



# SAN FRANCISCO PLANNING DEPARTMENT

## Executive Summary Planning Code Text Amendment

HEARING DATE: FEBRUARY 20, 2020

90-DAY DEADLINE: MARCH 22, 2020

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*Project Name:* Ocean Avenue Lot Mergers, Neighborhood Notice, and Zoning Controls  
*Case Number:* 2020-000083PCA [Board File No. 191285]  
*Initiated by:* Supervisor Yee / Introduced December 17, 2019  
*Staff Contact:* Diego Sanchez, Legislative Affairs  
diego.sanchez@sfgov.org, 415-575-9082  
*Reviewed by:* Aaron Starr, Manager of Legislative Affairs  
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*Recommendation:* **Approval with Modifications**

### PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to require consideration of smaller commercial spaces when creating large lots, limit lot frontages to 50 feet on Ocean Avenue, create an exception from neighborhood notices for certain uses in the Ocean Avenue Neighborhood Commercial Transit (NCT) District and add Arts Activity as a use to the Ocean Avenue Neighborhood Commercial Transit District.

#### The Way It Is Now

New construction or significant enlargement of existing buildings on lots that exceed the lot size limits in Table 121.1 require Conditional Use authorization. As part of the authorization the Planning Commission considers two criteria concerning the mass and façade of the proposed improvements.

Within the Ocean Avenue NCT District, lot mergers that increase the frontage width of any lot on Ocean Avenue are prohibited except for those lot mergers that (1) the Zoning Administrator (ZA) may administratively exempt or (2) that secure Conditional Use authorization and that create a corner parcel for the purposes of accommodating access to off-street parking from a cross street to Ocean Avenue.

#### The Way It Would Be

As part of an authorization to allow new construction or significant enlargement of existing buildings on lots that exceed the lot size limits in Table 121.1, the Planning Commission would consider a third criteria. This third criteria would be whether at least one commercial space of 1,000 square feet or smaller is included in a project that adds 5,000 or more gross square feet of commercial space.

In the Ocean Avenue NCT lot mergers that result in a lot frontage on any street of up to 50 feet would be allowed. Lot mergers that result in a lot frontage greater than 50 feet would be allowed only if (1) the ZA administratively exempts the merger or (2) if Conditional Use authorization is secured and the merger creates a corner lot.

Changing the use of a property in the Ocean Avenue NCT to any of the uses listed below is subject to the notification requirements and requests for Planning Commission Review under Planning Code Section 311:

- Adult Business
- Bar
- Cannabis Retail
- General Entertainment
- Group Housing
- Limited Restaurant
- Liquor Store
- Massage Establishment
- Medical Cannabis Dispensary
- Nighttime Entertainment
- Outdoor Activity Area
- Post-Secondary Educational Institution
- Private Community Facility
- Public Community Facility
- Religious Institution
- Residential Care Facility
- Restaurant
- School
- Tobacco Paraphernalia Establishment
- Trade School
- Wireless Telecommunications Facility

Within the Ocean Avenue NCT, the uses listed below would no longer be subject to the notification requirements and requests for Planning Commission Review under Planning Code Section 311:

- General Entertainment
- Limited Restaurant
- Nighttime Entertainment
- Outdoor Activity Area
- Private Community Facility
- Public Community Facility
- Restaurant
- Tobacco Paraphernalia Establishments

Within the Ocean Avenue NCT the ground floor commercial uses requirement in Section 145.4 apply. This regulation requires active uses, as defined in Table 145.4, to be located at the ground floor of properties. Arts Activities, Nighttime Entertainment or Institutional Community uses are not included in Table 145.4 and are not considered active uses.

For the purposes of complying with Section 145.4, within the Ocean Avenue NCT Arts Activities, Nighttime Entertainment and Institutional Community uses would be considered active uses.

Arts Activities are not allowed within the Ocean Avenue NCT.

Art Activities would be allowed below the Third Story within the Ocean Avenue NCT.

## ISSUES AND CONSIDERATIONS

### Permit Review Procedures for changes in use

Planning Code Section 311 (§311) establishes the review procedures for building permit applications (BPA) proposing a change from one land use activity to another. §311 indicates that a change to any of the following uses is a change of use in the City's Neighborhood Commercial Districts:

- Adult Business
- Bar
- Cannabis Retail
- General Entertainment
- Group Housing
- Limited Restaurant
- Liquor Store
- Massage Establishment
- Medical Cannabis Dispensary
- Nighttime Entertainment
- Outdoor Activity Area
- Post-Secondary Educational Institution
- Private Community Facility
- Public Community Facility
- Religious Institution
- Residential Care Facility
- Restaurant
- School
- Tobacco Paraphernalia Establishment
- Trade School
- Wireless Telecommunications Facility

§311 requires Planning Department staff (Staff) to review the BPA and coordinate with Planning Department administrative staff to issue a required written notice. Written notice is sent to property owners and occupants within 150 feet of the project site as well as to interested neighborhood organizations. This process, given existing Staff workload and the 30-day notice period, often takes 90 to 120 days to complete. While this is shorter than the typical Conditional Use authorization (CU) process, it is lengthy for principally permitted uses that could be approved over the counter if not for the §311 notification.

### **Adjusting to the changes in the Retail Sector**

In 2018, the San Francisco Office of Economic and Workforce Development (OEWD) released the State of the Retail Sector: Challenges and Opportunities for San Francisco's Neighborhood Commercial Districts report (Report).<sup>1</sup> Among other issues, the Report investigated changes in the retail, restaurant and personal service industries (Retail Sector) as well as the components constituting a successful San Francisco retail corridor.

#### Changes in the Retail Sector

The Report noted a shift in consumer spending toward experiences and away from objects. The rise of e-commerce is at least partially responsible for this shift. As part of this shift, the Report found sales at eating and drinking establishments increasing. The Report also notes a growth in interest for ground floor tenant spaces on the part of Retail Sector uses.

#### Components of a successful retail corridor

The Report found five factors that contribute to a retail corridor success. Those factors are: Trade Area Characteristics, Anchors and Mix of Uses, Physical Form and Built Environment, Transportation and Access, and District Management Capacity.

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<sup>1</sup> State of the Retail Sector: Challenges and Opportunities for San Francisco's Neighborhood Commercial Districts. Strategic Economics. February 15, 2018

<https://oewd.org/sites/default/files/Invest%20In%20Neighborhoods/State%20of%20the%20Retail%20Sector%20-%20Final%20Report.pdf>

An anchor is a use, retail or non-retail, which attracts foot traffic to the retail corridor. Anchor uses include grocery stores, a cluster of related retail stores or eating and drinking uses, or a civic, cultural, entertainment or institutional use. The presence of anchor uses in a retail corridor is important as they drive sales in a retail corridor. Often shoppers will visit other, smaller business in retail corridor during the same trip that they visit the anchor use.

Regarding a mix of uses, the Report recommends a retail corridor include goods and services that serve daily needs as well as for comparison shopping; personal services, eating and drinking uses, and entertainment uses; independent and Formula Retail uses; ground floor uses that reflect community character; affordable neighborhood-serving goods, services, and experiences; and some amount of office and housing uses. This mix is recommended because businesses rely on each other and other uses to generate foot traffic. For example, an individual may come to a retail corridor to buy groceries or attend a cultural event, but also stay to shop at other corridor businesses. It is important that a retail corridor capture this synergy between establishments, be they anchors or otherwise.

The Report also mentions the contribution that a diverse building stock has on a successful retail corridor. A mix of building ages, architectural styles and a variety of storefront sizes help draw shoppers to the retail corridor. The Report notes that a mix of large and small storefronts allows for a diverse range of businesses.

It is imperative that the City's retail corridors respond to these changes in the Retail Sector and consumer preferences. One way to do this is by facilitating the entry of foot-traffic generating uses by simplifying the permitting process. This includes eliminating written notice requirements for uses providing the goods and services consumers seek. The proposed Ordinance seeks to do this for multiple experience-based uses such as eating and drinking establishments, entertainment uses and community facilities. The Ordinance also removes the prohibition on Arts Activities uses in the Ocean Avenue NCT, adding yet another foot-traffic generating activity to the retail corridor. Further, the proposed Ordinance is also encouraging smaller retail spaces in new, larger development, which also helps provide a diversity of uses to the Ocean Avenue NCT.

### **Lot Merger controls in Neighborhood Commercial Districts (NCDs)**

The Planning Code regulates merged lot frontages in the City's NCDs to ensure a fine-grained scale of development and avoid large single structures that are superficially treated.<sup>2</sup> Of the NCDs with merged lot frontage limits, the Ocean Avenue NCT is an anomaly because its regulations are so severe. In the Ocean Avenue NCT lot mergers of any size are prohibited, excepting two situations. One is if a strictly defined Zoning Administrator (ZA) waiver is secured. The other is if a Conditional Use authorization is secured, and then only under specific conditions including if the lot merger creates a corner lot providing off-street parking access. The proposed Ordinance seeks to address this anomaly by opening a path for lot mergers resulting in a frontage width of up to 50 feet. For lot mergers resulting in a frontage greater than 50 feet, the existing the ZA and CU paths would remain.

While an improvement, this level of regulation may still be undesirably restrictive to mid-block parcel assembly. This is especially true for housing development, as it is often necessary to assemble parcels that

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<sup>2</sup> Planning Code Section 121.7

span more than 50 feet but that are not at an intersection of two streets. In this light, it seems preferable to loosen lot merger regulations to allow mid-block parcel assembly. Concerns over compatibility may be addressed by the recently adopted Urban Design Guidelines (UDG).<sup>3</sup> The UDG contain multiple guidelines that help direct building design toward compatibility, visual interest and street level activation. These include guidelines for creating a defined and active streetwall; modulating buildings vertically and horizontally; harmonizing building designs with neighboring scale and materials; and design active building fronts.<sup>4</sup>

### **General Plan Compliance**

The proposed Ordinance aligns with several of the City's General Plan objectives and policies. For example, the proposed Ordinance satisfies the Commerce and Industry Element's goals for maintaining and strengthening neighborhood commercial areas by facilitating the entry of neighborhood serving uses into the Ocean Avenue NCT. The Community Facilities Element's goal of assuring access to needed services is also met through the proposed Planning Code amendments. Last, goals to increase access to the arts in the City's Art Element and Balboa Park Station Area Plan are met by removing the prohibition on Arts Activities uses in the Ocean Avenue NCT.<sup>5</sup>

### **Racial and Social Equity Analysis**

Understanding the benefits, burdens and opportunities to advance racial and social equity that proposed Planning Code and Zoning Map amendments provide is part of the Department's Racial and Social Equity Initiative. This is also consistent with the Mayor's Citywide Strategic Initiatives for equity and accountability and with the Office of Racial Equity, which will require all Departments to conduct this analysis.

The Planning Code amendments in the proposed Ordinance can potentially improve racial and social equity in San Francisco. The proposed changes to the permit review procedures for eating and drinking establishments, entertainment uses and community facilities, and the removal of the prohibition on Arts Activities in the Ocean Avenue NCT can help to the extent communities of color seek to locate their establishments on Ocean Avenue. Easing restrictions on lot mergers can help improve housing equity to the extent that it facilitates the development of deed restricted affordable housing on Ocean Avenue. Given that income inequality is persistently based along race and ethnicity in the US, it is likely that communities of color will be eligible in high numbers for deed restricted affordable housing.

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<sup>3</sup> Urban Design Guidelines, Adopted March 22, 2018

[https://default.sfplanning.org/plans-and-programs/planning-for-the-city/Urban-Design-Guidelines/Urban\\_Design\\_Guidelines.pdf](https://default.sfplanning.org/plans-and-programs/planning-for-the-city/Urban-Design-Guidelines/Urban_Design_Guidelines.pdf)

<sup>4</sup> Guidelines S5: Create a Defined and Active Streetwall, A2: Modulate Buildings Vertically and Horizontally; A3: Harmonize Building Designs with Neighboring Scale and Materials; and A8: Design Active Building Fronts

<sup>5</sup> See the Draft Resolution for specific General Plan Compliance

It appears that the proposed Planning Code amendments alone are not certain to improve racial and social equity. Supplementing the Planning Code changes with proactive programmatic efforts that foster, attract and promote entrepreneurs from communities of color is an additional strategy that can help further racial and social equity.

### Implementation

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

### RECOMMENDATION

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

1. Eliminate the requirement that lot mergers resulting in a frontage width of greater than 50 feet within the Ocean Avenue NCT must also create a corner lot when seeking CU.
2. Clarify Ordinance language.

### BASIS FOR RECOMMENDATION

The Department supports the Ordinance for multiple reasons. First, the Ordinance amends the Ocean Avenue NCT zoning control table in ways that respond to current trends in the Retail Sector. This helps assure Ocean Avenue remains a vital retail corridor. Second, the Ordinance encourages that larger developments consider adding smaller Non-Residential tenant spaces. This helps add a mix of uses to the Ocean Avenue retail corridor given that tenant space size often dictates possible tenants. Last, the Ordinance normalizes the Ocean Avenue NCT lot merger regulations, allowing lot mergers to occur, just like every other NCD. In a similar vein, Staff is recommending modifications that will further normalize the lot merger regulations in the Ocean Avenue NCT and is proposing clarifications to the Ordinance language:

**Recommendation 1: Eliminate the requirement that lot mergers resulting in a frontage width of greater than 50 feet within the Ocean Avenue NCT must also create a corner lot when seeking CU.** Removing the corner lot creation requirement moves the Ocean Avenue NCT lot merger controls into conformity with all other lot merger controls for NCDs. It also provides flexibility for mid-block properties seeking to consolidate lots with the aim of developing housing at the stories above the street level. Further, fears of the incompatibility of new development can be addressed through the application of the Urban Design Guidelines. These provide ample direction for designing buildings that respond to their context and users.

**Recommendation 2: Clarify Ordinance language.** As part of the amendments, the Ordinance uses vague terms such as "commercial" and "square footage." For implementation purposes it makes sense that in their place the terms "Non-Residential" and "Gross Square Feet" be used because they are specific and found in the Planning Code's list of defined terms.

In addition, the proposed language regulating lot mergers in the Ocean Avenue NCT District should closely mirror that of other subsections regulating lot mergers in other NCDs. At the very least the proposed language should refer to restrictions on resultant lot frontage width.

Last, Staff is recommending that the changes in the Ocean Avenue NCT zoning control table be cross referenced to other Planning Code sections, including Planning Code Section 145.4.

### **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: Board of Supervisors File No. 191285



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Draft Resolution

HEARING DATE FEBRUARY 20, 2020

*Project Name:* Ocean Avenue Lot Mergers, Neighborhood Notice, and Zoning Controls  
*Case Number:* 2020-000083PCA [Board File No. 191285]  
*Initiated by:* Supervisor Yee/ Introduced December 17, 2019  
*Staff Contact:* Diego Sanchez, Legislative Affairs  
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**RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO REQUIRE CONSIDERATION OF SMALLER COMMERCIAL SPACES WHEN CREATING LARGE LOTS, LIMITING LOT FRONTAGES TO 50 FEET ON OCEAN AVENUE, CREATING AN EXCEPTION FROM NEIGHBORHOOD NOTICES FOR CERTAIN USES IN THE OCEAN AVENUE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT, AND ADDING ARTS ACTIVITY AS A USE TO THE OCEAN AVENUE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT; 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 December 17, 2019 Supervisor Yee introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 191285, which would amend the Planning Code to require consideration of smaller commercial spaces when creating large lots, limiting lot frontages to 50 feet on Ocean Avenue, creating an exception from neighborhood notices for certain uses in the Ocean Avenue Neighborhood Commercial Transit District, and adding Arts Activity as a use to the Ocean Avenue Neighborhood Commercial Transit District;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on February 20, 2020; and,

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

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

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



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

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

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance. Modifications include:

1. Eliminate the requirement that lot mergers resulting in a frontage width of greater than 50 feet within the Ocean Avenue Neighborhood Commercial Transit District must also create a corner lot when seeking Conditional Use authorization.
2. Clarify Ordinance language.

## 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. It is imperative that the City continually update its retail corridor regulations in response to changes in the retail sector. This includes reducing permit processing times for uses that consumers prefer as well as encouraging larger developments to include smaller tenant spaces.
2. Amending the Ocean Avenue Neighborhood Commercial Transit District lot merger regulations to allow lot mergers on Ocean Avenue is beneficial because it provides flexibility for new development on Ocean Avenue and brings the lot merger regulations in conformity with the lot merger controls for other neighborhood commercial districts in the City.
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 6

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

#### Policy 6.1

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

#### Policy 6.2

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

*The proposed Ordinance would help attract neighborhood serving uses, like eating and drinking uses, to the Ocean Avenue NCT by reducing permit review timelines. These uses are often small businesses responding to the latest changes in the marketplace.*

## **COMMUNITY FACILITIES ELEMENT**

### **OBJECTIVE 3**

ASSURE THAT NEIGHBORHOOD RESIDENTS HAVE ACCESS TO NEEDED SERVICES AND A FOCUS FOR NEIGHBORHOOD ACTIVITIES.

#### **Policy 3.1**

Provide neighborhood centers in areas lacking adequate community facilities.

#### **Policy 3.3**

Develop centers to serve an identifiable neighborhood.

#### **Policy 3.4**

Locate neighborhood centers so they are easily accessible and near the natural center of activity.

*The proposed Ordinance would amend land use controls regulating active ground floor uses to assure that compatible neighborhood centers and other community facilities are allowed within the Ocean Avenue NCT.*

## **ARTS ELEMENT**

### **OBJECTIVE I-2**

INCREASE THE CONTRIBUTION OF THE ARTS TO THE ECONOMY OF SAN FRANCISCO.

#### **Policy I-2.2**

Continue to support and increase the promotion of the arts and arts activities throughout the City for the benefit of visitors, tourists, and residents.

*Allowing Arts Activities in the Ocean Avenue NCT will help attract visitors, tourists and residents to the neighborhood's principal retail corridor. This helps support and promote arts activities there as well.*

### **OBJECTIVE IV-1**

SUPPORT THE CONTINUED DEVELOPMENT AND PRESERVATION OF ARTISTS' AND ARTS ORGANIZATIONS' SPACES.

#### **Policy IV-1.1**

Review, revise and coordinate city permit policies and codes to better meet the needs of the arts.

*By removing a prohibition on Arts Activities in the Ocean Avenue NCT, the proposed Ordinance helps to better meet the needs of the arts*

## **BALBOA PARK STATION AREA PLAN**

**OBJECTIVE 1.2**

STRENGTHEN THE OCEAN AVENUE NEIGHBORHOOD COMMERCIAL DISTRICT

**Policy 1.2.2**

Encourage mixed-use residential and commercial infill within the commercial district.

**Policy 1.2.3**

Retain and improve the neighborhood's existing businesses while also attracting new businesses that address unmet retail and service needs of the diverse local neighborhoods.

*By loosening restrictions on lot mergers as well as on the permit review procedures on neighborhood serving businesses, the proposed Ordinance would encourage mixed-use infill and attract new businesses to address the retail and service needs of local neighborhoods. This is also accomplished by removing the prohibition on Arts Activities uses in the Ocean Avenue NCT.*

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 have a beneficial 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 have a positive effect on housing and neighborhood character as it proposes Planning Code amendments that can help enhance neighborhood character and preserve the economic diversity of Ocean Avenue.*

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

*The proposed Ordinance would have a beneficial effect on the City's supply of affordable housing as it proposes changes to the lot merger controls on Ocean Avenue that could result in an enhanced affordable housing supply.*

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 as the Ordinance concerns itself with changes to the regulations on retail uses as well as on lot consolidation.*

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 because the Ordinance amends Planning Code regulations on retail uses as well as on the merging of lots.*

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 because the Ordinance amends Planning Code controls on the review of retail uses as well as on the merging of lots.*

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 because the Ordinance only concerns itself with Planning Code regulations on the permissibility of retail uses and on the consolidation of lots.*

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

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

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on February 20, 2020.

Jonas P. Ionin  
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: February 20, 2020

[Planning Code - Lot Mergers, Neighborhood Notice, and Zoning Controls]

**Ordinance amending the Planning Code to require consideration of smaller commercial spaces when creating large lots, limiting lot frontages to 50 feet on Ocean Avenue, creating an exception from neighborhood notices for certain uses in the Ocean Avenue Neighborhood Commercial Transit District, and adding Arts Activity as a use to the Ocean Avenue Neighborhood Commercial Transit District; 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, and 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. 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.

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 of Supervisors finds that this  
7 ordinance will serve the public necessity, convenience and welfare for the reasons set forth in  
8 Planning Commission Resolution No. \_\_\_\_\_, and incorporates such reasons by this  
9 reference thereto. A copy of said Resolution is on file with the Clerk of the Board of  
10 Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

11  
12  
13 Section 2. The Planning Code is hereby amended by revising Sections 121.1, 121.7,  
14 307, 311, and 755, to read as follows:

15 **SEC. 121.1. DEVELOPMENT OF LARGE LOTS, NEIGHBORHOOD COMMERCIAL**  
16 **DISTRICTS.**

17 \* \* \* \*

18 (b) Design Review Criteria. In addition to the criteria of Section 303(c) of this Code,  
19 the Planning Commission shall consider the extent to which the following criteria are met:

20 (1) The mass and facade of the proposed structure are compatible with the  
21 existing scale of the district.

22 (2) The facade of the proposed structure is compatible with design features  
23 of adjacent facades that contribute to the positive visual quality of the district.

1                   (3) Where 5,000 or more gross square feet of commercial space is proposed, that the  
2 project provides commercial spaces in a range of sizes, including one or more spaces of 1,000 square  
3 feet or smaller, to accommodate a diversity of neighborhood business types and business sizes.  
4

5                   **SEC. 121.7. RESTRICTION OF LOT MERGERS IN CERTAIN DISTRICTS AND ON**  
6 **PEDESTRIAN-ORIENTED STREETS.**

7                   (a) Purpose: In order to promote, protect, and maintain a fine-grain scale of  
8 development in residential districts and on important pedestrian-oriented commercial streets  
9 that is appropriate to each district; compatible with adjacent buildings; provide for a diverse  
10 streetscape; ensure the maintenance and creation of multiple unique buildings and building  
11 frontages rather than large single structures superficially treated; promote diversity and  
12 multiplicity of land ownership and discourage consolidation of property under single ownership  
13 merger of lots is regulated in accordance with this Section 121.7.~~as follows:~~

14                   (b) Controls. Merger of lots is regulated as follows:

15                   (1a) RTO Districts. In RTO Districts, merger of lots creating a lot greater than  
16 5,000 square feet shall not be permitted except according to the procedures and criteria in  
17 subsections (d) ~~and (e)~~ below.

18                   (2b) NCT, NC, and Mixed-Use Districts. In those NCT, NC, and Mixed Use  
19 Districts listed below, merger of lots resulting in a lot with a single street frontage greater than  
20 that stated in the table below on the specified streets or in the specified Districts is prohibited  
21 except according to the procedures and criteria in subsections (c) and (d) below.

22                   (3) WMUO District. Merger of lots in the WMUO zoning district resulting in a lot  
23 with a street frontage between 100 and 200 feet along Townsend Street is permitted so long as a  
24 publicly-accessible through-block pedestrian alley at least 20 feet in width and generally conforming to  
25 the design standards of Section 270.2(e)(5)-(12) of this Code is provided as a result of such merger.



(4) **Mission Street NCT District.** *In the Mission Street NCT District, projects that propose lot mergers resulting in street frontages on Mission Street greater than 50 feet shall provide at least one non-residential space of no more than 2,500 square feet on the ground floor fronting Mission Street.*

(5) **Ocean Avenue NCT District.** *In the Ocean Avenue NCT District, mergers of lots greater than 50 feet are permitted to create corner lots only and shall require a conditional use authorization.*

Street or District	Lot Frontage Limit
Hayes, from Franklin to Laguna	50 feet
RED and RED-MX	50 feet
Church Street, from Duboce to 16th Street	100 feet
Divisadero Street NCT except for the east and west blocks between Oak and Fell, Fillmore Street NCT, Folsom Street NCT, RCD, WMUG, WMUO, and SALI	100 feet; <i>for WMUO District (see subsection (b)(3))</i>
Mission Street, within the Mission Street NCT	100 feet; <del>(see subsection (b)(4f) below)</del>
Market, from Octavia to Noe	150 feet
Ocean Avenue in the Ocean Avenue NCT	<del>See subsection (e)</del> 50 feet; <i>see subsection (b)(5)</i>
Inner and Outer Clement NCDs	50 feet
North Beach NCD and SUD, Telegraph Hill-North Beach Residential SUD, Polk Street NCD, and Pacific Avenue NCD*	25 feet*

1	NC-2 districts on Balboa Street between 2nd	50 feet
2	Avenue and 8th Avenue, and between 32nd	
3	Avenue and 38th Avenue	

4           \* For lots that do not have street frontage, the merger would not result in a lot with a  
5 width greater than 25 feet.

6           ~~Notwithstanding the foregoing, merger of lots in the WMUO zoning district resulting in a lot~~  
7 ~~with a street frontage between 100 and 200 feet along Townsend Street is permitted so long as a~~  
8 ~~publicly accessible through block pedestrian alley at least 20 feet in width and generally conforming to~~  
9 ~~the design standards of Section 270.2(e)(5) (12) of this Code is provided as a result of such merger.~~

10           (c)    **Administrative Exceptions.** The Zoning Administrator may administratively waive  
11 certain lot mergers from the restrictions of ~~§~~subsections (b) ~~and (c)~~ only when one or more of  
12 the following conditions is present:

13                   (1)    One of the lots to be merged has total street frontage on the restricted  
14 street of less than 20 feet; or

15                   (2)    The pProject sponsor is a government agency or institution subject to  
16 Section 304.5 of this Code, and the purpose of the project is for a public facility, public  
17 building, or institutional building; or

18                   (3)    The project involves normalizing ~~of substandard or~~ irregular ~~parcels~~ lots that  
19 are publicly owned or are being transferred from public to private ownership, including lots of  
20 the former Central Freeway; or

21                   (4)    The lots to be merged contain a pre-existing single building spanning  
22 multiple lots; or

23                   (5)    The lot merger will enable a specific residential project in which a majority  
24 of the units on-site will be affordable as defined by Section ~~402326.3(h)(2)~~.

(d) **Conditionally Permitted Exceptions.** The Planning Commission may approve, as a Conditional Use according to the procedures of Section 303, ~~permit~~ mergers exceeding the restrictions of subsections (b) and (c) only when one or more of the following findings can affirmatively be made and the project meets the intent of this Section ~~as expressed in subsection (a) 121.7:~~

(1) The lot merger will enable a specific residential project that provides housing on-site at affordability levels significantly exceeding the requirements of Section 415; or

(2) The lot merger will facilitate development of an underutilized site historically used as a single use and the new project is comprised of multiple individual buildings; or

(3) The lot merger serves a unique public interest that cannot be met by building a project on a smaller lot.

~~(e) — In the Ocean Avenue NCT, no lot merger which increases the frontage width of any lot on Ocean Avenue may be permitted except as permitted administratively by Subsection (c) above or with a Conditional Use according to the procedures of Section 303 where such a merger creates a corner parcel for the purpose of accommodating access to off-street from a cross street to Ocean Avenue.~~

~~(f) — In the Mission Street NCT, projects that propose lot mergers resulting in street frontages on Mission Street greater than 50 feet shall provide at least one non-residential space of no more than 2,500 square feet on the ground floor fronting Mission Street.~~

## **SEC. 307. OTHER POWERS AND DUTIES OF THE ZONING ADMINISTRATOR.**

\* \* \* \*

(h) **Exceptions from Certain Specific Code Standards through Administrative Review.** The Zoning Administrator may allow complete or partial relief from certain standards

specifically identified below, in Section 161, or elsewhere in this Code when modification of the standard would result in a project fulfilling the criteria set forth below and in the applicable section.

(1) **Applicability.**

\* \* \* \*

*(F) Restriction of Lot Mergers in Certain Districts and on Pedestrian-Oriented Streets. For projects subject to the restrictions on lot mergers in Section 121.7, the Zoning Administrator may approve exceptions from those restrictions as provided in Section 121.7(c).*

**SEC. 311. PERMIT REVIEW PROCEDURES.**

\* \* \* \*

(b) **Applicability.** Except as indicated herein, all building permit applications in Residential, NC, NCT, and Eastern Neighborhoods Districts for a change of use; establishment of a Micro Wireless Telecommunications Services Facility; establishment of a Formula Retail Use; demolition, new construction, or alteration of buildings; and the removal of an authorized or unauthorized residential unit, shall be subject to the notification and review procedures required by this Section 311. In addition, all building permit applications that would establish Cannabis Retail or Medical Cannabis Dispensary uses, regardless of zoning district, shall be subject to the review procedures required by this Section 311. Notwithstanding the foregoing or any other requirement of this Section 311, a change of use to a Child Care Facility, as defined in Section 102, shall not be subject to the review requirements of this Section 311. Notwithstanding the foregoing or any other requirement of this Section 311, building permit applications to construct an Accessory Dwelling Unit pursuant to Section 207(c)(6) shall not be subject to the notification or review requirements of this Section 311.

(1) **Change of Use.** For ~~the~~ purposes of this Section 311, a change of use is defined as follows:

(A) **Residential, NC, and NCT Districts.** For all Residential, NC, and NCT Districts, a change of use is defined as a change to, or the addition of, any of the following land uses as defined in Section 102 of this Code: Adult Business, Bar, Cannabis Retail, General Entertainment, Group Housing, Limited Restaurant, Liquor Store, Massage Establishment, Medical Cannabis Dispensary, Nighttime Entertainment, Outdoor Activity Area, Post-Secondary Educational Institution, Private Community Facility, Public Community Facility, Religious Institution, Residential Care Facility, Restaurant, School, Tobacco Paraphernalia Establishment, Trade School, and Wireless Telecommunications Facility. A change of use from a Restaurant to a Limited-Restaurant shall not be subject to the provisions of this Section 311. Any accessory massage use in the Ocean Avenue Neighborhood Commercial Transit District shall be subject to the provisions of this Section 311.

\* \* \* \*

(iii) **Exception for the Ocean Avenue Neighborhood Commercial Transit District.** Notwithstanding subsection 311(b)(1)(A), building permit applications in the Ocean Avenue Neighborhood Commercial Transit District for a change of use to the following uses shall be excepted from the provisions of subsections 311(d) and 311(e): General Entertainment, Limited Restaurant, Nighttime Entertainment, Outdoor Activity Area, Private Community Facility, Public Community Facility, Restaurant, and Tobacco Paraphernalia Establishment.

\* \* \* \*

**SEC. 755. OCEAN AVENUE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.**

The Ocean Avenue Neighborhood Commercial Transit District is located on Ocean Avenue from Howth Street to Manor Drive. Ocean Avenue is a multi-purpose transit-oriented

1 small-scale commercial district ~~that is modeled on the NCT-2 District~~. Ocean Avenue was  
2 developed as a streetcar-oriented commercial district in the 1920s and continues to serve this  
3 function, with the K-line streetcar on Ocean Avenue. Numerous other bus lines serve the  
4 area, especially the eastern end, where the Phelan Loop serves as a major bus terminus. The  
5 eastern end of the district is anchored by the main City College campus and direct linkages to  
6 the Balboa Park BART/MUNI rail station a couple blocks to the east, which serves as the  
7 southernmost San Francisco station for BART and the terminus of the J, K, and M streetcar  
8 lines. Because of the immediate proximity of the BART/MUNI station the district has quick and  
9 easy transit access to downtown.

10 \* \* \* \*

11 The Ocean Avenue NCT District is intended to provide convenience goods and  
12 services to the surrounding neighborhoods as well as limited ~~comparison shopping~~ goods and  
13 services for a wider market. The range of ~~comparison~~ goods and services offered is varied and  
14 ~~often~~ includes ~~specialty~~ retail stores, retail services, restaurants, and neighborhood-serving arts,  
15 entertainment, and institutional community uses ~~offices~~. Buildings may range in height, with height  
16 limits generally allowing up to four or five stories. Lots are generally small to medium in size  
17 and lot consolidation is restricted ~~prohibited~~ to preserve the fine grain character of the district;  
18 ~~unless the consolidation creates a corner parcel that enables off-street parking to be accessed from a~~  
19 ~~side street~~.

20 Rear yard requirements above the ground story and at residential levels preserve open  
21 space corridors of interior blocks.

22 Active ~~C~~commercial, arts, entertainment, and institutional community uses are required at  
23 the ground level and permitted at the second story. For purposes of this Section, Arts Activities,  
24 Nighttime Entertainment, and Institutional Community Uses shall be considered "active commercial  
25 uses," as described in Section 145.4 of this Code.

\* \* \* \*

**Table 755. OCEAN AVENUE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT  
ZONING CONTROL TABLE**

		Ocean Avenue NCT		
Zoning Category	§ References	Controls		
BUILDING STANDARDS				
* * * *				
Street Frontage and Public Realm				
* * * *				
Ground Floor Commercial	§ 145.4	Required on Ocean Avenue within the District, except on the north side of Ocean Avenue between Plymouth and Brighton Avenues.(2)		
* * * *				
Miscellaneous				
* * * *				
Lot <u>Merger</u> Consolidation	§ <del>121.6</del> 121.7	<u>Certain exceptions permitted by § 121.7.</u> <del>Not Permitted except to create corner lots</del>		
* * * *				
NON-RESIDENTIAL STANDARDS AND USES				
* * * *				
		Controls by Story		
		1st	2nd	3rd+

Entertainment, Arts and Recreation Use Category				
Entertainment, Arts and Recreation Uses*	§ 102	NP	NP	NP
<u>Arts Activities</u>	<u>§ 102</u>	<u>P</u>	<u>P</u>	<u>NP</u>
* * * *				

(2) ~~{Note deleted.}~~ In the Ocean Avenue NCT District, Arts Activities, Nighttime Entertainment, and Institutional Community Uses are considered to be "active uses," as described in Section 145.4 of this Code.

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

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

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

By: \_\_\_\_\_  
AUSTIN M. YANG  
Deputy City Attorney

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