



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

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- Jobs Housing Linkage Program (Sec. 413)
- Downtown Park Fee (Sec. 412)
- First Source Hiring (Admin. Code)
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Planning Commission Motion 18669

HEARING DATE: JULY 19, 2012

Date: July 12, 2012
Case No.: **2012.0547C**
Project Address: **1337-1339 GRANT AVENUE**
Zoning: North Beach Neighborhood Commercial District
 40-X Height and Bulk District
 North Beach Special Use District
 North Beach Limited Financial Subdistrict
 Telegraph Hill-North Beach Residential Special Use District
Block/Lot: 0131/003
Project Sponsor: Derek Mattson
 Mosquito, LLC
 1337-1339 Grant Avenue
 San Francisco, CA 94133
Staff Contact: Kevin Guy – (415) 558-6163
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ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 722.48 TO AMEND THE CONDITIONS OF APPROVAL FOR A PREVIOUSLY APPROVED CONDITIONAL USE AUTHORIZATION FOR LIVE ENTERTAINMENT (CASE NOS. 1997.170C AND 2005.0433C) WITHIN AN EXISTING RESTAURANT (DBA "TUPELO"), TO ALLOW AMPLIFIED LIVE ENTERTAINMENT (DEFINED AS "OTHER ENTERTAINMENT"), AND TO EXTEND THE PERMITTED HOURS OF ENTERTAINMENT TO 12:00PM NOON TO 1:30AM (FROM THE PREVIOUSLY-APPROVED HOURS OF 7:00PM TO 10:00PM), WITHIN THE NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT, THE 40-X HEIGHT AND BULK DISTRICT, THE NORTH BEACH SPECIAL USE DISTRICT, THE NORTH BEACH LIMITED FINANCIAL SUBDISTRICT, AND THE TELEGRAPH HILL-NORTH BEACH RESIDENTIAL SPECIAL USE DISTRICT.

PREAMBLE

On April 25, 2012, Mark Rennie, acting on behalf of Mosquito, LLC ("Project Sponsor") filed an application with the Planning Department ("Department") for Conditional Use Authorization

under Planning Code Sections ("Sections") 303 and 722.48 to amend the conditions of approval for a previously approved Conditional Use authorization for live entertainment within an existing restaurant (dba "Tupelo"), to allow amplified live entertainment (defined as "Other Entertainment"), and to extend the permitted hours of entertainment to 12:00pm noon to 1:30am (from the previously-approved hours of 7:00pm to 10:00pm), located at 1337-1339 Grant Avenue ("Project Site") within the North Beach Neighborhood Commercial District ("NCD"), the 40-X Height And Bulk District, the North Beach Special Use District ("SUD"), the North Beach Limited Financial Subdistrict, and the Telegraph Hill-North Beach Residential SUD (Case No. 2012.0547C, collectively "Project").

On June 5, 1997, the San Francisco Planning Commission ("Commission") conducted a duly noticed public hearing at a regularly scheduled meeting and approved a Conditional Use Authorization, pursuant to Sections 303 and 722.48, to allow non-amplified live musical entertainment (defined as "Other Entertainment") within an existing restaurant located at the Project Site (Case No. 1997.170C, Motion No. 14388). The conditions of approval for Motion No. 14388 included a condition that restricted the live entertainment to the hours of 7:00pm to 10:00pm.

On August 4, 2005, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting and approved a Conditional Use Authorization, pursuant to Sections 303 and 722.41, to add a full bar to the existing restaurant on the Project Site (Case No. 2005.0433C, Motion No. 17078). The conditions of approval for Motion No. 17078 included a condition that the restaurant continue to operate as a "bona-fide public eating place" pursuant to Section 23038 of the California Alcoholic Beverage Control Act.

On August 9, 2007, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2007.0386C.

The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption.

On October 11, 2011, the San Francisco Entertainment Commission approved a Place of Entertainment Permit for the Project Site, allowing nightly entertainment activities until 2:00am. A subsequent letter from the Zoning Administrator determined that the full implementation of this Place of Entertainment Permit would conflict with the previously-approved Planning Commission Motion No. 14388, because this Motion entertainment uses to a non-amplified basis, between the hours of 7:00pm and 10:00pm. This determination was upheld on appeal by the Board of Appeals on April 18, 2012.

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. 2012.0547C, 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 Project Site is located on the west side of Grant Avenue, between Green and Vallejo Streets, Block 0131, Lot 003, within the North Beach NCD, the 40-X Height and Bulk District, the North Beach Special Use District, The North Beach Limited Financial Subdistrict, and the Telegraph Hill-North Beach Residential Special Use District. The Project Site is developed with a one-story commercial building containing only the existing Tupelo restaurant. The building covers nearly the entire Project Site.
3. **Surrounding Properties and Neighborhood.** The area surrounding the Project Site is mixed-use in character. A variety of commercial establishments are located within ground floor storefronts in the vicinity, including restaurants, financial institutions, apparel stores, and other types of retailers. Upper floors of buildings are generally occupied by offices, residential units, or tourist hotels. Other uses in the vicinity include the Church of Saints Peter and Paul and Washington Square Park (located to the northwest of the Project Site) and Pioneer Park and Coit Tower (located to the northeast of the Project Site).
4. **Project Description.** The applicant proposes to amend the conditions of approval for a previously approved Conditional Use authorization for live entertainment within an existing restaurant (dba "Tupelo"), to allow amplification of the live entertainment (defined as "Other Entertainment"), and to extend the permitted hours of entertainment to allow entertainment between 12:00pm noon to 1:30am. Previous Conditional Use Authorizations did not permit amplification of the live entertainment activities, and restricted entertainment to the hours of 7:00pm to 10:00pm.
5. **Public Comment.** Through the Project Sponsor, the Department has received numerous letters and petitions in support of the project from residents and business owners in the area. The Department has received no letters in opposition to 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. **Use.** Section 722.44 states that a Conditional Use Authorization is required for a Restaurant use (as defined by Section 790.91) within the North Beach NCD. Section

722.48 states that a Conditional Use Authorization is required for Other Entertainment uses within the North Beach NCD. Within the North Beach NCD, Conditional Use authorization is required for a Restaurant to obtain a "Type 47" ABC License, and the Restaurant must continue to operate as a Bona Fide Eating Place, as defined in Section 790.142. Within the North Beach SUD, a restaurant may only be allowed through Conditional Use Authorization if the tenant space is not currently or last occupied by a Basic Neighborhood Sale or Service (as defined in Section 780.3(b)), or a permitted principal use within the North Beach NCD; or a vacant space last occupied by a nonconforming use or a permitted conditional use under Section 722 (North Beach Controls) that has been discontinued or abandoned pursuant to Sections 186.1(d) or 178(d). The regulations of the North Beach Limited Financial Subdistrict and the Telegraph Hill-North Beach Residential SUD apply to the Project Site, however, these regulations would not affect the uses within the Project.

The existing Restaurant and Other Entertainment uses authorized for this business were previously approved in 1997, pursuant to Motion No. 14388, Case No. 1997.170C. However, the conditions of approval for this Motion did not permit amplified live entertainment. The Project Sponsor is requesting to amend the previous conditions of approval to allow amplified live entertainment. While this request would modify the nature of the "Other Entertainment" use permitted for the business, the amendment would not introduce any new uses that were not previously authorized.

In 2005, the Commission approved a Conditional Use Authorization to add a full bar to the existing restaurant use on the Project Site, pursuant to Motion No. 17078, Case No. 2005.0433C. The conditions of approval for this Motion required that the restaurant continue to operate as a "bona-fide public eating place" pursuant to Section 23038 of the California Alcoholic Beverage Control Act. Pursuant the current regulations for to the current definition in Section 790.91, a Restaurant may serve beer, wine, or liquor for on-premises consumption provided that the Restaurant operates as a Bona Fide Eating Place as defined in Section 790.142. The requested amendments to the previous approvals would not introduce any new uses that were not previously authorized.

- B. Hours of Operation.** Section 722.27 states that Conditional Use Authorization is required to operate commercial uses between 2:00am to 6:00am. Section 303(c)(5) restricts the use of electronic amplification for Other Entertainment uses, unless specified criteria are met.

In 1997, the Commission approved a Conditional Use Authorization to allow live musical entertainment on the Project Site. However, the conditions of approval for this Authorization restricted the live entertainment to the hours of 7:00pm to 10:00pm. The Project Sponsor is proposing to amend these previous conditions of approval to allow live entertainment between the hours of 12:00pm noon and 1:30am. These proposed hours of operation would occur within the principally permitted hours of operation within the North Beach NCD. Compliance with the Conditional Use Authorization criteria is discussed in Item #7.

- C. **Parking.** Planning Section 151 of the Planning Code requires off-street parking for every 200 square-feet of occupied floor area, where the occupied floor area exceeds 5,000 square-feet.

The floor area of the existing business measures approximately 2,000 square-feet of floor area, and the Project does not propose to expand the existing space. Therefore, the Project does not require any off-street parking.

- D. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that within NC Districts space for active uses shall be provided within the first 25 feet of building depth on the ground floor and 15 feet on floors above from any facade facing a street at least 30 feet in width. In addition, the floors of street-fronting interior spaces housing non-residential active uses and lobbies shall be as close as possible to the level of the adjacent sidewalk at the principal entrance to these spaces. Frontages with active uses that must be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building. The use of dark or mirrored glass shall not count towards the required transparent area. Any decorative railings or grillwork, other than wire mesh, which is placed in front of or behind ground floor windows, shall be at least 75 percent open to perpendicular view. Rolling or sliding security gates shall consist of open grillwork rather than solid material, so as to provide visual interest to pedestrians when the gates are closed, and to permit light to pass through mostly unobstructed. Gates, when both open and folded or rolled as well as the gate mechanism, shall be recessed within, or laid flush with, the building facade.

The Project Site has approximately 31 feet of frontage on Grant Avenue. Nearly the entire storefront is characterized by unobstructed glazing with views into the interior of the business. There are no changes proposed to the commercial frontage.

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 and building, 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 Project is desirable for the neighborhood, because it would enhance the viability of an existing business. In addition, it will contribute to the overall vibrancy of the North Beach NCD by diversifying the options for dining and entertainment experiences in the area. While the Project is situated in an area that already hosts a number of live entertainment establishments, the proposed amplification and expanded hours of live entertainment is not expected to exacerbate negative impacts that can be associated with the clustering of such

entertainment venues. The restaurant will be required to comply with the San Francisco Noise Ordinance, and if needed, install interior upgrades and implement management practices to attenuate noise. The restaurant will not primarily function as a destination restaurant, but will instead serve local residents or visitors who are already present in the area to enjoy the attractions of the District. The area is well served by public transit and abundant taxicabs, and the Project would not expand patron capacity. Therefore, the Project is not expected to create substantial traffic congestion or affect on-street parking supply. The Project will continue the tradition of live entertainment within the subject building, as well as the District as a whole. The project is compatible with the neighborhood.

- 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 height and bulk of the existing building will remain the same and will not alter the existing appearance or character of the project vicinity. The proposed work will not affect the building envelope or exterior facade..

- 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 parking or loading for a 2,000 square-foot restaurant or other entertainment establishment. The proposed use is designed to meet the needs of the immediate neighborhood and should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide, and the area is well-served by transit and taxicabs.

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

The proposed use is subject to the standard conditions of approval for restaurants and other entertainment uses, as outlined in Exhibit A. Specifically, the Project Sponsor shall comply with San Francisco Noise Ordinance, and will be required to install interior upgrades and implement management practices to attenuate noise and odors, if necessary.

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

The proposed changes in hours and amplification for live entertainment do not affect the physical configuration of the building. Therefore, these treatments are not applicable to the Project. The Department shall review all future lighting and signs proposed for the business for compatibility with the character of the building and the district, and to avoid negative effects on adjacent properties.

- 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 North Beach NCD functions as a neighborhood-serving marketplace, citywide dining district, and tourist attraction. Section 722.1 acknowledges that NCD serves as a nighttime entertainment destination, with "eating, drinking, and entertainment establishments [that] remain open into the evening to serve a much wider trade area and attract many tourists." The NCD regulations are intended to avoid an overconcentration of eating and drinking establishments, and protect residential livability. Section 722.1 further states that, "Special controls limit additional ground-story entertainment uses..."

The Project would not expand the existing business, and would therefore not displace any residential or resident-serving retail uses. The North Beach NCD does not expressly prohibit ground-floor entertainment uses, but instead requires Conditional Use authorization to allow such venues that can be located and operated properly without detracting from residential livability. The Project would reinforce the established tradition of the North Beach area as an entertainment destination. Conditions of approval has been added requiring noise to be attenuated, so that the live entertainment does not create a nuisance to surrounding properties. The Project will contribute to the overall cultural vitality and viability of businesses within the North Beach area. The Project is in general conformity with the purpose of the North Beach NCD.

- E. (a) With respect to applications filed pursuant to Article 7, Section 703.2(a), zoning categories .46, .47, and .48, that such use or feature will:

- i. Not be open between 2:00am and 6:00am;

The Project does not propose to operate the restaurant or the live entertainment functions between the hours of 2:00am and 6:00am.

- ii. Not use electronic amplification between midnight and six a.m.;

The Project proposes the use of amplification between 12:00am midnight and 1:30am. See discussion under subitems (a)(iii) and (b) below.

- iii. 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.

(b) Notwithstanding the above, the Commission may authorized a Conditional Use which does not satisfy the criteria set forth above, if facts presented are such to establish that the use will be operated in such a way as to minimize disruption to residences in and around the district with respect to noise and crowd control.

Exhibit A of this motion contains conditions requiring that noise be minimized so as not to be a nuisance to nearby properties. The live entertainment activity will also be required to comply with the San Francisco Noise Ordinance. If necessary, interior upgrades and operational improvements can be utilized within to help attenuate such noise. The restaurant will be required to obtain necessary approvals from the Entertainment Commission prior to hosting live entertainment events. If the restaurant generates noise complaints in the future, the Police Department, in collaboration with the Entertainment Commission, would investigate the complaints and recommend such improvements to ensure that the venue complies with the Noise Ordinance.

- 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 WORKINIG ENVIRONMENT.

Policy 1.1:

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development that 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 proposed development will provide desirable goods and services to the neighborhood and will In order for a neighborhood commercial district to remain viable and be compatible with the surrounding neighborhood, it must exhibit a healthy balance of different types of commercial uses. This policy includes guidelines that discourage the overconcentration of a particular type of use, such as eating and drinking establishments, and entertainment venues. The Project would loosen the restrictions for a live entertainment function within an existing to an existing restaurant, but would not physically expand the restaurant or displace a neighborhood-serving retail use. Although live entertainment establishments are prevalent in the North Beach area, the Project is not expected to exacerbate negative effects that can be associated with the clustering of live entertainment venues. The restaurant will be required to control excessive noise and odor. The modifications of the operation of the live entertainment activity will not disrupt the balance of commercial uses in the area, and will not displace neighborhood-serving goods and services.

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 an existing commercial activity and will 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.

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.

There is a concern with the potential over-concentration of eating and drinking establishments. 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." The Project involves a request to amplify and expand the hours of live entertainment within an existing restaurant. However, the Project would not create a new restaurant, or expand the existing restaurant space. Therefore, the Project would not exacerbate an overconcentration of eating and drinking establishments in the area.

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 proposal. The proposed use is a neighborhood serving use. This is not a Formula Retail use.

ARTS ELEMENT

OBJECTIVE I-1:

RECOGNIZE THE ARTS AS NECESSARY TO THE QUALITY OF LIFE FOR ALL SEGMENTS OF SAN FRANCISCO.

Policy I-1.1

Promote inclusion of artistic considerations in local decision-making.

Policy I-1.2

Officially recognize on a regular basis the contributions arts make to the quality of life in San Francisco.

Policy I-1.4

Provide access to the creative process and cultural resources for all neighborhoods, cultural communities, and segments of the city and its populations.

OBJECTIVE VI-1

SUPPORT THE CONTINUED DEVELOPMENT AND PRESERVATION OF ARTISTS' AND ARTS ORGANIZATIONS' SPACES.

Policy VI-1.4

Preserve existing performing spaces in San Francisco.

The subject building has a history of hosting live music performances, and the North Beach area in general is known as a venue of regional cultural and entertainment importance for live music. The retention of spaces that will host live music performances strengthens the recognition and reputation of San Francisco as a city that is supportive of the arts, enhancing the recreational and cultural vitality of San Francisco, bolstering tourism, and supporting the local economy.

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 not expand the existing restaurant, and would therefore not decrease the square footage that could be made available to other types of neighborhood-serving retail uses or service establishments. The Project will contribute to the viability of a locally-owned business, preserving and enhancing opportunities for resident employment.

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

No housing units will be displaced by the Project, and there are no dwelling units within the Project Site.. The Project will add live entertainment to an existing restaurant, reinforcing the cultural history of North Beach as an entertainment destination. In addition, any entertainment use must be approved by the Entertainment Commission, who also regulates noise which may be of concern to the neighbors.

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

No housing is removed for this Project.

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

The Project would not adversely impact public transit or place a burden on the existing supply of parking in the neighborhood. The area is well-served by public transportation and taxicabs.

- 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.

There is no commercial office development associated with the Project. No industrial or service sector uses would be displaced.

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

The Project does not involve any construction activities that would compromise the structural integrity of the existing building.

- G. That landmarks and historic buildings be preserved.

No exterior changes are proposed for the Project. Any future storefront alterations and signage would be required to comply with applicable preservation standards.

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

The project will have no negative impact on existing parks and open spaces. The Project does not have an impact on open spaces.

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. 2012.0547C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated April 18, 2007, and stamped "EXHIBIT B", 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. 18669. 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 July 19, 2012.

Linda D. Avery
Commission Secretary

AYES: Antonini, Borden, Moore, Sugaya, Wu

NAYS:

ABSENT: Fong

ADOPTED: July 19, 2012

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow amplified live entertainment (defined as "Other Entertainment"), operating between the hours of 12:00pm noon and 1:30am daily, within an existing Restaurant (d.b.a. Tupelo) located at 1337-1339 Grant Avenue, Block 0131, Lot 003, pursuant to Planning Code Sections 303 and 722.48, within the North Beach Neighborhood Commercial District, the 40-X Height And Bulk District, the North Beach Special Use District, the North Beach Limited Financial Subdistrict, and the Telegraph Hill-North Beach Residential Special Use; in general conformance with plans, dated July 19, 2012, and stamped "EXHIBIT B" included in the docket for Case No. 2012.0547C and subject to conditions of approval reviewed and approved by the Commission on July 19, 2012 under Motion No 18669. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

This Motion No 18669 allows the continued operation of the existing Restaurant, including the use of a "Type 47" License from the California Department of Alcoholic Beverage Control. However, the Conditions of Approval for this Motion supersede the conditions of approval for previously-approved Motion No. 14388 (Case No. 97.170C) and Motion No. 17078 (Case No. 2005.0433C).

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit 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 subject 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 July 19, 2012 under Motion No 18669.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18669 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. "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 years from the effective date of the Motion. The approved use must be commenced within three years of the approval of this Conditional Use authorization. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if the use has not commenced within three (3) years of the date of the Motion approving the Project.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

DESIGN – COMPLIANCE AT PLAN STAGE

2. Garbage, composting and recycling storage. Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the building permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

3. Noise. Plans submitted with the building permit application for the approved project shall incorporate acoustical insulation and other sound proofing measures to control noise.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, 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

5. Monitoring. The Project requires monitoring of the conditions of approval in this Motion. The Project Sponsor or the subsequent responsible parties for the Project shall pay fees as established

under Planning Code Section 351(e) (1) and work with the Planning Department for information about compliance.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

6. 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

7. Gross Receipts. The Project Sponsor shall submit records of the gross receipts of the restaurant annually, and such records shall distinguish between food sales and alcoholic beverage sales. These records shall be submitted to the Planning Department annually, on or before July 19 of each year, beginning on July 19, 2013.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

OPERATION

8. 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 of 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, <http://sfdpw.org>

9. 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, <http://sfdpw.org>

10. 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

For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, www.sfdbi.org

For information about compliance with the amplified sound including music and television contact the Police Department at 415-553-0123, www.sf-police.org

11. Odor Control. While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed as necessary, and maintained to prevent any significant noxious or offensive odors from escaping the premises.

For information about compliance with odor or other chemical air pollutants standards, contact the Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

12. 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

13. Notices Posted at Bars and Entertainment Venues. Notices urging patrons to leave the establishment and neighborhood in a quiet, peaceful, and orderly fashion and to not litter or block driveways in the neighborhood, shall be well-lit and prominently displayed at all entrances to and exits from the establishment.

For information about compliance, contact the Entertainment Commission, at 415 554-6678, www.sfgov.org/entertainment

14. Other Entertainment. The Other Entertainment shall be performed within the enclosed building only. The building 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. Bass and vibrations shall also be contained within the enclosed structure. The Project Sponsor shall obtain all necessary approvals from the Entertainment Commission prior to operation. The authorized entertainment use shall also comply with all of the conditions imposed by the Entertainment Commission.

For information about compliance, contact the Entertainment Commission, at 415 554-6678, www.sfgov.org/entertainment

15. Hours of Operation. The Other Entertainment use is limited to the following hours of operation: Daily from 12:00pm noon to 1:30am.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org