



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: APRIL 19, 2018

90-DAY DEADLINE: COMMISISON INITIATED, NOT APPLICABLE

Project Name: Hours of Operation for Nonconforming Uses
Case Number: 2018-000681PCA [Board File No. TBD]
Initiated By: Planning Commission
Staff Contact: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: **Approve**

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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 (dba Chicken John's). 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.

The Planning Commission initiated this ordinance on March 8, 2018.

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.

General Plan Compliance

On balance, the proposed ordinance complies with the following Goals and Policies of the General Plan:

OBJECTIVE 2

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

POLICY 2.1

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

The proposed ordinance will expand opportunities for businesses designated as limited nonconforming uses by allowing them to remain open past 10:00 PM with Conditional Use authorization. This change will help to retain existing and attract new commercial activity to the City.

Implementation

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

RECOMMENDATION

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

BASIS FOR RECOMMENDATION

The Department supports the proposed ordinance because it will allow the Commission more flexibility with regards to Limited Nonconforming Uses in the city, while still ensuring that sufficient review and conditions can be placed on these uses to preserve the quality of life in the neighborhoods where they are located. Further, the proposed change is consistent with how the Code regulates Limited Nonconforming Uses. Limited Nonconforming Uses are controlled by NC-1 District use controls, which allow businesses to be open past 10:00 AM.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

ENVIRONMENTAL REVIEW

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

PUBLIC COMMENT

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

Attachments:

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



Exhibit A

SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Resolution

HEARING DATE: APRIL 19, 2018

Project Name: Hours of Operation for Nonconforming Uses
Case Number: 2018-000681PCA [Board File No. TBD]
Initiated by: Planning Commission/ March 8, 2018
Staff Contact: Aaron Starr, Manager of Legislative Affairs
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RESOLUTION APPROVING A PROPOSED ORDINANCE THAT 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.; 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 on March 8, 2018 to initiate a proposed Ordinance, which 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.;

Whereas at their March 9, 2018, the Planning Commission initiated said ordinance per Resolution 20127; and

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on April 19, 2018; and,

WHEREAS, the proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

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

MOVED, that the Planning Commission hereby **approves** 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 proposed ordinance will allow the Commission more flexibility with regards to Limited Nonconforming Uses in the city, while still ensuring that sufficient review and conditions can be placed on these uses to preserve the quality of life in the neighborhoods where they are located.
 2. The Commission finds that the proposed change is consistent with how the Planning Code regulates Limited Nonconforming Uses. Limited Nonconforming Uses are controlled by NC-1 District use controls, which allow businesses to be open past 10:00 AM.
1. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 2

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

POLICY 2.1

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

The propose ordinance will expand opportunities for businesses designated as an limited nonconforming uses by allowing them to remain open past 10:00 PM with Conditional Use authorization. This change will help to retain existing and attract new commercial activity to the City.

2. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:
 1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

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

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on April 19, 2018

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: April 19, 2018

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 * * * *

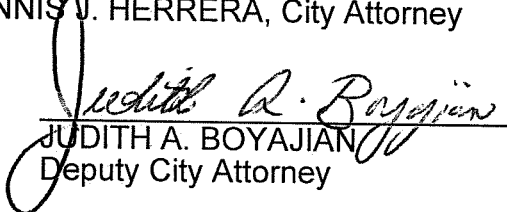
18
19 Section 3. Effective Date. This ordinance shall become effective 30 days after
20 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
21 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
22 of Supervisors overrides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