



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: MARCH 20, 2019

90-DAY DEADLINE: n/a

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Project Name: **Amendments relating to Planning Code Section 188(g):
Terrace Infill on Existing Noncomplying Structures**

Case Number: **2016-007303PCA [Board File No. TBD]**

Staff Contact: Seema Adina, Current Planning
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Reviewed by: Aaron Starr, Manager of Legislative Affairs
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Recommendation: **Approval with Modifications**

PLANNING CODE AMENDMENT

Ordinance amending the Planning Code to permit new floor area or building volume on the rooftop of a noncomplying structure that is designated as a Significant Building under Planning Code Article 11 and located on Assessor's Block No. 3707, provided that the rooftop has an existing parapet at least 17 feet in height along the primary building frontage.

The Way It Is Now:

Currently Section 188(g) of the Planning Code states that, for nonconforming buildings in a specified area, that are designated as Category I Significant Buildings, per Article 11:

1. Section 188(g) applies only to block 0316.
2. Terrace Infill is defined as floor area or building volume located within an existing terrace that is already framed by no less than one wall.
3. Planning Code Section 188(g) expires on January 31, 2019.

The Way It Would Be:

If adopted, the proposed amendments to Section 188(g) would:

1. Expand to allow for Terrace Infill within an existing rooftop terrace that is behind a parapet that is at least 17 feet in height along the primary building frontage on Block 3707.
2. Expand the definition of Terrace Infill to allow for the creation of new floor area or building volume through the Terrace Infill provision.
3. Extend the code section's current January 31, 2019 expiration date to January 31, 2029.

BACKGROUND

The proposed project at 5 Third Street, the Hearst Building, is a conversion from office use to hotel use on the second through twelfth floors. Approximately 5,920 square feet of office use will remain on the second and third floors while retail use will be maintained on the basement and ground floor. The Project includes a lightwell infill on the seventh and eighth floors not visible from the public right-of-way, as well as interior alterations consistent with the Secretary of the Interior's Standards for Rehabilitation. While the building envelope will not change on the southern structure (17-29 Third Street), interior alterations would create a two-story lobby entrance that connects to the rest of the Project Site. Portions of the existing penthouse structures on the 13th floor would be demolished, while new mechanical and elevator penthouses are proposed at a lower height, bringing the building into closer conformity with the existing 120-foot height limit. In addition, a roof deck and event space that are fully screened by the existing parapet are also proposed. The Ordinance would allow for the Terrace Infill at this location providing greater public access to the Hearst Building and the surrounding Montgomery-Mission-Second Street Conservation District as a whole. The Hearst Building is designated as a Significant Building: Category 1 under Article 11. The terrace that they wish to infill is screened behind a 17-foot parapet and not visible from the public right-of-way.

ISSUES AND CONSIDERATIONS

Section 188(g)

Planning Code Section 188 was added by ordinance in 1978 and allows for the enlargement, alteration, reconstruction, and change or intensification of use for existing structures that do not conform to current limitations set forth in the Code. In 2017, the Board of Supervisors added subsection (g), which applies to existing nonconforming structures located on Assessor's Block 0316 that are designated as Significant Buildings under Article 11 and seek a Major Permit to Alter to enclose rooftop terrace space. This section was added to facilitate rooftop improvements to the Clift Hotel at 495 Geary Street.

Projects that may utilize Section 188(g):

- Must be a qualifying "noncomplying structure," which is defined in Section 180 as:

a structure which existed lawfully at the effective date of this Code, or of amendments thereto, and which fails to comply with one or more of the regulations for structures, including requirements for off-street parking and loading, under Articles 1.2, 1.5, 2.5, 6, 7 and 8 of this Code, that then became applicable to the property on which the structure is located.

- Must not result in any increased discrepancy.

And must be found by the Historic Preservation Commission to:

- Not create Terrace Infill that is visible from the primary building frontage, and
- Not exceed 1,500 net new square feet per building.

Limited Application of 188(g) and Expiration of Current Code Language

Currently Section 188(g) limits the number of Article 11-designated historic buildings that could benefit from modestly-sized terrace infills to Assessor's block 0316 (the block of the Clift Hotel). Amendments to and extension of this Code section, which expired on January 31, 2019, will facilitate the adaptive reuse of historic buildings in a manner that is in keeping with existing city policies, with Article 11 of the Planning Code, and with national standards for historic preservation.

Visible Mechanical Additions on Designated Significant Buildings

The Planning Department's paramount concern is to maintain flexibility in the code to foster rehabilitation of designated Significant Buildings. This flexibility, however, must be balanced by a high standard of preservation design review. Discreet solutions for upgrading mechanical equipment, and installing them in locations that are shielded from public view, shall remain a design review priority. Historic design elements, such as a tall roof parapet, can serve as a visual screen for certain rooftop improvements that might otherwise detract from a Significant Building's character-defining features.

General Plan Compliance

The General Plan discusses the conservation of resources and states that Projects should preserve landmarks and historic buildings. Section 188(g) requires a project sponsor to file a Major Permit to Alter for Terrace Infill, and does not allow the work to be visible from a primary building frontage or exceed 1,500 net new square feet. Restrictions on the size and public visibility of qualifying Terrace Infill construction will continue to be in place, fostering the preservation of Category I Significant Buildings and their aesthetic value as an historic resource, in keeping with the General Plan's Priority Policies and Urban Design Element, the Downtown Area Plan, and the Planning Code.

RECOMMENDATION

The Department recommends that the Commission *approve* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Modify the 14-foot parapet height to specify a 17-foot parapet height.
2. Modify the proposed January 31, 2019 deadline for procuring a Major Permit to Alter.
3. Maintain the existing Code requirement that the Historic Preservation Commission must find that any Terrace Infill would not be visible from the primary building frontage.

BASIS FOR RECOMMENDATION

The Department supports the overall goals of this Ordinance because it fosters the preservation of a historic structure, ensures the work will not be visible from a primary façade, and will be done in accordance with the Secretary of Interior's Standards. The Ordinance will help facilitate the rehabilitation and reuse of a historic resource and would increase the public access of the historic building and the New Montgomery-Mission-2nd Street Conservation District as a whole.

Recommendation 1: Historic Parapet Conditions. Staff recommends an allowance for rooftop terrace infill along primary frontages of the Hearst Building if the enclosure meets the provisions of Section 1111.6 and would be screened from public visibility by its historic parapet wall measuring 17 feet in height.

Recommendation 2: Extension of Section 188(g). Staff recommends extending the expiration date for Section 188(g) because the existing timeline would not provide enough time for the Hearst Hotel to complete the proposed project.

Recommendation 3: Historic Preservation Commission Findings. Staff recommends upholding the existing requirement in Section 188(g) that the Historic Preservation Commission find the proposed work to be not publicly visible from the building's primary frontage, to retain and preserve the historic character of the property.

REQUIRED COMMISSION ACTION

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

IMPLEMENTATION

The Department has determined that this ordinance will not impact our current implementation procedures.

ENVIRONMENTAL REVIEW

The physical changes in the environment associated with the proposed legislative amendment include alterations and enlargements to the existing noncomplying rooftop structures, and were analyzed as part of the project as a whole in the Final Mitigated Negative Declaration. The project was found to not have a significant effect on the environment based on the criteria of the Guidelines of the State Secretary for Resources, Sections 15064 (Determining Significant Effect), 15065 (Mandatory Findings of Significance), and 15070 (Decision to prepare a Negative Declaration), and the reasons documented in the Initial Study prepared for the project.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

Attachments:

- Exhibit A: Draft Historic Preservation Commission Resolution
- Exhibit B: Sponsor-initiated Ordinance



SAN FRANCISCO PLANNING DEPARTMENT

Historic Preservation Commission Draft Resolution HEARING DATE MARCH 20, 2019

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Project Name: **Amendments Relating to Terrace Infill on Noncomplying Structures**
Case Number: **2016-007303PCA [Board File No. TBD]**
Initiated by: **Todd Chapman, Bespoke Hospitality, LLC**
c/o JMA Ventures, LLC
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San Francisco, CA 94108
Staff Contact: **Seema Adina, Current Planning**
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Reviewed by: **Aaron D Starr, Manager of Legislative Affairs**
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RESOLUTION RECOMMENDING APPROVAL OF A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO PERMIT NEW FLOOR AREA OR BUILDING VOLUME ON THE ROOFTOP OF A NONCOMPLYING STRUCTURE THAT IS DESIGNATED AS A SIGNIFICANT BUILDING UNDER PLANNING CODE ARTICLE 11 AND LOCATED ON ASSESSOR'S BLOCK NO. 3707, PROVIDED THAT THE ROOFTOP HAS AN EXISTING PARAPET AT LEAST 17 FEET IN HEIGHT ALONG THE PRIMARY BUILDING FRONTAGE; 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 April 5, 2018 the Project Sponsor submitted a proposed Ordinance under which would amend Section 188(g) of the Planning Code to permit new floor area or building volume on the rooftop of a noncomplying structure that is designated as a Significant Building under Planning Code Article 11 and located on Assessor's Block No. 3707, provided that the rooftop has an existing parapet at least 17 feet in height along the primary building frontage;

WHEREAS, a Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the Project was prepared and published for public review on August 22, 2018; and

WHEREAS, the Draft IS/MND was available for public comment until September 11, 2018; and

WHEREAS, on September 11, 2018, two separate appellants, Rachel Mansfield-Howlett of Provencher & Flatt, LLP, on behalf of Friends of Hearst Building, and Yasin Salma, filed letters appealing the determination to issue a MND. Both appellants provided supplemental appeal letters. The supplemental letter and material from friends of Hearst Building was received November 15, 2018. Accordingly, the

Department requested a continuance in order to assess the information and prepare a supplemental response, which the Planning Commission granted; and

WHEREAS, on February 14, 2019, the Planning Department reviewed and considered the Final Mitigated Negative Declaration (FMND) and found that the contents of said report and the procedures through which the FMND was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), 14 California Code of Regulations Sections 15000 et seq. (the “CEQA Guidelines”) and Chapter 31 of the San Francisco Administrative Code (“Chapter 31”); and

WHEREAS, the Planning Department found the FMND was adequate, accurate and objective, reflected the independent analysis and judgment of the Department of City Planning, and that the summary of comments and responses contained no significant revisions to the Draft IS/MND, and approved the FMND for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31; and

WHEREAS, the Planning Department, Jonas Ionin, is the custodian of records, located in File No. 2016-007303, at 1650 Mission Street, Fourth Floor, San Francisco, California; and

WHEREAS, the Planning Department prepared a Mitigation Monitoring and Reporting program (MMRP), which material was made available to the public and this Commission for this Commission’s review, consideration and action; now therefore, be it

WHEREAS, The Historic Preservation Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on March 20, 2019; and,

WHEREAS, the 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 Commission has reviewed the proposed Ordinance; and

WHEREAS, the Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Commission hereby recommends **approval** 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. The Commission finds that the Ordinance fosters the preservation of a historic structure, ensures the work will not be visible from a primary façade, and will be done in accordance with the Secretary of Interior's Standards.
2. The Commission finds that the Ordinance will help facilitate the rehabilitation and reuse of a historic resource and would increase the public access of the historic building and the New Montgomery-Mission-2nd Street Conservation District as a whole.
3. **General Plan Compliance.** The proposed Ordinance and the Commission is consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 1

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

Policy 1.1

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

The proposed Ordinance will facilitate the establishment of a retail hotel use that provides net benefits in the form of tourism to the city and commercial activity associated with visiting guests to San Francisco. A rooftop lounge and event space will be open to the general public, allowing both local residents and visitors to enjoy the rehabilitated historic building and its amenities. Any potential undesirable consequences may be addressed through existing regulatory controls.

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.

Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

The proposed Ordinance facilitates new commercial activity along the Market Street corridor in the form of visiting guests for both work and pleasure, who create activity downtown both during and outside of regular business hours. This added commercial activity will help maintain a favorable social and cultural climate in San Francisco as it brings more people into the area to work, shop, dine and recreate. The project will preserve

and rehabilitate a historic resource identified as a Significant Building, which adds to the cultural environment of the city. This enhances San Francisco as a location for firms.

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 2

CONSERVATION OF RESOURCES WHICH PROVIDES A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

Policy 2.4

Preserve notable landmarks and areas of historic, architectural or aesthetic value, and promote the preservation of other buildings and features that provide continuity with past development.

Policy 2.5

Use care in remodeling of older buildings, in order to enhance rather than weaken the original character of such buildings.

THE DOWNTOWN PLAN

OBJECTIVE 12

CONSERVE RESOURCES THAT PROVIDE CONTINUITY WITH SAN FRANCISCO'S PAST.

Policy 12.1

Preserve notable landmarks and areas of historic, architectural, or aesthetic value, and promote the preservation of other buildings and features that provide continuity with past development.

Policy 12.2

Use care in remodeling of older buildings, in order to enhance rather than weaken the original character of such buildings.

Because of its limited scope and strong review requirements, the proposed Ordinance is consistent with the above Objectives and Policies in the Urban Design Element and the Downtown Plan; it will allow for a change to a Significant Building per Article 11 of the Planning Code, while ensuring the preservation of its historic features and not weakening its original character.

4. **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. The loading area will be on a secondary street with little traffic and hotel guests arriving by car can take advantage of valet service.

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. The project proposes rehabilitation of the subject property according to both local and national standards.

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.

5. **Planning Code Section 302 Findings.** The Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Planning Commisison and Board ADOPT the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on March 20, 2019.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: March 20, 2019

[Planning Code - New Rooftop Floor Area or Building Volume on Noncomplying Structure Designated as a Significant Building on Assessor's Block Number 3707]

Ordinance amending the Planning Code to permit new floor area or building volume on the rooftop of a noncomplying structure that is designated as a Significant Building under Planning Code Article 11 and located on Assessor's Block No. 3707, provided that the rooftop has an existing parapet at least 17 feet in height along the primary building frontage; 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 making findings of public necessity, convenience, and welfare under Planning Code, Section 302.

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

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

Section 1. Findings.

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

1 (b) On _____, the Planning Commission, in Resolution No. _____,
2 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
3 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
4 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
5 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

6 (c) Pursuant to Planning Code Section 302, the Board finds that these Planning Code
7 amendments will serve the public necessity, convenience, and welfare for the reasons set
8 forth in Planning Commission Resolution No. _____ and the Board incorporates such reasons
9 herein by reference, as though fully set forth herein. A copy of Planning Commission
10 Resolution No. _____ is on file with the Clerk of the Board of Supervisors in File No. _____.
11

12 Section 2. The Planning Code is hereby amended by revising Section 188, to read as
13 follows:

14 **Section. 188. Noncomplying Structures: Enlargements, Alterations, and**
15 **Reconstruction.**

16 (a) Within the limitations of this Article 1.7, and especially Sections 172 and 180
17 hereof, a noncomplying structure as defined in Section 180 may be enlarged, altered or
18 relocated, or undergo a change or intensification of use in conformity with the use limitations
19 of this Code, provided that with respect to such structure there is no increase in any
20 discrepancy, or any new discrepancy, at any level of the structure, between existing
21 conditions on the lot and the required standards for new construction set forth in this Code,
22 and provided the remaining requirements of this Code are met.

23 * * * *

24 (g) Notwithstanding subsection (a) of this Section 188, Terrace Infill, defined as new
25 floor area or building volume located within an existing terrace ~~that is already framed by no less~~

1 ~~than one wall,~~ may be permitted ~~to be enclosed~~ on a noncomplying structure, as defined in
2 Planning Code Section 180, that is designated as a Significant Building under Article 11 of this
3 Code, notwithstanding otherwise applicable height, floor area ratio and bulk limits, ~~where the~~
4 ~~noncomplying structure is designated as a Significant Building under Article 11 of this Code~~ as follows:
5 on Assessor's Block 0316, Terrace Infill may be permitted to be enclosed within an existing terrace that
6 is already framed by no less than one wall; and is located on Assessor's Block 03163707, Terrace
7 Infill may be permitted within an existing rooftop terrace that is behind a parapet at least 17 feet in
8 height along the primary building frontage. An application for Terrace Infill shall be considered a
9 Major Alteration under Section 1111.1 of this Code and shall be subject to the applicable
10 provisions of Article 11 of this Code, including but not limited to the requirement to apply for
11 and procure a Permit to Alter. As part of the Historic Preservation Commission's
12 consideration of such application, in addition to other requirements set forth in this Code, the
13 facts presented must establish that the Terrace Infill (1) would not be visible from the primary
14 building frontage, and (2) would not exceed 1,500 net new square feet per building. Unless
15 the Board of Supervisors adopts an ordinance extending the term of this Subsection 188(g), it
16 shall expire by operation of law on January 31, 2019~~28~~. After that date, the City Attorney shall
17 cause this Subsection 188(g) to be removed from the Planning Code.

18
19 Section 3. Effective Date. This ordinance shall become effective 30 days after
20 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
21 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
22 of Supervisors overrides the Mayor's veto of the ordinance.

23
24 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
25 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,

1 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
2 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
3 additions, and Board amendment deletions in accordance with the “Note” that appears under
4 the official title of the ordinance.

5
6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8 By: _____
9 CHRISTOPHER T. TOM
Deputy City Attorney

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