



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: NOVEMBER 4, 2010

Project Name: **Amendments Relating to Temporary Uses
and Mobile Food Facilities**

Case Number: 2010.0908T [Board File No. 101351, formerly 101071]

Initiated by: Supervisor Bevan Dufty
Introduced August 3, 2010
Substitute Legislation introduced October 26, 2010

Staff Contact: Daniel A. Sider, AICP
dan.sider@sfgov.org, 415-558-6697

Recommendation: **Approval**

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PLANNING CODE AMENDMENT

The proposed Ordinance would establish a new 'intermittent activity' category of temporary uses in order to allow for occasional yet routine outdoor activities, including Mobile Food Facilities ('MFF's'), and would make other related amendments to the Planning Code.

The Way It Is Now:

MFF's are considered permanent uses and are regulated as if they were bricks-and-mortar restaurants. Separately, uses within certain Zoning Districts must be conducted within enclosed buildings. MFF's, which by their nature involve no building, are neither defined or addressed.

The Way It Would Be:

The proposal would (1) add Section 102.31 to the Planning Code in order to define an MFF as it is defined in the Health and Public Works Codes, (2) amend Section 205 and add Section 205.4 to establish an 'intermittent activity' category of temporary uses which can be approved for up to one-year, and (3) amend Sections 212, 790.91, and 890.90 to clarify that MFF's need not be conducted within enclosed buildings.

This proposal was first introduced in August 2010 and, through close collaboration with Department Staff, was amended and reintroduced as substitute legislation in October 2010. Excepting where specifically identified, this Executive Summary is based on the substitute legislation.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

BACKGROUND

MFF's – also known as 'street food' - encompass a range of eating and drinking uses which dispense ready-to-eat food from a non-fixed location. Examples range from traditional hot dog and pretzel carts to

more recent innovations such as custom-built catering trucks often serving novel and on occasion critically acclaimed cuisine.

MFF's are regulated by a range of City Departments, including Planning, Police, Public Health, Public Works, and Fire. Substantially divergent regulatory paths apply depending on whether the MFF is located on the public right-of-way (e.g. streets and sidewalks) or outside the public right-of-way (e.g. private property, parks, etc). As with most permitting issues, the Planning Department has jurisdiction only when an MFF is located outside of the public right-of-way. The lead agency for MFF's located within the public right-of-way is presently the Police Department, which refers MFF applications to the Health and Public Works Departments for review. Of significant note is a parallel Ordinance also introduced by Supervisor Dufty which would modernize the permit process for MFF's on the public right-of-way and transfer lead-agency authority to the Department of Public Works. That Ordinance is undergoing review by the involved Agencies at present and will likely be reviewed by the Board of Supervisors alongside the Ordinance which is the subject of this Executive Summary. A memo from the Office of Economic and Workforce Development describes that Ordinance and is attached as Exhibit D.

Uses subject to regulation under the Planning Code can be broadly grouped into two categories: (1) temporary uses or (2) fixed, non-mobile, permanent land uses. Current temporary use provisions are oriented toward discrete, time-limited activities such as neighborhood festivals or exhibitions, pumpkin or Christmas tree sales, or construction trailers. Based on the nature of the use, it can be allowed for between one day and two years. Conversely, permanent uses comprise any use that cannot be considered a temporary use. Because Mobile Food Facilities do not conform to existing temporary use provisions, they are considered permanent uses.

As permanent uses, MFF's are currently regulated in the same fashion as permanent, 'bricks-and-mortar' uses, and are subject to the conventional requirements of the Planning Code. In most Commercial (C), Industrial (M), and Production, Distribution, and Repair (PDR) Districts, MFF's are typically administratively approved as permanent uses without extensive process. However, within Neighborhood Commercial (NC) and certain Mixed Use Districts, MFF's – despite their limited nature – are subject to the same review process and standards which apply to much larger, permanent establishments. For example, in an NC District an MFF would be considered a Small Self-Service Restaurant and would be subject to the same Conditional Use stipulations, prohibitions, or neighborhood notification requirements that would apply to a conventional Small Self-Service Restaurant in that particular NC District.

PROPOSAL

The proposed Ordinance would establish a category of temporary uses which would address 'intermittent activities,' a new concept that primarily relates to MFF's but also captures farmers markets and similar open-air phenomena. In general terms, the Ordinance would allow an intermittent activity on a renewable one-year basis so long as: (1) it is not located in strictly residential district, (2) it is not conducted within a building, (3) it operates within any principally permitted hours of operation, and (4) it is located on any one property for no more than (a) six days each week for up to 12 hours each day or (b) three days each week for up to 24 hours each day.

Intermittent activities that do *not* comply with these criteria would continue to be reviewed as permanent uses. Intermittent activities *that comply* with these criteria would typically be approved administratively by the Zoning Administrator or his designee, except in cases where neighborhood notification would be required. Those cases would be limited to those where the intermittent activity is located in a District

subject to neighborhood notification under Planning Code Section 312 *and* the activity either involves more than 225 square feet (which accommodates roughly one catering truck) or is located within 50 feet of a Residential District.

The proposal would also define an MFF within the Planning Code by referring to the definition in the Public Works and Health Codes. Lastly, the proposal would clarify that permanent MFF's (i.e. those which would *not* fall under the new intermittent activity classification) need not be conducted within enclosed buildings.

BASIS FOR RECOMMENDATION

The wide range of fare provided by MFF's is typically offered at low or moderate prices and in many cases represents novel or innovative cuisine. When located and operated appropriately, Mobile Food Facilities add vitality to the street, contribute to the richness of San Francisco's culinary and cultural offerings, and provide economic opportunities especially for small business-persons. MFF's can also provide substantial amenity to nearby residents and employees.

Despite being neither permanent nor entirely temporary, MFF's continue to be regulated as permanent uses. While their mobility and scale is suggestive of a temporary designation, existing temporary use provisions fail to acknowledge their enduring presence. Thus, their nature as occasional and impermanent activities which nonetheless occur in an ongoing fashion defies the Code's existing permanent versus temporary framework.

By establishing a new, appropriate means of regulating MFF's and other intermittent activities, the City would enable an expansion of culinary, cultural, and business opportunities and increase community amenity. Through the incorporation of regulations such as (1) scale and proximity-based notification requirements and (2) restrictions on operating days and times, the Ordinance minimizes the potential for impacts to nearby uses while enabling activities with clear benefits to their immediate surrounds and the City as a whole.

ENVIRONMENTAL REVIEW

The amendment contained in the proposed Ordinance is exempt from review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15060(c)(2). Department review was conducted under Case Number #2010.0745E.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any comment in regards to the proposed Ordinance.

RECOMMENDATION:	Recommend Board Approval
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Proposed Ordinance introduced under Board of Supervisors File No. 101351
- Exhibit C: OWED memo regarding proposed changes to MFF regulations on public rights-of-way
- Exhibit D: Flowchart depicting application of Proposed Ordinance

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**Planning Commission
Resolution Number _____**

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and Mobile Food Facilities**

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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE BY (1) ADDING SECTION 102.31 IN ORDER TO DEFINE A MOBILE FOOD FACILITY AS IT IS DEFINED IN THE HEALTH AND PUBLIC WORKS CODES, (2) AMENDING SECTION 205 AND ADDING SECTION 205.4 TO ESTABLISH AN ‘INTERMITTENT ACTIVITY’ CATEGORY OF TEMPORARY USES WHICH CAN BE APPROVED FOR UP TO ONE-YEAR, AND (3) AMENDING SECTIONS 212, 790.91, AND 890.90 TO CLARIFY THAT MOBILE FOOD FACILITIES NEED NOT BE CONDUCTED WITHIN ENCLOSED BUILDINGS.

PREAMBLE

Whereas, on August 3, 2010, Supervisor Bevan Dufty introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 101071 which would amend the Planning Code in order to (1) add Section 102.31 to define a Mobile Food Facility (hereinafter “MFF”) as it is defined in the Health and Public Works Codes, (2) amend Section 205 and add Section 205.4 to establish an ‘intermittent activity’ category of temporary uses which can be approved for up to one-year, and (3) amend Sections 212, 790.91, and 890.90 to clarify that MFF’s need not be conducted within enclosed buildings.

Whereas, on October 26, 2010 a substitute piece of legislation was introduced under Board File Number 101351.

Whereas, on November 4, 2010, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the amendment contained in the proposed Ordinance is not a project pursuant to Section 15060(c)(3) of the California Environmental Quality Act (CEQA) Guidelines; and

Whereas, 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; and

Whereas, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

Whereas, the Commission has reviewed the proposed Ordinance; and

MOVED, that the Commission hereby recommends that the Board of Supervisors *approve the proposed Ordinance*.

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. MFF's are defined in Section 113831 of the California Health and Safety Code as "any vehicle used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed at retail." When such uses are located outside of San Francisco's public rights-of-way, permitting authority rests with the Department of Public Health which consults the Planning Department to ensure that all such applications are consistent with the Planning Code. Examples of MFF's include pushcart vendors, trailer-based vendors, and catering trucks which sell a range of ready-to-eat food.
2. Often termed "street-food," the wide range of fare provided by MFF's is typically offered at low or moderate prices and in many cases represents novel or innovative cuisine. When located and operated appropriately, MFF's add vitality to the street, contribute to the richness of San Francisco's culinary and cultural offerings, and provide economic opportunities especially for small businesspersons.
3. The Planning Code addresses land uses which are either discrete temporary uses or fixed, non-mobile, permanent uses. No regulations yet exist for uses such as MFF's which, while occasional, occur in an ongoing fashion with some routine or regularity. These 'intermittent activities' include outdoor uses such as MFF's, farmers markets, and open-air craft markets which are neither permanent nor entirely temporary. The 60-day or 24-hour limits contemplated as part of the Planning Code's temporary use provisions in Section 205 et. seq. do not acknowledge the enduring presence of these intermittent uses.

4. The nature of some MFF's – particularly those with an extended presence at a given location - is such that they would continue to be considered permanent uses. It has been suggested that portions of the Planning Code that require certain uses to be conducted within enclosed buildings are ambiguous with respect to MFF's.
5. MFF's encompass a range of eating and drinking uses which dispense ready-to-eat food from a non-fixed location. Examples range from traditional hot dog and pretzel carts to more recent innovations such as custom-built catering trucks often serving novel and on occasion critically acclaimed cuisine.
6. MFF's are regulated by a range of City Departments, including Planning, Police, Public Health, Public Works, and Fire. Substantially divergent regulatory paths apply depending on whether the MFF is located on the public right-of-way (e.g. streets and sidewalks) or outside the public right-of-way (e.g. private property, parks, etc). As with most permitting issues, the Planning Department has jurisdiction only when an MFF is located outside of the public right-of-way. The lead agency for MFF's located within the public right-of-way is presently the Police Department, which refers MFF applications to the Health and Public Works Departments for review. Of significant note is a parallel Ordinance also introduced by Supervisor Dufty which would modernize the permit process for MFF's on the public right-of-way and transfer lead-agency authority to the Department of Public Works. That Ordinance is undergoing review by the involved Agencies at present and will likely be reviewed by the Board of Supervisors alongside the Ordinance which is the subject of this Executive Summary. A memorandum from the Office of Economic and Workforce Development describes that Ordinance and is attached as Exhibit D.
7. Uses subject to regulation under the Planning Code can be broadly grouped into two categories: (1) temporary uses or (2) fixed, non-mobile, permanent land uses. Current temporary use provisions are oriented toward discrete, time-limited activities such as neighborhood festivals or exhibitions, pumpkin or Christmas tree sales, or construction trailers. Based on the nature of the use, it can be allowed for between one day and two years. Conversely, permanent uses comprise any use that cannot be considered a temporary use. Because Mobile Food Facilities do not conform to existing temporary use provisions, they are considered permanent uses.
8. As permanent uses, MFF's are currently regulated in the same fashion as permanent, 'bricks-and-mortar' uses, and are subject to the conventional requirements of the Planning Code. In most Commercial (C), Industrial (M), and Production, Distribution, and Repair (PDR) Districts, MFF's are typically administratively approved as permanent uses without extensive process. However, within Neighborhood Commercial (NC) and certain Mixed Use Districts, MFF's – despite their limited nature – are subject to the same review process and standards which apply to much larger, permanent establishments. For example, in an NC District an MFF would be considered a Small Self-Service Restaurant and would be subject to the same Conditional Use stipulations, prohibitions, or neighborhood notification requirements that would apply to a conventional Small Self-Service Restaurant in that particular NC District.
9. The proposed Ordinance would establish a category of temporary uses which would address 'intermittent activities,' a new concept that primarily relates to MFF's but also captures farmers

markets and similar open-air phenomena. In general terms, the Ordinance would allow an intermittent activity on a renewable one-year basis so long as: (1) it is not located in strictly residential district, (2) it is not conducted within a building, (3) it operates within any principally permitted hours of operation, and (4) it is located on any one property for no more than (a) six days each week for up to 12 hours each day or (b) three days each week for up to 24 hours each day.

10. Intermittent activities that do not comply with these criteria would continue to be reviewed as permanent uses. Intermittent activities that comply with these criteria would typically be approved administratively by the Zoning Administrator or his designee, except in cases where neighborhood notification would be required. Those cases would be limited to those where the intermittent activity is located in a District subject to neighborhood notification under Planning Code Section 312 and the activity either involves more than 225 square feet (which accommodates roughly one catering truck) or is located within 50 feet of a Residential District.
11. The proposal would also define an MFF within the Planning Code by referring to the definition in the Public Works and Health Codes. Lastly, the proposal would clarify that permanent MFF's (i.e. those which would not fall under the new intermittent activity classification) need not be conducted within enclosed buildings.
12. The wide range of fare provided by MFF's is typically offered at low or moderate prices and in many cases represents novel or innovative cuisine. When located and operated appropriately, Mobile Food Facilities add vitality to the street, contribute to the richness of San Francisco's culinary and cultural offerings, and provide economic opportunities especially for small business-persons. MFF's can also provide substantial amenity to nearby residents and employees.
13. Despite being neither permanent nor entirely temporary, MFF's continue to be regulated as permanent uses. While their mobility and scale is suggestive of a temporary designation, existing temporary use provisions fail to acknowledge their enduring presence. Thus, their nature as occasional and impermanent activities which nonetheless occur in an ongoing fashion defies the Code's existing permanent versus temporary framework.
14. By establishing a new, appropriate means of regulating MFF's and other intermittent activities, the City would enable an expansion of culinary, cultural, and business opportunities and increase community amenity. Through the incorporation of regulations such as (1) scale and proximity-based notification requirements and (2) restrictions on operating days and times, the Ordinance minimizes the potential for impacts to nearby uses while enabling activities with clear benefits to their immediate surrounds and the City as a whole.
15. For reasons including those set forth in this Resolution, the proposed Ordinance serves the public necessity, convenience and general welfare as set forth in Planning Code Section 302.
16. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

I. COMMERCE & INDUSTRY ELEMENT

THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN SETS FORTH OBJECTIVES AND POLICIES THAT ADDRESS THE BROAD RANGE OF ECONOMIC ACTIVITIES, FACILITIES, AND SUPPORT SYSTEMS THAT CONSTITUTE SAN FRANCISCO'S EMPLOYMENT AND SERVICE BASE.

GOALS

THE THREE GOALS OF THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN RELATE TO CONTINUED ECONOMIC VITALITY, SOCIAL EQUITY, AND ENVIRONMENTAL QUALITY.

OBJECTIVE 2

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

POLICY 2.3

MAINTAIN A FAVORABLE SOCIAL AND CULTURAL CLIMATE IN THE CITY IN ORDER TO ENHANCE ITS ATTRACTIVENESS AS A FIRM LOCATION.

Street food vendors provide a range of micro-entrepreneurial opportunities. Because of their significantly lower cost of entry (reported to be as low as \$10,000 for a full-service cart to \$100,000 for an elaborate catering truck, versus upwards of hundreds of thousands of dollars for the fit-out of a conventional restaurant) employment and ownership prospects are enhanced at all levels.

Oftentimes MFF's offer ethnic foods with unique slants or unusual combinations so as to differentiate them in the crowded marketplace (e.g. tikka-masala burritos; Korean tacos). Regardless, the quality of food is typically high, with professional chefs and accomplished amateurs serving a range of delicacies, thus helping to maintain San Francisco's reputation as a "food mecca" for visitors and residents alike.

OBJECTIVE 6

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

POLICY 6.7

PROMOTE HIGH QUALITY URBAN DESIGN ON COMMERCIAL STREETS.

The appeal and vitality of a neighborhood commercial district depends largely on the character, amenities, and visual quality of its streets. The main function of neighborhood commercial streets is to provide retail goods and services in a safe, comfortable, and attractive pedestrian environment...

MFF's and other intermittent activities have the wherewithal to activate stretches of neighborhood commercial frontage and underused parcels quickly and with a minimum of investment. They can contribute to street life and add vitality in a fashion that directly benefits those who live and work nearby.

II. URBAN DESIGN ELEMENT

THE URBAN DESIGN ELEMENT OF THE GENERAL PLAN SETS FORTH OBJECTIVES AND POLICIES THAT CONCERN THE PHYSICAL CHARACTER AND ORDER OF THE CITY, AND THE RELATIONSHIP BETWEEN PEOPLE AND THEIR ENVIRONMENT.

GOALS

THE FOUR GOALS OF THE URBAN DESIGN ELEMENT OF THE GENERAL PLAN RELATE TO ESSENTIAL HUMAN NEEDS, THE FULFILLMENT OF THOSE NEEDS IN RELATION TO SAN FRANCISCO'S SPECIAL CHARACTERISTICS, FUNDAMENTAL DESIGN PRINCIPLES AND RELATIONSHIPS, AND POLICIES NECESSARY TO ACHIEVE OR APPROACH THE OVERALL OBJECTIVE.

OBJECTIVE 4

IMPROVEMENT OF THE NEIGHBORHOOD ENVIRONMENT TO INCREASE PERSONAL SAFETY, COMFORT, PRIDE AND OPPORTUNITY

POLICY 4.13

IMPROVE PEDESTRIAN AREAS BY PROVIDING HUMAN SCALE AND INTEREST.

In addition to landscaping, other features along the streets add to the comfort and interest of pedestrians. Sidewalk paving and furnishings, if designed in a unified way, make walking more pleasurable...

As above, MFF's and other intermittent activities have the potential to activate underused parcels and streetscapes which may otherwise be bereft of vitality.

III. ARTS ELEMENT

The Arts Element is also founded on the belief that the City and County of San Francisco holds a trust for the development and preservation of arts and culture. It is furthermore held that explicit arts policy will help enable the City and County of San Francisco to respond to arts related issues and problems in the fulfillment of this trust.

GOALS

THE GOALS OF THE ARTS ELEMENT ARE TO SUPPORT AND NURTURE THE ARTS THROUGH CITY LEADERSHIP, RECOGNIZE AND SUSTAIN THE DIVERSITY OF THE CULTURAL EXPRESSIONS OF ART IN SAN FRANCISCO, RECOGNIZE AND SUPPORT INDIVIDUAL ARTISTS AND ARTS ORGANIZATIONS, INCREASE OPPORTUNITIES FOR QUALITY ARTS EDUCATION, INCREASE FUNDING SUPPORT FOR THE ARTS IN SAN FRANCISCO, ENHANCE, DEVELOP, AND PROTECT THE PHYSICAL ENVIRONMENT OF THE ARTS IN SAN FRANCISCO

OBJECTIVE II-2

SUPPORT ARTS AND CULTURAL PROGRAMS WHICH ADDRESS THE NEEDS OF DIVERSE POPULATIONS.

The diversity of population in San Francisco and the wide array of artists and arts organizations needs the support of programs which address diverse cultural needs.

As above, MFF's and other intermittent activities not only create employment and ownership opportunities with very low start-up costs which are accordingly accessible to individuals of all income levels, but the food they serve often reflects the rich backgrounds of the proprietors, all the while contributing to the City's culinary and cultural diversity.

17. The proposed Ordinance is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

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

The relatively small scale of the majority of likely intermittent activities will not negatively impact existing neighborhood-serving retail uses. At the same time, the establishment of new MFF's under the proposed intermittent activity category will allow for new opportunities for resident employment in and ownership of small businesses, particularly food-oriented businesses.

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

The proposed Ordinance will not negatively impact housing or neighborhood character. On the contrary, the cultural diversity of our neighborhoods will be bettered by enabling new micro-entrepreneurial opportunities that are likely to enhance the cultural offerings of the City.

- C) That City's supply of affordable housing will be preserved and enhanced:

The proposed Ordinance will have no adverse effect on the City's supply of affordable housing.

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

The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

- E) That a diverse economic base will 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 will be enhanced:

The proposed Ordinance would provide for new employment and ownership opportunities in the service sector and other sectors.

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

Preparedness against injury and loss of life in an earthquake would not be adversely affected by the proposed amendments. It could be argued that the MFF's which may be enabled as a result of this Ordinance could help feed displaced individuals in the event of an earthquake or other catastrophe.

- G) That landmark and historic buildings will be preserved:

Landmarks and historic buildings would not be adversely impacted by the proposed amendments.

- H) That parks and open space and their access to sunlight and vistas will be protected from development:

The City's parks and open space and their access to sunlight and vistas would not be adversely affected by the proposed amendments. Any MFF located on a park or open space outside of the public right-of-way would be subject not only to the limits and other restrictions included in the proposed Ordinance, but also to the processes and scrutiny applied by the Recreation and Parks Department.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on November 4, 2010.

Linda Avery
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: November 4, 2010

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EXHIBIT B

1 [Zoning - Temporary Uses and Mobile Food Facilities]

2

3 **Ordinance amending the San Francisco Planning Code by adding Section 102.31 to**
4 **define a Mobile Food Facility, amending Section 205 and adding Section 205.4 to**
5 **establish a new category of temporary uses, and amending Sections 212, 790.91,**
6 **790.93 and 890.90 to clarify that Mobile Food Facilities need not be conducted within**
7 **enclosed buildings; adopting findings, including environmental findings and findings**
8 **of consistency with the General Plan and Planning Code Section 101.1.**

9

NOTE: Additions are *single-underline italics Times New Roman*;
deletions are ~~*strike-through italics Times New Roman*~~.
Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough normal~~.

10

11

12 Be it ordained by the People of the City and County of San Francisco:

13

14 Section 1. The Board of Supervisors of the City and County of San Francisco hereby
15 finds and determines that:

16

17 (a) The Planning Department has determined that the actions contemplated in this
18 ordinance comply with the California Environmental Quality Act (California Public Resources
19 Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of
20 Supervisors in File No. _____ and is incorporated herein by reference.

21

22

23 (b) Pursuant to Planning Code Section 302, this Board finds that these Planning Code
24 amendments will serve the public necessity, convenience, and welfare for the reasons set
25 forth in Planning Commission Resolution No. _____ and the Board incorporates
such reasons herein by reference. A copy of Planning Commission Resolution No.
_____ is on file with the Board of Supervisors in File No. _____.

26

27

28 (c) This Board finds that these Planning Code amendments are consistent with the
29 General Plan and with the priority policies of Planning Code Section 101.1 for the reasons set

30

1 forth in Planning Commission Resolution No. _____, and the Board hereby
2 incorporates such reasons herein by reference.

3 (d) Mobile Food Facilities are defined in Section 113831 of the California Health and
4 Safety Code as “any vehicle used in conjunction with a commissary or other permanent food
5 facility upon which food is sold or distributed at retail.” When such uses are located outside of
6 San Francisco’s public rights-of-way, permitting authority rests with the Department of Public
7 Health which consults the Planning Department to ensure that all such applications are
8 consistent with the Planning Code. Examples of Mobile Food Facilities include pushcart
9 vendors, trailer-based vendors, and catering trucks which sell a range of ready-to-eat food.

10 (e) Often termed “street-food,” the wide range of fare provided by Mobile Food
11 Facilities is typically offered at low or moderate prices and in many cases represents novel or
12 innovative cuisine. When located and operated appropriately, Mobile Food Facilities add
13 vitality to the street, contribute to the richness of San Francisco’s culinary and cultural
14 offerings, and provide economic opportunities especially for small business-persons.

15 (f) The Planning Code addresses land uses which are either discrete temporary uses
16 or fixed, non-mobile, permanent uses. No regulations yet exist for uses such as Mobile Food
17 Facilities which, while occasional, occur in an ongoing fashion with some routine or regularity.

18 (g) These ‘intermittent activities’ include outdoor uses such as Mobile Food Facilities,
19 farmers markets, and open-air craft markets which are neither permanent nor entirely
20 temporary. The 60-day or 24-hour limits contemplated as part of the Planning Code’s
21 temporary use provisions in Section 205 et. seq. do not acknowledge the enduring presence
22 of these intermittent uses.

23 (h) In most Commercial, Industrial, and Production, Distribution, and Repair Districts,
24 such uses can typically be permitted as permanent uses without extensive, lengthy, or
25 burdensome permitting requirements. However, within Neighborhood Commercial and certain

1 Mixed Use Districts, such uses – despite their limited nature – are considered permanent land
2 uses and are subject to detailed and complex permit review. This review is of the same scope
3 as that which apply to larger, permanent, “bricks-and-mortar” establishments.

4 (i) The nature of some Mobile Food Facilities – particularly those with an extended
5 presence at a given location - is such that they would continue to be considered permanent
6 uses. It has been suggested that portions of the Planning Code that require certain uses to be
7 conducted within enclosed buildings are ambiguous with respect to Mobile Food Facilities.

8 Section 2. The San Francisco Planning Code is hereby amended by adding Section
9 102.31 to read as follows:

10 **SEC. 102.31. MOBILE FOOD FACILITY.** *A Mobile Food Facility shall be as defined in*
11 *Public Works Code Section 184.80. Mobile Food Facilities shall comply with the good neighbor*
12 *policies set forth in Public Works Code Section 184.94.*

13 Section 3. The San Francisco Planning Code is hereby amended by amending
14 Sections 205 and 212 and adding Section 205.4 to read as follows:

15 **SEC. 205. - TEMPORARY USES, GENERAL.**

16 (a) The temporary uses listed in Sections 205.1 through ~~205.3~~ 205.4, where not
17 otherwise permitted in the district, may be authorized as provided herein, up to the time limits
18 indicated. Further time for such uses may be authorized only by action upon a new
19 application, subject to all the requirements for the original application, unless otherwise
20 indicated in Sections 205.1 through ~~205.3~~ 205.4.

21 (b) Action upon such uses shall be by the Planning Commission, subject to all the
22 requirements for conditional uses in Sections 303 and 306 through 306.5 of this Code; except
23 that uses listed in Section 205.1, uses listed in Section 205.2 if located in a PDR, C, or M
24 District, *and* uses listed in Section 205.3 within the South of Market Mixed Use Districts and
25

1 Eastern Neighborhoods Mixed Use Districts, and uses listed in Section 205.4 may be authorized
2 by the Zoning Administrator without a public hearing.

3 (c) Wherever a use exists at the effective date of this Code or of an amendment
4 thereto under which such use is classified as a temporary use, or wherever a use is being
5 conducted under a temporary use authorization given prior to such a date, such use may be
6 continued for the maximum term specified therefore, calculated from said effective date or
7 date of authorization. No such use shall continue thereafter unless a temporary use
8 authorization shall have been sought and obtained under a new application. Continuance of a
9 temporary use beyond the date of expiration of the period authorized therefore, or failure to
10 remove a structure for such temporary use within 10 days thereafter, shall constitute a
11 violation of this Code.

12 **SEC. 205.4. - TEMPORARY USES: INTERMITTENT ACTIVITIES.**

13 An intermittent activity is an outdoor use which, while occasional, occurs with some routine or
14 regularity. Intermittent activities include, but are not limited to, the following uses: mobile food
15 facilities, farmers markets, and open-air craft markets. Such uses typically require additional
16 authorization(s) from other City Departments. An intermittent activity may be authorized as a
17 temporary use for a period not to exceed one year within all Districts, except for RH, RM, RED and
18 RTO Districts, so long as all of the following conditions are met:

- 19 (a) It shall not be located within a building as defined in Section 102.3 of this Code.
20 (b) It shall not be located on the property for more than either: (i) six (6) calendar days for
21 longer than 12 hours per day in any seven-day period; or (ii) three (3) calendar days for longer than 24
22 hours per day in any seven-day period. At the time of application, the applicant shall designate in
23 writing which of the foregoing options shall apply to the activity. No changes shall be made during the
24 authorization period without first filing a new application.

1 (1) The time periods referenced in Subsection (b) each constitute complete calendar
2 days and apply without regard to whether the activity is open to the public or whether the activity is
3 located on the subject property for consecutive days.

4 (2) Days of unused authorization cannot be stored or credited, and any portion of a day
5 that the intermittent activity is located at the subject property shall count toward the 12-hour or the 24-
6 hour limit of Subsection (b).

7 (c) It shall be open for business only during the hours of operation permitted as a principal use
8 for the District in which it is located, if any such hourly limits exist.

9 (d) If located in a District that is subject to neighborhood notification as set forth in Section
10 312, notification pursuant to Section 312 shall be required as follows:

11 (1) Notification shall be required if the vending space, as defined below, would exceed 225
12 square feet.

13 (2) Notification shall be required if any portion of the vending space would be located within
14 50 feet of an RH, RM, RED or RTO District. Distances to RH, RM, RED and RTO Districts shall be
15 measured from the extreme perimeter of any vending space to the nearest property line of any parcel
16 which is partially or wholly so zoned.

17 (3) For purposes of this Section "Vending Space" shall be defined as the entire area within a
18 single rectangular perimeter formed by extending lines around the extreme limits of all carts, vehicles,
19 tables, chairs, or other equipment associated with all intermittent activities located on the parcel.

20 (4) Notwithstanding Subsections (d)(1) and (2) above, and in order to eliminate redundant
21 notification, notification shall not be required for the resumption of an intermittent activity or the
22 extension of time for an intermittent activity when all of the following criteria are met: (A) an
23 intermittent activity is currently authorized on the property or has been authorized on the property
24 within the 12 months immediately preceding the filing of an application for resumption or extension;
25 (B) the existing or recent intermittent activity lawfully exceeds or exceeded the thresholds of

1 Subsections (d)(1) and/or (2), above, and was the subject of neighborhood notice under Section 312 at
2 the time of its establishment; and (C) the intermittent activity would not further exceed the thresholds of
3 Subsections (d)(1) and/or (2), above.

4 **SEC. 212. - ADDITIONAL REQUIREMENTS FOR USES IN CERTAIN C AND M**
5 **DISTRICTS.**

6 In the following C and M Districts, the permitted uses indicated in Sections 215 through
7 227 shall be subject to the additional requirements contained in this Section 212.

8 (a) In C-1 and C-2 Districts, all permitted uses, and all storage, servicing, fabricating,
9 processing or repair uses accessory thereto, shall be conducted within enclosed buildings,
10 with the exceptions of:

11 ~~_____ (1) Those uses indicated by an asterisk (*) in the column for the district, and with the~~
12 ~~exception, also, of the following accessory uses where permitted:~~

13 ~~(12) Accessory off-street parking and loading ~~area~~ areas where permitted;~~

14 ~~(23) Accessory outdoor dining areas where permitted;~~

15 ~~(34) Accessory recreation areas where permitted; and,~~

16 ~~(5) Mobile Food Facilities as defined in Section 102.31.~~

17 (b) In C-1, C-3-O, C-3-R and C-3-G Districts, no permitted use shall include an
18 establishment of the "drive-in" type, serving customers waiting in parked motor vehicles, with
19 the exception of automobile service stations and automobile washes where permitted.

20 (c) In the C-3-R District, along any block frontage that is entirely within such district or
21 partly in such district and partly in the C-3-O District, where such block frontage faces a street
22 40 feet or more in width, the following requirements shall apply to assure continuity of retail
23 and consumer service uses:

24 (1) Only those permitted uses listed in Sections 218 and 227 shall be located facing
25 such street in the ground story of any building. At least 1/2 the total width of any new or

1 reconstructed building, parallel to and facing such street, shall be devoted at the ground story
2 to entrances, show windows or other displays of such uses.

3 (2) All other permitted uses shall be located either on stories above or below the
4 ground story or at a distance of not less than 20 feet behind the front of the building at the
5 ground story. No more than 1/3 the width of any lot, parallel to and facing such street, shall be
6 devoted to entrances to such other permitted uses.

7 (d) No use listed as permitted in any C District or M-1 District shall include any use that
8 is hazardous, noxious or offensive for reasons described in Section 202(c) of this Code.

9 (e) In C-3 Districts, all demolitions of residential buildings and all conversions to
10 nonresidential use of residential uses above the ground floor shall be permitted only if
11 authorized as a conditional use under Section 303 of this Code, unless the Superintendent of
12 the Bureau of Building Inspection or the Chief of the Bureau of Fire Prevention and Public
13 Safety determines that the building is unsafe or dangerous and that demolition is the only
14 feasible means to secure the public safety. When considering whether to grant a conditional
15 use permit for the demolition or conversion, in lieu of the criteria set forth in Planning Code
16 Section 303, consideration shall be given to the adverse impact on the public health, safety
17 and general welfare of the loss of housing stock in the district and to any unreasonable
18 hardship to the applicant if the permit is denied.

19 Section 4. The San Francisco Planning Code is hereby amended by amending Section
20 790.91 and 790.93 to read as follows:

21 **SEC. 790.91. - RESTAURANT, SMALL SELF-SERVICE.**

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

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

1 (2) A limited menu of ready-to-eat food prepared in advance of customer orders, or
2 food which is able to be quickly prepared for consumption on or off the premises;

3 (3) Food served in disposable wrappers or containers;

4 (4) Food is ordered and served at customer service counter;

5 (5) Food is paid for prior to consumption;

6 (6) Public food service area, including queuing areas and service counters without
7 fixed seats, which counters are designed specifically for the sale and distribution of food and
8 beverages;

9 (7) Food available upon a short waiting time.

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

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

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

24 (1) All debris boxes shall be kept in enclosed structures.

1 (2) The operator shall be responsible for cleaning the sidewalk within a one-block
2 radius daily to maintain the sidewalk free of paper or other litter during its business hours, in
3 accordance with Article 1, Section 34 of the San Francisco Police Code.

4 (3) Noise and odors shall be contained within the premises so as not to be a nuisance
5 to nearby residents or neighbors.

6 (d) It shall not be required to operate within an enclosed building pursuant to Section
7 703.2(b)(1) so long as it is also a Mobile Food Facility as defined in Section 102.31. Any associated
8 outdoor seating and/or dining area is subject to regulation as an Outdoor Activity Area as set forth
9 elsewhere in this Code.

10 **SEC. 790.93. - SPECIALTY FOOD, SELF-SERVICE.**

11 (a) A retail use whose primary function is to prepare and provide ready-to-eat specialty
12 foods to a high volume of customers who carry out the food for off-premises consumption.
13 Such use exhibits each of the following characteristics: (1) Contains a service counter
14 designed specifically for the sale and distribution of food that has been prepared on site; (2)
15 Food is paid for prior to consumption; (3) Typically open for retail sales on weekdays during
16 daytime hours; and (4) May contain no more than 10 seats including sidewalk seating. It often
17 includes wholesaling, manufacturing, or processing of foods, goods, or commodities on the
18 premises as an accessory use as set forth in Section 703.2(b)(1)(C)(v).

19 (b) It includes, but is not limited to, specialty foods provided by bakeries,
20 delicatessens, and confectioneries meeting each of the above characteristics, but it is distinct
21 from small a self-service restaurant use as defined in Section 790.91, a large fast-food
22 restaurant use as defined in Section 790.90 or a retail coffee store as defined in 790.102(n). It
23 does not include general or specialty grocery stores with accessory take-out food activity as
24 described in Section 703.2(b)(1)(C) or retail uses which sell prepackaged or bulk ready-to-eat-
25 foods with no on-site food preparation area.

1 (c) It shall not provide on-site beer and/or wine sales for consumption on the premises,
2 but may provide beer and/or wine sales for consumption off the premises with a California
3 Alcoholic Beverage Control Board License type 20 (off-sale beer and wine) within the
4 accessory use limits as set forth in Section 703.2(b)(1)(C)(vi).

5 (d) It shall not be required to operate within an enclosed building pursuant to Section
6 703.2(b)(1) so long as it is also a Mobile Food Facility as defined in Section 102.31. Any associated
7 outdoor seating and/or dining area is subject to regulation as an Outdoor Activity Area as set forth
8 elsewhere in this Code.

9 Section 5. The San Francisco Planning Code is hereby amended by amending Section
10 890.90 to read as follows:

11 **SEC. 890.90. - RESTAURANT, FAST-FOOD (SMALL).**

12 (a) A retail eating or eating and drinking use which provides quick food service for
13 consumption on and off the premises and which exhibits the following characteristics:

14 (1) Contains fewer than 50 seats and less than 1,500 square feet of gross floor area;

15 (2) A limited menu of ready-to-eat food prepared in advance of customer orders, or
16 food which is able to be quickly prepared for consumption on or off the premises;

17 (3) Food served in disposable wrappers or containers;

18 (4) Food is ordered and served at customer service counter;

19 (5) Food is paid for prior to consumption;

20 (6) Food available upon a short waiting time.

21 It includes but is not limited to delicatessens, ice cream and cookie stores, sandwich
22 shops, and bakeries. It does not apply to retail general or specialty grocery or confectionery
23 stores. When a fast-food restaurant operates within and in conjunction with another retail use,
24 such as a retail grocery store, the area of the fast-food restaurant shall be measured to
25

1 include the area devoted to food preparation and service, seating and separate public food
2 service counters excluding fish, poultry and meat counters.

3 (b) It may provide on-site beer and/or wine sales for drinking on the premises (with
4 ABC licenses 40 or 60). If it serves liquor for drinking on the premises (with ABC licenses 47
5 or 48), or does not admit minors (with ABC licenses 42 or 61), then it shall also be considered
6 a bar, as defined in Section 890.22 of this Code.

7 (c) It shall not be required to operate within an enclosed building pursuant to Section
8 803.2(b)(1) so long as it is also a Mobile Food Facility as defined in Section 102.31. Any associated
9 outdoor seating and/or dining area is subject to regulation as an Outdoor Activity Area as set forth
10 elsewhere in this Code.

11 (~~e~~d) It shall be conducted in accordance with the following conditions:

12 (1) All debris boxes shall be kept in enclosed structures.

13 (2) The operator shall be responsible for cleaning the sidewalk within a one-block
14 radius daily to maintain the sidewalk free of paper or other litter during its business hours, in
15 accordance with Article 1, Section 34 of the San Francisco Police Code.

16 (3) Noise and odors shall be contained within the premises so as not to be a nuisance
17 to nearby residents or neighbors.

18
19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21 By: _____
22 John D. Malamut
23 Deputy City Attorney
24
25

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EXHIBIT C

MEMORANDUM

TO: Planning Commissioners
FROM: Ken Rich, OEWD
DATE: October 27, 2010
RE: Mobile Food Facility Legislation

This memo will serve as additional background and information for the Planning Commission in reference to the Mobile Food Facility legislation which is before the Commission on November 4, 2010.

Background:

OEWD and the Small Business Commission have been working closely with Supervisor Dufty's Office and the Planning Department to streamline the way the City permits and regulates mobile food facilities (i.e. food carts and food trucks).

There has been an explosion in the popularity of food trucks and food carts in San Francisco and around the country. Both Supervisor Dufty's office and OEWD staff view these as an important opportunity for small entrepreneurs to get established in a creative and positive line of business with comparatively low barriers to entry.

However, the regulations governing these types of businesses in the City are currently somewhat byzantine and hard to understand, and the fees quite high, with the result that we have many carts and trucks operating illegally and others just staying away from San Francisco as a place to do business.

In addition to working with Supervisor Dufty's office and the Planning Department on the piece of legislation before you, OEWD has been working with the Supervisor's Office on a companion piece of legislation streamlining the permitting process on public right-of-way (described below.) Beyond that OEWD is also seeking to create a program that will empower low- and moderate-income people, through a training curriculum and loan program, to launch mobile food vending microenterprises. Community stakeholders in Chinatown and the Fillmore have expressed interest in this type of program, and we may have resources to implement pilot programs in these neighborhoods.

Companion Legislation:

Supervisor Dufty has also introduced a companion piece of legislation, which would amend the Public Works Code to establish new procedures for regulating mobile food vendors on public right-of-way. This draft legislation is expected to be before the City Operations Committee of the Board of Supervisors at the same time as Planning Code amendments now before you.

Currently street and sidewalk space for mobile vendors is managed by the Police Department, with the Health and Fire Departments also required to issue permits. A key feature of the Police Code is a prohibition against a vendor selling “like food” within 600 feet of another vendor or bricks and mortar establishment. There is no established and clear process for defining like food or mediating these issues. The current Police Code procedure requires a hearing for every permit issuance and includes fees as high as \$9,500 in the startup year.

The draft legislation would move permitting authority for mobile food facilities on public streets and sidewalks from the Police Department to the Department of Public Works (DPW). Vendors would apply to DPW for each specific location where they wished to operate a food cart or food truck. As part of the application process, mailed notice would be provided to all businesses within a 300-foot radius of the proposed vending location. A business within that radius would have 30 days to file a protest with DPW; if one or more protests were received, DPW would hold a hearing at which issues of physical obstruction or unfair competition could be discussed and resolved. If no protest is received, DPW would issue a permit, provided the applicant shows evidence of a valid annual health and fire inspection. No permits would be issued adjacent to residential-only zoning districts or within 1,500 feet of a public school during school hours. Permit fees under the new legislation would be substantially lower than currently charged under the Police Code.

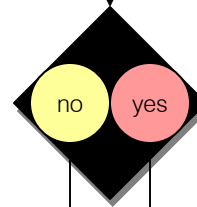
I will be available at the hearing on November 4, or in advance by telephone (415-572-7244) or email (ken.rich@sfgov.org).

EXHIBIT D

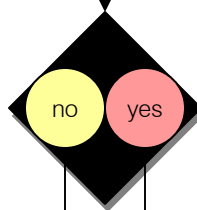
Application of proposed controls to an application for a new Mobile Food Facility

Proposed MFF

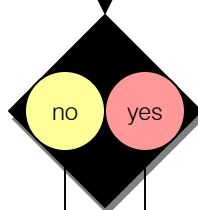
Is a building involved; or Will it operate beyond principally permitted hours; or Is it on-premises in excess of:
(a) 6 days/week for up to 12 hours/day, or
(b) 3 days/week for up to 24 hours/day?



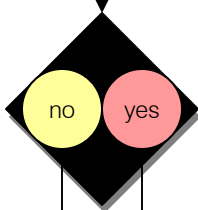
Is the property zoned RH, RM, RED, or RTO?



Is the zoning district subject to the notification requirements of Section 312?



Does the MFF involve more than 225 square feet; or is the MFF located within 50' of an R District?



Administrative Review/Approval

Administrative Review / Neighborhood Notice

Subject to Existing Regulations
C, M, PDR Districts: generally permitted
NC, MU Districts: various controls & notice requirements
R Districts: not permitted

Intermittent Use

Permanent Use