



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: JULY 15, 2020
90-DAY DEADLINE: AUGUST 4, 2020

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Project Name: Continuation of Use for Certain Nonconforming Parking Lots –
Mission Street Neighborhood Commercial Transit District
Case Number: 2020-005179PCA [Board File No. 200421]
Initiated by: Supervisor Ronen / Introduced April 28, 2020
Staff Contact: Veronica Flores, Legislative Affairs
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Reviewed by: Aaron Starr, Manager of Legislative Affairs
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Recommendation: **Approval**

PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to allow in the Mission Street Neighborhood Commercial Transit District the continuance of a nonconforming Parking Lot that is on the site of a designated City landmark.

The Way It Is Now:

Planning Code Section 184 establishes the periods of time during which certain nonconforming uses can continue or remain before the use is required to be eliminated. Under this section, nonconforming Parking Lots can continue for a period of up to five years from when they last became nonconforming.

The Way It Would Be:

The Ordinance would authorize nonconforming Parking Lots in the Mission Street Neighborhood Commercial District and within a designated City landmark to continue for an additional five years from original expiration date provided by Section 184.

BACKGROUND

Planning Code Section 184 was intended to allow short-term continuation of uses made nonconforming when the Neighborhood Commercial Districts were created. Only certain uses deemed beneficial to a neighborhood commercial area, such as Parking Lots, could continue for a period of five years from the last amendment that made the use nonconforming.

The Parking Lot located behind the historic El Capitan Theater and Hotel could continue to operate until 2020. This Ordinance seeks to extend the short-term continuance of the Parking Lot by another five years because landmark sites have limited development potential options. Additionally, the Ordinance addresses vacancy issues in Neighborhood Commercial Districts, which have been exacerbated by COVID-19.

ISSUES AND CONSIDERATIONS

Landmark Status

The El Capitan Theater and Hotel Landmark Designation per Ordinance No, 38-96 states that the landmark is limited to the building footprint.¹ Even though the Parking Lot itself is not considered historic, because it is located on the same parcel as a historic landmark, there are development constraints on the site. In addition to the standard building permit application requirements, any proposed new construction on the property would also require the following additional review:

- Architectural Review Committee (sub-committee of the Historic Preservation Commission) to review the proposed design for compatibility with the historic landmark
- A Certificate of Appropriateness entitlement from the Historic Preservation Commission

The additional reviews listed above assume that the scope of work does not include any work on the historic landmark itself. While the Historic Preservation Commission regularly reviews such applications, this does result in an additional level of discretion over future development on designated City landmarks.

It is also important to note that the designation Ordinance also stated that if in the future the parcel was to be subdivided, any new construction on newly subdivided lot would not require a Certificate of Appropriateness. While this provision does eliminate the need for Historic Preservation Commission's review, it does require a Parcel Map / Final Map Application from San Francisco Public Works.

Neighborhood Commercial Vacancies

Vacancy rates in Neighborhood Commercial Districts has been a growing issue in recent years. This is exacerbated by the shelter in place orders due to COVID-19. The Ordinance helps address some of these issues by extending the short-term continuance of the Parking Lot. If the Ordinance is not enacted, the Mission Street Neighborhood Commercial District will see another vacant property instead of a neighborhood amenity. Even if an application for a new project was submitted to the City today, there would be a vacancy during the interim between application review and project approval. This Ordinance eliminates that gap even if there was potential development at the site.

Transit-First Policy

The Board of Supervisors adopted a Transit-First policy in efforts to reduce traffic congestion and air pollution and encourage public transit over private vehicle use.² The El Capitan Theater and Hotel, located directly on Mission Street, is in a transit-rich area and located in between two different BART stations. Parking lots only serve to increase traffic congestion by encouraging people to drive to the neighborhood, which is inconsistent with the City's Transit First policy. Given the public transit options available in this area, this site could be developed with an amenity or service that would better serve the community and take advantage of the significant transit investments made in this neighborhood.

Temporary Use

The Ordinance would continue the short-term continuance of the nonconforming Parking Lot for an additional five years, at which point it would need to cease operation. The same concerns regarding limited development opportunities on a designated City landmark and addressing vacancy issues in the Mission

¹ [Ordinance No. 38-96](#)

² [Ordinance No. 189-73](#)

Street Neighborhood Commercial Transit District may arise again, pending the economic outlook at that time.

Another Potential Path

If the Ordinance is not enacted, the project sponsor can still pursue a temporary Parking Lot by way of Conditional Use Authorization from Planning Commission per Planning Code Section 156. This would require additional time and fees, as well as a public hearing to be considered. However, this review process would all be outside of the legislative process and could begin as soon as a complete application is submitted.

General Plan Compliance

The proposed Ordinance would support an existing nonconforming Parking Lot use within a City designated landmark. This is especially important since there are development constraints on historic landmark sites, even if the Parking Lot use itself is not considered historic. Even though the Ordinance is not consistent with the Transit-First Policy, this Ordinance helps ensure that the property retains a neighborhood business, even if just on a temporary basis of five years.

Racial and Social Equity Analysis

Understanding the benefits, burdens and opportunities to advance racial and social equity that proposed Planning Code 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 forthcoming Office of Racial Equity, which will require all Departments to conduct this analysis.

The Planning Code amendments in the proposed Ordinance help preserve an existing, legal noncomplying Parking Lot in the Mission Street Neighborhood Commercial Transit District. This benefits the existing commercial businesses by providing customers with another option in addition to the public transit in the neighborhood. Adjacent businesses in the immediate vicinity include restaurants, personal services, and other general retail.

Almost 40% of Mission residents identify as Latino.³ Additionally, the median family income is approximately \$68,000 compared to approximately \$104,000 for the entire city.⁴ Based on these figures, it is likely local residents do not own cars and rely on public transportation. With its prime location on Mission Street, this Parking Lot might be used by more affluent residents from outside the community. While this potentially drives in additional wealth into the Mission corridor, the location might better serve the community by providing a different neighborhood amenity or service.

The subject Parking Lot has been operating in this neighborhood for a long time, and the Ordinance to extend the short-term continuance should not further burden the neighborhood; however, this extension does not seem to advance racial and social equity in the Mission. This Ordinance is a short-term solution in addressing commercial vacancies along the Mission, and it is likely that the same concerns will arise in five years given current challenges. Future development considerations at the project site that advance

³ [2016 Five Year American Community Survey](#)

⁴ Ibid.

racial and society equity must be considered. These may include affordable housing or community-serving non-profit spaces that are currently struggling to find spaces in commercial corridors.

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 is recommending approval of the proposed Ordinance because it supports the Commerce and Industry Element's goals to support existing commercial businesses, and supports the Mission Area Plan's goal to continue existing, legal nonconforming uses that benefit the neighborhood. Additionally, the Ordinance would help prevent a vacancy on Mission Street, which has been an increasing concern in all commercial corridors. However, the Department is concerned about the continuation of a Parking Lot Use in one of the most transit rich areas of the City, and the Ordinance's inconsistency with the City's Transit First Policy. The Department also notes that while the ordinance should not further burden the neighborhood, it does not help advance racial and social equity in the Mission; therefore, the Department strongly recommends that the property owner use the next five years to engage with the community about future development opportunities on this site. That engagement must take into consideration the goals and policies outlined in MAP 2020 and the General Plan, the City's Transit First Policy, as well as advancing racial and social equity in the Mission.

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 15378 and 15060(c)(2) 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 Historic Preservation Commission Resolution

Exhibit B: Board of Supervisors File No. 200421



SAN FRANCISCO PLANNING DEPARTMENT

Historic Preservation Commission Draft Resolution

HEARING DATE JULY 15, 2020

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RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD THE PLANNING CODE TO ALLOW IN THE MISSION STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT THE CONTINUANCE OF A NONCONFORMING PARKING LOT THAT IS ON THE SITE OF A DESIGNATED CITY LANDMARK; 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 NECESSITY, CONVENIENCE, AND GENERAL WELFARE UNDER PLANNING CODE, SECTION 302.

WHEREAS, on April 28, 2020 Supervisor Ronen introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 200421, which would amend the Planning Code to allow in the Mission Street Neighborhood Commercial Transit District the continuance of a nonconforming Parking Lot that is on the site of a designated City landmark;

WHEREAS, the Historic Preservation Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on July 15, 2020; and,

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

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

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

WHEREAS, the Commission has reviewed the proposed Ordinance; and

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

MOVED, that the Historic Preservation 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 proposed Ordinance would support an existing nonconforming Parking Lot use and help avoid vacancies in the Mission Street Neighborhood Commercial Transit District.
2. **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.

MISSION AREA PLAN

OBJECTIVE 1.3

INSTITUTE FLEXIBLE “LEGAL NONCONFORMING USE” PROVISIONS TO ENSURE A CONTINUED MIX OF USES IN THE MISSION

Policy 1.3.1

Continue existing, legal nonconforming rules, which permit pre-existing establishments to remain legally even if they no longer conform to new zoning provisions, as long as the use was legally established in the first place.

OBJECTIVE 1.3

MAINTAIN AND STRENGTHEN THE MISSION’S NEIGHBORHOOD COMMERCIAL AREAS

Policy 1.8.2

Ensure that the Mission's neighborhood commercial districts continue to serve the needs of residents, including immigrant and low-income households.

The proposed Ordinance would support an existing nonconforming Parking Lot use within a City designated landmark. This is especially important since there are development constraints on historic landmark sites, even if the Parking Lot use itself is not considered historic. Even though the Ordinance is not consistent with the Transit-First Policy, this Ordinance helps ensure that the property retains a neighborhood business, even if just on a temporary basis of five years.

3. **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 help address neighborhood commercial vacancies by supporting an existing, legal noncomplying Parking Lot.

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.

4. **Planning Code Section 302 Findings.** The Historic Preservation 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 July 15, 2020.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: July 15, 2020

[Planning Code - Continuation of Use for Certain Nonconforming Parking Lots - Mission Street Neighborhood Commercial Transit District]

Ordinance amending the Planning Code to allow in the Mission Street Neighborhood Commercial Transit District the continuance of a nonconforming parking lot that is on the site of a designated City landmark; 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 necessity, convenience, and general welfare under Planning Code, Section 302.

NOTE: **Unchanged Code text and uncoded 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 ~~Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Findings.

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

(b) On _____, the Planning Commission, in Resolution No. _____, adopted 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

1 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
2 the 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
4 these Planning Code amendments will serve the public necessity, convenience, and general
5 welfare for the reasons set forth in Planning Commission Resolution No. _____.
6

7 Section 2. The Planning Code is hereby amended by revising Section 184, to read as
8 follows:

9 **SEC. 184. SHORT-TERM CONTINUANCE OF CERTAIN NONCONFORMING USES.**

10 Except as provided in subsection (c) below, ~~The~~ the period of time during which the following
11 nonconforming uses may continue or remain shall be limited to five years from the effective
12 date of this Code (May 2, 1960), or of the amendment thereto which caused the use to be
13 nonconforming. Every such nonconforming use shall be completely eliminated within 90 days
14 after the expiration of such period.

15 (a) A Parking Lot or any other ~~Any~~ nonconforming commercial or industrial use of
16 land where no enclosed building is involved in such use, except for permanent off-street
17 Parking Lots in the C-3-O, C-3-R, and C-3-G Districts existing on the effective date of
18 Ordinance No. 414-85, provided that such lots are screened in the manner required by
19 Section 156(e); such permanent uses shall be eliminated no later than five years and 90 days
20 from the effective date of an amendment to this Code that makes such permanent uses
21 nonconforming.

22 (b) Any use of a type first permitted as a ~~p~~PPrincipal or ~~e~~CConditional ~~u~~Use in an NC,
23 RC, C, or M District or in a Residential-Commercial Combined District, when occupying a
24 building in an R District other than a Residential-Commercial Combined District that has an
25

1 assessed valuation not in excess of \$500 on the effective date of this Code or such later date
2 as the use becomes nonconforming, with the following exceptions:

3 (1) Any lawful use in this category in a building having an assessed valuation
4 of \$250 or more on the effective date of this Code, or such later date as the use becomes
5 nonconforming, shall have a period of permitted continuance of 10 years from the date at
6 which the property was placed in a residential zoning classification, if such a period of
7 continuance produces an expiration date that is later than the expiration date stated above; or

8 (2) Any lawful use in this category that is of a type first permitted in an NC-1
9 District; or of a type first permitted in any other district and supplying commodities at retail, or
10 offering personal services, primarily to residents of the immediate vicinity; shall have a period
11 of permitted continuance of 10 years from the effective date of this Code, or of the
12 amendment thereto that caused the use to be nonconforming. After five years of such period
13 have elapsed, any use as described in this Paragraph (b)(2) shall, upon application, be
14 qualified for consideration by the Planning Commission as a conditional use as regulated in
15 Section 303 of this Code.

16 (c) In the Mission Street Neighborhood Commercial Transit District, a Parking Lot that is
17 on the site of a designated landmark under Article 10 of this Code as of the effective date of this
18 Ordinance No. _____ may continue its Use as a Parking Lot for five additional years from the original
19 expiration date provided by this Section 184.
20

21 Section 3. Effective Date. This ordinance shall become effective 30 days after
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
24 of Supervisors overrides the Mayor's veto of the ordinance
25

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

7
8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By: /s/ Judith A. Boyajian
11 JUDITH A. BOYAJIAN
12 Deputy City Attorney

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