



# SAN FRANCISCO PLANNING DEPARTMENT

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 No. 18013

HEARING DATE: JANUARY 21, 2010

*Date:* January 14, 2010  
*Case No.:* **2009.1001 C**  
*Project Address:* **3168 22nd STREET**  
*Zoning:* Mission Street Neighborhood Commercial Transit  
55-X Height and Bulk District  
Mission ABC/RUSD  
Mission Street Fast Food RUSD  
*Block/Lot:* 3615 / 015  
*Project Sponsor:* Jeremy Paul  
60 Otis Street  
San Francisco, CA 94103  
*Staff Contact:* Edgar Oropeza – (415) 558-6381  
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**ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303, 736.44, AND 790.91 OF THE PLANNING CODE TO ALLOW A SMALL SELF-SERVICE RESTAURANT (DBA MISSION MINIS) WITHIN THE MISSION STREET (NEIGHBORHOOD COMMERCIAL TRANSIT) DISTRICT, THE MISSION ALCOHOLIC BEVERAGE SPECIAL USE DISTRICT, THE MISSION STREET FAST FOOD SUBDISTRICT AND A 55-X HEIGHT AND BULK DISTRICT.**

### PREAMBLE

On October 22, 2009 Jeremy Paul (Project Sponsor) filed an application with the Department for Conditional Use Authorization under Planning Code Sections 303, 736.44, and 790.91 to allow a small-self service restaurant (D.B.A. Mission Minis) located at 3168 22<sup>nd</sup> Street all within the Mission Street (Neighborhood Commercial Transit) District, the Mission Alcoholic Beverage Special Use District, the Mission Fast Food Subdistrict and a 55-X Height and Bulk District.

On January 21, 2010, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2009.1001C.

The Project was determined by the San Francisco Planning Department (hereinafter "Department") to be Categorically Exempt from the California Environmental Quality Act ("CEQA") as a Class 1a exemption under CEQA Guidelines as described in the determination contained in the Planning Department files for this project. 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. 2009.1001C, 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 northwest corner of 22<sup>nd</sup> and Capp Streets, one block east of Mission Street and located within the Mission Street (Neighborhood Commercial Transit) District, the Mission Alcoholic Beverage Special Use District, the Mission Fast Food Subdistrict and a 55-X Height and Bulk District.

The property is improved with a three story mixed use building having two floors of residential uses over a commercial ground floor. The building contains a total of 20 dwelling units located on floors 2-3 and 7 individual commercial store fronts fronting 22<sup>nd</sup> Street and Capp Street. The store fronts on-site can be considered "incubator" spaces all measuring approximately 13 feet in width while providing approximately 500-600 gross square feet each. All of the store fronts on-site are currently in use with uses ranging from a Fringe Financial Services, Personal Services, Retail and Food uses. Mission Minis would be the second food use located within the subject building.

3. **Surrounding Properties and Neighborhood.** The project site is located within the Mission Street NCT in the Mission District. The Mission NCT lies along Mission Street between 15th and Cesar Chavez (Army) Street, and includes adjacent portions of 17th Street, 21st Street, 22nd Street, and Cesar Chavez Street. The commercial area of this District provides a selection of goods serving the day-to-day needs of the residents of the Mission District. Additionally, this District serves a wider trade area with its specialized retail outlets. Eating and drinking establishments contribute to the street's mixed-use character and activity in the evening hours.

The District is extremely well-served by transit, including regional-serving BART stations at 16th Street and 24th Street, major buses running along Mission Street, and both cross-town and local-serving buses intersecting Mission along the length of this district. Given the area's central

location and accessibility to the City's transit network, accessory parking for residential uses is not required.

The 22<sup>nd</sup> Street corridor is well know for its vibrant mix of restaurants, bars, outdoor seating areas, places of entertainment, and financial services which serve a wider trade area mixed in with specialized retail and personal service uses for residents of the immediate area. San Francisco City College's "Mission District" campus is located on the western edge of this section of the 22<sup>nd</sup> Street corridor and has been a major factor of the continued commercial vitality of the said commercial corridor.

4. **Project Description.** The project proposes to change the use of the existing commercial space from a retail sales and service use per Planning Code Section 790.102 to a small self-service restaurant use per Planning Code Section 790.91 occupying approximately 500 square feet and doing buiness as, "Mission Minis." The proposal includes minor tenant improvements to the interior but the existing commercial space would not be enlarged. No exterior alterations are proposed.

The proposed small self service restaurant use is an independent and locally owned bakery, which has been encouraged throughout San Francisco. The proposal requires a change of use and Section 312-neighborhood notification was conducted in conjunction with the Conditional Use Authorization process.

Mission Minis is a purveyor of unique artisanal pastries specializing in cupcakes. Through the use of distinctive ingredients in the creation of a wide range of unique and unusual pastry flavors, the product can be considered a specialty food. The proposed operation includes the service counter for sale and distribution of food that is paid for prior to consumption. Patrons will have the option of utilizing the walk-up counter for takeout or the on-site seating which will not exceed 10 seats. Hours of operation are between 7 AM and 5 PM and are shortened on Sundays. Mission Minis utilizes approximately 500 square-foot ground floor commercial space and occupies 13 linear feet of frontage on 22nd Street. Sidewalk width at the subject property is approximately 12 feet.

5. **Public Comment.** The Department has not received public comment either in opposition or in support of the proposal.
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. **Self-Service Restaurant Defined.** Planning Code Section 790.91 defines a small self service restaurant use as 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:

Contains fewer than 50 seats and less than 1,000 square feet of gross floor area;

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;  
Food served in disposable wrappers or containers;  
Food is ordered and served at customer service counter;  
Food is paid for prior to consumption;  
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;  
Food available upon a short waiting time.

*The proposed project meets the definition of a small self service restaurant as defined per Planning Code Section 790.91.*

- B. **Mission Street Fast Subdistrict.** Planning Code Sections 781.5, 736.44 and 790.91 states that a Conditional Use Authorization is required in order to establish a new small self service restaurant within the Mission Street Fast Food Subdistrict and within the Mission Street NCT District.

*The project site is located within the Mission Street NCT District and within the Mission Street Fast Food Subdistrict. The project sponsor has applied for a Conditional Use authorization per Case No. 2009.1001C, heard before the Planning Commission on January 21, 2010.*

- C. **Formula Retail Use.** Planning Code Section 703.4 requires Conditional Use authorization from the Planning Commission to establish a formula retail use, as defined in Planning Code Section 703.3, in any Neighborhood Commercial District, as identified in Article 7 pursuant to the criteria of Sections 303(c) and 303(i) and subject to the terms of Sections 703.3(g) and (i).

*The proposed retail self service restaurant use (dba Mission Minis) is not identified as a formula retail.*

- D. **Use Size Limits.** Planning Code Section 736.21 principally permits uses sizes of up to 5,999 square feet and conditionally permits uses sizes of 6,000 square feet.

*The project proposes a retail self service restaurant of approximately 500 square feet.*

- E. **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 commercial space has approximately 13-feet of frontage on 22nd Street with approximately 13 feet devoted to either the restaurant entrance or window space. The windows are clear and unobstructed. No changes are proposed to the commercial frontage.*

- F. **The Mission Alcoholic Beverage Special Use Subdistrict.** Planning Code Section 781.1 prohibits new establishments where alcoholic beverages are sold, served or given away for on-site or off-site consumption such as bars and liquor stores.

*No alcohol is proposed per this project.*

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 size of the proposed use is in keeping with other storefronts located within the subject building and within the immediate area. The proposed self-service restaurant will not impact traffic or parking in the District because of its small size. It is anticipated that the proposed use will compliment the variety of goods and services currently available in the immediate area and contribute to the economic vitality of the neighborhood by removing 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;

*At 500 square feet, the proposed small self service restaurant is in keeping with the area's existing commercial storefronts. The Mission Street NCT District principally permits use size limits of up to 5,999 square feet in order to provide a selection of goods serving the day-to-day needs of the residents and a wider trade area. The proposed work will not affect the building envelope or any of its exterior architectural elements.*

- 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 District is well-served by transit, including regional-serving BART stations at 16th Street and 24th Street, buses routes running along Mission Street, and both cross-town and local-serving buses routes intersecting Mission along the length of this district. Given the area's*

*central location and accessibility to the City's transit network, parking for residential and commercial uses is not required.*

*The Planning Code does not require parking or loading for any uses within the Mission Street NCT District.*

- 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 self-service restaurants as outlined in Exhibit A. Condition 5 specifically obligates the project sponsor to mitigate odor and noise generated by the restaurant use.*

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

*Parking and loading areas are not required for the proposed use. Landscaping is not proposed as the building has no front setback. The Department shall review all proposed signs under separate permit applications.*

- 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 purpose of Mission NCT District in that the intended use is located at the ground floor and it will provide a compatible convenience service for the surrounding neighborhoods during daytime 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 goods and services to the neighborhood and will provide resident employment opportunities to those in the community. Further, 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.*

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 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.

*The 22<sup>nd</sup> Street corridor is well known for its vibrant mix of restaurants, bars, outdoor seating areas, places of entertainment, and financial services which serve a wider trade area intermixed with specialized retail and personal service uses for residents of the immediate area.*

*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."*

*Although it appears that along the stretch of 22<sup>nd</sup> Street between Capp and Valencia Streets more than 20% of the frontages are already attributed to eating and drinking establishments, historically the immediate area has housed a high percentage of eating and drinking establishments that support the more intensive entertainment and shopping areas of the Mission District. Notwithstanding, with the proposed restaurant use, approximately 11%-13% of the frontage of the entire Mission NCT District, between 15<sup>th</sup> and Cesar Chavez Streets, would be attributed to eating and drinking establishments, which complies with the General Plan.*

*Planning Department Staff performed a site and feels that restaurant uses contribute to the economic vitality of the District and they do not detract from the diversity of retail uses already provided in the immediate area. In sum, Staff has observed that within the overall area there exists a strong mixture of uses critical to making the Mission Street NCT a livable 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. 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 providing a small self-service restaurant in an area with a strong mixture of uses critical to making the area a livable neighborhood. The business would be locally owned and creates four new employment opportunities for the community. The proposed alterations are within the existing building footprint.*

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

*The project proposes to utilize a currently vacant storefront for its operation and does not propose any expansion or alteration to either the building envelope or building façade.*

- 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 District is extremely well-served by transit, including regional-serving BART stations at 16th Street and 24th Street, major bus routes running along Mission Street, and both cross-town and local-serving bus routes intersecting Mission along the length of this district. Given the area's central location and accessibility to the City's transit network, accessory parking for residential and commercial uses is not required.*

- 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.*

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

*The Project is designed and will be constructed to conform to the structural and seismic safety requirements of the City Building Code. This proposal will not impact the property's ability to withstand an earthquake.*

- G. That landmarks and historic buildings be preserved.

*The project does not propose exterior alterations to the existing building's envelope or to any of its character defining architectural elements.*

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

*The project will not have an impact to any existing parks and public 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. 2009.1001C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans filed with the Application as received on January 21, 2010 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. 18013. 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 21, 2010.

Linda D. Avery  
Commission Secretary

AYES: Commissioners Antonini, Borden, Miguel, Moore, Olague, and Sugaya

NAYS: None

ABSENT: Commissioner Lee

ADOPTED: January 21, 2010

## Exhibit A

# Conditions of Approval

1. This authorization is for a Conditional Use Authorization under Planning Code Section 303, 781.5, 736.44 and 790.91 to allow a small self-service restaurant (dba "Mission Minis") all within the Mission Street (Neighborhood Commercial Transit) District, the Mission Alcoholic Beverage Special Use District, the Mission Fast Food Subdistrict and a 55-X Height and Bulk District, in general conformance with plans filed with the Application as received on October 16, 2009 and stamped "EXHIBIT B" included in the docket for Case No. 2009.1001C, reviewed and approved by the Commission on January 21, 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 3615, Lot 015), which notice shall state that construction has been authorized by and is subject to the conditions of this Motion.
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 up to \$250 a day 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 they are installed.
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. Refuse containers shall be provided both inside and outside the establishment for use by patrons of the restaurant. The operator of the use shall be responsible for maintaining the sidewalk within a one-block radius of the site free of paper or litter generated by the restaurant.
12. 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.
13. 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.