

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: *el*
bn Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

DATE: January 22, 2018

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS

The Board of Supervisors' Land Use and Transportation Committee has received the following substitute legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 171108-2

Ordinance amending the Planning Code to regulate restaurant and bar uses in the Jackson Square Special Use District, Broadway Neighborhood Commercial District, North Beach Neighborhood Commercial District, and North Beach Special Use District; amending the Jackson Square Special Use District to require a conditional use permit for Office Uses, Business Services, and Institutional Uses fronting on Pacific Avenue; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public necessity, convenience and welfare under Planning Code, Section 302; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

No Comment

Recommendation Attached

Chairperson, Small Business Commission

1 [Planning Code - Restaurant and Bar Uses in Jackson Square, Broadway and North Beach,
2 and Pacific Avenue Office Uses]

3 **Ordinance amending the Planning Code to regulate restaurant and bar uses in the**
4 **Jackson Square Special Use District, Broadway Neighborhood Commercial District,**
5 **North Beach Neighborhood Commercial District, and North Beach Special Use District;**
6 **amending the Jackson Square Special Use District to require a conditional use permit**
7 **for Office Uses, Business Services, and Institutional Uses fronting on Pacific Avenue;**
8 **affirming the Planning Department's determination under the California Environmental**
9 **Quality Act; making findings of public necessity, convenience and welfare under**
10 **Planning Code, Section 302; and making findings of consistency with the General Plan,**
11 **and the eight priority policies of Planning Code, Section 101.1.**

12 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
13 **Additions to Codes** are in *single-underline italics Times New Roman font*.
14 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
15 **Board amendment additions** are in double-underlined Arial font.
16 **Board amendment deletions** are in ~~strikethrough Arial font~~.
17 **Asterisks (* * * *)** indicate the omission of unchanged Code
18 subsections or parts of tables.

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

20 Section 1. Findings.

21 (a) The Planning Department has determined that the actions contemplated in this
22 ordinance comply with the California Environmental Quality Act (California Public Resources
23 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
24 Supervisors in File No. _____ and is incorporated herein by reference. The Board affirms this
25 determination.

1 (b) On _____, the Planning Commission, in Resolution No. _____, adopted findings
2 that the actions contemplated in this ordinance are consistent, on balance, with the City's
3 General Plan and eight priority policies of Planning Code Section 101.1. The Board adopts
4 these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of
5 Supervisors in File No. _____, and is incorporated herein by reference.

6 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
7 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
8 in Planning Commission Resolution No. _____, and the Board incorporates such reasons
9 herein by reference. A copy of Planning Commission Resolution No. _____ is on file with the
10 Board of Supervisors in File No. _____.

11
12 Section 2. The Planning Code is hereby amended by revising Sections 178, 249.25,
13 714, 722, and 780.3, to read as follows:

14
15 **SEC. 178. CONDITIONAL USES.**

16 * * * *

17 (d) Abandonment. A permitted conditional use ~~which~~ that is discontinued for a period
18 of three years, or otherwise abandoned, shall not be restored, except upon approval of a new
19 conditional use application pursuant to the provisions of Article 3 of this Code. For purposes of
20 this Subsection, the period of nonuse for a permitted conditional use to be deemed
21 discontinued in the North Beach, and Castro Street Neighborhood Commercial Districts, and
22 the Jackson Square Special Use District shall be eighteen (18) months, ~~except that in the North~~
23 ~~Beach Neighborhood Commercial District, the period of non use for a Restaurant use, as defined in~~
24 ~~Section 102, to be deemed discontinued shall be three years.~~

1 A permitted conditional Formula Retail use which is discontinued for a period of 18
2 months, or otherwise abandoned, shall not be restored, except upon approval of a new
3 conditional use application pursuant to Article 3 of this Code.

4
5 **SEC. 249.25. JACKSON SQUARE SPECIAL USE DISTRICT.**

6 * * * *

7 (b) Controls.

8 (1) General. The provisions of the C-2 use district as established in Section
9 210.2 and applicable provisions of the Washington-Broadway Special Use Districts (Section
10 239), and the Chinatown Community Business District (Section 810.1), shall prevail except as
11 provided in paragraphs (2) and (3) below.

12 (2) Conditional Uses.

13 (A) Office Uses, Business Services, and Institutional Uses as set forth in
14 Section 102 of this Code at the ground floor are subject to Conditional Use authorization
15 pursuant to Section 303 of this Code, provided, however, that building lobbies, entrances, and
16 exits to and from the basement, ground floor, or upper floors, and other reasonably-sized
17 common areas at the ground floor shall be permitted without Conditional Use authorization. In
18 addition to the findings required under Section 303(c) for Conditional Use authorization, the
19 Commission shall make the following findings:

20 (i) The use shall be necessary to preserve the historic resource
21 and no other use can be demonstrated to preserve the historic resource.

22 (ii) The use shall be compatible with, and shall enhance, the
23 unique retail character of the District.

24 (B) *Subsection (b)(2)(A) shall not apply to any use that fronts Pacific Street.*
25 Restaurants, Limited Restaurants, and Bars. Restaurant, Limited Restaurant and Bar uses may be

1 permitted as a Conditional Use on the First Story through the procedures set forth in Section 303 only
2 if the Zoning Administrator first determines that the proposed new Restaurant, Limited Restaurant, or
3 Bar would occupy a space that is currently or was last legally occupied by one of the uses described
4 below; provided that its last use has not been discontinued or abandoned pursuant to Sections 186.1(d)
5 or 178(d) of this Code and that the proposed new use will not enlarge the space; and provided further
6 that no Conditional Use shall be required if the use remains the same as the prior authorized use, with
7 no enlargement or intensification of use:

8 (i) A Bar may occupy a space that is currently or last legally
9 occupied by a Bar;

10 (ii) A Restaurant may occupy a space that is currently or was last
11 legally occupied by a Restaurant or Bar; and

12 (iii) A Limited Restaurant may occupy a space that is currently or was
13 last legally occupied by a Limited Restaurant, Restaurant or Bar.

14 (iv) Except as provided herein, no other use shall be allowed to
15 convert to a Limited Restaurant, Restaurant or Bar.

16 (3) Prohibited Uses. Adult Businesses, as defined in Section 102 of this Code,
17 are prohibited.

18
19 **SEC. 714. BROADWAY NEIGHBORHOOD COMMERCIAL DISTRICT.**

20 * * * *

21 Table 714. BROADWAY NEIGHBORHOOD COMMERCIAL DISTRICT

22 ZONING CONTROL TABLE

23 * * * *

24 (5) BROADWAY LIQUOR LICENSES FOR RESTAURANTS

25 **Boundaries:** Applicable to the Broadway Neighborhood Commercial District.

1 **Controls:** A Restaurant Use may only add ABC license types 41, 47, 49 or 75 as a
2 Conditional Use on the ~~ground level~~ First Story if, in addition to the criteria set forth in Section
3 303, the Planning Commission finds that the restaurant is operating as a Bona Fide Eating
4 Place, as defined in Section ~~790.1421~~ 102 of this Code. Should a restaurant fail to operate as a
5 Bona Fide Eating Place for any length of time, the Conditional Use authorization shall be
6 subject to immediate revocation.

7 * * * *

8
9 **SEC. 722. NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT.**

10 * * * *

11 Table 722. NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT

12 ZONING CONTROL TABLE

13 * * * *

14 (5) NORTH BEACH SPECIAL USE DISTRICT (Section 780.3): Restaurants,
15 Limited-Restaurants and Bars may be permitted as a Conditional Use on the First Story *per*
16 *through the procedures set forth in* Section 303 only if the Zoning Administrator first determines
17 that the *proposed new* Restaurant, Limited Restaurant, or Bar would occupy a space that is
18 currently or was last *legally* occupied by *one of the uses described below same-use-as-that-being*
19 *proposed*; provided that *such its last* use has not been discontinued or abandoned pursuant to
20 Sections 186.1(d) or 178(d) of this Code *and that the proposed new use will not enlarge the space*;
21 and provided further *that no Conditional Use shall be required if the use remains the same as the*
22 *prior authorized use, with no enlargement or intensification of use:*

23 (A) A Bar may occupy a space that is currently or last legally occupied by a
24 Bar;

1 (B) A Restaurant may occupy a space that is currently or was last legally
2 occupied by a Restaurant or Bar; and

3 (C) A Limited Restaurant may occupy a space that is currently or was last
4 legally occupied by a Limited Restaurant, Restaurant or Bar.

5 ~~that the following shall apply: (A) a Bar could occupy a space that is currently or was last~~
6 ~~legally occupied by a Bar, (B) a Restaurant could occupy a space that is currently or was last legally~~
7 ~~occupied by a Restaurant or Bar, and (C) a Limited Restaurant could occupy a space that is currently~~
8 ~~or was last legally occupied by a Limited Restaurant, Restaurant, or Bar.~~

9 (D) Except as provided herein, no other use shall be allowed to convert
10 to a Limited Restaurant, Restaurant or Bar.

11 (6) NORTH BEACH LIQUOR LICENSES FOR RESTAURANTS (Section
12 780.3): A Restaurant Use may only add ABC license Bar types 41, 47, 49 or 75 as a Conditional
13 Use on the First Story if, in addition to the criteria set forth in Section 303, the Planning
14 Commission finds that the Restaurant is operating as a Bona Fide Eating Place as defined in
15 Section 102. 790.142. Should a Restaurant fail to operate as a Bona Fide Eating Place for any
16 length of time, the Conditional Use authorization shall be subject to immediate revocation. To
17 verify that the Restaurant is continuing to operate as a Bona Fide Eating Place, records of the
18 Restaurant's gross receipts, showing that a minimum of 51% of its gross receipts within the
19 last year is from food sales prepared and sold to guests on the premises, shall be provided to
20 the Department upon request. All records and information shall be submitted to the
21 Department under penalty of perjury.

22 * * * *

23 **SEC. 780.3. NORTH BEACH SPECIAL USE DISTRICT.**

24 * * * *

25 (c) Controls. The following provisions shall apply within such district:

1 (1): Restaurants, Limited-Restaurants and Bars may be permitted as a
2 Conditional Use on the First Story *per through the procedures set forth in* Section 303 only if, the
3 Zoning Administrator first determines that the *proposed new* Restaurant, Limited Restaurant, or
4 Bar would occupy a space that is currently or was last legally occupied by *one of the uses*
5 *described below same use as that being proposed*; provided that *such its last* use has not been
6 discontinued or abandoned pursuant to Sections 186.1(d) or 178(d) of this Code *and that the*
7 *proposed new use will not enlarge the space*; and provided further *that no Conditional Use shall be*
8 *required if the use remains the same as the prior authorized use, with no enlargement or intensification*
9 *of use*:

10 (A) A Bar may occupy a space that is currently or last legally occupied by
11 a Bar;

12 (B) A Restaurant may occupy a space that is currently or was last legally
13 occupied by a Restaurant or Bar; and

14 (C) A Limited Restaurant may occupy a space that is currently or was
15 last legally occupied by a Limited Restaurant, Restaurant or Bar.

16 (D) Except as provided herein, no other use shall be allowed to convert
17 to a Limited Restaurant, Restaurant or Bar.

18 (2) Alcohol Licenses. A Restaurant may provide on-site beer, wine, and/or
19 liquor sales for drinking on the premises (with ABC license types 41, 47, 49, 59 or 75) as a
20 Conditional Use on the First Story if, in addition to the criteria set forth in Section 303, the
21 Planning Commission finds, based on information submitted to the Department by the
22 applicant, that the Restaurant is and will continue to operate as a Bona-Fide Eating Place as
23 defined in Section 102. Should a Restaurant fail to operate as a Bona-Fide Eating Place for
24 any length of time, the Conditional Use authorization shall be subject to immediate revocation
25 per Planning Code Section 303(f). To verify that the Restaurant is continuing to operate as a

1 Bona-Fide Eating Place, records of the Restaurant's gross receipts, showing that a minimum
2 of 51% of its gross receipts within the last year preceding the Department's request is from
3 food sales prepared and sold to guests on the premises promises, shall be provided to the
4 Department upon request. All records and information shall be submitted to the Department
5 under penalty of perjury.

6 * * * *

7
8 Section 3. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor's veto of the ordinance.

12
13 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the "Note" that appears under
18 the official title of the ordinance.

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

21 By:


22 KATE H. STACY
23 Deputy City Attorney

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25

REVISED LEGISLATIVE DIGEST

(Substituted, 1/9/2018)

[Planning Code - Restaurant and Bar Uses in Jackson Square, Broadway and North Beach, and Pacific Avenue Office Uses]

Ordinance amending the Planning Code to regulate restaurant and bar uses in the Jackson Square Special Use District, Broadway Neighborhood Commercial District, North Beach Neighborhood Commercial District, and North Beach Special Use District; amending the Jackson Square Special Use District to require a conditional use permit for Office Uses, Business Services, and Institutional Uses fronting on Pacific Avenue; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of public necessity, convenience and welfare under Planning Code, Section 302; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Existing Law

Conditionally permitted Restaurant uses in the North Beach Neighborhood Commercial District would be deemed discontinued if the period of non-use is 3 years.

Office Uses, Business Services and Institutional uses fronting on Pacific Avenue within the Jackson Square Special Use District do not require conditional use authorization.

Restaurants, Limited Restaurants and Bars are generally permitted uses in the Jackson Square Special Use District.

Restaurants, Limited Restaurants and Bars are conditionally permitted uses in the North Beach Special Use District and a Bar may occupy a space that is currently or last legally occupied by a Bar; a Restaurant may occupy a space that is currently or was last legally occupied by a Restaurant or Bar; and a Limited Restaurant may occupy a space that is currently or was last legally occupied by a Limited Restaurant, Restaurant or Bar. No other use is allowed to convert to a Limited Restaurant, Restaurant or Bar.

In the Broadway Neighborhood Commercial District and North Beach Neighborhood Commercial District, a Restaurant Use may add ABC license types 47, 49 or 75 as a Conditional Use on the ground level if the Planning Commission finds that the restaurant is operating as a Bona Fide Eating Place.

Amendments to Current Law

This legislation would provide that conditionally permitted Restaurant uses in the North Beach Neighborhood Commercial District would be deemed discontinued if the period of non-use is 18 months.

Office Uses, Business Services and Institutional uses fronting on Pacific Avenue within the Jackson Square Special Use District would require conditional use authorization.

This legislation would restrict Restaurants, Limited Restaurants and Bars in the Jackson Square Special Use District, as follows:

Restaurant and Bar uses would be permitted as a Conditional Use on the First Story if the Zoning Administrator determines that the Restaurant, Limited Restaurant, or Bar would occupy a space that is currently or was last legally occupied by a Restaurant, Limited Restaurant or Bar use; provided that the use has not been discontinued or abandoned pursuant to Sections 186.1(d) or 178(d) of this Code and that the proposed new use will not enlarge the space; and provided further that no Conditional Use shall be required if the use remains the same as the prior authorized use, with no enlargement or intensification of use. Specifically:

- (i) A Bar may occupy a space that is currently or last legally occupied by a Bar;
- (ii) A Restaurant may occupy a space that is currently or was last legally occupied by a Restaurant or Bar; and
- (iii) A Limited Restaurant may occupy a space that is currently or was last legally occupied by a Limited Restaurant, Restaurant or Bar.
- (iv) No other use would be allowed to convert to a Limited Restaurant, Restaurant or Bar.

Restaurants, Limited Restaurants and Bars would continue to be conditionally permitted uses in the North Beach Special Use District and would be subject to similar occupancy restrictions as those currently in place. Some minor amendments have been made to clarify the meaning of the controls, and to provide that the proposed new use could not enlarge the space. No Conditional Use would be required if the use remains the same as the prior authorized use, with no enlargement or intensification of use.

In the Broadway Neighborhood Commercial District and the North Beach Neighborhood Commercial District, a Restaurant Use would also be able to add ABC License Type 41 as a Conditional Use on the First Story if the Planning Commission finds that the restaurant is operating as a Bona Fide Eating Place. For the North Beach Neighborhood Commercial District, Planning Code Section 722 would be amended to include ABC License Type 41 to be consistent with Planning Code Section 780.3.