



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

DATE: July 24, 2008
TO: Members of the Planning Commission
FROM: Ken Rich, Eastern Neighborhoods Project Manager
RE: Potential Changes Not Yet Discussed With the Commission

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The purpose of this memo is to outline for the Commission the potential changes to the April 17, 2008 Initiation Package for which staff has not yet received direction from the Commission. These remaining potential changes consist of: 1) key policy issues that have benefitted from stakeholder discussions over the last few weeks; 2) issues brought up by the Commission on July 10 that required further staff analysis.

1) Office rules in PDR and Mixed Use Districts

Concern has been expressed over the past few weeks about the staff proposal for controlling office uses in PDR and mixed use districts. These concerns revolve around two key issues: 1) The ability of spaces which have a history of office-type use but unclear permit histories to attain legal nonconforming status; 2) whether the proposed rules were flexible enough to permit desirable businesses to grow and flourish in these areas.

After discussions between various stakeholders and both Planning Department and Economic Development staff, a substantially new and different proposal has been developed for the Commission's consideration.

Proposed New Controls for Offices in PDR-1 Districts:

- Proposed "Innovative Industries" special use district in Showplace Square would be removed. (However the proposed Innovative Industries SUD in Central Waterfront would be retained.)
- Office space continues to be defined by the simple land use definition described in proposed new section 890.70
- Office space is not permitted in the PDR districts, **HOWEVER....**
- "Legitimization" process
 - Provision to allow existing uses with questionable permit circumstances to now seek those permits, regardless of new Eastern Neighborhoods restrictions.
 - Existing uses, excepting live/work units, which have been ongoing for at least 3 years are eligible.

- Very similar to existing legitimization protocol for NC Districts
- Review procedures apply as they would have at the time of a use's establishment.

(Planning Department data shows up to 4 million square feet of existing office-type space that could be legitimized if all property owners were to seek this.)

(It should be noted that legitimization also addresses existing dwellings without permits.)

- Two new land use definitions are created:
- *"Small Enterprise Workspace" (SEW)*
 - Designed to house a range of very small flexible spaces intended for occupancy by PDR and office-type tenants
 - All upper stories restricted to SEW use.
 - Individual SEW spaces capped as follows: 25% of all spaces cannot exceed 2,500 gsf while 75% may not exceed 500 gsf
 - All SEW projects subject to office allocation process for the total square footage of all stories above the ground story
 - No mergers or subdivisions of units allowed once constructed
- *"Hybrid" Office/PDR*
 - A land use with characteristics of both office space and PDR space
 - Office and PDR space must be related activities of the same business
 - PDR function must comprise at least one third of total floor space
- SEW is principally permitted in new construction only
- Hybrid Office/PDR is permitted in buildings containing three stories or more and built as of the effective date of the Eastern Neighborhoods zoning. (i.e. not in new construction). Tenants wishing to take advantage of this opportunity would be required to register for the Enterprise Zone.
- The PDR-2 section of the southern Central Waterfront would retain the same PDR-2 controls, similar to those recently adopted for Bayview.

In UMU and MUG districts:

- Office floor controls as proposed in the April 17, staff proposal continue to apply
- Legitimization would be offered in the same manner as proposed above for PDR districts
- Hybrid Office-PDR uses would also be permitted under the same conditions as in the PDR-1 districts.
- SEW would not be permitted in the UMU or MUG. This is to avoid competition for land with residential projects.

Relationship of Proposed New Office Controls to the Enterprise Zone:

The Enterprise Zone geography covers all of the Eastern Neighborhoods PDR and Mixed Use districts and offers a significant set of incentives and assistance packages to businesses which hire a variety of disadvantaged workers. In general staff believes that PDR and hybrid businesses would usually be eligible for Enterprise Zone tax credits and other incentives. The goal of the Planning Department and MOEWD is to work together to link land use controls and economic development incentives, centered on the Enterprise Zone opportunities. MOEWD staff will be able to discuss this further at the July 31 hearing.

2) Proposed Fee Structure for Hybrid and Legitimized Spaces

Currently office space in the city pays a “jobs-housing linkage” fee and a transportation impact development fee (TIDF). In addition to these existing fees, the Eastern Neighborhoods program proposes an additional public benefits impact fee for new offices spaces.

Staff is still working with the City Attorney to develop a fair and legally defensible fee package for legitimized and hybrid uses. We expect to develop a set of fees that equitably charge legitimized uses for the net new impact accompanying intensification as an office use (i.e. the difference between the impacts generated by the previously permitted uses and the newly permitted office uses); and that charge hybrid uses at a rate that correctly represents their impact, which is typically lower than traditional office use. Both fees are likely to be set at a level substantially lower than full office fees.

3) Proposed Changes to Inclusionary Housing Rules for Small Parcels in the UMU

Small scale development faces a number of challenges in the current development climate, including limited access to credit and often, a higher land cost per unit for the small sites on which they develop. Because of these and other variations from larger-scale development, they operate under a somewhat unique development model which cannot be fully encapsulated within the constraints of the *Eastern Neighborhoods Financial Analysis*, prepared to assess the financial feasibility of increasing housing requirements and impact fees in the Plan Areas.

To address these challenges, staff recommends a number of slight modifications to the increased affordable housing requirements of the UMU district, to apply to small projects (defined as 20 units or fewer, or less than 20,000 gross square feet).

1. *The ability to meet inclusionary housing requirements via the in-lieu fee option, while paying on a fractional or per-square foot basis.* This applies the housing requirement equitably across the total development constructed, and avoids the disproportionately high unit requirement that occurs for projects of 9, 14, 15, 16 and 20 units because of rounding calculations.
2. *The ability to pay such half of such a fee prior to the issuance of the first site or building permit for the project applicant, and half prior to issuance of the Temporary Certificate of Occupancy (TCO).* This will enable projects with limited access to credit the ability to substantially complete construction and begin unit sales, which will help ease the burden of payment of the fee.

4) Pipeline

Staff believes (but wishes to confirm) that the basic structure of the proposed pipeline controls is acceptable to the Commission, with the possible exception of the “grandfather date,” which is still the subject of some debate.

When the Commission takes action on the Eastern Neighborhoods Program, it will also be requested to act on Supervisor Daly’s proposed ordinance related to the Eastern Neighborhoods Pipeline, which must be calendared separately.

Staff proposes to have a final discussion with the Commission on this set of issues at the July 31 hearing.

5) Conversion of nonconforming live-work units to housing

The April 17 staff proposal did not include a mechanism to convert live-work units to housing units. We understand that Supervisor Maxwell’s office is interested in developing a piece of legislation separate from the Eastern Neighborhoods process to

accomplish this, with appropriate process and fees. Thus staff recommends continuing to omit this issue from the Eastern Neighborhoods process.

6) Zoning from 23rd to 25th Streets, between Indiana and 3rd St

The April 17 staff proposal zoned these blocks as PDR-2. Staff has met with representative business and property owners from this area who are concerned about the proposed PDR-2 zoning. While staff is sympathetic to these concerns, we continue to strongly recommend that the Commission maintain the PDR-2 zoning in this area. Under the PDR-2 zoning live-work and residential units that were legally established may continue in perpetuity. The majority of businesses currently operating in this area would also continue to be permitted under the new zoning.

7) SoMa Youth & Family Zone

The South of Market Community Action Network (SomCan) has identified an area of the South of Market, bounded approximately Harrison, Fifth, Howard and Seventh Streets, which currently serves a large population of youth and families. SomCan has requested a number of changes to the zoning in these areas, summarized as follows:

- Bedroom mix of 60% 2 and more bedrooms
- Permit institutional uses such as youth and recreation centers with Conditional Uses for schools, health clinics and childcare to be neighborhood-serving
- Conditional Uses required for all retail
- Bars, adult entertainment, massage parlors and liquor stores not permitted
- Conditional uses on arts, theatre and entertainment
- Limited office, PDR permitted and green industries with conditional use to have local hiring
- Traffic calming improvements and impact fees that go towards maintenance of current amenities
- Increased transit service with pricing and routes reflective of community patterns

SomCan has also requested that housing uses in the area be restricted to 100% affordable projects, with an average affordability level at 60% of Area Median Income; which would mean that any new housing developed in the area would require public subsidy, including resources funded through the Mayor's Office of Housing, the San Francisco Redevelopment Agency, and leveraged with local, state and federal affordable housing funds. Unfortunately most of the available sites within the Zone as small infill sites, and

do not lend themselves to publicly funded affordable housing project. Staff, in trying to balance the same goals that the SYFZ strives for - new affordable housing development *and* neighborhood stabilization - ultimately concluded that while a publicly-funded small site development program was worthy of long-term exploration, funds could be more immediately effective if focused towards stabilization, acquisition and rehabilitation of existing housing.

Staff's proposed zoning package aims to address these same goals on the broader area of the four neighborhoods. By proposing strategies such as increased inclusionary percentages, land dedication, and a fee-funded rehabilitation and acquisition program, the package leverages market-rate contributions with public resources to produce a significant amount of affordable housing (estimated at over 2500 new units). The plan provides incentives for development of 100% affordable housing, as well as for mixed income development with a significant number of units affordable to low to moderate income households. It also addresses the issue of neighborhood stabilization with a dedicated income source for acquisition and rehabilitation of vulnerable housing stock,

Staff, after meeting with SomCan representatives, proposes the following changes for the Commission's consideration:

- Make religious institutions a conditional use in the SoMa NCT
- Make youth centers, recreation centers and senior centers permitted rather than conditional in the SoMa NCT
- Make bars and liquor stores a conditional in the MUR (these are already conditional in SoMa NCT and MUG)
- Explore making the massage establishments not permitted in the NCT

8) Formula Retail Controls in PDR districts

The April 17, 2008 staff proposal did not include conditional use controls for formula retail uses in the PDR districts. There has been some interest from community members in extending these controls into the PDR districts. Staff understands the desire of community members who live near PDR districts to maintain a presumption in favor of locally owned businesses. However staff also observes that one of the primary purposes of PDR districts is to serve low and middle income jobs and workers. Formula retail establishments can sometimes serve this need. Staff has no recommendation on this issue and seeks Commission direction.

9) PDR Demolition Controls in PDR Districts

The proposed PDR zoning includes demolition controls on PDR space in PDR districts. The controls require replacement of demolished PDR space at a ratio of 1:1 or 0.5:1, depending on the amount of space demolished.

The Commission has previously given direction to staff to accommodate grocery stores and Small Enterprise Workspaces in the PDR districts. It would be difficult to replace PDR space demolished in order to establish a Small Enterprise Workspace or to establish or expand a grocery store. Because we are not likely to see a large number of either of these uses, staff believes it would be prudent to waive the PDR demolition controls in these cases.

10) Gymnasium Uses in the UMU

The Commission has directed staff to ensure that large gymnasiums are able to expand or be established in the PDR and UMU districts. The proposed UMU district zoning already permits retail uses larger than 4,000 square feet by CU, but requires retail uses larger than 25,000 square feet in size to be part of a mixed use project, at a ratio of 3 square feet of another permitted use to 1 square foot of retail. This rule would have the effect of prohibiting a gymnasium from occupying or expanding in an existing one-story industrial building.

Staff does not have a position on this issue and seeks direction from the Commission. The Commission can direct staff to leave this rule in place, make an exception for retail in existing buildings or make an exception for only gymnasiums in existing buildings.

11) Citizens Advisory Committee's Appointment, Role & Function

The Planning Commission has requested more specific language regarding the makeup, role and function of the Citizens Advisory Committee (CAC). Staff has included new language as a part of Section 327 pertaining to the Eastern Neighborhoods Public Benefits Fund, which specifies the following:

1. The CAC's representation, is appointed by the Board of Supervisors (2/3) and the Mayor (1/3). It is comprised of community members from varying geographic, socio-economic, ethnic, racial, gender, and sexual orientations living or working within the plan area, and includes at least two representatives from each neighborhood (Eastern SoMa, Central Waterfront, Mission and Showplace Square Potrero Hill). It must adequately represent key stakeholders including resident renters, resident homeowners, low-income residents, local merchants, established neighborhood groups within the plan area.

2. The CAC's role and responsibilities, will be refined when the CAC is established but shall include at a minimum the points included in the Eastern Neighborhoods Implementation Program Document (EN Initiation Package Page 1220).
3. The CAC's function, includes collaboration with the Planning Department and the Interagency Plan Implementation Committee on prioritizing community improvement projects and identifying implementation details as part of annual expenditure program; reports back progress on enforcement of individual projects' compliance with the Area Plans and on specific conditions of project approvals; and collaborates on the Area Plans' monitoring program as required by the Administrative Code.

12) Potrero Hill Public Housing:

As written, the Potrero Hill/Showplace Square Area Plan does not discuss any potential rezoning in the vicinity of the Potrero Hill Public Housing development. *The proposed change would amend two policies in the Land Use section and create a new policy in the Housing section of the Potrero Hill/Showplace Square Area Plan to facilitate any future rezoning necessary to support the redevelopment of the Potrero Housing Projects through the Hope SF program.*

13) Acknowledging the Importance of Protecting the Murals and other public artwork in the Mission:

While not traditional historic structures, murals and other public artwork are important cultural resources that deserve protection and recognition. *The proposed change would add a policy to the Mission Area Plan directing the Planning Department and Art Commission to study how these works can be designated or recognized and how they can be expanded and strengthened as new construction occurs nearby.*