



# SAN FRANCISCO PLANNING DEPARTMENT

---

## Executive Summary Planning Code Text Amendment

HEARING DATE: DECEMBER 8, 2016  
EXPIRATION DATE: DECEMBER 26, 2016

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

*Project Name:* **Exempting Certain Historic Landmarks from November 2016 Ballot Measure Requiring Conditional Use Authorization to Replace Production, Distribution, and Repair, Institutional Community, and Arts Activities Uses**

*Case Number:* **2016-013035PCA** [Board File No. 161014]

*Initiated by:* Supervisor Kim / Introduced September 20, 2016

*Staff Contact:* Diego R Sánchez, Legislative Affairs  
diego.sanchez@sfgov.org, 415-575-9082

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

*Recommendation:* **Recommend Approval with Modifications**

### PLANNING CODE AMENDMENT

The proposed Ordinance would amend Planning Code Section 208.8, included in the November 8, 2016, General Election as Proposition X, to exempt certain designated historic landmarks from obtaining Conditional Use Authorization to remove certain Production, Distribution, and Repair, Institutional Community, and Arts Activities Uses, and providing replacement for such uses.

#### The Way It Is Now:

For projects subject to Planning Code Section 202.8, Conditional Use Authorization (CU) is required when proposing to convert Production, Distribution, and Repair (PDR), Institutional Community (IC), and Arts Activities Uses. These projects are also required to replace converted PDR, IC and Arts Activities spaces according to a ratio based on zoning district and Environmental Evaluation Application submittal date.

#### The Way It Would Be:

Projects subject to Planning Code Section 202.8 proposing to convert no more than 50% of the property's PDR, IC or Arts Activities space would be exempt from the CU and replacement requirement if that space is located within a landmark designated under Article 10 of the Planning Code or individually listed on the National Register of Historic Places. Further, this project type would be allowed to convert an additional 25% of the space dedicated to PDR, IC or Arts Activities uses if the remaining PDR, IC or Arts Activities space is rented, leased or sold at 50% below market rate.

### BACKGROUND

#### Proposition X

On November 8, 2016 60% of San Francisco voters approved Proposition X, Preserving Space for Neighborhood Arts, Small Business and Community Services in Certain Neighborhoods.<sup>1</sup> This Proposition amended the Planning Code to require CU for projects proposing to demolish or convert spaces dedicated to PDR, IC or Arts Activities uses. The Proposition also required that the demolished or converted spaces be replaced according to a ratio based on the project's zoning district and Environmental Evaluation Application submittal date. The CU and replacement requirements apply to projects in specific mixed use zoning districts in the Mission, East SOMA, Western SOMA and Central SOMA, if adopted, Plan Areas.

Proposition X also affords eight different project types an exemption from the CU and replacement requirements. These projects are:

1. Properties under Port of San Francisco or Recreation and Park Commission jurisdiction, in Redevelopment Plan Areas in effect as of July 1, 2016 and any parcel in the P (Public) zoning district as of July 1, 2016.
2. Projects where the PDR, IC or Arts Activities use subject to conversion commenced after June 14, 2016
3. Projects that were approved by the Planning Department or Planning Commission by June 14, 2016
4. Any project that would convert less than 15,000 square feet of PDR, IC or Arts Activities use and for which an Environmental Evaluation Application was submitted prior to June 14, 2016
5. Any public transportation project
6. Any project receiving affordable housing credits associated with affordable unit retention at the South Beach Marina Apartments
7. Any project where 100% of the units are affordable
8. Any property in the Western SOMA Plan Area if the actual use functioning on the property as of September 8, 2014 was principally permitted and not a PDR, IC or Arts Activities use, such that a legal conversion could have been approved prior to October 9, 2014. This applies only to conversions of uses less than 25,000 square feet in area.

The ballot arguments in favor of Proposition X cited the loss of affordable spaces for PDR, IC and Arts Activities as motivation for the Proposition. Proponents argued that urgent action was needed given the loss of one million square feet of PDR, IC or Arts Activities spaces since 2011. These uses, proponents claimed, contribute to the City's cultural heritage and local economy and merit preservation. Proponents also cited job preservation and creation as reasons to support Proposition X.

Opponents argued that using the ballot initiative process is a very poor method to amend land use controls. In this vein, they claimed that Proposition X was hastily drafted and lacked adequate outreach. Consequently, opponents argued, Proposition X would lead to housing production delays and cost increases. Proposition X does not guarantee that newly created replacement spaces would be suitable to light industrial and arts uses, both from a physical and financial perspective. Because of this, opponents

---

<sup>1</sup>Legislative Digest:

<http://sfgov.org/elections/sites/default/files/Documents/candidates/Requirements%20for%20Changing%20the%20Use%20of%20Certain%20Properties%20Legislative%20Digest.pdf>

Legal Text:

<http://sfgov.org/elections/sites/default/files/Documents/candidates/Requirements%20for%20Changing%20the%20Use%20of%20Certain%20Properties%20Legal%20Text.pdf>

argued, these matters are better handled through the typical legislative process, including vetting by the Commission and the BOS.

## **ISSUES AND CONSIDERATIONS**

### **A Brief Overview of PDR Retention Strategies in San Francisco's Industrial Areas**

Since the early 1990's the City has been concerned about the loss of PDR activity from its industrial areas. Competing Residential, Live/Work and Office uses very often drove the conversion of PDR spaces to non-PDR purposes. Vacant land zoned for PDR activities was also frequently used for non-PDR purposes. In response, the Planning Commission (Commission) and Board of Supervisors (BOS) have repeatedly adopted land use policies and permanent controls to preserve PDR land and spaces.

#### Initial Strategies from the 1990's

Resolutions 13794 (R13794) and 14556 (R14556) were early attempts to stem the loss of PDR activity. Adopted in December 1994, R13794 required the Planning Commission (Commission) to take Discretionary Review (DR) on proposals constructing ten or more new Live/Work units or converting an existing industrial structure to ten or more Live/Work units within a portion of the Northeast Mission (NEMIZ). R14556, adopted in March 1998, expanded the DR policy to encompass all of the NEMIZ and include areas within Islais Creek and Mission Bay.

The Commission recognized replacement requirements as a PDR retention strategy with the adoption of Resolution 14861 (R14861) in August 1999. These interim controls also provided guidance on the location of PDR and Residential uses, with an eye toward assuring compatibility. R14861 established an Industrial Protection Zone (IPZ) and a Mixed Use Housing Zone (MUHZ) within industrially zoned areas of eastern San Francisco. Within the IPZ, projects retaining or creating PDR spaces were favored over housing. The Commission also established a policy encouraging replacement of demolished industrial spaces with new spaces suitable for PDR. CU was required for projects demolishing buildings occupied by businesses engaged in industrial activities. The MUHZ intended to foster residential development with lighter intensity PDR or retail uses at the ground floor. This was to serve as a transition between industrial activities in the IPZ and Residential uses in the MUHZ.

#### The 2000's: BOS Moratoria and Affirmation of Existing Commission Strategies

By the early 2000's the BOS began to impose stronger controls to address the loss of PDR spaces. The Live/Work Moratorium (Resolution 111-01), enacted in February 2001, and the "Information Technology" Office controls (Resolution 518-01), enacted in July 2001, are two examples. Resolution 111-01 prohibited Live/Work uses across San Francisco. Resolution 518-01 prohibited new Office uses in the NEMIZ. Both were a response to the threats these uses posed to the PDR sector's viability.

Resolution 16727, adopted in February 2004, reaffirmed the Commission's PDR replacement requirement as a viable retention strategy. It also identified three sub-areas in the Mission, SOMA and Showplace Square/Potrero Hill neighborhoods for particular consideration. Two sub-areas, the Core PDR Overlay and the Housing/PDR Overlay, discouraged PDR loss and encouraged its inclusion in replacement projects. The third, the Housing/Mixed Use Overlay, encouraged maximizing housing densities.

The Eastern Neighborhoods Plan (EN), begun in 2001 and effective as of January 2009, sought to balance two on-going and competing needs in eastern San Francisco. The first was the need to accommodate new Residential and Office development. The second was the need to preserve existing PDR uses and land

zoned for those uses. EN attempted to resolve this tension, in part, by creating two new sets of zoning districts for industrially zoned land. One set essentially restricted land to PDR uses. The other set allowed a mix of uses, including Residential and PDR uses. Much like the earlier MUHZ, this set of districts was crafted to maximize residential densities while allowing other non-Residential uses.

#### More Recent BOS and Commission Controls

In the last few years both the BOS and the Commission have continued to enact controls to retain PDR uses in the City's eastern neighborhoods. For example, Ordinance 210-14, enacted by the BOS in October 2014, established an interim moratorium on the conversion or replacement of PDR uses in the proposed Central SOMA Plan Area. This was intended to address PDR displacement concerns in the Central SOMA Plan Area during plan area development. This control expired in October 2016.

Another instance of Commission action is the Mission Interim Zoning Controls, effective January 2014 as part of the continuing Mission Action Plan 2020 effort. These controls require project sponsors to provide additional information, and Department Staff to conduct additional analysis, on projects proposing PDR displacement. For example, research and disclosure of offered relocation benefits, availability of uses similar to those being displaced and availability of vacant space to serve as replacement is required of project sponsors. Department Staff is required to review the provided information and attend pre-application meetings for such projects. It is also a Department policy to encourage PDR replacement when projects propose demolition or significant renovation.

#### Compromise as a Common Thread

In certain instances, based on compatibility considerations for example, the City has taken a policy direction toward highly scrutinizing proposed projects and encouraging PDR retention. In others it provided flexibility in allowed land uses irrespective of geography or existing land uses. Even Proposition X acknowledges more than a half dozen circumstances where using formerly industrially zoned land for non-PDR purposes is beneficial to the City. This give and take has been an underlying theme in the City's PDR retention efforts.

#### **Adaptive Re-Use of Historic Buildings**

Actively used, fully functional historic buildings greatly contribute to a neighborhood's fabric and economic vitality; however, given rapid economic changes certain buildings may not be properly designed to accommodate newer activities, leading to their neglect and deterioration. For example, older buildings may not have suitable conveyance or ventilation systems for particular economic activities or do not comply with ADA requirements. Some may suffer from outdated floor plan configurations, including inadequate ingress/egress. In other cases, existing building/life safety or land use regulations may hamper the introduction of many new economic activities. In these instances it is reasonable that the City pursue financial incentives and/or regulatory amendments to facilitate the re-use of such buildings.

San Francisco's General Plan also provides policy guidance regarding the preservation and adaptive re-use of historic buildings. For example, the Western SOMA Area Plan encourages and supports the adaptive re-use of the neighborhood's historic and social heritage resources.<sup>2</sup> The Mission and East

---

<sup>2</sup> Western SOMA Area Plan, Objective 5.1, Policy 5.1.3: Encourage and support the preservation and adaptive re-use of historic and social heritage neighborhood resources.

SOMA Area Plans have policies that urge the City to revise land use controls to facilitate preservation goals.<sup>3</sup> This includes making adaptive re-use easier.

### **Supply and Creation of PDR Spaces**

The Department's Pipeline Reports provide data analyzed on a quarterly basis regarding the development of non-Residential uses, including PDR uses.<sup>4</sup> The Pipeline Reports, and in particular Table 1: Residential and Commercial Pipeline, by Pipeline Status and Land Use Category, indicate a consistent trend in the production of PDR spaces. Despite certain Pipeline Reports indicating some level of new PDR production, either as filed or approved applications for example, cumulatively there is a consistent net loss of PDR space. This figure is typically in the hundreds of thousands of gross square feet.

Data on completed projects involving PDR uses since 2000 also illustrate a similar trend. Table 1 below indicates the net production by particular Area Plan and the rest of San Francisco.

TABLE 1: NET PRODUCTION OR LOSS OF PDR SINCE 2000 FROM COMPLETED PROJECTS

Location	Net PDR Production, in Sq. Ft.
Central Waterfront Area Plan	9,732
Showplace Square/ Potrero Hill Area Plan	106,307
Eastern SOMA Area Plan	(692,866)
Mission Area Plan	(328,394)
Western SOMA Area Plan	(141,720)
Rest of San Francisco	(373,891)
TOTALS	(1,420,832)

The magnitude and overall trend in completed and pipeline projects are particularly troubling to the City's goals of achieving economic and employment diversity.<sup>5</sup>

Lessening this rate of loss is important. The City should be open to new or amended regulations that address this issue. On the supply side, programs incentivizing or actually producing new PDR spaces should be strongly supported. These could be tailored to create spaces leased or sold at below market rate as well.

---

<sup>3</sup> Mission Area Plan, Objective 8.3, Policy 8.3.6: Adopt and revise land use, design and other relevant policies, guidelines, and standards, as needed to further preservation objectives.  
East SOMA Area Plan, Objective 8.3, Policy 8.3.6: Adopt and revise land use, design and other relevant policies, guidelines, and standards, as needed to further preservation objectives

<sup>4</sup> <http://sf-planning.org/pipeline-report>

<sup>5</sup> Commerce and Industry Element, Goals Nos. 1 and 2

[http://www.sf-planning.org/ftp/General\\_Plan/I2\\_Commerce\\_and\\_Industry.htm](http://www.sf-planning.org/ftp/General_Plan/I2_Commerce_and_Industry.htm)

The City does not have a readily available mechanism or program to proactively create PDR, or IC and Arts Activities, spaces leased or sold at any price. Given the decades of competitive pressure from Residential and Office uses and scant new production of PDR spaces, finding a mechanism or program to do so is imperative. Combined with constantly escalating commercial lease rates in the City's eastern half, PDR, IC or Arts Activities spaces leased or sold below market rates would be a boon to these sectors.

When creating such a mechanism or program to create PDR/IC/Arts Activities spaces leased or sold below market rates it is prudent that exemptions, required amounts and limits are clear to all parties. This is particularly true for larger projects subject to a Development Agreement (DA) with the City. It is preferable that the City agency negotiating the DA determine the proper lease or sales rate, using accepted best practices, for any PDR/IC/Arts Activities spaces produced in conjunction with the larger development. In addition, any exemptions to replacement requirements should be selectively allowed and any size or time limits to their use clearly demarcated.

### Planning Commission Comments

On December 8, 2106 the Planning Commission presided over an initial hearing of the Ordinance, including taking public comment. Public comment was mixed. Certain members spoke against the concept of allowing PDR conversion or demolition. Others spoke in support of PDR conversion under the terms outlined in the Planning Department staff report.

The Planning Commission's comments focused on balancing the goal of preserving and maintaining historic buildings with the goal of preserving the City's PDR spaces. Commissioners did recognize the inherent difficulty in renovating particular buildings and the need to provide flexibility in allowed uses. However, there was also a strong concern about the level of review the Planning Commission would have over projects proposing to demolish or convert existing PDR spaces. Certain Commissioners spoke in favor of maintaining a Conditional Use authorization requirement for proposed PDR demolition or conversion. After much deliberation, the Planning Commission concluded that its decision would benefit from the input of the Historic Preservation Commission. To that end, the Planning Commission moved to continue the item to their January 19, 2017 hearing.

## RECOMMENDATION

The Department recommends that the Historic Preservation Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Modify subsection 202.8(f)(9) of the proposed Ordinance to make clarifications to ease implementation, including the following:
  - a. Clarify that the City Agency negotiating the Development Agreement will make the determination of market rate for projects proposing additional conversion;
  - b. Clarify that the First Certificate of Occupancy shall be the milestone or document used to determine the 10 year limit on the use of the proposed exemptions; and
  - c. Clarify that a property may reduce up to 75% of its PDR, IC or Arts Activities spaces exempt from the requirements of Section 202.8.

(f)(9) Any project that proposes to convert no more than 50% of the property's PDR, Institutional Community, or Arts Activities space, provided that such space is located within a landmark designated

under Article 10 of the Planning Code or individually listed on the National Register of Historic Places. Additionally, any such project that is also subject to a contract or agreement meeting the requirements of California Civil Code Section 1954.28(d), which, as part of the terms of such contract or agreement, rents, leases, or sells at 50% below market rate the property's remaining PDR, Institutional Community, or Arts Activities space, may convert an additional 25% of the property's PDR, Institutional Community, or Arts Activities space exempt from the requirements of this Section 202.8, for a total of 75% of its PDR, Institutional Community, or Arts Activities space exempted from the requirements of this Section 202.8. The public agency negotiating the contract or agreement meeting the requirements of California Civil Code Section 1954.28(d) shall determine the market rate using accepted best practices for this purpose. Such below market rate rental, lease, or sale shall be for a period of not less than 55 years and subject to a deed restriction. The exemptions set forth in this subsection 202.8(f)(9) may be used no more than once every 10 years per property, with the date of the first Certificate of Occupancy for the permit application for conversion establishing the start of the 10 year period.

2. Modify subsection 202.8(a)(5) to add the term "square feet" to clarify allowed reduced replacement amounts for projects subject to any contract or agreement meeting the requirements of California Civil Code Section 1954.28(d) and renting, leasing or selling required replacement space at 50% below market rate:

(a)(5) The replacement requirements of subsection (a)(1), (2), (3), and (4) may be reduced by 0.25 square feet for any project subject to any contract or agreement meeting the requirements of California Civil Code Section 1954.28(d), including but not limited to a development agreement approved by the City under California Government Code Section 65864 et seq. if, as part of the terms of such agreement, the required replacement space is rented, leased, or sold at 50% below market rate for such commercial space for a period of not less than 55 years and is subject to deed restriction.

3. Modify the Ordinance to limit the proposed exemption to conversions of certain sizes in identified landmark buildings designated under Article 10 or individually listed on the National Register of Historic Places.

(f)(9) Any project that proposes to convert the lesser of 49,999 square feet or ~~no more than~~ 50% of the property's PDR, Institutional Community, or Arts Activities space, provided that such space is located within a landmark designated under Article 10 of the Planning Code or individually listed on the National Register of Historic Places as of July 1, 2016...

## BASIS FOR RECOMMENDATION

The Department supports the Ordinance's overarching goals of balancing the adaptive re-use of historic buildings through conversion and the creation of a mechanism producing below market rate PRD/IC/Arts Activities spaces with the need for their retention. Neighborhoods benefit when older buildings are renovated and actively used. When this is coupled with an opportunity to create spaces leased or sold below market rates, a beneficial synergy arises that enriches the neighborhood fabric and economy. Nonetheless, the Department is in favor of modifications constraining the amount of PDR/IC/Arts Activities spaces potentially converted by narrowing the applicability of the proposed exemption.

**Recommendation 1: Amend subsection 202.8(f)(9) to make clarifications to ease implementation.** Staff recommends these three clarifications because they will aid in the successful implementation of the

proposed exemption. For building owners contemplating conversion, the proposed clarifications help highlight the allowed extent and frequency of the exemption. For the City, the responsibility for establishing lease rates or sales prices for retained spaces is clarified. The three clarifications also help the City review future conversion proposals.

**Recommendation 2: Amend subsection 202.8(a)(5) to clarify allowed reduced replacement amounts.** Clarifying that the allowed reduction is in square feet improves the readability of the subsection. It also helps understand this subsection's ramifications on four other subsections establishing replacement requirements. Both project sponsors and Department Staff will benefit from this added clarity.

**Recommendation 3: Amend subsection 202.8(f)(9) to limit the proposed exemption to conversions of certain sizes in identified buildings.** Well defined parameters outlining the projects allowed the proposed exemption serve two purposes. First, it limits the total area converted from any one project proposing PDR/IC/Art Activities conversion. The proposed allowed amount is equivalent to that allowed under the City's Office Development Reserve for Smaller Buildings. This keeps conversions small, yet still adequately sized for a variety of buildings and prospective tenants. Second, the modification constrains future PDR/IC/Arts Activities conversions to already identified historic buildings. This type of constraint is a common feature in the existing Proposition X exemptions and helps the City retain existing PDR/IC/Arts Activities spaces.

## **REQUIRED COMMISSION ACTION**

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

## **IMPLEMENTATION**

The Department determined that this Ordinance will impact our current implementation procedures; however the proposed changes can be implemented without increasing permit costs or review time.

## **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 not received any public comment regarding the proposed Ordinance.

<b>RECOMMENDATION:</b>	<b>Recommendation of Approval with Modification</b>
------------------------	---

### **Attachments:**

Exhibit A: Draft Historic Preservation Commission Resolution  
Exhibit B: Board of Supervisors File No. 161014





# SAN FRANCISCO PLANNING DEPARTMENT

---

## Historic Preservation Commission Draft Resolution

HEARING DATE: DECEMBER 8, 2016

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

*Project Name:* **Exempting Certain Historic Landmarks from November 2016 Ballot Measure Requiring Conditional Use Authorization to Replace Production, Distribution, and Repair, Institutional Community, and Arts Activities Uses**

*Case Number:* **2016-013035PCA [Board File No. 161014]**

*Initiated by:* **Supervisor Kim / Introduced September 20, 2016**

*Staff Contact:* **Diego R Sánchez, Legislative Affairs  
diego.sanchez@sfgov.org, 415-575-9082**

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

**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTION 202.8, INCLUDED IN THE NOVEMBER 8, 2016, GENERAL ELECTION AS PROPOSITION X, TO EXEMPT CERTAIN DESIGNATED HISTORIC LANDMARKS FROM OBTAINING CONDITIONAL USE AUTHORIZATION TO REMOVE CERTAIN PRODUCTION, DISTRIBUTION, AND REPAIR, INSTITUTIONAL COMMUNITY, AND ARTS ACTIVITIES USES, AND PROVIDING REPLACEMENT SPACE FOR SUCH USES; 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 20, 2016 Supervisor Kim introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 161014, which would amend Planning Code Section 202.8, included in the November 8, 2016, General Election as Proposition X, to exempt certain designated historic landmarks from obtaining Conditional Use Authorization to remove certain Production, Distribution, and Repair, Institutional Community, and Arts Activities Uses, and providing replacement spaces for such uses;

WHEREAS, The Historic Preservation Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on December 8, 2016; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2) and 15378; 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

MOVED, that the Historic Preservation Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed ordinance.

The modifications include:

1. Modify subsection 202.8(f)(9) of the proposed Ordinance to make clarifications to ease implementation, including the following:
  - a. Clarify that the City Agency negotiating the Development Agreement will make the determination of market rate for projects proposing additional conversion;
  - b. Clarify that the First Certificate of Occupancy shall be the milestone or document used to determine the 10 year limit on the use of the proposed exemptions; and
  - c. Clarify that a property may reduce up to 75% of its PDR, IC or Arts Activities spaces exempt from the requirements of Section 202.8.

(f)(9) Any project that proposes to convert no more than 50% of the property's PDR, Institutional Community, or Arts Activities space, provided that such space is located within a landmark designated under Article 10 of the Planning Code or individually listed on the National Register of Historic Places. Additionally, any such project that is also subject to a contract or agreement meeting the requirements of California Civil Code Section 1954.28(d), which, as part of the terms of such contract or agreement, rents, leases, or sells at 50% below market rate the property's remaining PDR, Institutional Community, or Arts Activities space, may convert an additional 25% of the property's PDR, Institutional Community, or Arts Activities space exempt from the requirements of this Section 202.8, for a total of 75% of its PDR, Institutional Community, or Arts Activities space exempted from the requirements of this Section 202.8. The public agency negotiating the contract or agreement meeting the requirements of California Civil Code Section 1954.28(d) shall determine the market rate using accepted best practices for this purpose. Such below market rate rental, lease, or sale shall be for a period of not less than 55 years and subject to a deed restriction. The exemptions set forth in this subsection 202.8(f)(9) may be used no more than once every 10 years per property, with the date of the first Certificate of Occupancy for the permit application for conversion establishing the start of the 10 year period.

2. Modify subsection 202.8(a)(5) to add the term "square feet" to clarify allowed reduced replacement amounts for projects subject to any contract or agreement meeting the requirements of California Civil Code Section 1954.28(d) and renting, leasing or selling required replacement space at 50% below market rate:

(a)(5) The replacement requirements of subsection (a)(1), (2), (3), and (4) may be reduced by 0.25 square feet for any project subject to any contract or agreement meeting the requirements of California Civil Code Section 1954.28(d), including but not limited to a development agreement approved by the City under California Government Code Section 65864 et seq. if, as part of the

terms of such agreement, the required replacement space is rented, leased, or sold at 50% below market rate for such commercial space for a period of not less than 55 years and is subject to deed restriction.

3. Modify the Ordinance to limit the proposed exemption to conversions of certain sizes in identified landmark buildings designated under Article 10 or individually listed on the National Register of Historic Places.

(f)(9) Any project that proposes to convert the lesser of 49,999 square feet or ~~no more than~~ 50% of the property's PDR, Institutional Community, or Arts Activities space, provided that such space is located within a landmark designated under Article 10 of the Planning Code or individually listed on the National Register of Historic Places as of July 1, 2016...

## 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. Neighborhoods benefit when older buildings are renovated and actively used. This can be done by loosening restrictions on the conversion of existing PDR, Institutional Community or Arts Activities spaces in those buildings. When this is coupled with an opportunity to create PDR, Institutional Community or Arts Activities spaces leased or sold below market rates, a beneficial synergy arises that enriches the neighborhood fabric and economy.
2. Limits to the conversions of existing PDR, Institutional Community or Arts Activities spaces for the purposes of facilitating the adaptive re-use of historic buildings are also prudent given the value of existing PDR, Institutional Community or Arts Activities spaces. Regulations that strike a balance between the need to adaptively reuse older buildings and the need to retain PDR, Institutional Community or Arts Activities spaces best serve the City's interests in these matters.
3. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

## COMMERCE AND INDUSTRY ELEMENT

### OBJECTIVE 3

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

#### Policy 3.1

Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers

*Because the proposed Ordinance maintains a PDR retention requirement and includes a path to create PDR spaces leased or sold at below market rates, the Ordinance promotes employment opportunities for unskilled and semi-skilled workers.*

### OBJECTIVE 4

IMPROVE THE VIABILITY OF EXISTING INDUSTRY IN THE CITY AND THE ATTRACTIVENESS OF THE CITY AS A LOCATION FOR NEW INDUSTRY.

**Policy 4.11**

Maintain an adequate supply of space appropriate to the needs of incubator industries

*The proposed Ordinance creates a mechanism to create PDR, Institutional Community and Arts Activities spaces rented at below market rates. These can augment the supply of existing spaces used as business incubators.*

**MISSION AREA PLAN**

**OBJECTIVE 8.2**

PROTECT, PRESERVE, AND REUSE HISTORIC RESOURCES WITHIN THE MISSION PLAN AREA.

**Policy 8.2.3**

Promote and offer incentives for the rehabilitation and adaptive reuse of historic buildings in the Mission plan area.

*The proposed Ordinance will facilitate the adaptive reuse of historic buildings by loosening restrictions on the conversion of specific uses in these buildings. This can allow new uses in these buildings which then subsidize any renovations required for the adaptive reuse.*

**OBJECTIVE 8.3**

ENSURE THAT HISTORIC PRESERVATION CONCERNS CONTINUE TO BE AN INTEGRAL PART OF THE ONGOING PLANNING PROCESSES FOR THE MISSION PLAN AREA AS THEY EVOLVE OVER TIME.

**Policy 8.3.6**

Adopt and revise land use, design and other relevant policies, guidelines, and standards, as needed to further preservation objectives.

*The proposed Ordinance will revise an existing land use regulation in a manner that will facilitate the adaptive reuse of historic buildings in the Mission Area Plan.*

**EAST SOMA AREA PLAN**

**OBJECTIVE 8.2**

PROTECT, PRESERVE, AND REUSE HISTORIC RESOURCES WITHIN THE EAST SOMA AREA PLAN.

**Policy 8.2.3**

Promote and offer incentives for the rehabilitation and adaptive reuse of historic buildings in the East SoMa area plan.

*The proposed Ordinance will facilitate the adaptive reuse of historic buildings by loosening restrictions on the conversion of specific uses in these buildings. This can allow new uses in these buildings which then subsidize any renovations required for the adaptive reuse.*

**OBJECTIVE 8.3**

ENSURE THAT HISTORIC PRESERVATION CONCERNS CONTINUE TO BE AN INTEGRAL PART OF THE ONGOING PLANNING PROCESSES FOR THE EAST SOMA PLAN AREA AS THEY EVOLVE OVER TIME

**Policy 8.3.6**

Adopt and revise land use, design and other relevant policies, guidelines, and standards, as needed to further preservation objectives.

*The proposed Ordinance will revise an existing land use regulation in a manner that will facilitate the adaptive reuse of historic buildings in the East SOMA Area Plan.*

**WESTERN SOMA AREA PLAN**

**OBJECTIVE 5.1**

REINFORCE THE DIVERSITY OF THE EXISTING BUILT FORM AND THE WAREHOUSE, INDUSTRIAL AND ALLEY CHARACTER.

**Policy 5.1.3**

Encourage and support the preservation and adaptive re-use of historic and social heritage neighborhood resources.

*The proposed Ordinance will facilitate the adaptive reuse of historic buildings by loosening existing restrictions on the conversion on specific uses. This will allow the introduction of other uses which can subsidize any required renovations or maintenance.*

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 because the Ordinance deals with allowed conversion and replacement of light industrial, Institutional Community and Arts Activities uses.*

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 can have a positive effect on the existing neighborhood character and can help preserve economic diversity of the City's neighborhoods because it creates a path to adaptively reuse historic buildings while retaining and in certain instances creating new light industrial, Institutional Community and Arts Activities uses.*

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 concerns itself with the conversion and replacement of light industrial, Institutional Community and Arts Activities uses.*

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 because it concerns itself with the conversion and replacement of light industrial, Institutional Community and Arts Activities uses.*

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 will assure that the City maintains a diverse economic base by maintaining a PDR retention requirement and by creating a path to produce new PDR spaces.*

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 can have a beneficial effect on the City's Landmarks and historic buildings as it loosens land use regulations that can support future investment and adaptive reuse of these 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 because it concerns itself with the conversion and replacement of light industrial, Institutional Community and Arts Activities uses.*

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 Board ADOPT the proposed Ordinance with modifications as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on January 18, 2017.

Jonas P. Ionin  
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: January 18, 2017

[Planning Code - Exempting Certain Historic Landmarks From November 2016 Ballot Measure Requiring Conditional Use Authorization to Replace Production, Distribution, and Repair, Institutional Community, and Arts Activities Uses]

**Ordinance amending Planning Code, Section 202.8, included in the November 8, 2016, General Election as Proposition X, to exempt certain designated historic landmarks from obtaining conditional use authorization to remove certain Production, Distribution, and Repair, Institutional Community, and Arts Activities Uses, and providing replacement space for such uses; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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. Environmental and Land Use 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.

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



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

4 Section 2. Background and Effective Date.

5 (a) On August 2, 2016, the Board of Supervisors approved Motion No. M16-105,  
6 ordering an initiative ordinance entitled "Initiative Ordinance - Planning Code - Requiring  
7 Conditional Use Authorization for Replacement of Production, Distribution, Repair, Institutional  
8 Community, and Arts Activities Uses," be submitted to the voters at the November 8, 2016  
9 general election. Motion No. M16-105, including the initiative ordinance, is found in Board File  
10 No. 160698. The initiative ordinance is designated Proposition X on the November 8, 2016,  
11 ballot.

12 (b) Proposition X adds Section 202.8 to the Planning Code. Subsection 202.8(i)  
13 provides that the Board of Supervisors "by ordinance and by at least a two-thirds vote of all its  
14 members" may amend Section 202.8 "at any time after its effective date." This ordinance  
15 amends Section 202.8.

16 (c) If Proposition X is adopted by the voters at the November 8, 2016 general election,  
17 this ordinance shall become law if it is both finally passed by at least two-thirds of the Board of  
18 Supervisors and is enacted by the City, after the effective date of Proposition X. In that event,  
19 the effective date of this ordinance shall be 30 days after its enactment. Enactment occurs  
20 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not  
21 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the  
22 Mayor's veto of the ordinance.

23 (d) If Proposition X is not adopted by the voters, this ordinance shall be withdrawn  
24 from consideration by the Board of Supervisors.

1           Section 3. The Planning Code is hereby amended by revising proposed Section 202.8,  
2 to read as follows:

3           **SEC. 202.8. LIMITATION ON CONVERSION OF PRODUCTION, DISTRIBUTION,**  
4 **AND REPAIR USE, INSTITUTIONAL COMMUNITY USE, AND ARTS ACTIVITIES USE.**

5           The following controls shall apply in the following Eastern Neighborhoods Plans Areas:  
6 Mission; Eastern SoMa; Western SoMa; and, if adopted, Central SoMa. Notwithstanding any  
7 other provision of this Code, conversion of building space where the prior use in such space  
8 was a Production, Distribution, and Repair (PDR) use of at least 5,000 square feet, an  
9 Institutional Community use of at least 2,500 square feet, or an Arts Activities use, all as  
10 defined in Section 102, through change in use or any other removal, including but not limited  
11 to demolition of a building that is not unsound, shall be subject to the following requirements:

12           (a) To preserve the existing stock of building space suitable for PDR, Institutional  
13 Community, and Arts Activities uses, such conversion shall, if located within the following  
14 zoning districts, require conditional use authorization under Section 303 and the space  
15 proposed for conversion shall be replaced in compliance with the following criteria:

16           (1) In the areas that, as of July 1, 2016, are zoned SALI, the replacement space  
17 shall include one square foot of PDR, Institutional Community, or Arts Activities use for each  
18 square foot of the use proposed for conversion.

19           (2) In the areas that, as of July 1, 2016, are zoned UMU, MUO, or SLI, the  
20 replacement space shall include 0.75 square foot of PDR, Institutional Community, or Arts  
21 Activities use for each square foot of the use proposed for conversion.

22           (3) In the areas that, as of July 1, 2016, are zoned MUG or MUR, the  
23 replacement space shall include 0.50 square foot of PDR, Institutional Community, or Arts  
24 Activities use for each square foot of the use proposed for conversion.

1 (4) For any project located in the areas that, as of July 1, 2016, are zoned SALI,  
2 UMU, MUO, SLI, MUG, or MUR, that would convert at least 15,000 square feet of PDR,  
3 Institutional Community, or Arts Activities use, and for which an Environmental Evaluation  
4 application was submitted to the Planning Department by June 14, 2016, the replacement  
5 space shall include 0.4 square foot of PDR, Institutional Community, or Arts Activities use for  
6 each square foot of the use proposed for conversion. Notwithstanding the foregoing sentence,  
7 should the Board of Supervisors overturn any such project's environmental review on appeal,  
8 such project shall provide replacement space as required by subsections (a)(1), (2), or (3)  
9 above, as applicable.

10 (5) The replacement requirements of subsections (a)(1), (2), (3), and (4) may be  
11 reduced by 0.25 for any project subject to any contract or agreement meeting the  
12 requirements of California Civil Code Section 1954.28(d), including but not limited to a  
13 development agreement approved by the City under California Government Code Section  
14 65864 et seq. if, as part of the terms of such agreement, the required replacement space is  
15 rented, leased, or sold at 50% below market rate for such commercial space for a period of  
16 not less than 55 years and is subject to a deed restriction.

17 (6) Replacement space for PDR and Arts Activities use may be used for either  
18 PDR or Arts Activities use, regardless of which of those uses is proposed for conversion.  
19 Replacement space for Institutional Community use shall be used for Institutional Community  
20 use.

21 (b) Definitions. For the purposes of this Section 202.8, the following definitions shall  
22 apply:

23 "Prior use" shall mean the prior permanent and permitted use and shall not include any  
24 approved temporary uses such as "pop-up" eating establishments, craft fairs, or other  
25 seasonal uses.

1           “Replacement space” shall mean newly developed building space and shall not include  
2 building space that was previously used for PDR, Institutional Community, or Arts Activities.

3           “Unsound” shall mean a building for which rehabilitation to comply with City Codes for  
4 continued use as PDR, Institutional Community, or Arts Activities use, as applicable, would  
5 cost 50% or more of the cost to construct a comparable building.

6           (c) The amount of replacement space required under subsection (a)(1) may be  
7 reduced by the amount that is necessary to provide building entrances and exits;  
8 maintenance, mechanical, and utilities facilities; and on-site open space and bicycle facilities  
9 required under this Code; provided that no reduction shall be permitted for non-car-share  
10 vehicle parking spaces.

11           (d) Undeveloped property. The requirements of this Section 202.8 shall only apply to  
12 those portions of a site that are developed with building space where the prior use in such  
13 space was PDR use of at least 5,000 square feet, an Institutional Community use of at least  
14 2,500 square feet, or an Arts Activities use.

15           (e) In determining whether to grant Conditional Use authorization, in addition to  
16 making the required findings under Section 303, the Planning Commission shall consider the  
17 suitability of the replacement space for the use proposed for conversion.

18           (f) Exemptions. The following shall be exempt from the requirements of this Section  
19 202.8:

20                   (1) Any property under the jurisdiction of the Port of San Francisco or the  
21 Recreation and Park Commission; all Redevelopment Plan Areas in effect as of July 1, 2016;  
22 and any parcel zoned P (Public) on or after July 1, 2016.

23                   (2) Any project where the PDR use, Institutional Community use, or Arts  
24 Activities use subject to conversion commenced after June 14, 2016.

1 (3) Any project that has been approved by the Planning Department or Planning  
2 Commission by June 14, 2016, provided that, if subsequently appealed, such approval is  
3 upheld.

4 (4) Any project that would convert less than 15,000 square feet of PDR,  
5 Institutional Community, or Arts Activities use and for which an Environmental Evaluation  
6 application was submitted to the Planning Department by June 14, 2016,

7 (5) Any public transportation project.

8 (6) Any project that receives affordable housing credits associated with  
9 retention of affordable units at the South Beach Marina Apartments, pursuant to Board of  
10 Supervisors Resolution No. 197-16.

11 (7) Any project where all of the residential units with the exception of the  
12 manager's unit are affordable housing units, as that term is defined in Section 406(b)(1). If  
13 feasible, such projects shall make efforts to replace any converted PDR, Institutional  
14 Community, and Arts Activities uses.

15 (8) Any property in the Western SoMa Plan Area if the actual use functioning on  
16 the property as of September 8, 2014, as determined by the Zoning Administrator, was  
17 principally permitted, and not a PDR, Institutional Community, or Arts Activities use, such that  
18 a legal conversion could have been approved prior to October 9, 2014. This exemption  
19 applies only to conversions of uses smaller than 25,000 square feet.

20 (9) Any project that proposes to convert no more than 50% of the property's PDR,  
21 Institutional Community, or Arts Activities space, provided that such space is located within a  
22 landmark designated under Article 10 of the Planning Code or individually listed on the National  
23 Register of Historic Places. Additionally, any such project that is also subject to a contract or  
24 agreement meeting the requirements of California Civil Code Section 1954.28(d), which, as part of the  
25 terms of such contract or agreement, rents, leases, or sells at 50% below market rate the property's

1 remaining PDR, Institutional Community, or Arts Activities space, may convert an additional 25% of  
2 the property's PDR, Institutional Community, or Arts Activities space exempt from the requirements of  
3 this Section 202.8. Such below market rate rental, lease, or sale shall be for a period of not less than 55  
4 years and subject to a deed restriction. The exemptions set forth in this subsection 202.8(f)(9) may be  
5 used no more than once every 10 years per property.

6 (g) This Section 202.8 shall not authorize a change in use if the new use or uses are  
7 otherwise prohibited.

8 (h) In Lieu Fee and Off-Site Replacement. The Board of Supervisors may enact an  
9 ordinance adopting an in lieu fee and/or an off-site replacement option to meet the  
10 replacement requirements set forth in subsection (a). The proceeds from any such in lieu fee  
11 shall be used for the preservation and rehabilitation of existing PDR, Institutional Community,  
12 and Arts Activities spaces in the area plan area where the project paying the fee is located.

13 (i) The Board of Supervisors by ordinance and by at least a two-thirds vote of all its  
14 members may amend this Section 202.8 at any time after its effective date.

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

21 APPROVED AS TO FORM:  
22 DENNIS J. HERRERA, City Attorney

23 By: \_\_\_\_\_  
24 MARLENA BYRNE  
Deputy City Attorney

25 n:\legana\as2016\1700156\01137133.docx