

1 [Initiative Ordinance - Planning Code - Conditional Use Requiring Replacement of Production,
2 Distribution, Repair, Institutional Community, and Arts Activities Uses]

3 **Motion ordering submitted to the voters, at an election to be held November 8, 2016,**
4 **“Ordinance amending the Planning Code to require replacement space and Conditional**
5 **Use authorization for conversion of Production, Distribution, and Repair Use,**
6 **Institutional Community Use, and Arts Activities Use”;** and affirming the Planning
7 **Department’s determination under the California Environmental Quality Act.**

8
9 MOVED, That the Planning Department has determined that the actions contemplated
10 in this ordinance comply with the California Environmental Quality Act (California Public
11 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the
12 Board of Supervisors in File No. 16098 and is incorporated herein by reference. The Board
13 affirms this determination; and be it

14 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
15 voters of the City and County of San Francisco, at an election to be held on November 8,
16 2016.

17
18 **Ordinance amending the Planning Code to require replacement space and Conditional**
19 **Use authorization for conversion of Production, Distribution, and Repair Use,**
20 **Institutional Community Use, and Arts Activities Use.**

21 NOTE: **Unchanged Code text and uncodified text** are in plain font.
22 **Additions to Codes** are in *single-underline italics Times New Roman font*.
23 **Deletions to Codes** are in ~~italics Times New Roman font~~.
24 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or
25 parts of tables.

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

2 Section 1. Findings.

3 (a) San Francisco is a unique city and its character is made up of the diversity of its
4 people and its businesses.

5 (b) As outlined in San Francisco's General Plan, its density creates a rich variety of
6 experiences and encounters on every street. The City is cosmopolitan and affable, easily
7 traversed by foot or by bus, and offers an intriguing balance of urban architecture. San
8 Francisco is the center and the soul of the region and cooperative efforts to maintain the
9 area's quality of life are imperative. The City has long been a magnet for business, culture,
10 retailing, tourism and education. Its rich 150 year history reflects the cultures of the world and
11 gives energetic diversity to its neighborhoods. The residents strive to maintain this tradition,
12 welcoming people from around the world to participate in the promise of a healthy city.

13 (c) In recent years, this diversity has become threatened because of the high cost of
14 commercial real estate.

15 (d) Steady increases in commercial real estate rental rates have pushed office prices
16 to 122% above where they were five years ago to about \$70 per square foot.

17 (e) The Bay Area commercial real estate markets are now the toughest in the nation.

18 (f) This threatens organizations and businesses that are important to the City but find
19 themselves unable to compete for limited commercial space in this real estate market.
20 Nonprofit organizations, arts organizations, and spaces for people to work in jobs that do not
21 require high educational attainment find themselves pushed out of this market.

22 (g) In a recent report commissioned by the Northern California Grantmakers
23 Association, "Status of Nonprofit Space and Facilities", in March 2016, two out of every three
24 nonprofits surveyed say they will have to make a decision about moving within the next five
25 years.

1 (h) Many nonprofits fear they will have to abandon part of their mission because of the
2 economic pressure created by high real estate costs or move to new locations.

3 (i) The report identifies that some of this pressure can be addressed at the local
4 government level by using zoning to create space suitable for arts and other community
5 organizations, turning to publicly owned property for space, and including nonprofit space in
6 affordable housing development.

7 (j) These pressures, although City-wide, are felt acutely in San Francisco's South of
8 Market and Mission neighborhoods. Because of this, the Eastern Neighborhoods community
9 planning process began in 2001 with the goal of developing new zoning controls for the
10 industrial portions of these neighborhoods.

11 (k) At one time, land zoned for industrial uses covered almost the entire eastern
12 bayfront of San Francisco, from the southern county line to well north of Market Street. As the
13 city's economy has transformed over time, away from traditional manufacturing and "smoke-
14 stack" industry toward tourism, service, and "knowledge-based" functions, the city's industrial
15 lands have shrunk steadily.

16 (l) By the 1990s, land zoned for industrial uses stood at about 12% of the city's total
17 usable land (i.e., not including parks and streets). This period was one of strong economic
18 growth in which the city gained thousands of new jobs and residents. As a result, capital,
19 business, and building activity surged into the industrial and residential Eastern
20 Neighborhoods, south of Downtown. While this wealth brought needed resources, it also
21 created conflicts around the use of land. San Francisco's industrial zoning has historically
22 been permissive – allowing residences, offices, and other uses, in addition to industrial
23 businesses.

24 (m) As part of the Eastern Neighborhoods planning process, the Planning Department
25 conducted a series of workshops where stakeholders articulated goals for their neighborhood,

1 considered how new land use regulations (zoning) might promote these goals, and created
2 several rezoning options representing variations on the amount of industrial land to retain for
3 employment and business activity.

4 (n) Starting in 2005, the community planning process expanded to address other
5 issues critical to these communities including affordable housing, transportation, parks and
6 open space, urban design, and community facilities. The Planning Department began working
7 with the neighborhood stakeholders to create Area Plans for each neighborhood to articulate
8 a vision for the future.

9 (o) Based on several years of community input and technical analysis, the Eastern
10 Neighborhoods Program calls for transitioning about half of the existing industrial areas in
11 these four neighborhoods to mixed use zones that encourage new housing. The other
12 remaining half would be reserved for Production, Distribution and Repair zoning districts,
13 where a wide variety of functions such as Muni vehicle yards, caterers, and performance
14 spaces can continue to thrive.

15 (p) The initial Eastern Neighborhoods Area Plans were adopted in 2008.

16 (q) At their core, the Eastern Neighborhoods Plans try to accomplish two key policy
17 goals: 1) to ensure a stable future for Production, Distribution and Repair (PDR) uses in the
18 city, mainly by reserving a certain amount of land for this purpose; and 2) to provide a
19 significant amount of new housing affordable to low, moderate, and middle income families
20 and individuals, along with “complete neighborhoods” that provide appropriate amenities for
21 these new residents.

22 (r) Because San Francisco has very limited land available, it is important to evaluate
23 the current state of land available for PDR use and to protect PDR uses because of
24 competing pressure from residential and office uses, which can afford to pay far more to buy
25 and develop land.

1 (s) Office tenants are willing to pay well over twice what PDR commands — creative
2 tech space goes for \$70 a square foot in SoMa or the Inner Mission. This leads to the loss of
3 space critical for PDR activities and therefore the loss of jobs that result from these activities.

4 (t) The Planning Department prepared a report in April 2005, on the demand for and
5 supply of PDR in the City. This report is known as the EPS PDR Study. To alleviate the
6 impact of loss of PDR uses and to revitalize PDR uses and to attract technology and biotech
7 businesses to the City, it is necessary for the City to aggressively pursue retention of PDR
8 and its associated job sectors. Development that removes PDR use should have the option of
9 replacing the lost space at a one-to-one ratio. To accomplish this, a PDR replacement
10 program should be established.

11
12 Section 2. The Planning Code is hereby amended by adding a new Section 202.8, to
13 read as follows:

14 **SEC. 202.8. LIMITATION ON CONVERSION OF PRODUCTION, DISTRIBUTION, AND**
15 **REPAIR USE, INSTITUTIONAL COMMUNITY USE, AND ARTS ACTIVITIES USE.**

16 *The following controls shall apply in the following Eastern Neighborhoods Plans Areas:*
17 *Mission; Eastern SoMa; Western SoMa; and, if adopted, Central SoMa. Notwithstanding any other*
18 *provision of this Code, conversion of building space where the prior use in such space was a*
19 *Production, Distribution, and Repair (PDR) use of at least 5,000 square feet, an Institutional*
20 *Community use of at least 2,500 square feet, or an Arts Activities use, all as defined in Section 102,*
21 *through change in use or any other removal, including but not limited to demolition of a building that is*
22 *not unsound, shall be subject to the following requirements:*

23 *(a) To preserve the existing stock of building space suitable for PDR, Institutional Community,*
24 *and Arts Activities uses, such conversion shall, if located within the following zoning districts, require*

1 conditional use authorization under Section 303 and the space proposed for conversion shall be
2 replaced in compliance with the following criteria:

3 (1) In the areas that, as of July 1, 2016, are zoned SALI, the replacement space shall
4 include one square foot of PDR, Institutional Community, or Arts Activities use for each square foot of
5 the use proposed for conversion.

6 (2) In the areas that, as of July 1, 2016, are zoned UMU, MUO, or SLI, the replacement
7 space shall include 0.75 square foot of PDR, Institutional Community, or Arts Activities use for each
8 square foot of the use proposed for conversion.

9 (3) In the areas that, as of July 1, 2016, are zoned MUG or MUR, the replacement
10 space shall include 0.50 square foot of PDR, Institutional Community, or Arts Activities use for each
11 square foot of the use proposed for conversion.

12 (4) For any project located in the areas that, as of July 1, 2016, are zoned SALI, UMU,
13 MUO, SLI, MUG, or MUR, that would convert at least 15,000 square feet of PDR, Institutional
14 Community, or Arts Activities use, and for which an Environmental Evaluation application was
15 submitted to the Planning Department by June 14, 2016, the replacement space shall include 0.4
16 square foot of PDR, Institutional Community, or Arts Activities use for each square foot of the use
17 proposed for conversion. Notwithstanding the foregoing sentence, should the Board of Supervisors
18 overturn any such project's environmental review on appeal, such project shall provide replacement
19 space as required by subsections (a)(1), (2), or (3) above, as applicable.

20 (5) The replacement requirements of subsections (a)(1), (2), (3), and (4) may be
21 reduced by 0.25 for any project subject to any contract or agreement meeting the requirements of
22 California Civil Code Section 1954.28(d), including but not limited to a development agreement
23 approved by the City under California Government Code Section 65864 et seq. if, as part of the terms
24 of such agreement, the required replacement space is rented, leased, or sold at 50% below market rate
25 for such commercial space for a period of not less than 55 years and is subject to a deed restriction.

1 (6) Replacement space for PDR and Arts Activities use may be used for either PDR or
2 Arts Activities use, regardless of which of those uses is proposed for conversion. Replacement space for
3 Institutional Community use shall be used for Institutional Community use.

4 (b) Definitions. For the purposes of this Section 202.8, the following definitions shall apply:

5 “Prior use” shall mean the prior permanent and permitted use and shall not include any
6 approved temporary uses such as “pop-up” eating establishments, craft fairs, or other seasonal uses.

7 “Replacement space” shall mean newly developed building space and shall not include
8 building space that was previously used for PDR, Institutional Community, or Arts Activities.

9 “Unsound” shall mean a building for which rehabilitation to comply with City Codes for
10 continued use as PDR, Institutional Community, or Arts Activities use, as applicable, would cost 50%
11 or more of the cost to construct a comparable building.

12 (c) The amount of replacement space required under subsection (a)(1) may be reduced by the
13 amount that is necessary to provide building entrances and exits; maintenance, mechanical, and
14 utilities facilities; and on-site open space and bicycle facilities required under this Code; provided that
15 no reduction shall be permitted for non-car-share vehicle parking spaces.

16 (d) Undeveloped property. The requirements of this Section 202.8 shall only apply to those
17 portions of a site that are developed with building space where the prior use in such space was PDR
18 use of at least 5,000 square feet, an Institutional Community use of at least 2,500 square feet, or an
19 Arts Activities use.

20 (e) In determining whether to grant Conditional Use authorization, in addition to making the
21 required findings under Section 303, the Planning Commission shall consider the suitability of the
22 replacement space for the use proposed for conversion.

23 (f) Exemptions. The following shall be exempt from the requirements of this Section 202.8:

1 (1) Any property under the jurisdiction of the Port of San Francisco or the Recreation
2 and Park Commission; all Redevelopment Plan Areas in effect as of July 1, 2016; and any parcel zoned
3 P (Public) on or after July 1, 2016.

4 (2) Any project where the PDR use, Institutional Community use, or Arts Activities use
5 subject to conversion commenced after June 14, 2016.

6 (3) Any project that has been approved by the Planning Department or Planning
7 Commission by June 14, 2016, provided that, if subsequently appealed, such approval is upheld.

8 (4) Any project that would convert less than 15,000 square feet of PDR, Institutional
9 Community, or Arts Activities use and for which an Environmental Evaluation application was
10 submitted to the Planning Department by June 14, 2016.

11 (5) Any public transportation project.

12 (6) Any project that receives affordable housing credits associated with retention of
13 affordable units at the South Beach Marina Apartments, pursuant to Board of Supervisors Resolution
14 No. 197-16.

15 (7) Any project where all of the residential units with the exception of the manager's
16 unit are affordable housing units, as that term is defined in Section 406(b)(1). If feasible, such projects
17 shall make efforts to replace any converted PDR, Institutional Community, and Arts Activities uses.

18 (8) Any property in the Western SoMa Plan Area if the actual use functioning on the
19 property as of September 8, 2014, as determined by the Zoning Administrator, was principally
20 permitted, and not a PDR, Institutional Community, or Arts Activities use, such that a legal conversion
21 could have been approved prior to October 9, 2014. This exemption applies only to conversions of uses
22 smaller than 25,000 square feet.

23 (g) This Section 202.8 shall not authorize a change in use if the new use or uses are otherwise
24 prohibited.

1 (h) In Lieu Fee and Off-Site Replacement. The Board of Supervisors may enact an ordinance
2 adopting an in lieu fee and/or an off-site replacement option to meet the replacement requirements set
3 forth in subsection (a). The proceeds from any such in lieu fee shall be used for the preservation and
4 rehabilitation of existing PDR, Institutional Community, and Arts Activities spaces in the area plan
5 area where the project paying the fee is located.

6 (i) The Board of Supervisors by ordinance and by at least a two-thirds vote of all its members
7 may amend this Section 202.8 at any time after its effective date.

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9 APPROVED AS TO FORM:

10 DENNIS J. HERRERA, City Attorney

11 By:

12 _____
13 MARLENA BYRNE
14 Deputy City Attorney

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