



# SAN FRANCISCO PLANNING DEPARTMENT

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Subject to: (Select only if applicable)

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| <input type="checkbox"/> Inclusionary Housing (Sec. 315)         | <input type="checkbox"/> First Source Hiring (Admin. Code) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 313) | <input type="checkbox"/> Child Care Requirement (Sec. 314) |
| <input type="checkbox"/> Downtown Park Fee (Sec. 139)            | <input type="checkbox"/> Other                             |

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## Planning Commission Motion 18009

HEARING DATE: JANUARY 14, 2010

*Date:* January 7, 2010  
*Case No.:* **2009.1056C**  
*Project Address:* **1400 CALIFORNIA STREET**  
*Zoning:* Polk Street Neighborhood Commercial District  
65-A Height and Bulk District  
*Block/Lot:* 0249/028  
*Project Sponsor:* Chaiwat Law-Pattanapong  
1400 California Street  
San Francisco, CA 94109  
*Staff Contact:* Rick Crawford – (415) 558-6358  
[rick.crawford@sfgov.org](mailto:rick.crawford@sfgov.org)

**ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303, 723.42 AND 723.27 OF THE PLANNING CODE TO ALLOW THE CONVERSION OF THE EXISTING NONCONFORMING LARGE FAST FOOD RESTAURANT TO A FULL-SERVICE RESTAURANT (D.B.A. THAI THAI NOODLE RESTAURANT) AND TO EXTEND HOURS OF OPERATION TO 3 A.M. ON FRIDAY AND SATURDAY NIGHTS WITHIN POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT AND A 65-A HEIGHT AND BULK DISTRICT.**

### PREAMBLE

On November 10, 2009 Chaiwat Law-Pattanapong (Project Sponsor) filed an application with the Department for Conditional Use Authorization under Planning Code Sections 723.24 and 723.27 to allow the conversion of an existing nonconforming Large Fast Food Restaurant to a Full-Service Restaurant (d.b.a. Thai Thai Noodle Restaurant) and to extend hours of operation to 3 am on Friday and Saturday nights within the Polk Street Neighborhood Commercial District and a 65-A Height and Bulk District.

On January 14, 2010, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2009.1056C.

The Project was determined by the San Francisco Planning Department (hereinafter "Department") to be categorically exempt from environmental review under class 1(a). 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. 2009.1056C, 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 is located at the northwest corner of California and Hyde Streets within the Polk Street Neighborhood Commercial District (NCD) and 65-A height and bulk district. The property is developed with a five-story 37 unit apartment building with three ground floor commercial uses, including a smoke shop and a hardware store in addition to the nonconforming large fast food restaurant. The subject property is a corner lot, with approximately 87.5 feet of frontage both on California Street and Hyde Street. The lot is approximately 95% covered by the subject building.
3. **Surrounding Properties and Neighborhood.** The project site is located at the intersection of California and Hyde Streets at the eastern extremity of the Polk Street NCD. The surrounding neighborhood is primarily comprised of small to medium sized apartment buildings. Some of the buildings at the intersection of California and Hyde Streets, and toward the west on California Street, feature ground floor commercial. The across California street is a Cala Foods grocery store. With the exception of the properties to the west along California Street, which are in the Polk Street NCD, the surrounding properties are located within the RM-3 (Residential Mixed, Medium Density) District.
4. **Project Description.** The applicant proposes to convert an existing nonconforming Large Fast Food Restaurant to a Full Service Restaurant and extend hours of operation fro 2 am to 3 am on Friday and Saturday nights. The restaurant occupies approximately 1,480 square feet of space on the ground floor of the subject building. The conversion would eliminate the existing order station in the restaurant and replace it with wait-staff and table service.
5. **Public Comment.** The Department has not received any comment from the public on this 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. **Full Service Restaurant.** Planning Code Section 723.42 states that a Conditional Use Authorization is required for Full Service Restaurant, as defined by Planning Code Section 790.92 and that such uses are permitted only on the ground floor of a building.

*The Project Sponsor intends to convert the existing nonconforming 1,480 square foot Large Fast Food Restaurant into a Full Service Restaurant by eliminating the existing order station in the restaurant and hiring wait-staff and table service. The use is located on the ground floor of the building. The project will not alter the exterior of the building.*

- B. **Hours of Operation.** Planning Code Section 723.27 states that a Conditional Use Authorization is required for maintaining hours of operation from 2 a.m. until 6 a.m. as defined by Planning Code Section 790.48.

*The current hours of operation for Thai Thai Noodle Restaurant are 11a.m. to 2 a.m. everyday. The sponsor wants to keep the restaurant open for one hour after the bars and nightclubs in the area have closed to offer food to the patrons of those businesses on Friday and Saturday nights. The request for extended hours applies only to Friday and Saturday night (Saturday and Sunday mornings). Seven businesses within one half mile of the project are open later than 2 a.m. but none are less than one quarter mile away. These businesses include the 24 hour Cala Foods grocery store across California Street from the project, Grubsteak restaurant on Pine Street near Polk Street, open until 4 a.m. every night, Cairo Nights hookah bar on Geary near Hyde Street open until 4:30 a.m. every night, Osha Thai restaurant on Geary near Leavenworth Street open until 3 a.m. Fridays and Saturdays, Bob's Donut and Pastry Shop on Polk Street near Clay Street open 24 hours, and Crepes A Go Go restaurant on Polk Street near Sutter open until 4 a.m. Thursdays through Saturdays. The other businesses with late hours, with the exception of Cala Foods, are some blocks from the project site. In this instance granting extended hours for the project will not lead to an over concentration of such uses. The activity from the late hours will be mitigated by the late hours of the grocery store across the street.*

- 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 subject restaurant occupies 1,480 square feet of floor area in an existing building. Parking is not required for this use.*

- D. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires 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 restaurant has approximately 20 feet of frontage on California Street with approximately 16 feet devoted to either the restaurant entrance or window space. The windows are clear and obstructed only by an "open" sign and menus for the restaurant. 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 will be located in an existing building and will not affect the building size, shape or arrangement on the property.*

- 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 minimal proposed interior work will not affect the building envelope.*

- 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 1,480 square-foot full-service restaurant. 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.*

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

*The project sponsor shall maintain appropriate odor control equipment to prevent any significant noxious or offensive kitchen odors from escaping the premises and shall operate the proposed restaurant such that noise is kept at reasonable levels so as not to unduly disturb neighboring*

*businesses and residents. The Department has not received any complaints regarding the operations of the existing restaurant on the site.*

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

*The proposed full-service restaurant does not require any additional tenant improvements or signage beyond the existing signs.*

- 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 proposed project is consistent with the stated purposes of Polk Street Neighborhood Commercial District in that the intended use is located at the ground floor, will provide a compatible convenience service for the immediately surrounding neighborhoods during daytime and evening hours.*

- 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 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 services to the neighborhood and will provide resident employment opportunities to those in the community. The extended hours of operation for the use are negligible and will not result in undesirable consequences. The Project Site is located within a Neighborhood Commercial District and is thus consistent with activities in 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 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.*

**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. Although the sponsor or relatives own a total of three Thai Thai restaurants this is not a Formula Retail use.*

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 proposal would enhance the district by converting a nonconforming Large Fast Food restaurant to a desirable Full Service restaurant in an area that does not have an over concentration of restaurants. The business would be locally owned and the project will not alter the existing building footprint or facade.*

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

*The existing housing in the surrounding neighborhood would not be adversely affected. The proposal includes extending the hours of operation but on a very limited basis by one hour on each weekend night (Friday and Saturday).*

- 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 site on California Street is well served by transit. It is presumable that the employees would commute by transit thereby mitigating possible impacts on street parking.*

- 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.

*The Project will not alter the existing building and will not impact the property's ability to withstand an earthquake.*

- G. That landmarks and historic buildings be preserved.

*The building was surveyed in 1993 and is considered a potential historic resource. No further evaluation has occurred and the building is not a landmark building. The proposed use will not change the exterior of the building and will not effect the building's consideration as a potential historic resource in the future.*

- 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.*

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 and that the project is desirable as it project replaces a nonconforming use with a use that complies with the Planning Code.

### **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. 2007.1056C** 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. 18009. 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 January 14, 2010.

Linda D. Avery  
Commission Secretary

AYES: Antonini, Bordon, Lee, Miguel, and Olague

NAYS: Moore and Sugaya

ABSENT: None

ADOPTED: January 14, 2010



## Exhibit A

# Conditions of Approval

1. This authorization is for a Conditional Use Authorization under Planning Code Section 723.42, and 723.27 of the Planning Code to allow a full-service restaurant (d.b.a. Thai Thai Noodle Restaurant) with extended hours of operation, at 1400 California Street within the Polk Street Neighborhood Commercial District and a 65-A Height and Bulk District, in general conformance with plans filed with the Application as received on November 10, 2009 and stamped "EXHIBIT B" included in the docket for **Case No. 2009.1056C**, reviewed and approved by the Commission on January 14, 2010.
2. Prior to the issuance of the Building Permit 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 premises (Assessor's 0249, Lot 007), which notice shall state that construction has been authorized by and is subject to the conditions of this Motion. From time to time after the recordation of such notice, at the request of the Project Sponsor, the Zoning Administrator shall affirm in writing the extent to which the conditions of this Motion have been satisfied.
3. Violation of the conditions contained in this Motion or of any other provisions of the Planning Code may be subject to abatement procedures and fines in accordance with Planning Code Section 176.
4. Should monitoring of the Conditions of Approval contained in Exhibit A of this Motion be required, the Project Sponsor or successors shall pay fees as established in Planning Code Section 351(e)(1).
5. The property owner shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean condition. Such maintenance shall include, at a minimum, daily litter pickup and disposal, and washing or steam cleaning of the main entrance and abutting sidewalks at least once each week.
6. Signs and exterior lighting for the business shall be reviewed and approved by the Planning Department before any changes.
7. The Project Sponsor shall maintain an attractive storefront providing visibility of the restaurant interior through the storefront windows.
8. The Project shall appoint a Community Liaison Officer to address issues of concern to neighbors related to the operation of this Project. The Project Sponsor shall report the name and telephone number of this Officer to the Zoning Administrator and the neighborhood for reference. The Applicant will keep the above parties apprised should a different staff liaison be designated.
9. The project sponsor shall maintain appropriate odor control equipment to prevent any significant noxious or offensive kitchen odors from escaping the premises.

10. The project sponsor shall operate the proposed restaurant such that noise is kept at reasonable levels so as not to unduly disturb neighboring businesses and residents.
11. An enclosed garbage area shall be provided within the establishment. All garbage containers shall be kept within the building until pick-up by the disposal company.
12. The hours of operation shall be limited to 11:00 a.m. to 2 a.m. daily except for Friday and Saturday when the hours of operation shall extend to 3:00 a.m.
13. The Planning Department will conduct a public information hearing at the Commission on the operations of the restaurant during the extended hours period (2:00a.m. to 3:00a.m. Fridays and Saturdays (Saturday and Sunday mornings)) six months after the approval of and issuance of an on-sale beer and wine permit by the Alcoholic Beverage Commission (ABC). After this public information hearing and with the advice and input of the Planning Commission, the Zoning Administrator may limit or otherwise restrict hours of operations on Fridays and Saturdays.
14. The authorization and right vested by virtue of this action shall be deemed void and canceled if, within 3 years of the date of this Motion, a site permit or building permit for the Project has not been secured by Project Sponsor. This authorization may be extended at the discretion of the Zoning Administrator only if the failure to issue a permit by the Department of Building Inspection is delayed by a city, state, or federal agency or by appeal of the issuance of such permit.