



# SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Inclusionary Housing (Sec. 315)
- Jobs Housing Linkage Program (Sec. 313)
- Downtown Park Fee (Sec. 139)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 314)
- Other

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## Planning Commission Motion No. 18068

HEARING DATE: APRIL 1, 2010

*Release Date:* March 25, 2010  
*Case No.:* **2009.0953 C**  
*Project Address:* **2859 MISSION STREET**  
*Zoning:* Mission Street NCT (Neighborhood Commercial Transit) District,  
 Mission Street Fast Food Subdistrict,  
 & Mission Alcoholic Beverage Special Use Subdistrict  
 40-X / 80-B Height and Bulk District  
*Block/Lot:* 6517 / 026  
*Project Sponsor:* Zachary Hilliard  
 P.O. Box 6702  
 Albany, CA 94706  
*Staff Contact:* Edgar Oropeza – (415) 558-6381  
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**ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303, 736.44, 790.91 AND 781.5 OF THE PLANNING CODE TO LEGALIZE AN EXISTING SMALL SELF-SERVICE RESTAURANT (D.B.A. LA TORTA SABROSA) WITHIN THE MISSION STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT AND A 40-X / 80-B HEIGHT AND BULK DISTRICT. THE PROJECT IS ALSO WITHIN THE MISSION FAST FOOD SUBDISTRICT AND THE MISSION ALCOHOLIC BEVERAGE SPECIAL USE SUBDISTRICT.**

### PREAMBLE

On October 8, 2009 Zachary Hilliard (Project Sponsor) filed an application with the San Francisco Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Sections 736.44, 790.92 and 781.5 to legalize an existing small self-service restaurant (dba “La Torta Sabrosa”) within the Mission Street NCT District and a 40-X / 80-B Height and Bulk District. The project is also located within the Mission Fast Food and the Mission Alcoholic Beverage Special Use Subdistrict.

On April 1, 2010, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2009.0953C.

The Project was determined by the Department to be categorically exempt from environmental review. 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. 2009.0953C, 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 proposed project is located on the east side of Mission Street, between 24th and 25th Streets, within the Mission Street Neighborhood Commercial Transit District, The Mission Fast Food Subdistrict, The Mission Alcoholic Beverage Special Use Subdistrict, and a 40-X / 80-B Height and Bulk District.

The 2,850 square foot lot is improved with a two-story 3,500 square foot mixed use building with a single dwelling located on the second floor. The commercial ground floor is improved with two separate storefronts occupying approximately six linear feet of frontage each. The adjacent storefront (south) is in use as a "personal service." The subject storefront (north) is currently in use as a small self-service restaurant.

3. **Surrounding Properties and Neighborhood.** The Mission is a neighborhood of strong character and a sense of community developed over decades. This area is home to almost 60,000 people, with Latinos comprising over half the population. The Mission is bounded by Guerrero to the west, Potrero to the east, Division to the north and Cesar Chavez to the south.

Retail is a significant business type in the Mission. Mission and 24th Streets in particular offer a variety of shops and services including many small grocery stores, beauty shops and restaurants that serve the local neighborhood and reflect the Latino population. There are about 900 stores and restaurants in the Mission, employing nearly 5,000 people.

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.

In addition to providing more than 23,000 jobs for the city of San Francisco, the Mission also provides a place for almost 60,000 residents to live, many in households substantially larger and poorer than those found elsewhere in the City. There are about 17,000 units of housing in the Mission mixed with commercial, industrial, retail and other uses. This mix of uses makes it possible for many residents to live and work in the same general area.

Overall, the Mission has a well-developed neighborhood infrastructure, easy access to shops and restaurants, an architecturally rich and varied housing stock, rich cultural resources, and excellent transit access.

4. **Project Description.** The project proposes to legalize an existing small self-service restaurant (dba La Torta Sabrosa) within the Mission Street NCT District and the Mission Fast Food Subdistrict. The subject establishment was previously used as a coffee shop.

“La Torta Sabrosa” is an independently owned restaurant and is not a Formula Retail use. The proposed operation will require between 2 to 3 employees.

“La Torta Sabrosa” provides fresh, healthy, and reasonably priced food and drinks including fresh fruit juices; squeezed at the time of order, fruit salads and a wide variety of tortas, tacos, and tostadas.

5. **Public Comment.** Staff did not receive public comment of any type in regards to 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. **Neighborhood Commercial Permit Review.** Planning Code Section 312 requires neighborhood notification for changes of use to a small self- service restaurant, as defined by Planning Code Section 790.91 for lots within the Neighborhood Commercial Districts.

*The Project Sponsor is proposing to legalize an existing small self-service restaurant use within the Mission Street Neighborhood Commercial District (dba“ La Torta Sabrosa”) and the Mission Fast food Subdistrict. Section 312 notification was conducted in conjunction with the Conditional Use authorization notification.*

- B. **Use.** Planning Code Section 736.44 allows a small self-service restaurant within the Mission Street NCT District by Conditional Use authorization on the first story.

*The Project Sponsor intends to legalize an existing small self service restaurant (dba "La Torta Sabrosa") located on the ground floor of the subject building. The project is located within the Mission Street NCT District and is seeking Conditional Use authorization.*

- C. **Small Self-Service Restaurant.** Planning Code Section 790.91 defines a small self-service restaurant 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 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 is ordered and served at customer service counter; Food is paid for prior to consumption.

*The subject commercial space is approximately 900 square feet in size and can accommodate no more than three tables and ten chairs.*

- D. **Formula Retail Use.** Planning Code Section 703.4 requires conditional use authorization from the Planning Commission to establishment of a formula retail use, as defined in 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 be subject to the terms of Sections 703.3(g) and (i).

*The proposed small self-service restaurant use (dba La Torta Sabrosa) is not identified as a formula retail.*

- E. **Hours of Operation.** Planning Code Section 736.27 permits unlimited hours of operation within the Mission Street NCT District.

*The proposed hours of operation, between 8:00 a.m. to 7:00 p.m. are principally within the Mission Street NCT District.*

- F. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that NC Districts containing specific uses, including full service 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 six-feet of frontage on Mission Street all devoted to either the restaurant entrance or window space. The windows are clear glass, providing an unobstructed view into the establishment at pedestrian eye-level.*

*No physical changes are proposed to the subject storefront.*

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 proposed project is desirable because it seeks to legalize the operation of an existing small self service restaurant use that has been in operation since early 2004. The proposal is a neighborhood serving restaurant located on the ground floor, will enrich the variety of goods offered within the Mission NCT District, is in line with the prevalent pattern of commercial / retail ground floor uses and 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 proposed project will operate within the existing building envelope and does not propose an expansion to the commercial square footage. The building's commercial space is in keeping with use sizes generally exhibited within the Mission Street NCT District.*

*The building's storefronts are considered incubator spaces. Incubator spaces are abundant and widespread within the Mission District. Historically they have provided affordable commercial rents to their tenants and offer more affordable goods and services to the general public.*

- 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 any uses within the Mission Street NCT District. The subject fast food restaurant is not expected to generate additional car trips into the Mission District but rather offer the pedestrian the opportunity to experience a different food type than those existing nearby.*

- 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 small self-service restaurants as outlined in Exhibit A. Conditions 5 through 9 specifically obligate the project sponsor to mitigate noxious or offensive 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 Planning 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 purposed of the Mission Street NCT District in that the intended use is located at the ground floor, will provide convenience goods to the immediately surrounding neighborhoods and will be active throughout the day.*

- 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 project will provide desirable goods and services to residents of the neighborhood, to patrons of the surrounding commercial establishments as well to persons within the greater area.*

*Being located within the Mission Street NCT District, the proposed project is 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 proposed project will legitimize the existing small self-service restaurant use that has existing on the subject site since 2004. Approval of the proposal restaurant use will ensure compliance of the Planning Code.*

**OBJECTIVE 3:** PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

**Policy 3.1:**

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

**Policy 3.2:**

Promote measures designed to increase the number of San Francisco jobs held by San Francisco residents.

*The proposed project will provide employment opportunities, including entry-level employment opportunities, for the immediate area's unskilled and semi-skilled workers.*

**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.

**Policy 6.3:**

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

*The project proposes to provide neighborhood serving goods. The commercial space is on the ground floor of a building whose upper floor is residential, thereby preserving the mixed commercial-residential character of the Mission Street NCT District. No affordable housing will be lost as the project proposes to retain commercial activity within an existing storefront.*

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.

*For eating and drinking establishments, the Commerce and Industry Guidelines for Specific Uses state, "the balance of commercial uses may be threatened when eating and drinking establishments occupy more than 20% of the total occupied commercial frontage." While the subject block offers an abundance of restaurant uses, the Departments feels that the legalization of this restaurant use will contribute to the economic vitality of the subject street and the greater*



*District. Eating and drinking establishments contribute to the street's mixed-use character and activity in the evening hours.*

*The Mission District is home to almost 60,000 people and is a major destination point for City residents and regional visitors seeking unique goods and services which the neighborhood can only provide. Planning Department staff will continue to monitor the number of restaurants should there be exacerbation of this issue. In sum, Staff has observed through site visits that within the overall area there exists a strong mixture of uses critical to making the Mission NCT district a livable neighborhood.*

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 proposes to legalize the existing small self-service restaurant use, a use that currently serves the neighborhood and as a source of potential employment for neighborhood residents.*

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

*The project proposes to legalize the use located within the subject storefront. The project does not propose to alter the existing historical storefront or to expand the existing size of the commercial space.*

- 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 proposed project is on Mission Street, between 24th and 25th Streets, and is well served by public transit. It is highly likely that customers of the proposed establishment will either walk, bike or use public transit as the preferred mode of transportation.*

*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.*

- 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 proposed project will not include any commercial office development and will not displace any existing service or industry establishments.*

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

*The proposed project will comply with the City Codes to achieve the proper preparedness in the event of an earthquake.*

- G. That landmarks and historic buildings be preserved.

*The project does not propose any physical changes to the existing historical storefront or to the building footprint.*

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

*The proposed project will not have a 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.

**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. 2009.0953C** 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. 18068. 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 94012.**

I hereby certify that the Planning Commission **ADOPTED** the foregoing Motion on April 1, 2010.

Linda Avery  
Commission Secretary

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

NAYS: None

ABSENT: None

ADOPTED: April 1, 2010

## Exhibit A

# Conditions of Approval

1. This authorization is for a Conditional Use Authorization under Sections 303, 736.44, 790.91 and 781.5 of the Planning Code to allow a Small Self -Service Restaurant not identified as a formula retail use at 2859 Mission Street within the Mission Street Neighborhood Commercial Transit District and a 40-X 80-B Height and Bulk District, The Mission Fast food Subdistrict and the Mission Alcoholic Beverage Special Use District, in general conformance with plans filed with the Application as received on March 18, 2010 and stamped "EXHIBIT B" included in the docket for **Case No. 2009.0953C**, reviewed and approved by the Commission on April 1, 2010.
2. A Small Self- Service Restaurant, as defined in Planning Code Section 790.91, is described 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:
  - (1) contains fewer than 50 seats and less than 1,000 square feet of gross floor area;
  - (2) A limited menu of ready-to-eat food prepared in advance of customer orders, or food which is able to be quickly prepared for consumption on or off the premises;
  - (3) Food served in disposable wrappers or containers;
  - (4) Food is ordered and served at customer service counter;
  - (5) Food is paid for prior to consumption;
  - (6) Public food service area, including queuing areas and service counters without fixed seats, which counters are designed specifically for the sale and distribution of food and beverages;
  - (7) Food available upon a short waiting time.
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 \$500 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 sweeping and litter pickup and disposal as well as washing or steam cleaning of the main entrance and abutting sidewalks at least once each week.
6. Until removal by a waste disposal service, all garbage and/or waste containers shall be either (1) kept within the subject building or (2) kept in a sealed enclosure which prevents the emission of any noxious odors.
7. The Project Sponsor shall maintain appropriate odor control equipment to prevent any significant noxious or offensive kitchen odors from escaping the premises.
8. 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.
9. The Project Sponsor shall maintain an attractive storefront providing visibility of the restaurant interior through the storefront windows.
10. Signs for the business shall be reviewed and approved by the Planning Department before they are installed.
11. The Project Sponsor shall assure the execution and recordation of the specified conditions as a Notice of Special Restrictions at the Office of the County Recorder / County Clerk.
12. The Planning Commission may, in a public hearing, consider the revocation of this conditional use authorization if a site or building permit has not been issued within three (3) years of the date of the Motion approving the project. Once a site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued thenceforth diligently to completion. The Commission may also consider revoking this conditional use authorization if a permit for the project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved. 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.