



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Change

HEARING DATE: DECEMBER 2, 2010

*Project Name:* Van Ness Avenue SUD "Entertainment Uses"  
*Case Number:* 2010.0965T  
*Initiated by:* Supervisor Alioto-Pier (BOS File No. 10-1091)  
*Initiated:* August 10, 2010  
*Staff Contact:* Tara Sullivan, Legislative Affairs  
tara.sullivan@sfgov.org, 415-558-6257  
*Reviewed by:* David Lindsay, Team Leader, NW Quadrant  
david.lindsay@sfgov.org, 415-558-6393  
*90-day Deadline:* December 2, 2010  
  
*Recommendation:* **Approval with Modifications**

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### PLANNING CODE AMENDMENT

The proposed Ordinance introduced by Supervisor Alioto-Pier would amend Section 243 (Van Ness Avenue Special Use District) to require Conditional Use Authorization for "Other Entertainment Uses".

The Department is recommending an addition to the proposed Ordinance – that Section 209.8 which regulates commercial uses in RC-3 and RC-4 Districts – be amended so that the use controls of C-2 Districts apply instead of the nearest neighborhood commercial district controls.

#### The Way It Is Now:

The Van Ness Avenue Special Use District ("Van Ness SUD") was created in 1988 and runs the length of Van Ness Avenue from Broadway in the north to Golden Gate Avenue in the south, encompassing the Avenue-fronting parcels. The Van Ness SUD regulates basic floor area, eliminates residential density restrictions, establishes a ration for nonresidential uses in new structures and augments underlying zoning controls on height and bulk, signage and rear yards. If a non-residential use is not specifically called out in the SUD, then the underlying zoning controls apply.

The underlying zoning of the Van Ness SUD is RC-4 (Residential-Commercial Combined District, High Density), and nonresidential uses are regulated in Section 209. Section 209.8 states that the use controls of the nearest Neighborhood Commercial (NC) District shall apply. There are several neighboring NC District's which have different requirements for Other Entertainment Uses.

#### The Way It Would Be:

The proposed Ordinance would require Conditional Use Authorization for all "Other Entertainment Uses", regardless of the underlying zoning controls, throughout the Van Ness SUD.

## REQUIRED COMMISSION ACTION

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

## RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. Specifically, the Department recommends the following modifications:

1. Revise Section 209.8 so that the use controls of the Community Business (C-2) zoning district apply to commercial establishments throughout the RC-3 and RC-4 zoning districts instead of the controls of the nearest NC District.

## BASIS FOR RECOMMENDATION

Other Entertainment Uses are defined in Article 7 (790.38) as:

“A retail use, other than adult entertainment, as defined in Section 790.36 of this Code, which provides live entertainment, including dramatic and musical performances, and/or operates as a dance hall which provides amplified taped music for dancing on the premises, including but not limited to those defined in Section 1060 of the Police Code, and which is adequately soundproofed or insulated so as to confine incidental noise to the premises. Other entertainment also includes a bowling alley, billiard parlor, shooting gallery, skating rink and other commercial recreational activity, but it excludes amusement game arcades, as defined in Section 790.4 of this Code and regulated in Section 1036 of the Police Code.”

Because the Van Ness SUD is silent on the regulation of Other Entertainment uses, the underlying RC-4 controls apply. Those controls in turn refer to the controls of the nearest NC District. There are several nearby NC Districts which dictate the applicable controls for commercial establishments within the Van Ness SUD: Polk Street NCD to the east, an NC-3 Cluster to the southeast, and a pocket of NCT-3 zoning at the southeast perimeter of the SUD. These districts have different controls for Other Entertainment Uses:

District	Other Entertainment Control
Polk Street NCD	Conditional Use Authorization
NCT-3	Permitted as-of-right
NC-3	Permitted as-of-right

The various controls for this use within the Van Ness SUD create an inconsistent regulatory process and does not treat all applications in a similar fashion. Given the relatively uniform character of development within the SUD, one standard control should apply throughout the SUD. A Conditional Use Authorization not only affords a reasonable level of scrutiny given the potential for impacts associated with Other Entertainment uses but is also the dominant *current*

land use control in the SUD. A Conditional Use Authorization will allow the Planning Commission to determine, on a case-by-case basis, whether a particular Other Entertainment Use is necessary and desirable for the neighborhood, and it allows for community input. The Department supports the proposed amendment to require Conditional Use Authorization for Other Entertainment Uses in the Van Ness SUD.

The Department is additionally requesting one modification to the legislation. As discussed above, nonresidential uses the RC Zoning Districts are currently subject to the regulations applicable in the nearest NC District. This creates great variances within the RC districts. Certain high density RC districts are subject to restrictions that are contrary to well established land use patterns in those areas. For example, the Van Ness Avenue corridor, for much of its length, and the North of Market Special Use District are nearest to the Polk Neighborhood Commercial District. For reasons unique to the Polk NCD, all restaurants, i.e. small and large self-service and full-service, are prohibited. By imposing the "nearest NCD" rule for RC districts means that no new restaurants are permitted along Van Ness Avenue or the North of Market Special Use District. These restrictions are excessive and inconsistent with the character and patterns of those districts.

The Department has been studying methods to streamline and regularize the use controls in the RC Districts and concludes that using the C-2 zoning controls will create certainty and uniformity in these Districts. This is further evidenced by the City's experience with the previous zoning controls for commercial establishments in the RC Districts. Prior to December 2008 all RC Districts were subject to C-2 zoning controls – this was inadvertently amended in BOS File No. 08-1260. C-2 controls are more appropriate for the RC Districts, as they are more commercial in nature than NC Districts, which tend to be smaller-scale and neighborhood oriented. Therefore, the Department requests that Section 209.8 be amended to have all RC districts refer to Commercial zoning controls.

In summary, the Department supports the proposed legislation with the single modification discussed above.

## **ENVIRONMENTAL REVIEW**

The proposed Planning Code amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

## **PUBLIC COMMENT**

As of the date of this report, the Planning Department has received no correspondence from the public in support of or opposition to the proposal.

<b>RECOMMENDATION:</b> <b>Recommendation of Approval with Modifications</b>
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### **Attachments:**

- Exhibit A:        Draft Planning Commission Resolution
- Exhibit B:        Board of Supervisors Ordinance (BOS File No. 10-1091)



# SAN FRANCISCO PLANNING DEPARTMENT

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## Draft Planning Commission Resolution No.

### Planning Code Text Changes

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*90-day Deadline:* December 2, 2010  
  
*Recommendation:* **Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS AN ORDINANCE THAT WOULD AMEND THE PLANNING CODE SECTION 243 TO REQUIRE A CONDITIONAL USE AUTHORIZATION FOR "OTHER ENTERTAINMENT" USES IN THE VAN NESS AVENUE SPECIAL USE DISTRICT; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS AND PLANNING CODE SECTION 101.1 FINDINGS.

### PREAMBLE

Whereas, on August 10, 2010, Supervisor Alioto-Pier introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 10-1091; and

Whereas, the proposed Ordinance would amend Planning Code Section 243 to require a Conditional Use Authorization for "Other Entertainment" uses in the Van Ness Avenue Special Use District; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing to consider the proposed Ordinance on December 2, 2010; and

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c); and

WHEREAS, the Planning 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 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 Planning Commission has reviewed the proposed Ordinance; and

**MOVED**, that the Planning Commission hereby recommends that the Board of Supervisors *approve with modifications* the proposed ordinance. Specifically, the Department recommends the following modifications:

1. Revise Section 209.8 so that the use controls of the Community Business (C-2) zoning district apply to commercial establishments throughout the RC-3 and RC-4 zoning districts instead of the controls of the nearest NC District.

## 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 Van Ness SUD is silent on the regulation of Other Entertainment uses and the underlying RC-4 controls apply. Those controls in turn refer to the controls of the nearest NC District.
2. There are several nearby NC Districts which dictate the applicable controls for commercial establishments within the Van Ness SUD: Polk Street NCD to the east, an NC-3 Cluster to the southeast, and a pocket of NCT-3 zoning at the southeast perimeter of the SUD. These districts have different controls for Other Entertainment Uses.
3. The various controls for this use within the Van Ness SUD create an inconsistent regulatory process and do not treat all applications in a similar fashion. Given the relatively uniform character of development within the Van Ness SUD, one standard control should apply throughout.
4. A Conditional Use Authorization not only affords a reasonable level of scrutiny given the potential for impacts associated with Other Entertainment uses but is also the dominant *current* land use control in the SUD.
5. A Conditional Use Authorization will allow the Planning Commission to determine, on a case-by-case basis, whether a particular Other Entertainment Use is necessary and desirable for the neighborhood, and it allows for community input. The Department supports the proposed amendment.
6. The Commission is additionally requesting one modification to the legislation. Nonresidential uses the RC Zoning Districts (which is what the underlying parcels in the Van Ness SUD are zoned) are currently subject to the regulations applicable in the nearest NC District. This creates great variances

within the RC districts. Certain high density RC districts are subject to restrictions that are contrary to well established land use patterns in those areas. For example, the Van Ness Avenue corridor, for much of its length, and the North of Market Special Use District are nearest to the Polk Neighborhood Commercial District. For reasons unique to the Polk NCD, all restaurants, i.e. small and large self-service and full-service, are prohibited. By imposing the "nearest NCD" rule for RC districts means that no new restaurants are permitted along Van Ness Avenue or the North of Market Special Use District.

7. The Commission has been studying methods to streamline and regularize the use controls in the RC Districts and concludes that using the C-2 zoning controls will create certainty and uniformity in these Districts. This is further evidenced by the City's experience with the previous zoning controls for commercial establishments in the RC Districts. Prior to December 2008 all RC Districts were subject to C-2 zoning controls – this was inadvertently amended in BOS File No. 08-1260. C-2 controls are more appropriate for the RC Districts, as they are more commercial in nature than NC Districts, which tend to be smaller-scale and neighborhood oriented. Therefore, the Department requests that Section 209.8 be amended to have all RC districts refer to Commercial zoning controls.
8. Therefore, the Commission recommends *approval with modifications of the proposed Ordinance*.
9. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

#### **I. COMMERCE & INDUSTRY ELEMENT**

THE COMMERCE & INDUSTRY ELEMENT SETS FORTH OBJECTIVES AND POLICES THAT ADDRESS THE BROAD RANGE OF ECONOMIC ACTIVITIES, FACILITIES AND SUPPORT SYSTEMS THAT CONSTITUTE SAN FRANCISCO'S EMPLOYMENT AND SERVICE BASE. THE PLAN SERVES AS A COMPREHENSIVE GUIDE FOR BOTH THE PUBLIC AND PRIVATE SECTORS WHEN MAKING DECISIONS RELATED TO ECONOMIC GROWTH AND CHANGE.

#### **GOALS**

*The objectives and policies are based on the premise that economic development activities in San Francisco must be designed to achieve three overall goals: 1) Economic Vitality - the first goal is to maintain and expand a healthy, vital and diverse economy which will provide jobs essential to personal well-being and revenues to pay for the services essential to the quality of life in the city; 2) Social Equity - the second goal is to assure that all segments of the San Francisco labor force benefit from economic growth. This will require that particular attention be given to reducing the level of unemployment, particularly among the chronically unemployed and those excluded from full participation by race, language or lack of formal occupational training; and 3) Environmental Quality - the third goal is to maintain and enhance the environment. San Francisco's unique and attractive environment is one of the principal reasons San Francisco is a desirable place for residents to live, businesses to locate, and tourists to visit. The pursuit of employment opportunities and economic expansion must not be at the expense of the environment appreciated by all.*

**OBJECTIVE 1**

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

**POLICY 1.3**

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan

**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.

**POLICY 6.8**

Preserve historically and/or architecturally important buildings or groups of buildings in neighborhood commercial districts.

10. The proposed replacement project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The 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 proposed Ordinance would help neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses by applying consistent zoning use controls throughout the RC Districts and the Van Ness SUD.*

- B) The 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 impact existing housing and will help preserve neighborhood character by requiring a Conditional Use Authorization for Other Entertainment Uses*

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

*The proposed Ordinance will not impact the supply of affordable housing.*

- D) The 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) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

*The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.*

- F) The 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 is unaffected by the proposed amendments.*

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

*The proposed Ordinance will not impact historic buildings.*

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

*The proposed Ordinance will not impact the City's parks and open space.*

I hereby certify that the foregoing Resolution was ADOPTED by the San Francisco Planning Commission on December 2, 2010.

Linda D. Avery  
Commission Secretary

AYES:

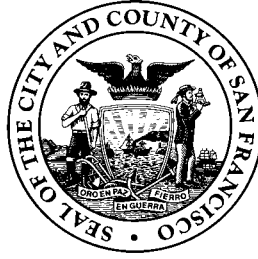
NOES:

ABSENT:

ADOPTED: December 2, 2010



**BOARD of SUPERVISORS**



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**Dr. Carlton B. Goodlett Place, Room 244**  
**San Francisco 94102-4689**  
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September 3, 2010

Linda Avery  
Planning Commission  
1660 Mission Street, 5<sup>th</sup> Floor  
San Francisco, CA 94103

Dear Commissioners:

On August 10, 2010, Supervisor Alioto-Pier introduced the following proposed legislation:

**File No. 101091**

Ordinance amending Section 243 of the San Francisco Planning Code to require conditional use authorization for "Other Entertainment Uses" in the Van Ness Avenue Special Use District; adopting findings, including findings under Section 302 of the Planning Code, environmental findings and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script that reads "Alisa Somera".

By: Alisa Somera, Committee Clerk  
Land Use & Economic Development Committee

Attachment

- c: John Rahaim, Director of Planning
- AnMarie Rodgers, Legislative Affairs
- Tara Sullivan, Legislative Affairs
- Brett Bollinger, Major Environmental Analysis
- Kate Stacy, Deputy City Attorney

1 [Planning Code—Requiring Conditional Use Authorization for "Other Entertainment Uses" in  
2 the Van Ness Avenue Special Use District.]

3 **Ordinance amending Section 243 of the San Francisco Planning Code to require**  
4 **conditional use authorization for "Other Entertainment Uses" in the Van Ness Avenue**  
5 **Special Use District; adopting findings, including findings under Section 302 of the**  
6 **Planning Code, environmental findings and findings of consistency with the General**  
7 **Plan and the Priority Policies of Planning Code Section 101.1.**

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

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

13 Section 1. Findings.

14 A. On \_\_\_\_\_ at a duly noticed public hearing, the Planning Commission  
15 in Motion No. \_\_\_\_\_ found that the proposed Planning Code amendments were  
16 consistent with the City's General Plan and with Planning Code Section 101.1(b). In addition,  
17 the Planning Commission, in Motion No. \_\_\_\_\_, recommended that the Board of  
18 Supervisors adopt the amendments. Copies of said Motion are on file with the Clerk of the  
19 Board of Supervisors in File No. \_\_\_\_\_ and are incorporated herein by reference.  
20 The Board finds that the proposed Planning Code amendments are consistent with the City's  
21 General Plan and with Planning Code Section 101.1(b) for the reasons set forth in said  
22 Motion.

23 B. Pursuant to Planning Code Section 302, the Board finds that the proposed  
24 Planning Code Amendments will serve the public necessity, convenience and welfare for the  
25

1 reasons set forth in Planning Commission Motion No. \_\_\_\_\_, which reasons are  
2 incorporated herein by reference as though fully set forth.

3 C. Environmental Findings. The Planning Department has determined that the  
4 actions contemplated in this Ordinance are in compliance with the California Environmental  
5 Quality Act (California Public Resources Code section 21000 et seq.). Said determination is  
6 on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and is  
7 incorporated herein by reference.

8  
9 Section 2. The San Francisco Planning Code is hereby amended by amending  
10 Section 243, to read as follows:

11 **SEC. 243. VAN NESS SPECIAL USE DISTRICT.**

12 (a) General. A Special Use District entitled the Van Ness Special Use District, the  
13 boundaries of which are shown on Sectional Map No. 2SU of the Zoning Map, is hereby  
14 established for the purposes set forth below.

15 (b) Purposes. In order to implement the objectives and policies of the Van Ness  
16 Avenue Plan, a part of the Master Plan, which includes (i) creation of a mix of residential and  
17 commercial uses on the boulevard, (ii) preservation and enhancement of the pedestrian  
18 environment, (iii) encouragement of the retention and appropriate alteration of architecturally  
19 and historically significant and contributory buildings, (iv) conservation of the existing housing  
20 stock, and (v) enhancement of the visual and urban design quality of the street, the following  
21 controls are imposed in the Van Ness Special Use District.

22 (c) Controls. All provisions of the City Planning Code applicable to an RC-4 District  
23 shall apply except as otherwise provided in this Section.

24 (1) Basic Floor Area Ratio. The basic floor area ratio limit shall be 7.0 to 1 in the  
25 130-foot height district and 4.5:1 in the 80-foot height district. These limits shall apply to

1 dwellings notwithstanding Section 124(b) of this Code, but shall not apply to floor space used  
2 for nonaccessory off-street parking and driveways and maneuvering areas incidental thereto  
3 provided such parking is located entirely below curb level at the centerline of the building  
4 containing such parking and replaces parking spaces displaced by the building or buildings.  
5 For definitions of floor area ratio and gross floor area, see Sections 102.11 and 102.9,  
6 respectively. The provisions allowing a floor area premium set forth in Section 125(a) shall not  
7 apply in the Van Ness Special Use District.

8 (2) Housing Density. The restrictions on density set forth in Sections 207, 207.1,  
9 208, 209.1 and 209.2 of this Code shall not apply.

10 (3) Height and Bulk Restrictions. See Height and Bulk Map No. 2H. See Section  
11 270 of this Code for bulk limits.

12 (4) Awnings, canopies and marquees, as defined in Sections 790.20, 790.26 and  
13 790.58 of this Code, and further regulated by the Building Code and Sections 243(c)(5), 136.2  
14 and 607.3 of this Code, are permitted.

15 (5) Signs.

16 (A) Signs located within the Van Ness Special Use District, with the exception of the  
17 Civic Center Special Sign District as described in Section 608.3 of this Code and as shown in  
18 Sectional Map SSD, shall be regulated as provided in Article 6, including Section 607.3 which  
19 governs signs located in the Van Ness Special Sign District.

20 (B) Signs on structures designated as landmarks under the provisions of Section  
21 1004 shall be regulated as provided in Section 607.3(d).

22 (6) Rear Yards. The requirements of this Code applicable to rear yards may be  
23 modified or waived by the Zoning Administrator pursuant to Section 307(g) if all of the  
24 following conditions are met:  
25

1 (A) The interior block open space formed by the rear yards of abutting properties will  
2 not be adversely affected; and

3 (B) A comparable amount of usable open space is provided elsewhere on the lot or  
4 within the development where it is more accessible to residents; and

5 (C) The access of light and air to abutting properties will not be significantly  
6 impeded.

7 This provision shall be administered pursuant to the procedures which are applicable to  
8 variances, as set forth in Sections 306.1 through 306.5 and 308.2 of this Code.

9 (7) Required Setbacks. Setbacks for buildings exceeding a height of 40 feet shall be  
10 regulated as provided in Section 253.2 of this Code.

11 (8) Limitation of Nonresidential Uses.

12 (A) Residential Uses; Ratio Established. In newly constructed structures,  
13 nonresidential uses shall only be permitted if the ratio between the amount of net additional  
14 occupied floor area for residential uses, as defined in this paragraph below, to the amount of  
15 occupied floor area for nonresidential uses in excess of the occupied floor area of structures  
16 existing on the site at the time the project is approved is 3 to 1 or greater. In additions to  
17 existing structures which exceed 20 percent of the gross floor area of the existing structure,  
18 nonresidential uses shall be permitted in the addition in excess of 20 percent only if the ratio  
19 between the amount of occupied floor area for residential use, as defined in this paragraph  
20 below, to the area of occupied floor area for nonresidential use is 3 to 1 or greater. This  
21 residential use ratio shall not apply to development sites in the Van Ness Special Use District  
22 which have less than 60 feet of street frontage on Van Ness Avenue and have no street  
23 frontage other than the Van Ness Avenue frontage. For purposes of this Section,  
24 "nonresidential uses" shall mean those uses described in Sections 209.2(d) and (e) (hotel,  
25 inn, hostel), 209.3(a) (hospital, medical center or other medical institution with in-patient care

1 facilities), 209.4 (community facilities), 209.6 (public facilities and utilities), 209.7 (vehicle  
2 storage and access) and 209.8 (commercial establishments); in the Automotive Special Use  
3 District nonresidential uses include automotive uses as described in Section 237; "residential  
4 use" shall mean those uses described in Sections 209.1 and 209.2(a), (b) and (c) (dwelling  
5 units and group housing).

6 (B) Reduction of Ratio of Residential Uses for Affordable Housing. The City  
7 Planning Commission may modify the Van Ness Special Use District residential to  
8 nonresidential use ratio between Golden Gate Avenue and California Street as a conditional  
9 use in one of the following ways:

10 (i) In-Lieu Fee. By conditional use, the developer may elect to fulfill the obligation to  
11 build housing by paying an in-lieu fee to the Affordable Housing Fund as provided in Section  
12 313 of this Code. No more than a 50 percent reduction of the required housing for a specific  
13 project can be fulfilled by paying an in-lieu fee. Use of these funds shall provide affordable  
14 housing within 2,000 feet of the Van Ness Special Use District. The in-lieu fee shall be  
15 determined by the following formula:

16 (1)

$$\frac{((\text{Lot Area} \times \text{FAR}) / 4) \times 3}{\text{Residential Requirement}} = \text{SQ. FT.}$$

20 (2)

$$\frac{\text{Residential SQ. FT. Requirement}}{\text{Residential Developed SQ. FT.}} = \text{LOSS}$$

24 (3)

$$\text{LOSS} \times \$15 = \text{In-Lieu Fee}$$

(ii) Providing Affordable Housing. By conditional use, the developer may reduce up to 50 percent of the required amount of on-site housing by maintaining a portion of that housing as permanently affordable for the life of the project. Affordable units shall be managed by a nonprofit housing agency through a duly executed agreement between the project sponsor, the nonprofit agency and the Planning Department. The mix of affordable units retained in the project shall conform to the overall dwelling unit size mix of the project. The portion of retained residential which shall be affordable will be determined by calculating the number of market rate units which could be subsidized by the amount of "in-lieu fee" calculated in Paragraph (i) above. The number of square feet of affordable housing shall be calculated in the following manner:

(1)

$$\frac{\text{In-Lieu Fee}}{\$30/\text{square foot subsidy}} = \frac{\text{Square Feet of Affordable Housing Retained in the Project}}$$

(iii) Annual Reporting, Evaluation and Adjustments to Affordability and Fee Calculations. The Department shall report annually to the Planning Commission on the activity and utilization of Section 243(c)(8)(B). Based on an evaluation of this report, the Planning Commission may initiate a modification or deletion of Section 243(c)(8)(B).

The dollar amounts used in the calculation for Paragraphs (i) and (ii) of this Subsection shall be subject to annual adjustments in accord with Section 313.6(1) of this Code. Affordability shall be defined by rents or sale prices affordable by households with no more than 80 percent of median income standards developed by HUD.

(iv) If the Commission finds that taking into consideration projects constructed since the effective date of the Van Ness Special Use District and the housing development potential

1 remaining in the District the overall objective of adding a substantial increment of new housing  
2 on Van Ness Avenue will not be significantly compromised, the Commission may by  
3 conditional use modify the 3:1 housing ratio or may modify the rules regarding the timing and  
4 location of linked projects if in addition to Section 303(c) standards of this Code it finds that:

5 (1) The project is to provide space for expansion of an established business from an  
6 adjacent site (for this purpose two sites separated by an alley shall be deemed to be adjacent)  
7 or,

8 (2) The project is to provide space for an institutional, hotel, medical, cultural or  
9 social service use meeting an important public need which cannot reasonably be met  
10 elsewhere in the area, and

11 (3) Housing cannot reasonably be included in the project referred to in (1) and (2)  
12 above.

13 The Commission shall consider the feasibility of requiring the project to be constructed  
14 in such a manner that it can support the addition of housing at some later time.

15 (C) Off-Site Provision of Required Residential Space. For the purpose of calculating  
16 the 3 to 1 ratio between residential and nonresidential use, two or more projects for new  
17 construction within the Van Ness Special Use District may be considered and approved  
18 together as linked projects. The requirements of Paragraph (A) above may be satisfied if the  
19 aggregate amount of occupied floor area for residential use in two or more linked projects is at  
20 least three times greater than the aggregate amount of occupied floor area for nonresidential  
21 use.

22 (i) Those building permit applicants who wish to link two or more projects for the  
23 purpose of meeting the 3 to 1 residential to nonresidential ratio shall file with the Department  
24 of City Planning a statement of intent identifying the applications covering the projects that are  
25 to be considered and approved together;



1 (ii) When the Department of City Planning approves an application for a project  
2 containing only nonresidential use and the project is linked to one or more other projects  
3 pursuant to the statement of intent filed with the Department, it shall include as a condition of  
4 approval a requirement prohibiting the project sponsor from commencing any work on the site  
5 until the Zoning Administrator issues a written determination that such work may proceed. The  
6 Zoning Administrator shall not issue such a determination until those permits authorizing the  
7 projects containing residential use have been issued and foundations have been completed at  
8 each such site;

9 (iii) If a permit for a project containing nonresidential use expires because of delays  
10 in the completion of foundations for linked projects containing residential uses, new permits  
11 may be approved for the nonresidential project within three years of such expiration without  
12 regard to the 3 to 1 residential ratio requirement if a Temporary Certificate of Occupancy or a  
13 Permit of Occupancy has been issued for each project containing residential use;

14 (iv) No building or portion of a building approved as a linked project that contains  
15 residential use required to meet the 3 to 1 residential to nonresidential ratio requirement shall  
16 be used for any nonresidential purposes; provided, however, that this restriction shall no  
17 longer apply if 50 percent or more of the non-residential occupied floor area in the linked  
18 projects has been converted to residential use, or has been demolished, or has been  
19 destroyed by fire or other act of God;

20 (v) The Zoning Administrator shall impose as a condition of approval of a permit  
21 authorizing the residential uses of linked projects the requirement that the owner record in the  
22 land records of the property a notice of restrictions, approved as to form by the Zoning  
23 Administrator, placed on the use of the property by this Section.

24 (D) Nonconforming Uses. A use which existed lawfully at the effective date of this  
25 Section and which fails to conform to the use limitation of Section 243(c)(8)(A) above, shall be

1 considered a nonconforming use and subject to the provisions of Sections 180 through 188 of  
2 this Code, including the provisions of Section 182 regarding change of use, except as follows:

3 (i) In calculating the cost of structural alterations pursuant to Section 181(b)(4), the  
4 cost of reinforcing the building to meet the standards for seismic loads and forces of the 1975  
5 Building Code shall not be included; and

6 (ii) Notwithstanding the provisions of Section 181(b), the structure occupied by the  
7 nonconforming use may be enlarged by an amount equal to 20 percent of the gross floor area  
8 of the existing structure.

9 (E) Street Frontages. Street frontages and parking setbacks shall conform to  
10 Section 145.1 of this Code. Ground floor non-residential uses shall have a minimum floor-to-  
11 floor height of 14 feet.

12 (F) Fast Food Uses. A large fast food restaurant as defined in Section 790.90 of this  
13 Code shall be permitted only as a conditional use.

14 A small self-service restaurant, as defined in Section 790.91 of this Code, shall be permitted  
15 only as a conditional use unless such restaurant is a related minor use which is either  
16 necessary to the operation or enjoyment of a lawful principal use or conditional use, or is  
17 appropriate, incidental and subordinate to any such use, in which case it shall be permitted as  
18 an accessory use.

19 (G) Drive-Up Facilities. Drive-up facilities are not permitted. For the purposes of this  
20 Section, "drive-up facilities" shall be defined as structures designed primarily for drive-to or  
21 drive-through trade which provides service to patrons while in private motor vehicles.

22 (H) Demolitions. All demolitions of buildings containing residential use and all  
23 conversions from residential uses to nonresidential uses above the ground floor shall be  
24 permitted only if authorized as a conditional use under Section 303 of this Code, unless the  
25 Superintendent of the Bureau of Building Inspection or the Chief of the Bureau of Fire

1 Prevention and Public Safety determines that the building is unsafe or dangerous and that  
2 demolition is the only feasible means to secure the public safety. When considering whether  
3 to grant a conditional use permit for the demolition or conversion, in lieu of the criteria set forth  
4 in Planning Code Section 303, consideration shall be given to the adverse impact on the  
5 public health, safety and general welfare of the loss of housing stock in the district and to any  
6 unreasonable hardship to the applicant if the permit is denied. The definition of residential use  
7 shall be as set forth in Section 243(c)(8)(A), but shall not include any guest room in a building  
8 classified as a residential hotel subject to the Residential Hotel Unit Conversion and  
9 Demolition Ordinance.

10 A conditional use permit shall not be required if the demolition permit is sought in order  
11 to comply with a court order directing or permitting the owner to demolish a building because it  
12 is unsafe. No person shall be permitted to construct anything on the site of a demolished  
13 building subject to such an order for a period of two years unless (a) the proposal is for at  
14 least the same number and size of dwelling units and guest rooms and the same amount of  
15 nonresidential floor area as that which was demolished or (b) the applicant requests and is  
16 granted an exemption from this requirement on the ground that the applicant has  
17 demonstrated that (1) the need for demolition did not arise because of the deliberate or  
18 unreasonable neglect of the maintenance of the building, or that (2) the restrictions would  
19 cause undue hardship to the property owner or that (3) the restrictions would leave the  
20 property without any substantial remaining market value or reasonable use.

21 (l) Parking. Pursuant to Table 151 in Article 1.5 of this Code, the residential parking  
22 requirement shall be one space for each dwelling unit; provided, however, that the parking  
23 requirement may be reduced to not less than one space for each four dwelling units, if the  
24 Zoning Administrator determines that the reduced parking requirement is sufficient to serve  
25 the reasonably anticipated auto usage by residents and visitors to the project. The procedures

1 and fee for such review shall be the same as those which are applicable to variances, as set  
2 forth in Sections 306.1 through 306.5 and 308.2.

3 (J) Adult Entertainment Enterprises. The uses described in Section 221(k) of this  
4 Code are not permitted.

5 (K) Other Entertainment Uses. Other Entertainment Uses as defined in Section 790.38 of  
6 this Code shall be permitted only as a conditional use under Section 303 of this Code.

7 (9) Reduction of Ground Level Wind Currents.

8 (A) New buildings and additions to existing buildings shall be shaped, or other wind  
9 baffling measures shall be adopted, so that the development will not cause year-round ground  
10 level wind currents to exceed, more than 10 percent of the time, between 7:00 a.m. and 6:00  
11 p.m., the comfort level of 11 m.p.h. equivalent wind speed in areas of pedestrian use and  
12 seven m.p.h. equivalent wind speed in public seating areas. When pre-existing ambient wind  
13 speeds exceed the comfort levels specified above, the building shall be designed to reduce  
14 the ambient wind speeds in efforts to meet the goals of this requirement.

15 (B) An exception to this requirement may be permitted but only if and to the extent  
16 that the project sponsor demonstrates that the building or addition cannot be shaped or wind  
17 baffling measures cannot be adopted without unduly restricting the development potential of  
18 the building site in question.

19 (i) The exception may permit the building or addition to increase the time that the  
20 comfort level is exceeded, but only to the extent necessary to avoid undue restriction of the  
21 development potential of the site.

22 (ii) Notwithstanding the above, no exception shall be allowed and no building or  
23 addition shall be permitted that causes equivalent wind speeds to reach or exceed the hazard  
24 level of 26 m.p.h. for a single hour of the year.

1 (C) For the purposes of this Section, the term "equivalent wind speed" shall mean  
2 an hourly wind speed adjusted to incorporate the effects of gustiness or turbulence on  
3 pedestrians.

4  
5 APPROVED AS TO FORM:  
6 DENNIS J. HERRERA, City Attorney

7  
8 By: \_\_\_\_\_  
9 Marlena G. Byrne  
Deputy City Attorney

## **LEGISLATIVE DIGEST**

[Planning Code—Requiring Conditional Use Authorization for "Other Entertainment Uses" in the Van Ness Avenue Special Use District.]

**Ordinance amending Section 243 of the San Francisco Planning Code to require conditional use authorization for "Other Entertainment Uses" in the Van Ness Avenue Special Use District; adopting findings, including findings under Section 302 of the Planning Code, environmental findings and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.**

### **Existing Law**

The Van Ness Avenue Special Use District (SUD) runs along Van Ness Avenue and is generally bounded by Broadway Street in the north and Golden Gate Street to the south. Its boundaries can be found on Zoning Map SU02 of the City and County of San Francisco. Currently, there are no special requirements for "Other Entertainment Uses," as defined by Planning Code Section 790.38, within this SUD. Section 790.38 generally defines "Other Entertainment Uses" as retail uses, other than adult entertainment, that provide live entertainment, including dramatic and musical performances, and/or operate as a dance hall.

### **Amendments to Current Law**

The proposed legislation would require all new "Other Entertainment Uses", as defined in Planning Code Section 790.38, to obtain a Conditional Use authorization under Planning Code Section 303.