



EXECUTIVE SUMMARY PLANNING CODE TEXT AMENDMENT

HEARING DATE: November 17, 2022

90-Day Deadline: February 6, 2023

Project Name: Neighborhood Commercial and Mixed-Use Zoning Districts
Case Number: 2022-003902PCA [Board File No. 220340]
Initiated by: Supervisor Dorsey/ Reintroduced November 8, 2022
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Recommendation: Approval with Modifications

Planning Code Amendment

Ordinance amending the Planning Code to update and reorganize the Eastern Neighborhoods Mixed Use Zoning District's tables and use definitions in Section 102 consistent with the Code Reorganization Project, in addition to the following substantive amendments:

The Way It Is	The Way It Will Be
Accessory Uses	
Production and Wholesaling as an Accessory Uses. In NC districts, production, wholesaling, and processing of goods may occupy more than one-third of a retail space. In RC, C, DTR, and Eastern Neighborhood Mixed-Use districts, accessory production and wholesaling are limited to one-third of the total space.	Accessory production, wholesaling, and processing of goods would be able to occupy more than one-third of a retail space in RC, C, DTR, and Eastern Neighborhoods Mixed Use districts, so long as an active retail use is in the space.
Limited Live Performance Permits. LLPs are prohibited in the MUG, MUR, and RED-MX zoning districts	LLPs would be permitted in these zoning districts

Catering in C, M, and PDR Districts. Catering may currently operate as an Accessory Use in a Limited Restaurant, but not in a Restaurant	Catering in these districts would be allowed as an Accessory Use for both Limited Restaurants and Restaurants.
Ground-floor Uses	
Mix of ground-floor commercial use sizes. Except in the Central SoMa SUD, there are no size requirements for storefront spaces in Eastern Neighborhoods Mixed Use Districts.	Projects that provide more than 10,000 Square feet of ground-floor commercial space would be required to provide commercial spaces in a range of sizes, including some spaces of 1,000 square feet or smaller.
Entertainment, Arts, and Recreation Uses	
Arts Activities in the SoMa NCT. Arts Activities are not permitted.	Arts Activities would be principally permitted on all floors in this zoning district.
Arts Activities in the Eastern Neighborhood Mixed Use Districts (ENMUD). Except for RED, RED-MX and South Park District, Arts Activities is not permitted in the ENMUDs.	Arts activities will be principally permitted in all ENMUDs, except in RED Districts where this use will require conditional use authorization. In addition, in the RED, RED-MX, and South Park District, the live theater aspect of this use will not be permitted, which is an existing control.
Good Neighbor Policies for Entertainment Uses. Nighttime Entertainment and General Entertainment uses citywide must comply with the Entertainment Commission's good neighbor policies. A separate set of good neighbor policies exist for Nighttime Entertainment uses in Eastern Neighborhoods Mixed-Use districts.	The Planning Code would be amended to require compliance with the Entertainment Commission's good neighbor policies. The good neighbor policies specific to Eastern Neighborhoods Mixed Use districts would be deleted from the Planning Code.
Location restrictions for Nighttime Entertainment and Animal Services in the Western SoMa Special Use District. Nighttime Entertainment Uses and Animal Services Uses are prohibited within 200 feet of any Residential Enclave District (RED and RED-MX).	The location restrictions for Nighttime Entertainment and Animal Services in the Western SoMa SUD would be deleted. Controls for the various zoning districts would still govern the location of such uses.
Nighttime and General Entertainment in the Regional Commercial District. Nighttime Entertainment is not permitted, and General Entertainment requires conditional use authorization.	Nighttime and General Entertainment would be principally permitted on the first and second floors in this district, and not permitted on the third floor and above.
Nighttime and General Entertainment in SoMa NCT and South Park District. Nighttime and General Entertainment are not permitted.	Nighttime and General Entertainment would be allowed with conditional use authorization in these districts.
Nighttime Entertainment in the MUG, MUO and WMUG Districts. Nighttime Entertainment in these districts is not permitted.	Nighttime Entertainment would be principally permitted in these districts.

Nighttime Entertainment in the Folsom Street NCD. Nighttime Entertainment is not permitted.	Nighttime Entertainment would be principally permitted on the first and second floors and prohibited on the third floor and above.
Nighttime Entertainment in MUR Districts. Nighttime Entertainment is principally permitted in the Central SoMa SUD, but not permitted elsewhere in the MUR District.	Nighttime Entertainment would be conditionally permitted outside the Central SoMa SUD within the MUR zoning district.
Nighttime Entertainment in South Beach and Rincon Hill DTR zoning districts. Nighttime Entertainment requires conditional use authorization.	Nighttime Entertainment would be principally permitted in the South Beach and Rincon Hill DTR Districts.
General Entertainment in MUG and MUR districts. A Pool Hall is conditionally permitted, but all other General Entertainment uses are not permitted.	All General Entertainment uses would be principally permitted in these districts.
General Entertainment in WMUG. General Entertainment requires CU approval	General Entertainment would be principally permitted
Eating and Drinking Uses	
Second-floor Bar uses in the Folsom NCT and Regional Commercial Districts. Bar uses are not permitted on the second floor in the Folsom NCT and Regional Commercial Districts.	Bars would be principally permitted on second floors in these districts.
Institutional Uses	
Job Training, Private Community Facility, and Public Facility in the SoMa NCT District. These uses are conditionally permitted on the first and second floors	Job Training, Private Community Facility uses would be principally permitted on the first and second floors. Job Training would be conditionally permitted on the third floor and above. Public Facility uses would be principally permitted on all floors.
Historic Buildings in Residential Enclave Districts (RED and RED-MX). Retail Sales and Service Uses and Office Uses are permitted in historic buildings in RED and RED-MX Districts with conditional use authorization.	In addition to the uses allowed with conditional use authorization, Arts Activities, Community Facility, Private Community Facility, Public Facility, School, Social Service or Philanthropic Facility, and Trade School uses would be principally permitted in historic buildings.
Job Training in RED-MX, MUG, MUO, MUR, UMU, WMUG, WMUO, and SALI districts. Job Training uses are prohibited in these districts.	Job training would be principally permitted in these districts.
Religious Facility in MUG districts. Religious Facility requires conditional use authorization.	Religious Facility would be principally permitted
Social Service, Community Facility, and Religious Facility uses in the WMUG and RED-MX Districts. These uses are conditionally permitted in the WMUG and RED-MX Districts.	Social Service and Philanthropic Facility, Community Facility, and Religious Facility uses would be principally permitted in these districts.

Trade School and Utility Installation uses in SALI Districts. Trade Schools and Utility Installations are not permitted in SALI districts.	Trade Schools and Utility Installations would be principally permitted.
Hours of Operation for Medical Cannabis Dispensaries in SALI Districts. Medical Cannabis Dispensaries cannot operate between 10 pm and 6 am.	Medical Cannabis Dispensaries would be subject to the same Hours of Operation as all other uses in SALI Districts.
Automotive Uses	
Automobile Sales and Rental and Parcel Delivery Service in MUG, MUO, and MUR Districts. Automobile Sales and Rental are permitted in either an enclosed building or on an open lot.	Automobile Sales and Rental would be permitted only if in an enclosed building.
Non-accessory parking lots in WMUO and SALI districts. Public parking lot uses are conditionally permitted.	Public parking lot uses would be not permitted
Non-Accessory parking lots and garages in RED-MX districts. Non-Accessory parking lots and garages are conditionally permitted in RED-MX districts.	Public parking lots and garages would be not permitted, and private parking garages would be permitted with conditional use authorization.
Residential Uses	
Rear yards in SRO buildings in RED, RED-MX, and SPD districts. Certain new SRO buildings may expand further into the rear yard than other residential buildings.	New SRO buildings would have the same rear-yard requirements as other residential buildings.
Proposition H Alignment	
311 Notification in Eastern, Western, and Central SoMa Plan Area. In the Eastern, Western, and Central SoMa Area Plan, changes from one land use category to another (e.g., from an Institutional Use to a Sales and Service Use) requires Section 311 Notification.	311 Notification would no longer be required for principally permitted uses.
30-day Permit Review in Eastern SoMa Plan Area. Changes of use in the Eastern SoMa Area Plan are not eligible for the 30-day permit process instituted by Proposition H	Changes of use in the Eastern SoMa Area Plan would be eligible for the 30-day permit process created by Proposition H.
Outdoor Activity Areas in WMUG, WMUO, SALI, and RED-MX Districts. Outdoor Activity Areas located in the rear yard require conditional use approval.	Outdoor Activity Areas located in the rear yard would be principally permitted, so long as they met the criteria outlined in Prop H.
Other Amendments	
Large-scale Urban Agriculture in Eastern Neighborhoods Mixed Use districts. Large-	Large-scale urban agriculture would be principally permitted in these districts.

scale Urban Agriculture is conditionally permitted or not permitted.	
Basic Floor-Area Ratio in SPD, RED, and RED-MX districts. The maximum Floor-Area Ratio (including housing) is 1.8 in SPD Districts, and 1.0 in RED and RED-MX Districts.	Maximum Floor-Area Ratio (including housing) in RED, RED-MX, and SPD districts shall be contingent on permitted building height, as in other Eastern Neighborhoods Mixed Use Districts.
Reactivation of Limited Commercial Uses. Limited commercial uses in RH, RM, RTO, and RED Districts that have been discontinued or abandoned may be reactivated with conditional use authorization.	Rather than requiring conditional use authorization for LCU reactivation, the Zoning Administrator would be able to reactive LCUs using the same criteria.
Walk-up Facilities Definition. Walk-up Facilities are defined as “A Use Characteristic defined as a structure designed for provision of pedestrian-oriented services when located on an exterior building wall, including window service, self-service operations, and automated bank teller machines (ATMs).”	The following language would be added to the Walk-facilities definition: <u>Such facilities shall provide waste receptacles, be kept free of litter, and provide adequate lighting for the facility, provided that such lighting shall comply with Planning Department guidelines.</u>

Background

Code Reorganization Project

Initiated in 2013, the Code Reorganization Project seeks to restructure the Planning Code so that it's easier to read, understand, and use. Phase 1 of the Planning Code Reorganization project focused on Article 2 and consolidated definitions into Planning Code Section 102. Phase 2 focused on Article 7 of the Planning Code, and Phase 3.1 focused solely on Chinatown Mixed Use Districts. This phase will focus on the Eastern Neighborhood Mixed Use Districts.

Phase 1 of the Code Reorganization program consolidated all use definitions into Planning Code Section 102. It also reorganized Article 2, which includes Residential (RH, RM, and RC), Downtown (C-3), and Industrial (PDR, and M) zoning districts, by creating Zoning Control Tables like the ones already used in our Neighborhood Commercial Districts. The major benefit to Zoning Control Tables is that they allow users to obtain building standards and use controls for a zoning district in one easy to use chart. Phases 2 and 3.1 brought NC Districts and Chinatown Districts into conformity with the new use definitions and zoning control table format. The Planning Commission approved Phase 1 in October of 2014, Phase 2 in February of 2017, and Phase 3.1 May 9, 2021.

The next and -hopefully final- phase with focus on the Downtown Residential Districts, at which point all zoning district will use one standard set of use definitions and one standardized zoning control table format.

How Did We Get Here?

The Planning Code maintained the same basic structure until 1986 when the Neighborhood Commercial District controls were added to the Code in Article 7. Prior to that, all development standards and general definitions were in Article 1 and use definitions and use controls were in Article 2. For its time, Article 7 was a dramatically new way of organizing the Planning Code and thinking about land use, primarily because it used vertical controls to regulate uses; however, because of the structural differences between Articles 2 and 7, and the desire to more closely regulate retail and service uses, Article 7 was given its own set of use definitions.

When Article 8 was added to the Code, it followed the same format as Article 7 along with adding its own list of use definitions. As a result, at the start of the Code Reorganization Process there were four different section of the Planning Code that contained use definitions. Today we have two sets of definitions: one for R, C, M, PDR, and NC Districts in Section 102, one for MUDs in Article 8. At the end of this process, there will only be one set of definitions in the Planning Code (Section 102) and one standard format for zoning control tables.

Prop H

Proposition H was passed by voters in November of 2020 and relaxed several planning code provisions for the City's Neighborhood Commercial Districts. Two of those provisions were 1) the removal of the 311 Notification (aka neighborhood notification) for principally permitted uses and 2) allowing outdoor activity areas as of right in the rear yard under certain circumstances.

311 Notification was a more onerous requirement in the NC Districts because it required notification for a change from one use to the other, while 311 notifications in the Eastern Neighborhoods Districts are only required if the use category is changes. For example, in the NC Districts a change from a clothing store to a restaurant would require 311 Notification, while in the EN District that would not require 311 Notification because both the clothing store and the restaurant are under the Retail Use Category. In the EN Districts, if a space went from an Intuitional Use to a Restaurant that would require 311 Notification because the Use Category has changed. The proposed ordinance would remove the 311 Notification for principally permitted uses in the EN Zoning Districts consistent with what Proposition H did for the City's NC Districts.

Prop H also allowed outdoor activities as of right if certain conditions are met. Prior to Prop H, Outdoor Activity Areas (outdoor seating) was allowed as of right if the area was located at the front of the building, but typically required CU approval if the area was in the rear yard. Proposition H allowed outdoor activity areas as of right in the rear yard if the following criteria were met:

- a) The Outdoor Activity Area is located on the ground level;
- b) The Outdoor Activity Area is in operation only between 9:00 a.m. and 10:00 p.m.;
- c) The Outdoor Activity Area is not operated in association with a Bar use;
- d) Where associated with a Limited Restaurant or Restaurant Use, the Outdoor Activity Area includes only seated, not standing, areas for patrons; and
- e) Alcohol is dispensed to patrons only inside the premises or through wait staff services at the patron's outdoor seat in the Outdoor Activity Area.

The proposed ordinance would extend these same controls to the Eastern Neighborhoods Zoning Districts.

Issues and Considerations

Accessory Uses

Because of the legacy of changes that led to the Code Reorganization Project, the Planning Code also has three different set of accessory use controls, one set in Article 2 one set in Article 7 and one in Article 8. The proposed ordinance would increase consistency between these three definitions by allowing wholesale manufacturing as an accessory use in retail businesses regardless of how much floor area it takes up. This accessory use provision is intended to allow small makers to create and sell their own products on site. This change was added to Article 7's Accessory Use controls as part of the Restaurant Rationalization Ordinance, passed in 2011. It's unclear how many businesses have taken advantage of this change as Accessory Uses don't require a change of use permit, but the Planning Department has not received any complaints or been made aware of any land use conflicts as a result. The advantage to standardizing this language is that any retail use, regardless of where it is located in the City, could take advantage of the same accessory use controls.

The ordinance would also allow Restaurants in all commercial zoning districts to take advantage of the Accessory Catering provision allowed in the City's Neighborhood Commercial Districts. Currently in the Eastern Neighborhoods Districts and in the C, PDR, and RC districts, Catering is allowed as an Accessory Use only for Limited Restaurants; however, in the NC Districts, a Catering Use is allowed in both Restaurants and Limited Restaurants. Catering in NC Districts is limited to food and beverage catering if the Catering Use does not operate more than 75% of the total time within the businesses Hours of Operation on any given day; and the Catering Use does not distribute or deliver individual meals to customers directly from the subject lot, either by its own means, or through a third-party delivery service. The proposed ordinance would expand this provision to all commercial zoning districts in the City.

Entertainment, Arts, and Recreation Uses

Good Neighbor Policies for Entertainment Uses

As the agency that regulates land use, it's difficult for the Planning Department to respond to quality-of-life concerns resulting from Nighttime Entertainment operators. It is also difficult, if not sometimes impossible, to revoke the land use approvals for problematic operators; however, the Entertainment Commission directly regulates these operators through a Place of Entertainment Permit. Like the State's Alcoholic Beverage Control division ensures bar operators abide by state liquor laws, and the City's Office of Cannabis ensures that Cannabis Retail operators are operating according to local regulations, so too does the Entertainment Commission ensure that Nighttime Entertainment operators are abiding by local regulations. The Entertainment Commission has its own set of Good Neighbor Policies that it enforces. It also can address issues related to problematic operators, and if a resolution can't be found the Commission can ultimately revoke the Place of Entertainment permits. The Good Neighbor Policies in the Planning Code were added before we had the Entertainment Commission. Now that the City has a more effective means to address quality of life issues related to Nighttime Entertainment, it makes sense to remove the Planning Code's good neighbor policies.

General Entertainment

General Entertainment is a catch-all definition for various types of entertainment uses including uses from billiard parlors to bowling alleys. By itself, General Entertainment does not permit the sale of alcohol. For a

bowling alley to serve alcohol it would also need to seek land use approval for a Bar; therefore, General Entertainment is somewhat of a low-impact land use. In the past few years, we have seen a small new bowling alley, a new mini-golf course, and even a renewed interests in video game arcades; however, the trend isn't widespread, and most neighborhoods lack these types of uses. This ordinance relaxes the controls for General Entertainment through the Eastern Neighborhood Mixed Use Districts. In doing so it will allow more flexibility for existing businesses to add other revenue generating activities to their business, and also make it easier for new entrepreneurs to open businesses in San Francisco.

Nighttime Entertainment Uses

Like General Entertainment, Nighttime Entertainment also requires a separate land use approval for a Bar to sell alcohol. What distinguishes Nighttime Entertainment from General Entertainment is the ability to serve alcohol during a performance. The distinction helps differentiate between uses like a theatrical play, where alcohol may be served but only before the performance or during intermission, and a night club, where alcohol is always available. Given this distinction, and the sound amplification that is often associated with Nighttime Entertainment uses, this is a more intensive and therefore regulated land use; however, current controls are so prohibitive that in areas of the City known for nightlife, new Nighttime Entertainment uses are often prohibited. In fact, there are few areas of the City where new Nighttime Entertainment Uses can be established, let alone open as-of-right.

Restrictions on new or expanded Nighttime Entertainment options in San Francisco is detrimental to the City's social and economic well-being. Nightlife provides spaces for neighbors and visitors alike to socialize and engage in artistic and cultural expression. The City's diverse nightlife offerings attract people to the City and its many neighborhood businesses. Live entertainment is a key piece of San Francisco's nightlife offerings and a cornerstone of our city's cultural identity. According to the Controller's Office's 2012 nightlife visitor survey, 31% of visitors from outside of the City who traveled to San Francisco at night did so to visit music venues and nightclubs, frequenting other local businesses during their trips.

Nightlife activity has also been devastated by the COVID-19 pandemic. Prior to the pandemic, the City's 3,800 nightlife businesses employed over 64,000 people and generated an estimated \$7 billion in annual economic impact. While San Francisco continues to make progress in its economic recovery, the COVID-19 pandemic has had a devastating effect on our restaurants, bars, performing arts spaces, and music venues. Employment in the San Francisco metro area's leisure and hospitality sector in April 2022 remains down over 23% compared to February 2020. According to research cited by the National Independent Venue Association, the live music industry experienced an estimated \$9 billion loss in ticket sales nationwide in 2020, without even counting revenues that would have been generated by food or beverage sales at venues.

While entertainment venues have been hit especially hard by the pandemic, they are critical to San Francisco's standing as a world class arts and culture destination. They also play an important role in the local economy. Live music attracts tourists and locals alike, adding vibrancy to neighborhoods and drawing patrons to our restaurants, bars, and hotels. Expanding opportunities for entertainment venues South of Market will enhance the recovery of the downtown economic core and attract local workers and tourists to support downtown businesses. Reducing barriers for live entertainment in SoMa also aligns with the work of the Leather & LGBTQ Cultural District to revitalize and sustain nightlife and entertainment within the district.

Institutional Uses

The proposed ordinance relaxes the controls on several Institutional uses in various Eastern Neighborhood Mixed Use Districts. In general, these uses -Job Training, Community Facility, Public Facility, and Social Service and Philanthropic Facility- are all uses that we want to encourage in San Francisco. They are also considered to be low-impact land uses, and typically don't out compete other uses on the amount of rent they can afford to pay. In fact, they are likely to have a hard time finding suitable spaces they can afford, so making them more permissible in more neighborhoods increases the likelihood that the uses can find locations that they can afford.

Automotive Uses

San Francisco's Transit First Policy has been in place for decades, but the work to deprioritize the private automobile has been slow. Our streets are still dominated by cars, while our efforts to reach Vision Zero have floundered, especially during the pandemic. Traffic Deaths in San Francisco have been on the rise in the past few years. Since Vision Zero was adopted, the City saw an all-time low of 20 deaths in 2017, but by 2020 the number of deaths had climbed to 30. As of June 2022, 15 people have died on our streets due to traffic related violence, putting us on pace to meet or exceed the grim milestone set in 2020¹.

San Francisco is also struggling to reduce its carbon emission related to transportation. The City has been able to reduce its carbon emissions by an impressive 41% from 1990 levels; however, most of this reduction came from emission related to buildings. Our emissions from transportation have only been reduced by 16% from 1990 levels, and currently make up a total of 47% of our total carbon footprint². Climate change continues to intensify and disproportionately impact the most vulnerable segments of our population. San Francisco must continue to advance policies that disincentivize driving and convert our existing auto infrastructure to carbon free alternatives.

Programs like Shared Spaces that remove automotive space for people centered spaces, Automotive Uses/Housing Density ordinance that encourages the conversion of auto-oriented uses to housing, and the recently passed EV Legislation that allows for the as-of-right conversion of existing automotive uses to carbon free fueling stations are all moving the City in a positive direction. This ordinance will also help in that regard by further restricting where new parking facilities can locate in the Eastern Neighborhoods.

Eastern Neighborhood's Residential Districts

The Western SoMa plan called for the creation of the Residential Enclave Districts with policy 1.1.3 (Protect existing and newly designated residential clusters with Residential Enclave District zoning controls.). There are two such districts, the RED and the RED-MX. REDs encompass many of the clusters of low-scale, medium density, predominantly residential neighborhoods located along the narrow side streets of the South of Market area. The zoning controls for this district are tailored to the design needs and neighborhood characteristics of these enclaves. They are intended to encourage and facilitate the development of attractive, compatible, and economically feasible in-fill housing while providing adequate residential amenities to the site and neighborhood. Dwelling units are permitted as a principal use. Nonresidential uses, except art related activities, are not permitted, except for certain uses in historic buildings and some institutional uses.

¹ <https://www.visionzerosf.org/about/how-are-we-doing/>

² <https://sfenvironment.org/carbonfootprint>

Red-MX Districts are like RED Districts in that they encompass some of the clusters of low-scale, medium density, predominantly residential neighborhoods located along the narrow side streets of the Western SoMa area. Both Districts also include several vacant parcels, parking lots and other properties in open storage use, which are viewed as opportunity sites for new, moderate-income, in-fill housing. RED-MX differs from RED in that it allows some small-scale retail, restaurants, arts activities, and other commercial uses to create the potential for more active, mixed-use alleys.

These districts are treated more gingerly than other districts in the Eastern Neighborhood's by what types of uses are allowed in the district (mostly residential), and by a 200' buffer around them that prohibits new Nighttime Entertainment Uses and Animal Service Uses. Unfortunately, this 200' buffer all but prohibits new nighttime entertainment uses in the neighborhoods that this ordinance seeks to allow them in (see map below). While the buffer is intended to help protect these neighborhoods it is also significantly limiting the ability to expand night life uses in the area. To address this, this ordinance also seeks to remove the 200' buffer prohibiting Nighttime Entertainment Uses and Animal Services.

