



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18497 HEARING DATE OCTOBER NOVEMBER 17, 2011

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Project Name: **Amendments relating to the Neighborhood Commercial Districts: Self-Service Restaurants, Retail Coffee Stores, and Video Stores**

Case Number: 2011.0172T [Board File No. 11-0152]

Initiated by: Supervisor Mirkarimi/ Introduced February 8, 2011

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Recommendation: **Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTION SECTIONS 710, 730, 733A, 733A.1, 790.90, 790.91, AND 790.102 OF THE PLANNING CODE TO: (1) INCREASE THE MAXIMUM USE SIZE FOR SMALL SELF-SERVICE RESTAURANTS IN NEIGHBORHOOD COMMERCIAL DISTRICTS TO THAT OF THE NONRESIDENTIAL USE SIZE LIMIT FOR THE DISTRICT AND ELIMINATE THE LIMIT ON THE NUMBER OF SEATS; (2) INCREASE THE MINIMUM SIZE FOR LARGE SELF-SERVICE RESTAURANTS IN NEIGHBORHOOD COMMERCIAL DISTRICTS TO THAT OF THE NON-RESIDENTIAL USE SIZE LIMIT FOR THE DISTRICT; (3) PRINCIPALLY PERMIT SMALL SELF-SERVICE RESTAURANTS AND VIDEO STORES IN NEIGHBORHOOD COMMERCIAL CLUSTER (NC-1) AND NEIGHBORHOOD COMMERCIAL TRANSIT CLUSTER (NCT-1) DISTRICTS; (4) CONDITIONALLY PERMIT LARGE SELF-SERVICE RESTAURANTS IN THE INNER SUNSET NEIGHBORHOOD COMMERCIAL DISTRICT; (5) REQUIRE THAT MECHANICAL NOISE AND VIBRATION FROM SELF-SERVICE RESTAURANTS BE CONFINED TO THE PREMISES; AND (6) REMOVE THE PROHIBITION OF ON-SITE FOOD PREPARATION AND COOKING AND REHEATING EQUIPMENT IN RETAIL COFFEE STORES, AND ADOPT CERTAIN MODIFICATIONS TO THE PROPOSED ORDINANCE TO FURTHER SIMPLIFY EXISTING PLANNING CODE DEFINITIONS AND CONTROLS FOR FOOD AND DRINK ESTABLISHMENTS, ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE PRIORITY POLICIES OF PLANNING CODE SECTION 101.1.

WHEREAS, on February 8, 2011, Supervisors Mirkarimi introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 11-0152 which would amend Sections 710, 730, 733A, 733A.1, 790.90, 790.91, and 790.102 of the Planning Code to: (1) increase the maximum use size for Small Self-Service Restaurants in Neighborhood Commercial Districts to that of the nonresidential use size limit for the district and eliminate the limit on the number of seats; (2) increase the minimum size for Large Self-Service Restaurants in Neighborhood Commercial Districts to that of the non-residential use size limit for the district; (3) principally permit Small Self-Service Restaurants and Video Stores in

Neighborhood Commercial Cluster (NC-1) and Neighborhood Commercial Transit Cluster (NCT-1) Districts; (4) conditionally permit Large Self- Service Restaurants in the Inner Sunset Neighborhood Commercial District; (5) require that mechanical noise and vibration from Self-Service Restaurants be confined to the premises; and (6) remove the prohibition of on-site food preparation and cooking and reheating equipment in Retail Coffee Stores.

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on May 26, 2011; and,

WHEREAS, The Commission continued the item at its May 26, 2011 hearing to October 6, 2011 in order for Supervisor Mirkirimi to conduct more public outreach; and,

WHEREAS, The Commission continued the item at its October 6, 2011 to November 17, 2011 in order for Supervisor Mirkirimi to conduct more public outreach; and,

WHEREAS, The Commission conducted another duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on November 17, 2011; and,

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

WHEREAS, the Planning 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 Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed ordinance. Specifically, the Commission recommends the following modifications:

- Recommend that the Board of Supervisors adopt the changes proposed by the Planning Department, which are outlined in the attached draft ordinance identified as Exhibit A, and that the proposed Ordinance be further amended to include provisions that subject the proposed new definitions to Planning Code 312 Notification requirements as well as Formula Retail Controls.

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. A review of Neighborhood Commercial District controls 20 years after being adopted titled "NC@20" recommended that existing restaurant definitions be reevaluated based on changes that have occurred to the Planning Code since those controls were adopted.
2. The existing restaurant definitions were devised to help stop the displacement of neighborhood serving retail uses and the proliferation of large chain fast-food restaurants. Since then, 312 Neighborhood Notification and Formula Retail Controls were added to the Planning Code and more appropriate address these issues and concerns.
3. Existing restaurant definitions are overly prescriptive and restrict how restaurants can operate without a clear land use benefit. Enforcement of these definitions is often difficult and ineffective.
4. Grouping restaurant types by alcohol license type and including operational conditions within the Planning Code is a more effective way to address the land use and quality of life impacts caused by restaurants.
5. Non-Residential Use Size controls that are tailored to individual neighborhoods provide adequate protection from over-sized restaurant uses.
6. Video stores are becoming obsolete due to on-demand video through cable providers and other internet based video delivery systems. Having a separate use category for Video Stores is no longer necessary.
7. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

I. COMMERCE & INDUSTRY ELEMENT

THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN SETS FORTH OBJECTIVES AND POLICIES THAT ADDRESS THE BROAD RANGE OF ECONOMIC ACTIVITIES, FACILITIES, AND SUPPORT SYSTEMS THAT CONSTITUTE SAN FRANCISCO'S EMPLOYMENT AND SERVICE BASE.

GOALS

THE THREE GOALS OF THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN RELATE TO CONTINUED ECONOMIC VITALITY, SOCIAL EQUITY, AND ENVIRONMENTAL QUALITY.

OBJECTIVE 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT

POLICY 1.2

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

The changes to the proposed Ordinance by the Planning Commission include minimum and reasonable performance standards for restaurants and bars.

OBJECTIVE 3

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

POLICY 3.1

Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

Restaurants tend to employ unskilled and semi-skilled labor. The proposed changes to the restaurant definitions will make it easier to open and operate a restaurant which will attract, retain and expand a commercial use.

OBJECTIVE 6

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

POLICY 6.2

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

POLICY 6.3

Preserve and promote the mixed commercial-residential character in neighborhood commercial districts. Strike a balance between the preservation of existing affordable housing and needed expansion of commercial activity.

POLICY 6.10

Promote neighborhood commercial revitalization, including community-based and other economic development efforts where feasible.

The existing controls are too prescriptive and often stifle new or emerging business models. These amendments will help foster small business enterprise and entrepreneurship by allowing more flexibility and creativity in how restaurants are run and operated. Integrating standardized operational conditions into the new eating and drinking definitions will help ensure that there is a balance between new or expanded commercial activity and residential uses in Neighborhood Commercial Districts. The proposed amendments will also help spur commercial revitalization in some neighborhood commercial districts by reducing the barriers for new restaurants to open and existing restaurants to adapt to a changing market place.

8. **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 amendments will encourage neighborhood-serving retail uses and opportunities for employment in or ownership of such businesses in the City by making it easier for new restaurants to open and operate and for existing restaurants to adapt to a changing marketplace.

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 amendments will not have an impact on housing in Neighborhood Commercial Districts. Controls are in place in section 317 of the Planning Code that severely restricts the conversion of housing units to commercial units.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed amendments will have no 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 amendments will 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 amendments 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;

Preparedness against injury and loss of life in an earthquake is unaffected by the proposed amendments. Any new construction or alteration associated with a use would be executed in compliance with all applicable construction and safety measures.

7. That the landmarks and historic buildings be preserved;

Landmarks and historic buildings would be unaffected by the proposed amendments. Should a proposed use be located within a landmark or historic building, such site would be evaluated under Planning Code provisions and comprehensive Planning Department policies.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments. It is not anticipated that permits would be such that sunlight access, to public or private property, would be adversely impacted.

8. Planning Code Section 302 Findings. The Planning 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 recommends that the Board ADOPT the proposed Ordinance as described in this Resolution and in the proposed Ordinance with the modification outlined above.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on November 17, 2011.



Linda D. Avery
Commission Secretary

AYES: Olague, Miguel, Antonini, Fong, Moore, and Sugaya

NOES:

ABSENT: Borden

ADOPTED: November 17, 2011