



# SAN FRANCISCO PLANNING DEPARTMENT

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November 18, 2011

Ms. Angela Calvillo, Clerk  
Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

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Suite 400  
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CA 94103-2479

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**Re: Transmittal of Board File No. 110152; Planning Case No. 2011.0172T  
Self-Service Restaurants, Retail Coffee Stores, and Video Stores  
Planning Commission Recommendation: *Approval with modifications***

Dear Ms. Calvillo; Supervisor Wiener; and Supervisor Mirkarimi:

On November 17, 2011, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Mirkarimi and now cosponsored by Supervisor Wiener.

The proposed Ordinance would amend Sections 710, 730, 733A, 733A.1, 790.90, 790.91, and 790.102 of the Planning Code to: (1) increase the maximum use size for Small Self-Service Restaurants in Neighborhood Commercial Districts to that of the non-residential use size limit for the district and eliminate the limit on the number of seats; (2) increase the minimum size for Large Self-Service Restaurants in Neighborhood Commercial Districts to that of the non-residential use size limit for the district; (3) principally permit Small Self-Service Restaurants and Video Stores in Neighborhood Commercial Cluster (NC-1) and Neighborhood Commercial Transit Cluster (NCT-1) Districts; (4) conditionally permit Large Self-Service Restaurants in the Inner Sunset Neighborhood Commercial District; (5) require that mechanical noise and vibration from Self-Service Restaurants be confined to the premises; and (6) remove the prohibition of on-site food preparation and cooking and reheating equipment in Retail Coffee Stores.

The proposal to amend Planning Code Sections 710, 730, 733A, 733A.1, 790.90, 790.91, and 790.102 would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

***At the November 17 hearing, the Commission adopted Resolution Number 18497 with a recommendation of approval with modifications to the Board of Supervisors for the proposed ordinance.***

**Specifically, the Commission recommended that the Board of Supervisors modify Supervisor Mirkarimi's proposed Ordinance [Board File No. 110152] by incorporating the changes proposed by the Planning Commission, which are outlined in the attached draft ordinance identified as Exhibit A, and that the proposed Ordinance be further amended to include provisions that subject the proposed new definitions to Planning Code 312 Notification requirements as well as Formula Retail Controls.**

The Department recommends that the legislative sponsors advise the City Attorney at your earliest convenience if you wish to incorporate any changes recommended by the Commission. One hard-copy is being delivered to the Clerk of the Board for the official record. This electronic copy is our transmittal. Per Ordinance Number 316-10, the Planning Department provides only one hard-copy of this report and provides e-copies to other parties. Additional hardcopies may be provided upon request. Attached are documents relating to the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'AM-Rodgers'.

AnMarie Rodgers  
Manager of Legislative Affairs

cc: Supervisor Ross Mirkarimi and Supervisor Scott Weiner

Attachments [one copy of each of the following]

- Planning Commission Resolution Number 18497
- Exhibit A Draft Ordinance
- Planning Commission Executive Summary



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. 18497 HEARING DATE OCTOBER NOVEMBER 17, 2011

1650 Mission St.  
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*Project Name:* **Amendments relating to the Neighborhood Commercial Districts:  
Self-Service Restaurants, Retail Coffee Stores, and Video Stores**

*Case Number:* 2011.0172T [Board File No. 11-0152]

*Initiated by:* Supervisor Mirkarimi/ Introduced February 8, 2011

*Staff Contact:* Aaron Starr, Legislative Affairs  
aaron.starr@sfgov.org, 415-558-6362

*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395

*Recommendation:* **Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTION SECTIONS 710, 730, 733A, 733A.1, 790.90, 790.91, AND 790.102 OF THE PLANNING CODE TO: (1) INCREASE THE MAXIMUM USE SIZE FOR SMALL SELF-SERVICE RESTAURANTS IN NEIGHBORHOOD COMMERCIAL DISTRICTS TO THAT OF THE NONRESIDENTIAL USE SIZE LIMIT FOR THE DISTRICT AND ELIMINATE THE LIMIT ON THE NUMBER OF SEATS; (2) INCREASE THE MINIMUM SIZE FOR LARGE SELF-SERVICE RESTAURANTS IN NEIGHBORHOOD COMMERCIAL DISTRICTS TO THAT OF THE NON-RESIDENTIAL USE SIZE LIMIT FOR THE DISTRICT; (3) PRINCIPALLY PERMIT SMALL SELF-SERVICE RESTAURANTS AND VIDEO STORES IN NEIGHBORHOOD COMMERCIAL CLUSTER (NC-1) AND NEIGHBORHOOD COMMERCIAL TRANSIT CLUSTER (NCT-1) DISTRICTS; (4) CONDITIONALLY PERMIT LARGE SELF-SERVICE RESTAURANTS IN THE INNER SUNSET NEIGHBORHOOD COMMERCIAL DISTRICT; (5) REQUIRE THAT MECHANICAL NOISE AND VIBRATION FROM SELF-SERVICE RESTAURANTS BE CONFINED TO THE PREMISES; AND (6) REMOVE THE PROHIBITION OF ON-SITE FOOD PREPARATION AND COOKING AND REHEATING EQUIPMENT IN RETAIL COFFEE STORES, AND ADOPT CERTAIN MODIFICATIONS TO THE PROPOSED ORDINANCE TO FURTHER SIMPLIFY EXISTING PLANNING CODE DEFINITIONS AND CONTROLS FOR FOOD AND DRINK ESTABLISHMENTS, ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE PRIORITY POLICIES OF PLANNING CODE SECTION 101.1.

WHEREAS, on February 8, 2011, Supervisors Mirkarimi introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 11-0152 which would amend Sections 710, 730, 733A, 733A.1, 790.90, 790.91, and 790.102 of the Planning Code to: (1) increase the maximum use size for Small Self-Service Restaurants in Neighborhood Commercial Districts to that of the nonresidential use size limit for the district and eliminate the limit on the number of seats; (2) increase the minimum size for Large Self-Service Restaurants in Neighborhood Commercial Districts to that of the non-residential use size limit for the district; (3) principally permit Small Self-Service Restaurants and Video Stores in

Neighborhood Commercial Cluster (NC-1) and Neighborhood Commercial Transit Cluster (NCT-1) Districts; (4) conditionally permit Large Self- Service Restaurants in the Inner Sunset Neighborhood Commercial District; (5) require that mechanical noise and vibration from Self-Service Restaurants be confined to the premises; and (6) remove the prohibition of on-site food preparation and cooking and reheating equipment in Retail Coffee Stores.

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on May 26, 2011; and,

WHEREAS, The Commission continued the item at its May 26, 2011 hearing to October 6, 2011 in order for Supervisor Mirkirimi to conduct more public outreach; and,

WHEREAS, The Commission continued the item at its October 6, 2011 to November 17, 2011 in order for Supervisor Mirkirimi to conduct more public outreach; and,

WHEREAS, The Commission conducted another duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on November 17, 2011; 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, 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 Commission recommends the following modifications:

- Recommend that the Board of Supervisors adopt the changes proposed by the Planning Department, which are outlined in the attached draft ordinance identified as Exhibit A, and that the proposed Ordinance be further amended to include provisions that subject the proposed new definitions to Planning Code 312 Notification requirements as well as Formula Retail Controls.

## **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. A review of Neighborhood Commercial District controls 20 years after being adopted titled "NC@20" recommended that existing restaurant definitions be reevaluated based on changes that have occurred to the Planning Code since those controls were adopted.
2. The existing restaurant definitions were devised to help stop the displacement of neighborhood serving retail uses and the proliferation of large chain fast-food restaurants. Since then, 312 Neighborhood Notification and Formula Retail Controls were added to the Planning Code and more appropriate address these issues and concerns.
3. Existing restaurant definitions are overly prescriptive and restrict how restaurants can operate without a clear land use benefit. Enforcement of these definitions is often difficult and ineffective.
4. Grouping restaurant types by alcohol license type and including operational conditions within the Planning Code is a more effective way to address the land use and quality of life impacts caused by restaurants.
5. Non-Residential Use Size controls that are tailored to individual neighborhoods provide adequate protection from over-sized restaurant uses.
6. Video stores are becoming obsolete due to on-demand video through cable providers and other internet based video delivery systems. Having a separate use category for Video Stores is no longer necessary.
7. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are 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 1**

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

#### **POLICY 1.2**

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

*The changes to the proposed Ordinance by the Planning Commission include minimum and reasonable performance standards for restaurants and bars.*

**OBJECTIVE 3**

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

**POLICY 3.1**

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

*Restaurants tend to employ unskilled and semi-skilled labor. The proposed changes to the restaurant definitions will make it easier to open and operate a restaurant which will attract, retain and expand a commercial use.*

**OBJECTIVE 6**

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

**POLICY 6.2**

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

**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 6.10**

Promote neighborhood commercial revitalization, including community-based and other economic development efforts where feasible.

*The existing controls are too prescriptive and often stifle new or emerging business models. These amendments will help foster small business enterprise and entrepreneurship by allowing more flexibility and creativity in how restaurants are run and operated. Integrating standardized operational conditions into the new eating and drinking definitions will help ensure that there is a balance between new or expanded commercial activity and residential uses in Neighborhood Commercial Districts. The proposed amendments will also help spur commercial revitalization in some neighborhood commercial districts by reducing the barriers for new restaurants to open and existing restaurants to adapt to a changing market place.*

- 8. Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed amendments will encourage neighborhood-serving retail uses and opportunities for employment in or ownership of such businesses in the City by making it easier for new restaurants to open and operate and for existing restaurants to adapt to a changing marketplace.*

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

*The proposed amendments will not have an impact on housing in Neighborhood Commercial Districts. Controls are in place in section 317 of the Planning Code that severely restricts the conversion of housing units to commercial units.*

3. That the City's supply of affordable housing be preserved and enhanced;

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

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

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

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The proposed amendments would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.*

6. That the City 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. Any new construction or alteration associated with a use would be executed in compliance with all applicable construction and safety measures.*

7. That the landmarks and historic buildings be preserved;

*Landmarks and historic buildings would be unaffected by the proposed amendments. Should a proposed use be located within a landmark or historic building, such site would be evaluated under Planning Code provisions and comprehensive Planning Department policies.*

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

*The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments. It is not anticipated that permits would be such that sunlight access, to public or private property, would be adversely impacted.*

**8. Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance as described in this Resolution and in the proposed Ordinance with the modification outlined above.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on November 17, 2011.



Linda D. Avery  
Commission Secretary

AYES: Olague, Miguel, Antonini, Fong, Moore, and Sugaya

NOES:

ABSENT: Borden

ADOPTED: November 17, 2011





# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Change

HEARING DATE: MAY 26, 2011

1650 Mission St.  
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*Project Name:* **Amendments relating to the Neighborhood Commercial Districts (NCD):  
Self-Service Restaurants, Retail Coffee Stores, and Video Stores**

*Case Number:* 2011.0172I [Board File No. 11-0152]

*Initiated by:* Supervisor Mirkarimi/ Introduced February 8, 2011

*Staff Contact:* Aaron Starr, Legislative Affairs  
aaron.starr@sfgov.org, 415-558-6362

*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395

*Recommendation:* **Recommend Approval with Modifications**

### PLANNING CODE AMENDMENT

The proposed Ordinance would amend Sections 710, 730, 733A, 733A.1, 790.90, 790.91, and 790.102 of the Planning Code to: (1) increase the maximum use size for Small Self-Service Restaurants in Neighborhood Commercial Districts to that of the non-residential use size limit for the district and eliminate the limit on the number of seats; (2) increase the minimum size for Large Self-Service Restaurants in Neighborhood Commercial Districts to that of the non-residential use size limit for the district; (3) principally permit Small Self-Service Restaurants and Video Stores in Neighborhood Commercial Cluster (NC-1) and Neighborhood Commercial Transit Cluster (NCT-1) Districts; (4) conditionally permit Large Self-Service Restaurants in the Inner Sunset Neighborhood Commercial District; (5) require that mechanical noise and vibration from Self-Service Restaurants be confined to the premises; and (6) remove the prohibition of on-site food preparation and cooking and reheating equipment in Retail Coffee Stores<sup>1</sup>.

### The Way It Is Now:

#### Use Categories

There are a total of 13 Definitions (7 Neighborhood Commercial / 6 Mixed Use) for line item eating and drinking uses in the Planning Code:

- **Article 7 Definitions:** Small Self-Serve Restaurant (790.91), Large Fast-Food Restaurant (790.90), Full Service Restaurant (790.92), Retail Coffee Shop (790.102n), Accessory Grocery Deli (703.2), Self-Service Specialty Food Stores (790.93) and Bar (790.22).

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<sup>1</sup> **A note to the reader:** throughout this report existing and proposed Planning Code definitions are noted with the use of Capitalized Words instead of within "quotes". This style choice was made in an effort in increase readability and decrease clutter that may have resulted from the large number of such terms throughout the report.

- **Article 8 Definitions:** Bar (890.22), Small Fast-Food Restaurant (890.90), Large Fast-Food Restaurant (890.91), Full Service Restaurant (890.92), Bar (890.22) and Take-Out Food (890.122).

### **Use Size**

- Each Neighborhood Commercial District (NCD) in Article 7 and has a Non-Residential Use Size that is permitted as-of-right. Any Non-Residential Use proposed over that threshold requires Conditional Use (CU) authorization. As-of-right Non-Residential Use Sizes range from 1,999 sq. ft. to 5,999 in Article 7, with the majority being 2,499 sq. ft.
- Small-Self Service Restaurants and Large Fast-Food Restaurants are differentiated by their total square footage and the number of seats. Small Self-Service Restaurants are limited to 1,000 sq. ft. and 50 seats; Large Fast-Food Restaurants are defined as anything above 1,000 sq. ft.

### **Prohibited or Restricted Uses**

- Small Self-Service Restaurants and Video Stores in Neighborhood Commercial Cluster (NC-1) and Neighborhood Commercial Transit Cluster (NCT-1) require Conditional Use Authorization.
- Large Self-Service Restaurants are not permitted in the Inner Sunset Neighborhood Commercial District.
- Coffee Stores are not permitted to have on-site food preparation or equipment to cook or reheat food or prepare meals, except where a conditional use is granted for an exception in the West Portal NCD.

### **Noise and Odor Controls**

- Large Fast-Food Restaurants and Small Self-Service Restaurants currently carry a condition that noise and odors be contained within the premises so as not to be a nuisance to nearby residents or neighbors.

### **The Way It Would Be:**

The proposed legislation removes seating limitations and relates restaurant use size to the tailored sizes of the various NC districts. The legislation is more permissive of restaurants in the smallest districts and allows food preparation in coffee stores.

- Maintain the current number of restaurant uses and not modify the restaurant definitions in Article 8.
- Increase the maximum use size for Small Self-Service Restaurants in Neighborhood Commercial Districts to that of the non-residential use size limits for the district and eliminate the limit on the number of seats;
- Change the name of Large Fast-Food Restaurants to Large Self-Service Restaurants;
- Increase the minimum size for Large Self-Service Restaurants in Neighborhood Commercial Districts to that of the Non-Residential Use Size limit for the district;
- Principally permit Small Self-Service Restaurants and Video Stores in NC-1 and NC-T Districts;
- Conditionally permit Large Self-Service Restaurants in the Inner Sunset Neighborhood Commercial District;

- Require that mechanical noise and vibration from Self-Service Restaurants be confined to the premises; and
- Remove the prohibition of on-site food preparation and cooking and reheating equipment in Retail Coffee Stores.

## 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.

## RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance *with modifications* to include:

The Department proposes consolidating the number of line item definitions from 13 to three. (See Exhibit D for a graphic image of this consolidation and Exhibit C for the specific text for these new definitions.) The distinguishing characteristic that would group the new restaurant categories would be the historically most volatile: sale of alcohol. An eating/drinking establishment without on-site alcohol sales would be a Restaurant-Limited; a restaurant with wine and beer would be simply a Restaurant; and a full liquor license would be classified as a Bar. Further the Department recommends that the Video Store definition be removed and the use be put back under Sales and Service, Other Retail (790.100).

- **Simplify Definitions.** Reduce the total number of line item definitions in both Articles 7 and 8 to three: Restaurant, Restaurant-Limited and Bar. The Bar definition would not substantially change, but standardized operation conditions would be added. Restaurant would encompass Large Fast-Food (790.90 & 890.91), Small Self-Service (790.91 & 890.90), and Full-Service Restaurants (790.92 & 890.92). Restaurant-Limited would encompass Self-Service Specialty Food Stores (790.93), Take-Out Food (890.122), Accessory Grocery Deli (703.2) and Coffee Shops (790.102n). General and Specially Grocery Store (709.102 (a) & (b)) definitions would be amended to reflect the changes in restaurant definitions for the purposes of accessory uses and to include Standard Conditions.
- **Entitlement Process.** Staff proposes two options for translating the new definitions into controls for the Commission's consideration. Option 1 would continue CU requirements if any of the existing definitions encompassed in the new definitions currently require CU authorization. Option 2 allows Restaurant-Limited (no on-site alcohol) as of right in all NCDs, and would require CU authorization for Restaurants if Full-Service Restaurants are currently required to obtain a CU. Option 2 is preferred by the Department (see discussion below).
- **Standard Conditions of Approval.** The proposed definitions would add conditions in the Code on each eating and drinking use consistent with the standardized conditions currently used with CU authorization. These controls would address noise, litter, trash receptacles and odor issues.
- **Consolidate Definitions.** All definitions would be located in Article 7 of the Planning Code. Article 8 would reference the definitions in Article 7.
- **Remove Video Store Definition (790.135):** Instead this use would be covered by Sales and Service, Other Retail (790.102). Video stores are becoming obsolete due to the provision of on-demand video through cable providers and other internet-based video delivery systems. Therefore, the Department does not see a need to keep it as a separate use category.

- **Additional Controls.** Existing controls attached to restaurant uses (indicated by a # in the Planning Code) would remain for the most part. For instance, a new bar in the Upper Fillmore NCD could only be approved in conjunction with a Restaurant use.
- **Retain Existing Restaurant Caps.** Existing legislated limits on restaurant types would be transferred and applied to the new restaurant definitions. For example, the Union Street NCD currently has a restriction prohibiting more than 32 Full-Service Restaurants within the district. Under the Department's proposal, that limit would be applied to establishments that fit the new definition, Restaurant.

## **BASIS FOR RECOMMENDATION**

As part of our review of Supervisor Mirkarimi's legislation, the Planning Commission asked staff to reevaluate and consolidate existing restaurant definitions. In addition, "NC@20" – a review of NCD controls 20 years after being adopted - also recommended that existing restaurant definitions be evaluation based on changes that have occurred to the Planning Code since NCD controls were adopted.

### **Evolving Planning Code**

The citywide Neighborhood Commercial Controls were enacted in 1987<sup>2</sup> in response to land use issues identified by neighborhood groups, planners, and elected officials. Two issues of particular concern were restaurants displacing neighborhood serving retail uses and the proliferation of chain restaurant. As a way to address these concerns, restaurants were divided into very specific use types so that they could be more tightly controlled and regulated. Since then, two significant additions have been added to the Planning Code that address the same issues, but in a more effective way: Planning Code Section 312 Neighborhood Notification<sup>3</sup> first established in 2000 and Formula Retail Controls<sup>4</sup> were first added to the Planning Code in 2004<sup>5</sup>.

Prior to the establishment of required neighborhood notification by §312, neighbors and neighborhood groups were not routinely notified of proposed restaurants before approval by the Planning Department. There was no effective method for these groups to voice their concerns if they felt there was an over proliferation of restaurants in the area. Additionally, controlling large chain fast-food restaurants in NCDs was difficult and inconsistent prior to the Formula Retail controls. Now all formula retail establishments require a Conditional Use hearing before the Planning Commission, even if there is already a formal retail business in the existing space.

### **Overly Prescriptive Definitions**

The desire to restrict restaurants and large chain fast-food restaurants created the need to develop explicit definitions for different restaurant types in NCD. While this helped slow the establishment of

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<sup>2</sup> Added by Ord. 69-87, App. 3/13/87.

<sup>3</sup> Added by Ord. 279-00, File No. 001423, App. 12/15/2000.

<sup>4</sup> Added by Ord. 62-04, File No. 031501, App. 4/9/2004.

<sup>5</sup> The first Formula Retail controls established in 2004 in San Francisco applied only to the Hayes-Gough NCD. Since that time, these controls have been expanded to regulate Formula Retail uses in all NC Districts; the Japantown and Western SoMa SUDS; the Urban Mixed Use, Mixed Use-General, Residential Transit-Oriented, and Chinatown Visitor Retail districts; as well as the Residential Commercial districts along Van Ness between Golden Gate and Chestnut. See Ordinance Numbers 62-04, 8-05, 65-05, 173-05, 204-06, 180-06, 0269-08, 0298-08, 0301-08, 304-08 and the 2007 Voter's Initiative, Proposition G.

fast-food restaurants in NCD, it also dictated how a restaurant could operate and what they could offer their customers. For instance, coffee shops are restricted from serving prepared foods such as toasted bagels with cream cheese, and Small Self-Service Restaurants and Large-Fast Food Restaurants are required to have food ordered and served at the counter and have food served in disposable wrappers. Yet many newer restaurants models have customers order at the counter and then the food is brought to them. Further, requiring businesses to serve food in disposable wrappers is antithetical to the City's efforts on reducing the amount of trash it generates.

As restaurants have changed and the City's attitude toward restaurants has evolved, the distinction between the different eating and drinking uses has become obsolete. The Zoning Administrator issued several interpretations trying to fit new or emerging business models into the existing definitions. Small business owners have had to modify how they operate to be in compliance with the Planning Code or risk fines, and the Department's enforcement staff has had to police coffee stores to ensure that they don't have toasters and are serving ice cream in cups and not cones. Enforcing these regulations takes significant resources without any clear public benefit.

### **Number of Definitions**

Rather than attempting to refine the existing definitions, the Department finds it more practical and effective to combine existing definitions based on the one issue that has the greatest land use and quality of life impacts, alcohol sale and consumption. Under the Department's proposal, those uses that are currently permitted to have food service and on-site alcohol sale and consumption would simply be categorized as Restaurants. Uses that are currently permitted to serve food and have off-site alcohol sale would be categorized as Restaurant-Limited. The definitions for Bars, which permits on-site alcohol sale without food service, would remain the same except that standard operating conditions would be added to the definition.

Existing Formula Retail controls would still prevent or limit large chain restaurants in Neighborhood Commercial Districts. Neighborhood groups and residents would be notified of any restaurant seeking to establish in non-restaurant retail spaces, and entitlement requirements can still be tailored to individual neighborhoods. Neighborhood Commercial Districts with restrictions on bars or specific alcohol licenses would remain in effect. Conversely small business owners would be allowed operate their business with more flexibility and without fear of being in violation of the Planning Code, the new definitions would be clearer for new business owners and the Planning Department would not be charged with monitoring how food is ordered or served.

### **Other Impacts**

Restaurants have other impacts such as noise, odor and trash. To address these issues, Staff proposes that the new definitions include clearly defined operating conditions that would apply to any restaurant use in the City whether or not it is required to obtain CU authorization. These conditions have been taken from a list of standardized conditions of approval recently developed by the Department. Moreover, the success and popularity of a restaurant, rather than the service level or type of restaurant dictates how disruptive it will be to a neighborhood. Since the City can not regulate success, requiring standardized conditions for each restaurant would ensure that business owners know what the City's expectations are before opening and would provide greater assurances to neighbors.

### **Use Size**

The existing use definitions limit Small Self-Service Restaurants to 1,000 sq. ft., while a Self-Service Restaurant above that size is considered to be a Large Fast-Food Restaurant. One major change proposed by Mirkarimi's legislation that is also consistent with the Department's recommendation is the use of

existing Non-Residential Use Sizes to regulate restaurant sizes. Each neighborhood commercial district has a non-residential use size that, once exceeded, requires CU authorization. These use sizes are tailored to each district; for instance in NC-1 Districts (smaller commercial clusters often located within residential neighborhoods) the non-residential use size is 2,999 sq. ft. and in NC-3 Districts (larger commercial districts like those along Geary Boulevard) the non-residential use size is 5,999 sq. ft. The Department believes that these existing, tailored controls are sufficient to ensure that restaurant size would not be disruptive to each NCD's character.

### **Entitlement Process**

Attachment E charts two proposals for determining land use controls within specific zoning districts. Of the two options presented in the Department's recommendation, Option 2 is the Department's preferred option. Option 2 would permit the least impactful use, Restaurant-Limited, to be Principally Permitted in all NCDs, and Restaurants would be either Principally Permitted or Permitted with CU Authorization, depending on existing controls for Full-Service Restaurants. For example, if a Full-Service Restaurant currently requires a CU authorization or is not permitted in an NCD then the new Restaurant category would require a CU authorization.

Option 1 is a more conservative reading and would preserve all existing CUs by merely transferring any existing CU to the new definition. If a use is not currently permitted that would convert to a CU. For example, *not only* would any Full Service Restaurant, Large Fast-Food Restaurant or Small Self-Serve Restaurant trigger a CU for the new Restaurant use *but also* any existing CU for a Coffee Shop, Self-Service Specialty Food, Take Out or Accessory Deli would trigger a CU for the new Restaurant-Limited Use. This option would be the more conservative approach and would not only preserve existing CUs but also due to the definition consolidation would actually *increase* the frequency where CUs would be required.

Under current controls the most restricted eating use in NCDs is Large-Fast Food Restaurants, which is an artifact from initial attempts to prohibit or limit the number of large chain restaurants in NCDs. Since the establishment are now formula retail controls that more effectively regulate this type of use, outright prohibition of restaurants that fall under this definition is no longer necessary

### **ENVIRONMENTAL REVIEW**

The proposal to amend Planning Code Sections 710, 730, 733A, 733A.1, 790.90, 790.91, and 790.102 would result in no physical impact on the environment. The proposed 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 Department has received approximately five emails inquiring about the proposed changes and one phone call. One email expressed concern about how the proposed changes would impact the West Portal Neighborhood Commercial District's cap on restaurants. Two emails expressed concerns on how the proposed changes would effect the prohibition on bars in the Upper Fillmore NCD and the Union Street NCD. The Department feels that its recommendation addresses these concerns by preserving both the total cap on new restaurants and the prohibition of new bars in those districts.

While not specific to this proposal, the Small Business Commission (SBC) has requested the simplification of restaurant definitions as generally described in the "NC@20" report. Further, SBC staff report that streamlining restaurant definitions is one of the priority recommendations of the SBC.

<b>RECOMMENDATION:</b> <b>Recommendation of Approval with Modifications</b>
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**Exhibit D**

**Existing Use Categories**

**Proposed Use Categories**

