



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18549

HEARING DATE: FEBRUARY 23RD, 2012

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Project Name: **Extension of time to seek amnesty and apply for legitimization of uses in the Eastern Neighborhoods**

Case Number: 2012.0016T [Board File No. 11-1337]

Initiated by: Supervisor Cohen / Introduced December 13, 2011

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90-Day Deadline: March 21, 2012

Recommendation: **Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS PASS AN ORDINANCE WITH MODIFICATIONS THAT WOULD INITIATE AMENDMENTS TO THE SAN FRANCISCO PLANNING CODE BY AMENDING SECTION 179.1 (B) TO: 1) EXTEND BY SIX MONTHS THE PERIOD OF TIME IN WHICH EXISTING USES IN THE EASTERN NEIGHBORHOODS AREA THAT HAVE OPERATED WITHOUT PERMITS MAY FILE AN APPLICATION FOR DETERMINATION OF ELIGIBILITY FOR LEGITIMIZATION; AND 2) ESTABLISH A 90-DAY TIMELINE BETWEEN WHEN THE LETTER OF LEGITIMIZATION IS ISSUED AND WHEN ALL REQUIRED APPLICATIONS FOR LEGITIMIZATION NEED TO BE SUBMITTED. FAILURE TO MEET THIS DEADLINE WOULD DEEM THE LETTER OF LEGITIMIZATION NULL AND VOID.

PREAMBLE

Whereas, the timeline to seek amnesty and apply for legitimization of uses in the Eastern Neighborhoods has expired on January 19, 2012 and currently the Department cannot legally process any application received after that date; and

Whereas, on December 13, 2011 Supervisor Cohen introduced a proposed Ordinance under Board File Number 11-1337 that would amend Planning Code Section 179.1 (B) to extend by 90 days the period of time in which existing uses in the Eastern Neighborhoods Area that have operated without permits may file an application for determination of eligibility for legitimization; and

Whereas, since the introduction of the proposed Ordinance, the Planning Department recommended extending this period even further to six months; and also recommended to articulate that the legitimization process should proceed with deliberation after a determination of eligibility; and

Whereas, on February 23, 2012 the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance and the proposed modification; and

Whereas, the proposed Ordinance have been found exempt from the California Environmental Quality Act per section 15060 (c) (2) under non-physical exemption on January 5, 2012; 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 by Department staff, and other interested parties; and

Whereas, the 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

MOVED, that the Commission hereby recommends that the Board of Supervisors recommend *approval with modification* of the proposed Ordinance and adopts the attached Draft Resolution to that effect.

The recommended modifications include modifying the Supervisor's proposed Ordinance to extend the timeline to seek amnesty and apply for legitimization of uses in the Eastern Neighborhoods for six months. The modifications also establish a 90-day timeline between when the letter of legitimization is issued and when all required applications for legitimization need to be submitted. Failure to meet this deadline would deem the letter of legitimization null and void.

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. This Ordinance would respond to concerns raised by EN CAC, SFMADE, and the Small Business Commission that the amnesty program was not being fully utilized. Extending this timeline would provide one last opportunity for these small businesses to inquire information in order to find out whether or not they need to apply for the program. Currently, the Department cannot legally process any application to this program. Any small business without proper permits is subject to code enforcement and termination of use.

2. The Department has received 26 applications that are determined eligible under the amnesty program. These applications would amount to about 850,000 square feet of legitimized office space. During the first two and half years of this period the Department only received six applications. The rest of applications were all submitted within the last six months of this period. It is unclear if the applications received have captured all the eligible uses in the Eastern Neighborhoods Area. Staff's general analysis suggests that the increase in late participation in program may not represent a lack of public awareness of the program. Staff recognizes that no matter when the deadline may be, there will always be an incentive for property owners to submit applications late in the process and thereby avoid paying fees until required. In addition, some property owners may have been confused about eligibility criteria or ramifications if uses were found ineligible.
 3. Currently, once the letter of legitimization is issued, property owners have no legislated limits on the amount of time in which they may submit the necessary applications to the Department to secure this legalization. Therefore, while it is important to extend the deadline, it is also necessary to conclude this process in a reasonable time by clearly articulating the City's expectations on concluding the legitimization process. For this reason, the Department also proposes a 90-day timeline between when the legitimization letter is issued until all required application materials for legitimization need to be submitted and diligently pursued until completion. Failure to do so will deem the legitimization letter null and void.
 4. Additionally, in order to ensure the most comprehensive outreach, the Department would like to utilize new mechanisms of informing small businesses about this program. These new mechanisms include the following:
 - Publish press releases and seek additional media coverage (see attached example in Exhibit C: Business Times interview with the Planning Department Director).
 - Collaborate with brokers, property owners, local organizations such as SFMADE, and Mayor's Office of Economic and Workforce Development, to help businesses that will need to apply for legitimization and have not yet done so due to lack of awareness or confusions about the application process.
1. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

EASTERN NEIGHBORHOODS AREA PLANS

One of the key policies in the Eastern Neighborhoods Area Plans is that they attempt to ensure a stable future for Production, Distribution and Repair (PDR) businesses in the city, mainly by reserving a certain amount of land for this purpose. The Plans also establish that existing legal nonconforming use rules already provide substantial protections to certain types of establishments that pre-date the proposed rezoning. For example, in areas where limitations will be imposed under new zoning on retail and office uses, existing office and retail uses that do not

comply with this limitation would be able to remain, provided they were legally established in the first place.

OBJECTIVE 1- 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.

POLICY 1.3.3 Recognize desirable existing uses in the former industrial areas which would no longer be permitted by the new zoning, and afford them appropriate opportunities to establish a continuing legal presence.

The proposed Ordinance would extend the three year timeline for the amnesty program that was created to implement these policies. This Ordinance would provide a one last opportunity for legal nonconforming uses to seek amnesty and legitimize their use.

2. The proposed replacement project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed Ordinance will have no adverse impact on the neighborhood-serving retail uses.

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed Ordinance will help protect office uses in the neighborhood that have been in operation before the Eastern Neighborhood policies were adopted. At the same time, this Ordinance is aligned with the Eastern Neighborhood Area Plan policies to protect production, distribution and repair uses in this area.

- C) The City's supply of affordable housing will be preserved and enhanced:

The proposed Ordinance will have no adverse effects on the City's supply of affordable housing.

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

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

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed Ordinance would help protect manufacturing and industrial uses in the Eastern Neighborhoods Area by providing one last opportunity to office uses that have been operating prior to the zoning changes as a result of the Eastern Neighborhoods Area. Upon arrival of the new sunset for the amnesty program, office uses will not be allowed in most areas of the Eastern Neighborhoods in order to ensure protection of manufacturing and industrial uses from displacement.

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The proposed Ordinance would not affect the preparedness against injury and loss of life in an earthquake is unaffected.

- G) That landmark and historic buildings will be preserved:

The proposed Ordinance would not adversely affect landmark and historic buildings.

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

The proposed Ordinance would not adversely affect parks and open spaces in terms their access to sunlight and vistas.

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BF 11-1337

CASE NO. 2011.1382T
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I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on February 23, 2012.



Linda Avery
Commission Secretary

AYES: Miguel, Antonini, Borden, Fong, Moore, Sugaya, and Wu

NAYS: none

ABSENT: none

ADOPTED: 2/23/12