



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Amendment Initiation

HEARING DATE: MARCH 8, 2018

Project Name: **Hours of Operation for Nonconforming Uses**
Case Number: **2018-000681PCA [Board File No. TBD]**
Staff Contact: Jonathan DiSalvo, Planner
jonathan.disalvo@sfgov.org, 415-575-9182
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: **Initiate and Schedule for Adoption on or After April 12, 2018**

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

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The action before this Commission is initiation of the code amendments described below. Initiation does not involve a decision on the substance of the amendments; it merely begins the required 20-day notice period, after which the Commission may hold a hearing and take action on the proposed Code amendments.

PLANNING CODE AMENDMENT

The proposed ordinance would amend Section 186 of the Planning Code to allow limited nonconforming uses in specified zoning districts to operate between the hours of 10:00 p.m. and 12:00 a.m. with Conditional Use authorization.

The Way It Is Now:

Limited nonconforming uses are only permitted to be open to the public during the period between 6:00 a.m. and 10:00 p.m. in RH, RM, RTO, and RED Districts.

The Way It Would Be:

Limited nonconforming uses would be allowed to operate between the hours of 10:00 p.m. and 12:00 a.m. with Conditional Use authorization in RH, RM, RTO, and RED Districts.

BACKGROUND

The idea for this ordinance came from a Conditional Use Authorization hearing for the legalization of a non-conforming event and performance art venue located at 3359 Cesar Chavez Street. The applicant wanted the ability to stay open until midnight, but the Code did not permit the hours of operation to extend beyond 10:00 p.m. During the hearing, the Commission asked the Department to consider allowing for the extension of hours of operation for limited nonconforming uses.

In this specific case, the venue proposed to have nighttime event and art performances, which typically go beyond 10:00 p.m. The Commission considered the existing permitted hours of operations to be an

undue restriction on the proposed use. Amending the Planning Code to provide a pathway for the extension of hours for limited nonconforming uses from 10:00 p.m. to 12:00 a.m. would serve to meet the Commission's directive. It will also provide a means for the Commission to review the extension of hours on a case-by-case basis via the Conditional Use authorization process.

ISSUES AND CONSIDERATIONS

Limited Nonconforming Uses

A Nonconforming Use is a use that was created legally with appropriate permits, but due to changes in the Planning Code, has since become a use that would not be permitted in its zoning district. Limited Nonconforming Uses are nonconforming uses of a limited commercial or industrial character, which are beneficial to, and can be accommodated within, defined residential areas. These uses tend to be small in scale, and provide desirable convenience goods and services to residents within a short walk of their homes.

There is an underlying presumption in the Planning Code that nonconforming uses should be eliminated over time because they are contrary to regulatory goals in the Code. Generally, nonconforming uses are given time limits to change to a conforming use and/or cease operating. However, in residential districts (with some exceptions), neighborhood-serving Limited Nonconforming Uses are not subject to termination and may continue for an indefinite period, and may also change their use to other commercial uses as specified in the Planning Code. Changes of use for Limited Nonconforming Uses must conform to the zoning controls of the NC-1 (Neighborhood Commercial Cluster) District or the controls of a more restrictive named NC (Neighborhood Commercial) District when the site is within ¼ mile of that district.

In NC-1 Districts, hours of operation can be extended by means of Conditional Use authorization, and can even be extended beyond 12:00 a.m. to 2:00 a.m. Similarly, the legislative changes proposed in this Planning Code amendment would provide a regulatory pathway for desirable Limited Nonconforming Uses to extend hours of operation to 12:00 a.m. by means of Conditional Use authorization.

RECOMMENDATION

The Department recommends that the Commission recommend approval of the resolution to initiate the Planning Code amendments for consideration on or after April 12, 2018.

BASIS FOR RECOMMENDATION

The Department recommends that the Commission initiate the proposed ordinance because it will allow for Section 186 of the Planning Code to be amended per the Commission's direction.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may initiate the proposed Ordinance and schedule a time for the ordinance to be heard for adoption.

ENVIRONMENTAL REVIEW

The proposal to amend the Planning Code is anticipated to result in no physical impact on the environment. Evaluation under CEQA will be complete prior to the adoption hearing.

PUBLIC COMMENT

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

RECOMMENDATION: Initiate and Consider Adoption on or after April 12, 2018

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Proposed Ordinance



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Resolution

HEARING DATE MARCH 8, 2018

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Recommendation: **Initiate and Schedule for Adoption on or After April 12, 2018**

ORDINANCE AMENDING THE PLANNING CODE TO ALLOW LIMITED NONCONFORMING USES IN SPECIFIED ZONING DISTRICTS TO OPERATE BETWEEN THE HOURS OF 10:00 P.M. AND 12:00 A.M. WITH CONDITIONAL USE AUTHORIZATION; 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, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider initiation of the proposed Ordinance on April 12, 2018; and,

WHEREAS, the proposed amendment would amend the Planning Code to allow limited nonconforming uses in specified zoning districts to operate between the hours of 10:00 p.m. and 12:00 a.m. with Conditional Use authorization; and

WHEREAS, the Department recommends that the Commission initiate the proposed ordinance because it will allow for Section 186 of the Planning Code to be amended per the Commission's direction; and

WHEREAS, this ordinance is not defined as a project under CEQA Sections 15378 and 15060; 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

MOVED, that pursuant to Planning Code Section 302(b), the Planning Commission Adopts a Resolution to Initiate amendments to the Planning Code;

AND BE IT FURTHER RESOLVED, that pursuant to Planning Code Section 306.3, the Planning Commission authorizes the Department to provide appropriate notice for a public hearing to consider the above referenced Planning Code amendments contained in the draft ordinance, approved as to form by the City Attorney in Exhibit A, to be considered at a publicly noticed hearing on or after **April 12, 2018**.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on March 8, 2018.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED:

LEGISLATIVE DIGEST

[Planning Code - Hours of Operation for Limited Nonconforming Uses]

Ordinance amending the Planning Code to allow limited nonconforming uses in specified zoning districts to operate between the hours of 10:00 p.m. and 12:00 a.m. with Conditional Use authorization; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public convenience, necessity, and welfare under Planning Code, Section 302.

Existing Law

Planning Code Section 186 provides for the continuance in RH, RM, RTO, and RED Districts of nonconforming uses of a limited commercial and industrial character which are beneficial to, or can be accommodated within, the residential areas in which they are located. Subsection (b) lists the conditions under which such uses must operate. The hours during which the use is allowed to be open to the public is limited to the period between 6:00 a.m. and 10:00 p.m.

Amendments to Current Law

Section 186(b) is amended to allow the Planning Commission to extend the hours of operation of limited nonconforming uses to 12:00 a.m. through Conditional Use authorization.

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1 [Planning Code - Hours of Operation for Limited Nonconforming Uses]

2
3 **Ordinance amending the Planning Code to allow limited nonconforming uses in**
4 **specified zoning districts to operate between the hours of 10:00 p.m. and 12:00 a.m.**
5 **with Conditional Use authorization; affirming the Planning Department's determination**
6 **under the California Environmental Quality Act; making findings of consistency with**
7 **the General Plan and the eight priority policies of Planning Code, Section 101.1; and**
8 **adopting findings of public convenience, necessity, and welfare under Planning Code,**
9 **Section 302.**

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

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

18 Section 1. Findings.

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

24 (b) On _____, the Planning Commission, in Resolution No. _____, adopted
25 findings that the actions contemplated in this ordinance are consistent, on balance, with the
City's General Plan and eight priority policies of Planning Code, Section 101.1. The Board

1 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
2 Board of Supervisors in File No. _____, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code, Section 302, the Board of Supervisors finds that this
4 ordinance will serve the public necessity, convenience, and welfare for the reasons stated in
5 Planning Commission Resolution No. _____ and the Board adopts said reasons herein
6 by reference.

7
8 Section 2. The Planning Code is hereby amended by revising Section 186, to read as
9 follows:

10 **SEC. 186. EXEMPTION OF LIMITED COMMERCIAL AND INDUSTRIAL**
11 **NONCONFORMING USES IN RH, RM, RTO, AND RED DISTRICTS.**

12 The purpose of this Section is to provide for the further continuance in RH, RM, RTO,
13 and RED Districts of nonconforming uses of a limited commercial and industrial character, as
14 herein described, which are beneficial to, or can be accommodated within, the residential
15 areas in which they are located. It is hereby found and declared that, despite the general
16 incompatibility of nonconforming uses with the purposes of this Code, and with other nearby
17 uses, these limited commercial uses may be tolerated in residential areas, and tend to provide
18 convenience goods and services on a retail basis to meet the frequent and recurring needs of
19 neighborhood residents within a short distance of their homes or, within the South of Market
20 RED Districts, tend to provide jobs and continuation of small scale service and light industrial
21 activities. These uses tend to be small in scale, to serve primarily a walk-in trade, and cause a
22 minimum of interference with nearby streets and properties. Accordingly, this Section
23 recognizes the public advantages of these uses and establishes conditions for their continued
24 operation.

25 * * * *

1 (b) **Conditions on Limited Nonconforming Uses.** The limited nonconforming
2 uses described above shall meet the following conditions:

3 (1) The building shall be maintained in a sound and attractive condition,
4 consistent with the general appearance of the neighborhood;

5 (2) Any signs on the property shall be made to comply with the requirements of
6 Article 6 of this Code applying to nonconforming uses;

7 (3) The hours during which the use is open to the public shall be limited to the
8 period between 6:00 a.m. and 10:00 p.m., however, the Planning Commission may extend the
9 hours of operation to 12:00 a.m. through Conditional Use authorization, as outlined in Section 303 of
10 this Code;

11 (4) Public sidewalk space may be occupied in connection with the use provided
12 that it is only occupied with tables and chairs as permitted by this Municipal Code;

13 (5) Truck loading shall be limited in such a way as to avoid undue interference
14 with sidewalks, or with crosswalks, bus stops, hydrants and other public features;

15 (6) Noise, odors and other nuisance factors shall be adequately controlled; and

16 (7) All other applicable provisions of this Code shall be complied with.

17 * * * *

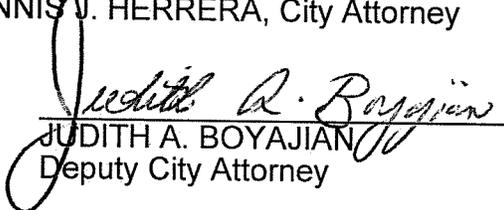
18
19 Section 3. Effective Date. This ordinance shall become effective 30 days after
20 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
21 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
22 of Supervisors overrides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

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11 Not defined as a project under CEQA Sections 15378 and 15060(c)
12 (2) because it does not result in a physical change in the
13 environment.