



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Motion No. 18555

HEARING DATE: MARCH 8<sup>TH</sup>, 2012,

*Date:* March 1<sup>st</sup>, 2012  
*Case No.:* **2011.1283C**  
*Project Address:* **4028 24<sup>th</sup> STREET**  
*Zoning:* 24<sup>th</sup> Street- Noe Valley Neighborhood Commercial District  
and a 40-X Height and Bulk District  
*Block/Lot:* 3656/011  
*Project Sponsor:* Ariel Ford  
4437 20<sup>th</sup> Street  
San Francisco, CA 94114  
*Staff Contact:* Tom Wang – (415) 558-6335  
*thomas.wang@sfgov.org*

**ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 728.44 AND 790.91 OF THE PLANNING CODE TO ALLOW A SMALL SELF-SERVICE RESTAURANT (D.B.A. EASY BREEZY) WITHIN THE 24<sup>TH</sup> STREET - NOE VALLEY NEIGHBORHOOD COMMERCIAL DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

### PREAMBLE

On November 10<sup>th</sup>, 2011 Ariel Ford (hereinafter “Project Sponsor”) filed an application with the San Francisco Planning Department (hereinafter “Department”) for Conditional Use authorization on the property at 4028 24<sup>th</sup> Street, Assessor’s Lot 011 in Block 3656 (hereinafter “Property”) to convert a vacant ground floor commercial space into a small self-service restaurant (d.b.a. Easy Breezy) under Planning Code Sections 728.44 and 790.91, in the 24<sup>th</sup> Street - Noe Valley Neighborhood Commercial District and a 40-X Height and Bulk District, in general conformity with plans filed with the Application and labeled “EXHIBIT B” (hereinafter “Project”).

On March 8<sup>th</sup>, 2012, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2011.1283C (hereinafter “Application”).

The Application was determined by the San Francisco Planning Department to be exempt from environmental review pursuant to Title 14, Class 1(a) of Category 15301 (Existing Facilities) of the California Administrative Code. The Commission has reviewed and concurs with said determination.

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 on behalf of the applicant, Department staff, and other interested parties.

**MOVED**, that the Commission hereby authorizes the Conditional Use requested in Application No. 2010.0521C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

## 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. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The Property is on the north side of 24<sup>th</sup> Street between Castro and Noe streets, Lot 011 in Assessor's Block 3656, within the 24<sup>th</sup> Street -- Noe Valley Neighborhood Commercial District and a 40-X Height and Bulk District. The Property measures 25 feet wide and 114 feet deep and is developed with commercial and residential uses within a three-story building. Currently, the second and third floors are each occupied by a dwelling unit and the ground floor contains a vacant commercial storefront (hereafter "the Project Site") and a health spa. The Project Site was most recently occupied by a retail sales store (Cosmic Wizard, selling gifts of science and spirit), but has become vacant since Cosmic Wizard closed its business and moved out in July 2011. The Project Site is within the center of a vital neighborhood commercial area and is well served by the public transportation, including Muni Bus Route 48 operating on 24<sup>th</sup> Street, directly in front of the Project Site and Muni Bus Route 24 operating on Castro Street, approximately two thirds of a block from the Project Site.
3. **Surrounding Properties and Neighborhood.** Surrounding properties along 24<sup>th</sup> Street contain mainly two and three story buildings and the majority of them are developed with ground floor commercial uses and residential uses on the upper floors. Surrounding residential districts are either RH-2 (Residential, House, Two-Family) District or RH-3 (Residential, House, Three-Family) District.

The 24<sup>th</sup> Street — Noe Valley Neighborhood Commercial District is situated along 24<sup>th</sup> Street between Chattanooga and Diamond streets in the Noe Valley neighborhood of central San Francisco. This daytime-oriented, multi-purpose commercial district provides a mixture of convenience and comparison shopping goods and services to a

predominantly local market area. It contains primarily retail sales and personal services at the street level, some office uses on the second story, and residential use almost exclusively on the third and upper stories.

4. **Project Description.** The Project is to establish a small self-service restaurant (d.b.a. Easy Breezy), selling frozen yogurt in a currently vacant ground floor commercial space at the Property. No exterior alterations to the subject building are proposed as part of this Project; however, interior tenant improvement will occur. The Project Site measures approximately 616 square feet in gross floor area and has an approximately 13 feet wide frontage on 24<sup>th</sup> Street.

The Project is not a Formula Retail use, defined under the Formula Retail provisions of Planning Code Sections 703.3 and 703.4, but rather an independent, locally owned business. The Project is designed to mainly serve residents from the surrounding neighborhood and patrons of other businesses on 24<sup>th</sup> Street. The Project will create up to three job openings. The proposed operation includes self-serve yogurt machines and a check-out counter to pay for the sale of yogurt prior to consumption. Patrons will have the option for take-out or dine-in at the on site seating area with up to eleven seats. The proposed hours of operation are between 11:00 a.m. to 10:00 p.m. Sunday through Thursday and 11:00 a.m. to 11:00 p.m. Friday and Saturday.

5. **Public Comment.** The Department is not aware of any opposition to the Project. The Department received ten letters in support of the Project.
6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Land Use.** Planning Code Section 728.44 provides that a Small Self-Service Restaurant, as defined in Planning Code Section 790.91\*, is permitted on the ground floor within the 24th Street – Noe Valley Neighborhood Commercial District with Conditional Use authorization

**\*Planning Code Section 790.91 defines a small self-service restaurant as follows:**

(a) A retail eating or eating and drinking use which provides ready-to-eat food for consumption on and off the premises and which may or may not provide seating. Such use exhibits the following characteristics:

- (1) Contains fewer than 50 seats and less than 1,000 square feet of gross floor area;
- (2) A limited menu of ready-to-eat food prepared in advance of customer orders, or food which is able to be quickly prepared for consumption on or off the premises;
- (3) Food served in disposable wrappers or containers;
- (4) Food is ordered and served at customer service counter;
- (5) Food is paid for prior to consumption;

- (6) Public food service area, including queuing areas and service counters without fixed seats, which counters are designed specifically for the sale and distribution of food and beverages; and
- (7) Food available upon a short waiting time.

It does not include retail grocery stores with accessory take-out food activity, as described in Section 703.2(b)(1)(C) of this Code, self-service specialty food use, as described in Section 790.93 of this Code, or retail uses which sell prepackaged or bulk ready-to-eat foods with no-site food preparation area, such as confectionery or produce stores. When a fast-food restaurant operates within and in conjunction with another retail use, such as a retail grocery store, the area of the fast-food restaurant use shall be measured to include the area devoted to food preparation and service, seating and separate public food service counters, excluding fish, poultry and meat counters.

(b) It may provide off-site beer, wine and/or liquor sales for consumption off the premises (with ABC licenses 20 or 21) or on-site beer and/or wine sales for drinking on the premises (with ABC licenses 40, 41 or 60). If it serves liquor for drinking on the premises (with ABC licenses 47 or 48) or does not admit minors (with ABC licenses 42 or 61), then it shall also be considered a bar, as defined in Section 790.22 of this Code.

(c) It shall be conducted in accordance with the following conditions:

- (1) All debris boxes shall be kept in enclosed structures.
- (2) The operator shall be responsible for cleaning the sidewalk within a one-block radius daily to maintain the sidewalk free of paper or other litter during its business hours, in accordance with Article 1, Section 34 of the San Francisco Police Code.
- (3) Noise and odors shall be contained within the premises so as not to be a nuisance to nearby residents or neighbors.

*The Project Sponsor seeks Conditional Use authorization to allow a small self-service restaurant in a vacant ground floor commercial space with approximately 616 square-feet of gross floor area at the Property in the 24<sup>th</sup> Street - Noe Valley Neighborhood Commercial District.*

*The Commerce and Industry Element of the General Plan contains Guidelines for Specific Uses. For eating and drinking establishments, the Guidelines state, "the balance of commercial uses may be threatened when eating and drinking establishments occupy more than 20% of the total occupied commercial frontage."*

*In June 2010, Department staff performed a survey on the existing eating and drinking establishment within the 24<sup>th</sup> Street – Noe Valley Neighborhood Commercial District, which contains six blocks along 24<sup>th</sup> Street between Chattanooga and Diamond streets and the Project site. There was a total of thirty six eating and drinking establishments, resulting in*

*approximately 22% of the total occupied commercial frontage was devoted to eating and drinking establishments. Therefore, a slight over-concentration of food-service establishments existed in this District.*

*In February 2012, Department staff performed another survey on the existing eating and drinking establishment within the 24<sup>th</sup> Street – Noe Valley Neighborhood Commercial District. The survey results indicate that there has been no change from the 2010 survey with respect to the total number (thirty six) of eating and drinking establishments and the percentage (approximately 22%) of the total occupied commercial frontage devoted to eating and drinking establishments. Therefore, still only a slight over-concentration of eating and drinking establishments remains in this District.*

*The Project, not containing a kitchen and only selling frozen yogurt, would be an operation with much less intensity than that of the majority of other eating and drinking establishments in this District. By the addition of the proposed small self-service restaurant, there will be thirty seven eating and drinking establishments and it will change the current approximately 22% of the total occupied commercial frontage dedicated to eating and drinking establishments to approximately 22.5% in this District. The Project; therefore, would result in a rather negligible effect on the current slight over-concentration of eating and drinking establishments in this District.*

*Furthermore, the 2012 survey also demonstrates a fact that the 24<sup>th</sup> Street – Noe Valley Neighborhood Commercial District currently features a variety of eating and drinking establishments and is gaining a reputation for providing popular eateries, a defining characteristic, which contributes to the economic strength and vitality of this District. The Project would be an addition compatible with this current trend found in the 2012 survey.*

- B. Neighborhood Commercial Permit Review.** Planning Code Section 312 requires neighborhood notification of a change in use from a vacant commercial space to a small self-service restaurant, as defined in Planning Code Section 790.91, on lots within the 24th Street – Noe Valley Neighborhood Commercial District.

*The Project Sponsor proposes to establish a small self-service restaurant in a currently vacant ground floor commercial space on the Property within the 24<sup>th</sup> Street – Noe Valley Neighborhood Commercial District. Section 312 notification was conducted in conjunction with the Conditional Use authorization notification.*

- C. Use Size [Non-Residential].** Planning Code Section 728.21 provides that Use Size [Non-Residential] is permitted up to 2,499 square feet; Conditional Use authorization is required for 2,500 square feet and above within the 24th Street – Noe Valley Neighborhood Commercial District.

*The Proposed small self-service restaurant would contain a gross floor area of approximately 616 square feet, which is permitted by Planning Code Section 728.21 within the 24th Street – Noe Valley Neighborhood Commercial District*

- D. **Hours of Operation.** Planning Code Section 728.27 permits hours of operation, as defined by Planning Code Section 790.48, from 6 a.m. to 2 a.m. and from 2 a.m. to 6 a.m. by conditional use authorization.

*The proposed hours of operation are between 11:00 a.m. to 10:00 p.m. Sunday through Thursday and 11:00 a.m. to 11:00 p.m. Friday and Saturday, which are within those hours principally permitted by Planning Code Section 728.27.*

- E. **Street Frontage in Neighborhood Commercial Districts.** Planning Code Section 145.1 provides that no more than 1/3 of the width of new or altered structures, parallel to and facing a street, shall be devoted to ingress/egress to parking and that NC Districts containing specific uses, including large fast-food restaurants, have at least ½ the total width of the new or altered structure at the commercial street frontage devoted to entrances to commercially used space, windows or display space at the pedestrian eye-level. Such windows shall use clear, un-tinted glass, except for decorative or architectural accent. Any decorative railings or decorated grille work, other than wire mesh, which is placed in front or behind such windows, shall be at least 75 percent open to perpendicular view and no more than six feet in height above grade.

*The subject ground floor commercial storefront does not devote any area to the ingress/egress to off-street parking and has an approximately 13 feet wide frontage on 24<sup>th</sup> Street with approximately 11 feet devoted to either the restaurant entrance or window space. The proposed windows will be clear and unobstructed. There are no changes proposed to alter the existing commercial frontage.*

- F. **Parking.** Planning Code Section 151 provides that for restaurant or bar use, one off street parking space is required for each 200 square feet of occupied floor area, where the occupied floor area exceed 5,000 square feet.

*The proposed small self-service restaurant would occupy a floor area of approximately 616 square feet; therefore, no off-street parking is required.*

- G. **Signage.** Currently, the Project Sponsor has not filed a sign permit application for the proposed small self-service restaurant with the Planning Department. However, any future proposed signage will be subject to the Department's review and approval.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

- A. The proposed new uses, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

*The size and intensity of the Project will be compatible with many other storefronts on the subject and opposite block-faces. The Project will not cause an impact on traffic or street parking in this neighborhood because it is designed to mainly serve residents from the surrounding neighborhood and patrons of other businesses on 24<sup>th</sup> Street within walking distance and is not intended to be a destination restaurant. The Project will be a development that is desirable and necessary because it will compliment the mix of goods and services currently available in this neighborhood and contribute to the economic strength and vitality of the neighborhood by occupying a vacant storefront.*

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

*The Project does not include any proposal to modify the exterior of the existing building on the Property and will have no impact on the existing appearance or character of the vicinity. The Project will only involve interior tenant improvement.*

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

*The Planning Code does not require off-street parking or loading for the proposed 616 square feet small-service restaurant. The Project is designed to be mainly frequented via walking by residents from the surrounding neighborhood and patrons of other businesses on 24<sup>th</sup> Street and the Project Site is well served by public transit (Muni Bus Route 48 operating on 24<sup>th</sup> Street, directly in front of the Project Site and Muni Bus Route 24 operating on Castro Street, two thirds of a block from the Project Site), minimizing the amount of vehicular traffic from the immediate neighborhood or citywide.*

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

*The Project will be subject to the standard conditions of approval for eating and drinking establishments as outlined in Exhibit A that obligate the Project Sponsor to mitigate noxious or offensive noise and odor generated by the eating and drinking use.*

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

*There are no changes proposed to the exterior of the existing structure on the Property. Off-street parking and loading areas are not required for the Project because it contains a gross floor area less than 5,000 square feet. All signage for the Project will be reviewed by the Department under a separate permit.*

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

*The Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.*

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

*The Project is consistent with the stated purpose of the 24<sup>th</sup> Street – Noe Valley Neighborhood Commercial District in that the intended eating and drinking use is located at the ground floor, will maintain the retail frontage by not including automobile drive up uses, will contribute to a mixture of convenience and comparison shopping goods and services to a predominantly local market.*

8. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

## NEIGHBORHOOD COMMERCE

### Objectives and Policies

#### **OBJECTIVE 1:**

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

#### **Policy 1.1:**

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

#### **Policy 1.2:**

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

#### **Policy 1.3:**

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.



*The Project will provide desirable goods and services to the neighborhood as well as employment opportunities to residents in the community. Permitting a 616 square feet small self-service restaurant will not result in undesirable consequences for the neighborhood. The Project is consistent with the activities within the 24<sup>th</sup> Street – Noe Valley Neighborhood Commercial District and the commercial land use plan.*

**OBJECTIVE 2:**

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

**Policy 2.1:**

Seek to retain existing commercial and industrial activity and to attract new such activity to the City.

*The Project will retain commercial activity within the 24<sup>th</sup> Street - Noe Valley Neighborhood Commercial District by occupying an existing vacant storefront and help enhance the diverse economic base of the City.*

**OBJECTIVE 6:**

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

**Policy 6.1:**

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

*No commercial tenant would be displaced and the Project would not prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood.*

**Policy 6.2:**

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

*An independent entrepreneur is sponsoring the Project. The Project is a neighborhood serving use and is not a Formula Retail use.*

The following guidelines, in addition to others in this objective for neighborhood commercial districts, should be employed in the development of overall district zoning controls as well as in the review of individual permit applications, which require case-by-case review and City Planning Commission approval. Pertinent guidelines may be applied as conditions of approval of individual permit applications. In general, uses

should be encouraged which meet the guidelines; conversely, uses should be discouraged which do not.

### **Eating and Drinking Establishments**

Eating and drinking establishments include bars, sit-down restaurants, fast food restaurants, self-service restaurants, and take-out food. Associated uses, which can serve similar functions and create similar land use impacts, include ice cream stores, bakeries and cookie stores. Guidelines for eating and drinking establishments are needed to achieve the following purposes:

- Regulate the distribution and proliferation of eating and drinking establishments, especially in districts experiencing increased commercial activity;
- Control nuisances associated with their proliferation;
- Preserve storefronts for other types of local-serving businesses; and
- Maintain a balanced mix of commercial goods and services.

The regulation of eating and drinking establishments should consider the following:

- Balance of retail sales and services;
- Current inventory and composition of eating and drinking establishments;
- Total occupied commercial linear frontage, relative to the total district frontage;
- Uses on surrounding properties;
- Available parking facilities, both existing and proposed;
- Existing traffic and parking congestion; and
- Potential impacts on the surrounding community.

In districts where the proliferation of eating and drinking establishments could generate problems, the following guidelines should be employed in the consideration of new establishments, relocations, changes from one kind of eating and drinking establishment to another (e.g. from self-service restaurant to full-service restaurant), expansion or intensification of existing establishments:

- The establishment should not add to an over-concentration of eating and drinking establishments in a single district. The balance of commercial uses may be threatened when eating and drinking establishments occupy more than 20% of the total occupied commercial frontage. Proposals for eating and drinking establishments which would increase the proportion of total occupied commercial frontage above 20% should be reviewed to ensure that they would not reduce the variety of neighborhood-serving uses; nor create substantial noise, traffic, parking problems, or other nuisances in the district or surrounding neighborhood. Those establishments that would do the above should not be permitted. Except in districts with an established pattern of service to a broad market, such as North Beach, such establishments should not occupy more than 25% of the total commercially occupied frontage in a district. To minimize the problems they can create, eating and drinking uses should generally be at least 100 feet apart from each other, unless there are factors making clustering of uses appropriate. For example, a configuration of clustered eating and drinking uses where off-street parking is shared might be more appropriate than an even distribution of such establishments.

- New, expanding or relocating eating and drinking uses should not impose significant

adverse impacts on traffic and transit volumes and circulation and parking congestion. If such impacts are anticipated, especially on transit-preferential streets, the proposed use, expansion or relocation should be redesigned to mitigate such impacts, or it should be prohibited.

- Eating and drinking uses should be adequately soundproofed or insulated for noise and operated so as to reasonably protect adjoining and surrounding upper-story residences from disturbances. Fixed source equipment noise should not exceed the decibel levels specified in the Noise Control Ordinance.

#### **Fast Food Restaurants and Self-Service Restaurants**

Fast food restaurants and self-service restaurants including take-out food establishments are retail uses which provide quick food service for consumption on or off the premises, which are often designed to serve a high volume of customers at a high turnover rate. As a result, this use can generate problems in traffic and pedestrian circulation, parking congestion, litter, noise and odors. All guidelines for eating and drinking establishments should apply to fast food restaurants and self-service restaurants in addition to the guidelines stated below.

- Large fast food restaurants occupying more than 1000 square feet of floor area are discouraged in neighborhood commercial cluster districts, small-scale neighborhood commercial districts and those individual districts where such discouragement is noted in their description and purpose statements. Large fast food restaurants of that size usually are designed to attract high volumes of customers from a large trade area. Such volumes of customers can generate various nuisance problems for the surrounding residential neighborhoods, especially parking congestion, traffic and pedestrian circulation, litter and late-night activity.
- The proposed use should not add to an overconcentration of fast food restaurants in a single district. As a general rule, fast food restaurants should be evenly distributed throughout the district. However, in certain locations, clustering may be more appropriate. For example, a configuration of clustered fast food restaurants where sufficient off-street parking is shared between them might make more efficient use of land than an even distribution of fast food restaurants throughout the district. The number of large fast food restaurants and small self-service restaurants should not exceed the maximum number that would be allowed if all fast food restaurants in the district were at least 500 feet from each other.
- To avoid potential pedestrian-vehicle conflicts where large numbers of children are present, fast food restaurants should not be within 500-foot walking distance of an elementary or secondary school.
- New or expanding large fast food restaurants should provide a detailed analysis of their anticipated impacts on transportation systems. If problems are anticipated, especially on transit-preferential streets, the proposed use should be reduced in size and/or redesigned to mitigate the above impacts, or prohibited. If the estimated parking demand for the use cannot be accommodated by existing or new off- or on-street parking facilities, the use should provide ample off-street parking on the site

Auto-Oriented Facilities

section and Policy 9 of this Objective for detailed guidelines.

- The use should provide adequate waiting space for walk-in patrons.
- The use should be equipped with sufficient outdoor and indoor trash receptacles to avoid litter problems in the surrounding neighborhood.
- The operator of the use should be responsible for maintaining the sidewalk within a one-block radius of the site free of paper or litter.
- The use should be designed and operated to contain fumes and odors within the cooking areas, so that such fumes and odors will not spread to adjacent or upper-story uses.
- The new or expanding use should close at 12:00 Midnight or earlier.

*In June 2010, Department staff performed a survey on the existing eating and drinking establishment within the 24<sup>th</sup> Street – Noe Valley Neighborhood Commercial District, which contains six blocks along 24<sup>th</sup> Street between Chattanooga and Diamond streets and the Project site. There was a total of thirty six eating and drinking establishments, resulting in approximately 22% of the total occupied commercial frontage was devoted to eating and drinking establishments. Therefore, a slight over-concentration of food-service establishments existed in this District.*

*In February 2012, Department staff performed another survey on the existing eating and drinking establishment within the 24<sup>th</sup> Street – Noe Valley Neighborhood Commercial District. The survey results indicate that there has been no change from the 2010 survey with respect to the total number (thirty six) of eating and drinking establishments and the percentage (approximately 22%) of the total occupied commercial frontage devoted to eating and drinking establishments. Therefore, still only a slight over-concentration of eating and drinking establishments remains in this District.*

*The Project, not containing a kitchen and only selling frozen yogurt, would be an operation with much less intensity than that of the majority of other eating and drinking establishments in this District. By the addition of the proposed small self-service restaurant, there will be thirty seven eating and drinking establishments and it will change the current approximately 22% of the total occupied commercial frontage dedicated to eating and drinking establishments to approximately 22.5% in this District. The Project; therefore, would result in a rather negligible effect on the current slight over-concentration of eating and drinking establishments in this District.*

*Furthermore, the 2012 survey also demonstrates a fact that the 24<sup>th</sup> Street – Noe Valley Neighborhood Commercial District currently features a variety of eating and drinking establishments and is gaining a reputation for providing popular eateries, a defining characteristic, which contributes to the economic strength and vitality of this District. The Project would be an addition compatible with this current trend found under the 2012 survey.*

*The Project is not within a 500-foot walking distance of an elementary or secondary school. The nearest elementary or secondary school is James Lick Middle School, at 1200 Noe Street, and is approximately 650 feet from the Project Site. Additionally, the proposed small self-service restaurant is not designed to be a destination restaurant, but rather a neighborhood-serving establishment, frequented via walking by residents from the surrounding neighborhood and patrons of other businesses on 24<sup>th</sup> Street.*

*The proposed small self-service restaurant provides adequate space for walk-in patrons and the conditions or approval help ensure that the area around the Project Site will be kept clean. The proposed hours of operation are between 11:00 a.m. to 10:00 p.m. Sunday through Thursday and 11:00 a.m. to 11:00 p.m. Friday and Saturday, which are within those hours principally permitted by Planning Code Section 728.27 and 790.48.*

*Off-street parking is not required in this District for uses that occupy less than 5,000 square feet of gross floor area. Traffic impacts are not anticipated because the Project is designed to mainly serve residents from the surrounding neighborhood and patrons of other businesses on 24<sup>th</sup> Street within walking distance. It is not intended to be a destination restaurant. Further, the Project Site is well served by public transit so that patrons and employees alike can arrive by means other than driving private automobiles.*

9. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the Project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

*The Project would be established in a currently vacant ground floor commercial storefront. No existing retail uses will be replaced as a result of the Project. Additionally, the Project would be locally owned and would offer up to three employment opportunities for neighborhood residents.*

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

*The scale and use proposed by the Project is within the existing character of the 24<sup>th</sup> Street – Noe Valley Neighborhood Commercial District. The Project does not include any modifications to the physical character of the existing structure or any change to the existing housing units at the Property.*

- C. That the City's supply of affordable housing be preserved and enhanced.

*No housing will be removed as a result of the Project*

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

*Due to the nature and size of the Project, it will not impede MUNI transit service or overburden the streets or neighborhood parking. The Project Site is well served by public transit, Muni Bus Route 48 operating on 24<sup>th</sup> Street, directly in front of the Project site and Muni Bus Route 24 operating on Castro Street, approximately two thirds of a block from the Project site.*

- E. 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 Project will not displace any service or industry establishment. The Project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this Project.*

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

*This Project will not diminish the city's preparedness to protect against injury and loss of life in an earthquake because the Project will be designed and constructed to conform to the structural and seismic safety requirements of the City's Building Code.*

- G. That landmarks and historic buildings be preserved.

*There are no exterior alterations to the existing structure proposed as part of this Project. Further, the existing structure is not an architecturally rated building nor is it included on any architectural survey. No historic buildings or landmarks will be adversely affected by the Project.*

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

*The Project will not adversely affect any parks and open space and their access to sunlight and vistas because no exterior alterations to the existing structure are proposed as part of this Project.*

10. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.

11. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

## DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2011.1283C** subject to the following conditions attached hereto as "EXHIBIT A" which is incorporated herein by reference as though fully set forth.

**APPEAL AND EFFECTIVE DATE OF MOTION:** Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18555. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on March 8<sup>th</sup>, 2012.

Linda Avery  
Commission Secretary

AYES: Fong; Wu; Antonini; Borden; Miguel; Moore; Sugaya.

NAYS: None

ABSENT: None

ADOPTED: March 8<sup>th</sup>, 2012



# Exhibit A

## Conditions of Approval

### **AUTHORIZATION**

This authorization is for a Conditional Use Authorization to allow a small self-service restaurant (d.b.a. Easy Breezy) located at 4028 24<sup>th</sup> Street, Assessor's Block 3656, Lot 011, pursuant to Planning Code Sections 728.44 and 790.91, within the 24<sup>th</sup> Street - Noe Valley Neighborhood Commercial District and a 40-A Height and Bulk District; in general conformance with plans dated October 18<sup>th</sup>, 2011 and labeled "EXHIBIT B" included in the docket for **Case No. 2011.1283C** and subject to conditions of approval reviewed and approved by the Commission on March 8<sup>th</sup>, 2012 under Motion No. 18555. This authorization and the conditions contained herein run with the Property and not with a particular Project Sponsor, business, or operator.

### **RECORDATION OF CONDITIONS OF APPROVAL**

Prior to the issuance of the Building Permit Application or commencement of use for the project, the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the Property. This Notice shall state that the Project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on March 8<sup>th</sup>, 2012 under Motion No. 18555.

### **PRINTING OF CONDITIONS OF APPROVAL ON PLANS**

The conditions of approval under the "Exhibit A" of this Planning Commission Motion No. 18555 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building Permit Application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

### **SEVERABILITY**

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section, or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a Building Permit. The Project Sponsor shall include any subsequent responsible party.

### **CHANGES AND MODIFICATIONS**

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

## Conditions of Approval, Compliance, Monitoring, and Reporting PERFORMANCE

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. A Building Permit Application from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a Site or Building Permit has not been obtained within three (3) years of the date of the Motion approving the Project. Once a Site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. The Commission may also consider revoking the approvals if a permit for the project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

2. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## DESIGN

3. **Rooftop Mechanical Equipment.** Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the Building Permit application. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

## MONITORING - AFTER ENTITLEMENT

4. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

5. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## OPERATION

6. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed off pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-.5810, [www.sfdpw.org](http://www.sfdpw.org)*

7. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works' Streets and Sidewalk Maintenance Standards.

*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, [www.sfdpw.org](http://www.sfdpw.org)*

8. **Noise Control.** The premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

*For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at 415 252-3800, [www.sfdph.org](http://www.sfdph.org)*

*For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, [www.sfdbi.org](http://www.sfdbi.org)*

*For information about compliance with the amplified sound including music and television contact the Police Department at 415-553-1012 or 415-5530123, [www.sf-police.org](http://www.sf-police.org)*

9. **Odor Control.** While it is inevitable that some low level of odor may be detectible to nearby residents and passersby, appropriate odor control equipment shall be installed and maintained to prevent any significant noxious or offensive odors from escaping the premises. The building permit application to implement the Project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans.

*For information about compliance with odor or other chemical air pollutants emission standards and air quality regulations contact the Bay Area Air Quality Management District (BAAQMD),*

1-800-334-ODOR (6367), [www.baaqmd.gov](http://www.baaqmd.gov) and Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)

10. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor. *For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*