

File No. 180777 Committee Item No. 1
 Board Item No. 4

COMMITTEE/BOARD OF SUPERVISORS
 AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date July 29, 2019

Board of Supervisors Meeting Date SEPTEMBER 3, 2019
 Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | CEQA Determination 080118 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | PLN Transmittal 110718 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | PLN Transmittal 031819 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Comm Rpt Request 071719 |
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Completed by: Erica Major Date July 25, 2019
 Completed by: Erica Major Date 8/7/2019

1 [Planning Code - ~~Prohibiting~~ Conditional Use Authorization Required for Employee Cafeterias
2 within Office Space]

3 **Ordinance amending the Planning Code to ~~prohibit~~ require a conditional use
4 authorization for Employee Cafeterias, as defined ~~in the Health Code~~, within office
5 space, except for existing Employee Cafeterias; affirming the Planning Department's
6 determination under the California Environmental Quality Act; making findings of
7 consistency with the General Plan, and the eight priority policies of Planning Code,
8 Section 101.1; and adopting findings of public necessity, convenience, and welfare
9 under Planning Code, Section 302.**

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

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

18 Section 1. Findings.

19 (a) General Plan, Planning Code and Environmental Findings.

20 (1) The Planning Department has determined that the actions contemplated in
21 this ordinance comply with the California Environmental Quality Act (California Public
22 Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the
23 Board of Supervisors in File No. 180777 and is incorporated herein by reference. The Board
24 affirms this determination.

25 (b) (2) On _____, the Planning Commission, in Resolution No. _____,
adopted findings that the actions contemplated in this ordinance are consistent, on balance,

1 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
2 Board finds that the actions contemplated in this ordinance are consistent, on balance, with
3 the City's General Plan and eight priority policies of Planning Code Section 101.1, for the
4 reasons set forth in Planning Commission's draft resolution contained in the Transmittal of
5 Planning Department Case Number 2018-010552PCA adopts these findings as its own. A
6 copy of said Resolution such draft resolution is on file with the Clerk of the Board of
7 Supervisors in File No. 180777, and is incorporated herein by reference.

8 (e) (3) Pursuant to Planning Code Section 302, the Board of Supervisors finds that
9 this ordinance will serve the public necessity, convenience, and welfare for the reasons stated
10 in Planning Commission Resolution No. _____ the Planning Commission's draft resolution
11 contained in the Transmittal of Planning Department Case Number 2018-010552PCA, a copy
12 of which is on file with the Clerk of the Board of Supervisors in File No. 180777, and is
13 incorporated herein by reference.

14 (b) Legislative Findings.

15 (1) In 2014, the city of Mountain View passed a rule requiring that any future
16 office tenant would be barred from providing free daily meals or subsidizing more than half the
17 price at any on-site, in-house cafeteria during the approval of the Merlone Geier's Phase II
18 development, The Village at the San Antonio Center. And, once Facebook moved there, the
19 rule was enforced as a way to better integrate the company into the local community, and also
20 to protect the surrounding mom-and-pop restaurants.

21 (2) In February 2018, the Office of Economic of Economic and Workforce
22 Development published "State of the Retail Sector: Challenges and Opportunities for San
23 Francisco's Neighborhood Commercial Districts" (henceforth, the "Study"). The Study was
24 drafted by Strategic Economics, and examined the national restructuring of the retail,
25 restaurant, and personal services industries.

1 (3) The Study found that, nationally, the growth in retail and restaurant sales
2 was concentrated in non-store (i.e., online) sales, food and beverage stores but, locally, San
3 Francisco's restaurants were slightly better off because of the many "competitive advantages"
4 the Board of Supervisors had enacted in previous years.

5 (4) A 2019 study conducted by Wealth-X reported that San Francisco has the
6 most billionaires per capita than any other top city in the world, in large part, because of the
7 City's proximity to Silicon Valley and small population size. However, as our billionaire
8 population has grown, income inequality has also ticked up. A 2018 study from the Brookings
9 Institute found that San Francisco had the sixth highest level of income inequality of all cities
10 in the U.S.

11 (5) As part of the effort to curb income inequality in the City, facilitate the
12 integration of office workers with the local communities, and maintain the vitality of the local
13 retail and restaurant services, the Board of Supervisors finds that requiring a conditional use
14 permit for employee cafeterias within office space, as those terms are further defined in this
15 ordinance, is desirable.

16
17 Section 2. The Planning Code is hereby amended by revising Sections 102, 202.2,
18 and 303, to read as follows:

19
20 **SEC. 102. DEFINITIONS.**

21 * * * *

22 **Office, General.** A Non-Retail Sales and Service Use that includes space within a structure or
23 portion thereof intended or primarily suitable for occupancy by persons or entities which
24 perform, provide for their own benefit, or provide to others at that location, services including,
25 but not limited to, the following: professional, banking, insurance, management, consulting,

1 technical, sales, and design; and the non-accessory office functions of manufacturing and
2 warehousing businesses, multimedia, software development, web design, electronic
3 commerce, and information technology. This use shall exclude Non-Retail Professional
4 Services as well as Retail Uses; repair; any business characterized by the physical transfer of
5 tangible goods to customers on the premises; wholesale shipping, receiving and storage; and
6 design showrooms or any other space intended and primarily suitable for display of goods. An
7 Office use is subject to the operating conditions of Section 202.2 of this Code.

8 * * * *

9 **Office Use.** A grouping of uses that includes General Office, Retail Professional Services,
10 and Non-Retail Professional Services. This use shall exclude: retail uses other than Retail
11 Professional Services; repair; any business characterized by the physical transfer of tangible
12 goods to customers on the premises; wholesale shipping, receiving and storage; and design
13 showrooms or any other space intended and primarily suitable for display of goods. All office
14 uses are subject to the operating conditions of Section 202.2 of this Code.

15 * * * *

16
17 **SEC. 202.2. LOCATION AND OPERATING CONDITIONS.**

18 * * * *

19 (i) ~~Non-Retail Sales and Service Use;~~ Office Use. An "Employee Cafeteria,"
20 as defined in Section 451(h) of the Health Code, is a prohibited use in Office space requires a
21 Conditional Use authorization pursuant to Section 303 of this Code unless the Employee
22 Cafeteria (1) is located at the first story, (2) is open to the public during all operating hours; (3)
23 complies with all relevant design standards for street frontages as found in Planning Code
24 Sections 145.1(c)(5)-(7) and 145.4(d)(3); and (4) employee meals in the Employee Cafeteria
25 are not more than 50% subsidized by their employer or the employer provides meal vouchers

1 to employees for use outside the Employee Cafeteria. For purposes of this subsection (j),
2 “Employee Cafeteria” is defined as a food facility within the premises where the employees
3 are provided food on a regular basis. The operators of the food facility are either employees of
4 the business or are contracted by that business. Foods are prepared and cooked on the site
5 business premise in a full-service kitchen with an exhaust ventilation system. The food facility
6 requires plan review and a health permit to operate from the Department of Public Health. that
7 requires a health permit from the Department of Public Health to operate. Any such use lawfully
8 existing or finally approved as of July 24, 2018 July 1, 2019 may continue and be maintained as a
9 legal nonconforming Accessory Use but may not be expanded or re-installed if abandoned unless the
10 expansion or reinstallation receives Conditional Use authorization as provided in this Section
11 202.2.

12
13 **SEC. 303. CONDITIONAL USES.**

14 * * * *

15 (y) With respect to applications for an Employee Cafeteria pursuant to Section
16 202.2(j) of this Code, in addition to the criteria set forth in Subsections (c) and (d) above the
17 Commission shall consider the following:

18 (1) The size of the proposed Employee Cafeteria and its location in the
19 building;

20 (2) Whether the proposed Employee Cafeteria would be open to the general
21 public and in a location conducive to use by the general public;

22 (3) The impact upon existing eating and drinking establishments in the
23 neighborhood, including but not limited to whether meals in the proposed Employee Cafeteria
24 would be free or heavily subsidized;

1 (4) Whether the employer will subsidize or pay for employee meals outside
2 the proposed Employee Cafeteria; and

3 (5) Whether the proposed Employee Cafeteria has committed to using all
4 reusable foodware and packaging for on-site and takeaway dining.

5 (6) The ability of existing eating and drinking establishments in the
6 neighborhood to absorb the increased demand related to the proposed Office project.

7 (7) The impact of employees of the Employee Cafeteria on the demand in
8 the City for housing, public transit, health, and other social services, relative to the demand of
9 such employees were they otherwise to be employed at other eating and drinking
10 establishments.

11 (8) Whether or not the Employee Cafeteria provides all employees and
12 contractors, such as janitors, servers, and security guards, equal access to the Employee
13 Cafeteria.

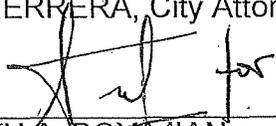
14 The Commission shall include as a Condition of Approval the requirement that
15 any Employee Cafeteria authorized shall be subject to applicable environmentally-friendly
16 requirements in the Environment Code, including but not limited to the requirements of
17 Chapter 16 (Food Service and Packaging Waste Reduction Ordinance) and Chapter 17
18 (Plastic Bag Reduction Ordinance).

19
20 Section 3. Effective Date. This ordinance shall become effective 30 days after
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
23 of Supervisors overrides the Mayor's veto of the ordinance.

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

7
8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By:


11 JUDITHA BOYAJIAN
12 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST
(Amended in Committee, 7/22/19)

[Planning Code - Conditional Use Authorization Required for Employee Cafeterias within Office Space]

Ordinance amending the Planning Code to require a conditional use authorization for Employee Cafeterias, as defined, within office space, except for existing Employee Cafeterias; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

Section 102 of the Planning Code defines uses and terms used throughout the Code. "Office Use" is defined in Section 102 as "A grouping of uses that includes General Office, Retail Professional Services, and Non-Retail Professional Services. This use shall exclude: retail uses other than Retail Professional Services; repair; any business characterized by the physical transfer of tangible goods to customers on the premises; wholesale shipping, receiving and storage; and design showrooms or any other space intended and primarily suitable for display of goods." Section 202.2 establishes location and operating conditions for specific use categories. Section 303 sets forth the Conditional Use authorization procedure.

Amendments to Current Law

The definition of "Office Use" in Section 102 is amended make it subject to the operating conditions of Section 202.2.

Section 202.2, in turn, defines an "Employee Cafeteria" as "a food facility within the premises where the employees are provided food on a regular basis. The operators of the food facility are either employees of the business or are contracted by that business. Foods are prepared and cooked on the site business premise in a full-service kitchen with an exhaust ventilation system. The food facility requires plan review and a health permit to operate from the Department of Public Health." Section 202.2 is further amended to provide that an "Employee Cafeteria" requires a Conditional Use authorization in Office space, except if the Employee Cafeteria: (1) is located at the first story; (2) is open to the public during all operating hours; (3) complies with all relevant design standards for street frontages as found in Planning Code Sections 145.1(c)(5)-(7) and 145.4(d)(3); and (4) employee meals in the Employee Cafeteria are not more than 50% subsidized by their employer or the employer provides meal vouchers to employees for use outside the Employee Cafeteria. Further, the Ordinance establishes that any Employee Cafeteria lawfully existing prior to July 1, 2019 may continue and be maintained. It may not, however, be expanded or re-installed if abandoned without the required Conditional Use authorization.

FILE NO. 180777

Finally, the Ordinance amends Section 303 to add additional criteria to be considered by the Planning Commission in approving a Conditional Use authorization for an Employee Cafeteria.

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SAN FRANCISCO PLANNING DEPARTMENT

March 18, 2019

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

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Re: Transmittal of Planning Department Case Number 2018-010552PCA:
Conditional Use Authorization Required for Employee Cafeterias within
Office Space
Board File No. 180777
Planning Commission Recommendation: Disapproval

Dear Ms. Calvillo and Supervisor Safai,

On March 7, 2019, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Safai, that would amend the Planning Code to require Conditional Use authorization for Employee Cafeterias within Office Space. At the hearing, the Planning Commission failed to successfully pass a resolution or continue the item to a future hearing date. Per Planning Code Section 306.4(d)(2), failure of the Commission to act within the 90-day timeline "shall be deemed to constitute disapproval."

Please find attached draft Planning Commission Resolution and Planning Department Executive Summary for informational purposes.

Sincerely,

Aaron D. Starr
Manager of Legislative Affairs

cc:
Judith A. Boyajian, Deputy City Attorney
Suha Sandoval, Aide to Supervisor Safai
Erica Major, Office of the Clerk of the Board

Attachments:

Draft Planning Commission Resolution

Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Resolution

HEARING DATE MARCH 7, 2019

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

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Information:
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Project Name: Conditional Use Authorization Required for Employee Cafeterias within Office Space
Case Number: 2018-010552PCA [Board File No. 180777]
Initiated by: Supervisors Safai and Peskin / Amended in Committee December 10, 2018
Staff Contact: Diego Sanchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO REQUIRE CONDITIONAL USE AUTHORIZATION FOR EMPLOYEE CAFETERIAS, AS DEFINED, WITHIN OFFICE SPACE, EXCEPT FOR EXISTING EMPLOYEE CAFETERIAS; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on July 24, 2018 Supervisors Safai and Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 180777, which would amend the Planning Code to prohibit Employee Cafeterias, as defined in the Health Code, within Office space, except for existing Employee Cafeterias;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on October 25, 2018; and,

WHEREAS, The Commission, under Resolution No. 20327, disapproved the proposed Ordinance and recommended that the Board of Supervisor explore alternatives to a prohibition on employee cafeterias within Office space; and

WHEREAS, the Board of Supervisors' Land Use Committee conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on December 10, 2018; and,

WHEREAS, the Land Use Committee amended the proposed Ordinance to require Conditional Use authorization for Employee Cafeterias within Office Space, except for existing Employee Cafeterias; and

WHEREAS, because of the substantive nature of the amendments, the amended Ordinance was referred to the Commission for its re-consideration; and

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the revised Ordinance on March 7, 2019; and,

WHEREAS, the amended Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c) and 150378; and

WHEREAS, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of 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 Commission has reviewed the amended Ordinance; and

WHEREAS, the Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby approves with modifications the proposed amended Ordinance.

Those modifications include:

SEC. 102. DEFINITIONS.

Office, General. A Non-Retail Sales and Service Use that includes space within a structure or portion thereof intended or primarily suitable for occupancy by persons or entities which perform, provide for their own benefit, or provide to others at that location, services including, but not limited to, the following: professional, banking, insurance, management, consulting, technical, sales, and design; and the non-accessory office functions of manufacturing and warehousing businesses, multimedia, software development, web design, electronic commerce, and information technology. This use shall exclude Non-Retail Professional Services as well as Retail Uses; repair; any business characterized by the physical transfer of tangible goods to customers on the premises; wholesale shipping, receiving and storage; and design showrooms or any other space intended and primarily suitable for display of goods. ~~use is~~ uses are subject to the operating conditions of Section 202.2 of this Code

Office Use. A grouping of uses that includes General Office, Retail Professional Services, and Non-Retail Professional Services. This use shall exclude: retail uses other than Retail Professional Services; repair; any business characterized by the physical transfer of tangible goods to customers on the premises; wholesale shipping, receiving and storage; and design showrooms or any other space intended and primarily suitable for display of goods. An Office use is subject to the operating conditions of Section 202.2 of this Code

SEC. 202.2. LOCATION AND OPERATING CONDITIONS.

~~(j) Non-Retail Sales and Service Use; Office Use. An "Employee Cafeteria," as defined in Section 451(h) of the Health Code, is a prohibited use in Office space requires a Conditional Use authorization pursuant to Section 303 of this Code unless the Employee Cafeteria (1) is located at the first story, (2) is open to the public during all operating hours; (3) complies with all relevant design standards for street frontages as found in Planning Code Sections 145.1(c)(5)-(7) and 145.4(d)(3); and (4) employee meals in the Employee Cafeteria are not more than 50% subsidized by their employer or the employer provides meal vouchers to employees for use outside the Employee Cafeteria. For purposes of this subsection (j), "Employee Cafeteria" is defined as a food facility within the premises where the employees are provided food on a regular basis. The operators of the food facility are either employees of the business or are contracted by that business. Foods are prepared and cooked on the business premise site in a full-service kitchen with an exhaust ventilation system. The food facility requires plan review and a health permit to operate from the Department of Public Health. that requires a health permit from the Department of Public Health to operate. Any such use lawfully existing or finally approved as of July 24, 2018 may continue and be maintained as a legal nonconforming Accessory Use but may not be expanded or re-installed if abandoned~~

SEC. 303. CONDITIONAL USES.

(y) With respect to applications for an Employee Cafeteria pursuant to Section 202.2(j) of this Code, in addition to the criteria set forth in Subsections (c) and (d) above the Commission shall consider the following:

- (1) The size of the proposed Employee Cafeteria ~~and its location in the building;~~
- (2) Whether the proposed Employee Cafeteria would be open to the general public ~~and~~, in a location conducive to use by the general public, and contribute to street activation;
- (3) The impact upon existing eating and drinking establishments in the neighborhood, including but not limited to whether meals in the proposed Employee Cafeteria would be free or heavily subsidized;
- (4) Whether the employer will subsidize or pay for employee meals outside the proposed Employee Cafeteria; and
- (5) Whether the proposed Employee Cafeteria ~~has committed to using all reusable foodware and packaging for on-site and takeaway dining~~ will promote economic opportunities for local residents and businesses by coordinating with the Office of Economic and Workforce Development to engage with the City's workforce system, including the First Source Hiring Program, and developing partnerships with existing and new local businesses, vendors, or institutions.

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. As an alternative to an outright ban, the CU requirement allows Employee Cafeteria operators to fashion business plans that help meet larger City goals and policies.

- 2. These larger City goals and policies include integrating into and contributing to the broader City fabric, helping activate street life; integrating into the broader City economy through local procurement and hiring; and providing incentives for patronizing local eating and drinking establishments.
- 3. **General Plan Compliance.** The proposed Ordinance and the Commission’s recommended modifications are consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

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 proposed Ordinance would help ensure that new employee cafeterias are regulated to lessen negative effects upon existing eating and drinking establishments.

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

The proposed Ordinance would continue to allow an economic activity (food service) that provides employment opportunities for unskilled and semi-skilled workers.

DOWNTOWN AREA PLAN

OBJECTIVE 3

IMPROVE DOWNTOWN SAN FRANCISCO’S POSITION AS THE REGION’S PRIME LOCATION FOR SPECIALIZED RETAIL TRADE.

Policy 3.5

Meet the convenience needs of daytime downtown workers.

The proposed Conditional Use findings can help create Employee Cafeterias open and accessible to daytime downtown workers by considering the cafeteria’s public accessibility.

4. **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 Ordinance and the conditional use findings would help enhance neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

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 Ordinance would not have a negative effect on housing and would have a beneficial effect on neighborhood character as the conditional use findings require consideration of an Employee Cafeteria's effect on neighborhood eating and drinking establishments.

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

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing because the Ordinance concerns itself with the permitting process for an accessory use.

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

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking as the Ordinance seeks to enhance the entitlement process for accessory Employee Cafeterias.

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 Ordinance 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 because the Ordinance seeks to amend the permitting process for accessory Employee Cafeterias.

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

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake as the Ordinance concerns itself with the entitlement process for an accessory use within Office space.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

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

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas because the Ordinance deals with accessory uses within Office space.

5. **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 APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on March 7, 2019.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: March 7, 2019



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: MARCH 7, 2019

90-DAY DEADLINE: MARCH 10, 2019

Project Name: Conditional Use Authorization Required for Employee Cafeterias within Office Space

Case Number: 2018-010552PCA [Board File No. 180777]

Initiated by: Supervisors Safai and Peskin / Amended in Committee December 10, 2018

Staff Contact: Diego Sanchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082

Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

Recommendation: Approval with Modifications

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to require Conditional Use authorization for Employee Cafeterias, as defined, within Office space.

The Way It Is Now:

Employee Cafeterias, as defined in the Health Code, are allowed within Office Uses¹ as an Accessory Use.

The Way It Would Be:

Employee Cafeterias would require Conditional Use authorization within Office Uses. Existing Employee Cafeterias lawfully existing or finally approved as of July 24, 2018 would be allowed to continue and maintained as a legal nonconforming Accessory Use but could not be expanded or re-installed if abandoned.

BACKGROUND

On October 15, 2017, the Planning Commission moved to disapprove the proposed Ordinance that would have prohibited Employee Cafeterias within Office Uses and recommended that the Board of Supervisor explore alternatives to the proposed prohibition.² The Planning Commission found that the proposed prohibition was too blunt of a regulation. It noted that Employee Cafeterias often hire locally, contract with local vendors, and can be used by local organizations or institutions for after-hours events. It also

¹ Per Section 102 of the Planning Code, an Office Use is defined as: A grouping of uses that includes General Office, Retail Professional Services, and Non-Retail Professional Services. This use shall exclude: retail uses other than Retail Professional Services; repair; any business characterized by the physical transfer of tangible goods to customers on the premises; wholesale shipping, receiving and storage; and design showrooms or any other space intended and primarily suitable for display of goods.

² Planning Commission Resolution No. 20327

found that new regulations on Employee Cafeterias, if pursued, should include an enhanced entitlement process, cafeteria size, and geographic considerations, among other alternative regulations.

At the December 10, 2018 Land Use Committee Supervisor Safai moved that the Ordinance prohibiting Employee Cafeterias within Office Space be amended to require Conditional Use authorization for Employee Cafeterias within Office Space and included specific Conditional Use findings. Supervisor Safai also modified how the term Employee Cafeteria is defined within the Planning Code. The Land Use Committee unanimously approved the motion to amend the Ordinance. Due to the substantive nature of the amendments the Ordinance was referred back to the Planning Commission for its consideration.

ISSUES AND CONSIDERATIONS

Conditional Use Findings

Conditional Use (CU) findings should help shape proposals to the benefit of larger City goals and policies. When this ordinance was first heard, the Planning Commission noted that findings for Employee Cafeterias should encourage integration into the City's larger economy; job creation for San Francisco residents; street activation when located at the first story; and providing incentives, such as meal vouchers, for employees to patronize nearby unaffiliated restaurants.³ The proposed CU findings in the amended Ordinance capture some of those goals. The amended Ordinance includes findings related to an Employee Cafeteria's effects on nearby restaurants and whether the employer will provide monetary incentives for employees to frequent outside restaurants. However, it omits findings related to the economic and workforce development potential of Employee Cafeterias and an explicit reference to a cafeteria's contribution to street activation. It also includes a finding related to reusable tableware, which is regulated in Chapter 16 of the San Francisco Environment Code.

Exemptions from Conditional Use Authorization

The CU requirement is imposed on uses to assure they are necessary or desirable for and compatible with the neighborhood and community in which they propose to locate.⁴ Certain uses also have additional considerations for Planning Commission to weigh. For example, when the Planning Commission deliberates over entertainment uses requiring CU it must also consider hours of operation and extent of noise insulation measures. In this way the CU is a means to vet proposals against how they meet larger policy goals. When a use is proposed that already meets larger policy goals it may make sense to exempt that use from the CU process.

Planning Code Definition for Office use

Office activities are allowed under multiple Planning Code use definitions. The primary use definition is "Office Use," a definition found in Planning Code Article 1 and Article 8. This use definition is also the broadest one, encompassing all office activities. Articles 1 and 8 also list other use definitions with typical office activities in their description. These include Non-Retail Professional Service, Retail

³ October 25, 2018 Planning Commission deliberation on Prohibiting Employee Cafeterias within Office Space, BF 180777

⁴ Planning Code Section 303(c)(1)

Professional Serve, Design Professional, Administrative Service and Professional Service.⁵ However these use definitions are considered a subset of the broader "Office Use" definition.

Employee Cafeteria Definition

The Planning Code does not contain a definition for Employee Cafeteria. The Health Code does, and defines it as:

*A food facility located within business premises where the business employees are provided or sold food on a regular basis. Food and drink are not regularly served to the public and the food establishment is not subject to tax. The operators of the food facility are either employees of the business or are contracted by that business.*⁶

Employee cafeterias vary in their provision of food and drink; however, this Health Code definition does not distinguish between the different types and lumps all employee cafeterias into one definition. For instance, this definition includes cafeterias that prepare food and drink on-site and have full-service kitchens requiring an exhaust ventilation system. These facilities often offer multiple choices in cuisine, sometimes prepare meals made-to-order, and in many ways resemble private restaurants or food courts. This definition also includes other types of cafeterias that are more akin to employee break rooms. These cafeterias are furnished with some food and small appliances like toasters and coffee makers. They offer pre-packaged snacks, breakfast items, and beverages but food is not cooked in a kitchen facility requiring an exhaust ventilation system. The proposed ordinance intention is to only limit the first type of full-service cafeteria, and not the employee break room.

Nonconforming Status for Conditional Uses

The Ordinance proposes to make legally existing Employee Cafeterias, approved as of July 24, 2018, nonconforming uses that cannot expand or be re-installed after abandonment. The restrictions in this grandfathering clause are stronger restrictions than those for Employee Cafeterias approved after July 24, 2018, including those after that date but prior to the Ordinance effective date. For example, the Planning Code allows Conditional Uses, in certain instances, expansions of up to 25% of floor area, and allows kitchen expansions on a case-by-case basis.⁷ Expansions beyond these limits are considered significant and require a new Conditional Use authorization.⁸

General Plan Compliance

The amended Ordinance complies with various policies in the Commerce and Industry Element and the Downtown Area Plan. By establishing locational and operating conditions for new accessory Employee Cafeterias, the Ordinance helps ensure that negative effects upon existing eating and drinking establishments are lessened and helps create Employee Cafeterias that are open and accessible to daytime downtown workers. The Ordinance would also continue to allow an economic activity (food service) that provides employment opportunities for unskilled and semi-skilled workers.

⁵ Planning Code Sections 102, 890.28, 890.70, 890.100, 890.106, 890.108

⁶ San Francisco Health Code Article 8, Section 451: Food Preparation and Service Establishment

⁷ Planning Code Interpretation of Section 186.1(b), Nonconforming use, "significant" defined

⁸ Planning Code Section 178(c)

Implementation

The Department has determined that this ordinance will not impact our current implementation procedures.

RECOMMENDATION

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Expand the CU requirement so that it applies to more office type uses by including "Office Use" in Section 202.2.
2. Add criteria exempting certain Employee Cafeterias from the Conditional Use authorization requirement.
3. Amend the Employee Cafeteria definition so that it distinguishes between a full-service cafeteria and a breakroom.
4. Amend the Conditional Use findings to include a finding on economic and workforce development; to explicitly consider street activation; and to remove the proposed finding regarding reusable tableware.
5. Eliminate the proposed grandfathering clause and allow existing cafeterias to expand or reestablish with CU authorization when applicable.

BASIS FOR RECOMMENDATION

The Department supports the amended Ordinance because it provides an alternative to an outright prohibition on Employee Cafeterias. The proposed Conditional Use authorization and Planning Commission findings allow Employee Cafeteria operators to fashion business plans that help meet larger City goals and policies. The Department is proposing the following modifications, both substantive and technical, in hopes of improving implementation and realizing policy aims:

Recommendation 1: Apply the Conditional Use authorization requirements in Planning Code Section 202.2 to the "Office Use" definition. Applying the CU requirement to the "Office Use" definition assures that all office activities that include Employee Cafeterias are similarly regulated. This eliminates loopholes that could be created with using a less encompassing office activity use definition such as "Office, General."

Recommendation 2: Add criteria exempting certain Employee Cafeterias from the Conditional Use authorization requirement. An exemption from the CU requirement is a strong incentive to design and operate a cafeteria in a manner that meets larger policy goals. For example, when an Employee Cafeteria opens at the street level it should be exempted from CU if it is open to and easily accessed by the public and maximizes storefront transparency. Similar requirements apply to other non-Residential uses and an Employee Cafeteria at the street level should comply as well. Further, if the employees are incentivized to patronize adjacent restaurants the street level cafeteria should be exempted from the CU requirement. This could include capping employee cafeteria meal subsidies or offering vouchers for use at nearby restaurants and cafes. These measures would help integrate Employee Cafeterias into the broader City fabric and help activate street life in and around the cafeteria

Recommendation 3: Amend the Employee Cafeteria definition so that it distinguishes between a full-service cafeteria and a breakroom. Clarifying the type of cafeteria subject to the proposed CU requirement helps operators and City staff. Operators benefit because they are made aware that a cafeteria with a full-service kitchen and exhaust system require CU. City staff benefit from a consistent definition and clarity about plan review requirements.

Recommendation 4: Amend the Conditional Use findings to include a finding on economic and workforce development; to explicitly consider street activation; and to remove the proposed finding regarding reusable tableware. The Planning Commission deliberation on the original Employee Cafeterias ordinance and their Resolution No. 20327 provide a framework for Conditional Use findings. Staff is proposing the following findings in accordance with the Planning Commission deliberation and Resolution No. 20327:

- (1) The size of the proposed Employee Cafeteria;
- (2) Whether the proposed Employee Cafeteria would be open to the general public in a location conducive to use by the general public, and contribute to street activation;
- (3) The impact upon existing eating and drinking establishments in the neighborhood, including but not limited to whether meals in the proposed Employee Cafeteria would be free or heavily subsidized;
- (4) Whether the employer will subsidize or pay for employee meals outside the proposed Employee Cafeteria; and
- (5) Whether the proposed Employee Cafeteria will promote economic opportunities for local residents and businesses by coordinating with the Office of Economic and Workforce Development to engage with the City's workforce system, including the First Source Hiring Program, and developing partnerships with existing and new local businesses, vendors, or institutions.

Staff is proposing to remove findings regarding reusable tableware because that consideration is better handled as a separate Ordinance amending the Environment Code, Chapter 16.

Recommendation 5: Eliminate the proposed grandfathering clause. The proposed grandfathering clause imposes stricter controls on existing Employee Cafeterias than those forthcoming. The benefit of this is unclear. In fact, it may be advantageous to allow existing Employee Cafeterias to expand, thereby requiring CU, the Planning Commission to review the proposal for necessity and desirability and application of locational and operational conditions applied to all CU. Further, the current Conditional Use regulations on expansions and re-installation are functional, and would not benefit from another exception for a specific accessory use such as Employee Cafeterias.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

ENVIRONMENTAL REVIEW

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

Attachments:

Exhibit A: Draft Planning Commission Resolution

Exhibit B: Board of Supervisors File No. 180777



SAN FRANCISCO PLANNING DEPARTMENT

November 7, 2018

Ms. Angela Calvillo, Clerk
Honorable Supervisor Safai
Honorable Supervisor Peskin
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
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Re: Transmittal of Planning Department Case Number 2018-010552PCA:
Prohibiting Employee Cafeterias within Office Space
Board File No. 180777
Planning Commission Recommendation: Disapproval

Dear Ms. Calvillo, Supervisor Safai, and Supervisor Peskin,

On October 23, 2018, the Planning Commission conducted duly noticed public hearings at regularly scheduled meetings to consider the proposed Ordinance, introduced by Supervisors Safai and Peskin that would amend the Planning Code to prohibit employee cafeterias, as defined in the Health Code, within Office spaces, except for existing employee cafeterias. At the hearing the Planning Commission recommended disapproval and recommended exploring alternatives to a prohibition on employee cafeterias within Office space.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

Aaron D. Starr
Manager of Legislative Affairs

cc:
Judy Boyajian, Deputy City Attorney
Suha Sandoval, Aide to Supervisor Safai

www.sfplanning.org

Transmittal Materials

CASE NO. 2018-010552PCA
Prohibiting Employee Cafeterias within Office Space

Sunny Angulo, Aide to Supervisor Peskin
Erica Major, Office of the Clerk of the Board

Attachments:

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 20327

HEARING DATE OCTOBER 25, 2018

Project Name: Prohibiting Employee Cafeterias within Office Space
Case Number: 2018-010552PCA [Board File No. 180777]
Initiated by: Supervisors Safai, Peskin / Introduced July 24, 2018
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

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RESOLUTION DISAPPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO PROHIBIT EMPLOYEE CAFETERIAS, AS DEFINED IN THE HEALTH CODE, WITHIN OFFICE SPACES, EXCEPT FOR EXISTING EMPLOYEE CAFETERIAS; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on July 24, 2018 Supervisors Safai and Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 180777, which would amend the Planning Code to prohibit Employee Cafeterias, as defined in the Health Code, within Office space, except for existing Employee Cafeterias;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on October 25, 2018; 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 15378; 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

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby disapproves the proposed ordinance and recommends the Board of Supervisors explore alternatives to a prohibition on employee cafeterias within Office space.

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. Measures taken to bolster the City's pedestrian environment should be supported, especially in nascent neighborhoods. This includes Ordinances that attempt to help induce patronage of ground floor retail establishments.
2. However a prohibition on employee cafeterias within office spaces is too blunt of a regulation. Employee cafeterias often hire locally, contract with local vendors and can be used by local organizations for after-hours events. In this way they are beneficial to the City. In this light, new regulations on employee cafeterias, if pursued, should include geographic considerations, cafeteria size, and an enhanced entitlement process, among other alternative regulations.
3. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are inconsistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 1

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

Policy 1.2

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

The proposed Ordinance would prevent new employee cafeterias from locating into Office spaces where they would be regulated to lessen negative effects upon existing eating and drinking establishments.

URBAN DESIGN ELEMENT

OBJECTIVE 4

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

Fundamental Principles for Neighborhood Environment: Principle #16

Continuity of interest and activities at ground level in commercial buildings adjacent to pedestrian ways creates rich street life and enhances pedestrian experiences.

The proposed Ordinance would prohibit new ground-level employee cafeterias within office buildings. This results in a lost opportunity to boost street life and enhance the pedestrian experience.

DOWNTOWN AREA PLAN

OBJECTIVE 3

IMPROVE DOWNTOWN SAN FRANCISCO'S POSITION AS THE REGION'S PRIME LOCATION FOR SPECIALIZED RETAIL TRADE.

Policy 3.5

Meet the convenience needs of daytime downtown workers.

By prohibiting new employee cafeterias that may be open to the public, the proposed Ordinance does not meet the convenience of downtown workers.

TRANSIT CENTER DISTRICT PLAN

OBJECTIVE 1.4

ENSURE THE DISTRICT MAINTAINS AREAS THAT CONTAIN CONCENTRATION OF GROUND-LEVEL PUBLIC-SERVING RETAIL AND CONVENIENCE USES FOR WORKERS AND VISITORS.

OBJECTIVE 2.12

ENSURE THAT DEVELOPMENT IS PEDESTRIAN-ORIENTED, FOSTERING A VITAL AND ACTIVE STREET LIFE.

The proposed Ordinance would prevent new private eating facilities from locating at the street level where they may bolster the street life.

4. **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 Ordinance would not help preserve existing neighborhood-serving retail or help new neighborhood-serving retail because it does not propose any Planning Code amendments that would proactively benefit neighborhood serving retail.

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 Ordinance would not help conserve or protect neighborhood character because it does not propose any Planning Code amendments that bolster neighborhoods.

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

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing because it concerns itself with accessory uses within Office spaces.

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

Because the Ordinance proposes to restrict new cafeterias within Office spaces, it would not negatively affect MUNI transit service or overburden 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 Ordinance 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 because the Ordinance proposes to restrict allowed accessory uses within Office spaces.

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

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake because the Ordinance proposes to restrict accessory uses within Office spaces.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings because the Ordinance proposes to restrict accessory uses within Office spaces.

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

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas because the Ordinance proposes to restrict accessory uses within Office spaces.

5. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare do not require the proposed amendments to the Planning Code as set forth in Section 302.

Resolution No. 20327
October 25, 2018

CASE NO. 2018-010552PCA
Prohibiting Employee Cafeterias within Office Space

NOW THEREFORE BE IT RESOLVED that the Commission hereby DISAPPROVES the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on October 25, 2018.



Jonas P. Ionin
Commission Secretary

AYES: Hillis, Johnson, Koppel, Melgar, Richards

NOES: None

ABSENT: Fong, Moore

ADOPTED: October 25, 2018.



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: OCTOBER 11, 2018
90-DAY DEADLINE: OCTOBER 29, 2018

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Case Number: 2018-010552PCA [Board File No. 180777]
Initiated by: Supervisors Safai, Peskin / Introduced July 24, 2018
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: Approval with Modifications

PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to prohibit Employee Cafeterias, as defined in the Health Code, within Office Space. Existing Employee Cafeterias would be allowed to remain as a legal nonconforming Accessory Use.

The Way It Is Now:

Employee Cafeterias, as defined in the Health Code, are allowed within Office Uses¹ as an Accessory Use.

The Way It Would Be:

Employee Cafeterias would be prohibited within Office Uses. Existing Employee Cafeterias lawfully existing or finally approved as of July 24, 2018 would be allowed to continue and maintained as a legal nonconforming Accessory Use but could not be expanded or re-installed if abandoned.

BACKGROUND

With the approval of the Central Market Payroll Tax Exclusion in 2011 the City has eagerly awaited the revitalization of the Mid-Market Area. Many prominent technology firms located within the Mid-Market Area to take advantage of the payroll tax relief, bringing with them thousands of new employees.² Soon

¹ Per Section 102 of the Planning Code an Office Use is defined as: A grouping of uses that includes General Office, Retail Professional Services, and Non-Retail Professional Services. This use shall exclude: retail uses other than Retail Professional Services; repair; any business characterized by the physical transfer of tangible goods to customers on the premises; wholesale shipping, receiving and storage; and design showrooms or any other space intended and primarily suitable for display of goods.

² Mayor Lee's Statement on Central Market/Tenderloin Payroll Tax Exclusion Report. October 27, 2014. Accessed September 24, 2018. <https://sfmayor.org/article/mayor-lees-statement-central-markettenderloin-payroll-tax-exclusion-report>

thereafter several restaurants followed.³ Combined with hundreds of new residential units, new and renovated hotel units, and adjacent theater and arts uses, there was a general expectation that the Mid-Market Area retail and pedestrian life would be revitalized. Unfortunately, many of the restaurants attracted to the area have since closed or continue to struggle.⁴ Further, many still perceive the area as undesirable or blighted. Some attribute, at least partially, the neighborhood's shortcomings to employee cafeterias installed by the new tenants in the area. These cafeterias typically provide free food to their employees disincentivizing them from going out and patronizing nearby businesses.

The City is also poised to approve the Central SoMa Plan, which will bring millions of square feet of new office space to the City. Central SoMa Plan is a comprehensive plan for the area surrounding much of southern portion of the Central Subway transit line. The Plan would change allowable land uses and zoning controls, increase heights on many parcels within the Plan area, proposes substantial changes to the street network to accommodate multiple modes of travel, and would provide additional recreational resources. The plan is projected to provide approximately 8,570 housing units and 32,500 jobs. The hope is that this new plan will create a vibrant new neighborhood in this area of the city; however one of the concerns is that the new office spaces in this area will also come with free employee cafeterias, which may repeat the situation we currently have in the Mid-Market.

ISSUES AND CONSIDERATIONS

Other jurisdictions

A similar proposal to this ordinance was recently enacted in Mountain View, California, although it is limited to a proposed development. In Mountain View, there a 9.9-acre site, known as Phase 2 of the San Antonio Center, was recently approved for redevelopment. The project included 120,000 square feet of commercial, retail and restaurant use, 70,000 square foot cinema, a 167-unit hotel, and 397,000 square feet of office use. To help assure patronage of the restaurants, the office uses in this project are subject to operating conditions that encourage use of the food and retail services at the San Antonio Center. Employers may subsidize or pay for employee meals if they are patronizing restaurants at the San Antonio Center. However, employers are prohibited from subsidizing meals by more than fifty percent or providing free meals for employees in the office space on a regular daily basis. This project specific regulation may also be considered for amendment at the request of office tenants or other applicants over time.⁵

³ "As Twitter Tax Break Nears Its End, Mid-Market Restaurants Feel Glimmer of Hope." Carolyn Alburger. September 19, 2018. Accessed September 25, 2018.

<https://sf.eater.com/2018/9/19/17862118/central-market-tax-exclusion-restaurants-post-mortem-future>

⁴ "Mid-Market Needs to Find its Heart in order to Become a Real Neighborhood." Brock Keeling. September 19, 2018. Accessed September 25, 2018. <https://sf.curbed.com/2018/9/19/17861316/midmarket-neighborhood-development-mission>

⁵ San Antonio Center, Phase 2.

<https://www.mountainview.gov/depts/comdev/planning/activeprojects/sanantcenter.asp>

Condition 42: Cafeteria Condition: In order to foster synergy between office, restaurant, and retail uses in the Center and realize the economic vitality of the project, the project anticipates employees in the office space will utilize food and retail services available in the Center. The applicant will encourage tenants and employees of tenants to utilize food and retail services available in the Center. Neither the applicant

Health Code Definition of Employee Cafeterias

While the Planning Code has definitions for various food serving uses, it does not have a use definition for Employee Cafeterias; however, the Health Code does and defines an Employee Cafeteria as:

a food facility located within business premises where the business employees are provided or sold food on a regular basis. Food and drink are not regularly served to the public and the food establishment is not subject to tax. The operators of the food facility are either employees of the business or are contracted by that business.⁶

Employee cafeterias vary in their provision of food and drink. Some prepare food and drink in on-site full-service kitchens requiring an exhaust ventilation system. These often offer multiple choices in cuisine, sometimes made to order, and in many ways resemble private restaurants or food courts. Others offer pre-packaged snacks, breakfast items, and beverages but do not cook food in a kitchen facility requiring an exhaust ventilation system. These are akin to employee break rooms that are furnished with some food and small domestic appliances like toasters and coffee makers. Distinguishing between these two cafeteria types is essential when seeking to regulate employee cafeterias. Cafeterias with on-site full-service kitchens directly compete with nearby restaurants, while those with only small domestic appliances are less likely to compete. Department of Public Health (DPH) Staff also makes this type of distinction in their permitting, inspections and collaboration with other City agencies.

Catering

The proposed ordinance does not prohibit employers from having lunch delivered to the office for its employees, nor is there any mechanism for this Planning Department to prohibit this type of activity. It is conceivable that office tenants restricted by this Ordinance would create large employee break rooms for caterers to provide food to their employees during the work week. Creating spaces that are just short of a full-service kitchen could serve as a work around to the proposed cafeteria prohibition.

Impacts on Jobs

Another consideration is that employee cafeteria workers often enjoy better remuneration and working conditions than their counterparts in restaurants. One source notes that entry level pay for employee cafeteria workers can be up to 30% more than the minimum wage paid to kitchen staff in San Francisco restaurants.⁷ It is also reported that employee cafeteria workers have more predictable working hours,

nor tenant(s) will subsidize meals by more than fifty percent (50%) or provide free meals for employees in the office space on a regular daily basis. An employer can subsidize or pay for employee meals as long as they are patronizing restaurants in the Center. The applicant may make a request to amend this condition. The City Manager or a designee may make a recommendation to the City Council on this matter.

⁶ San Francisco Health Code Article 8 Section 451: Food Preparation and Service Establishment

⁷ Arvanitidis, Laurel. e-mail message from the Office of Workforce and Economic Development regarding correspondence with sf.citi, October 1, 2018

Sciaccia, Annie. "The highest-paid restaurant workers are in San Francisco, survey says." Bizjournals. February 11, 2015. Accessed October 2, 2018.

have work hours amenable to child rearing and family life, and some enjoy unionization. The Ordinance would not remove these existing jobs, it would prevent new jobs like these by prohibiting new employee cafeterias.

Alternatives to a Complete Ban

As an alternative to an outright prohibition on new Employee Cafeterias, the Department believes that there are ways to incentivize businesses to not add employee cafeterias to new office space, and help encourage employees to patronize local restaurants. This approach could include relaxing certain Planning Code requirements on Office use in exchange for not adding an employee cafeteria. Conversely, when an Employee Cafeteria is added, additional requirements to encourage employees to venture out into the neighborhood could be required as conditions of approval. The following are some possible alternatives to a complete ban on cafeterias:

Incentives for foregoing an Employee Cafeteria

1. Allow Office uses at the First Story and below in zoning districts where Office uses require Conditional Use authorization

In most Downtown Commercial Districts (C-3), Office Uses at or below the ground floor require Conditional Use authorization. As an incentive to not add an Employee Cafeteria, new office space would be allowed as of right at the first story and below and could even be excluded from the FAR requirements in new buildings. To ensure an active street frontage any first story office uses should be required to be set back 10-25 feet in accordance with the Planning Code standards. Further, Landmark buildings and buildings in the C-3-R (Downtown Retail, aka Union Square) should not be allowed to avail themselves of this exemption.

2. Exempt from Gross Floor Area up to 15,000 square feet of first story space if that first story space is devoted to personal services, restaurants, and retail sales of goods intended to meet the convenience shopping and service needs of downtown workers and residents.

The definition of Gross Floor Area in Planning Code Section 102 currently exempts up to 5,000 square feet from the Gross Floor Area calculation in C-3 zoning districts if it is devoted to retail uses at the first story. Increasing the exempted amount could serve as an incentive for new buildings to not provide an employee cafeteria and allows that increased area to be used for office activities. This definition could also be amended to provide this exception to zoning districts within the Central SoMa plan area.

3. Allow Employee Cafeterias on the first story if they are open to the public

Since Employee Cafeterias are accessory uses to a principle Office Use, their allowed location is subject to the underlying zoning district's regulations on Office Uses. Allowing an Employee Cafeteria on the first story would allow an activity regulated as an Office Use where it typically is

<https://www.bizjournals.com/sanfrancisco/blog/2015/02/restaurants-san-francisco-bars-minimum-wage.html>

prohibited. The Planning Department, however, believes that the Employee Cafeteria should be open to the public. This public accessibility would help enliven the street and contribute to the quality of the public realm.

Requirements for Establishing an Employee Cafeteria

1. Require the provision of meal vouchers to employees for use at nearby restaurants.

To help offset the effect that subsidized Employee Cafeteria meals have upon local restaurants, office tenants would be required to provide their employees meal vouchers. These would be used to patronize nearby restaurants and help contribute to an enlivened pedestrian realm.

2. Require reporting to Office of Economic and Workforce Development (OEWD) as part of the DPH annual licensing for food facilities

DPH requires an annual licensing of all food facilities, including Employee Cafeterias. At the time of licensing it would be valuable to confirm the number of vouchers distributed to employees for use at local restaurants. Further, if an office has provided a cafeteria on the ground floor open to the public, it would also be valuable to know the extent to which the public is served by the employee cafeteria.

3. Amend the considerations under Planning Code Section 321 that the Planning Commission makes when considering approval of an Office development.

When the Planning Commission reviews office projects of 25,000 square feet or larger, it evaluates how well the project promotes the public welfare, convenience and necessity. When an office building project intends to allow Employee Cafeterias for future tenants, the Planning Commission should also consider how an Employee Cafeteria would promote the public welfare, convenience and necessity. Specific considerations should be made regarding existing restaurant concentration within a 300-foot radius of the office project; whether a future Employee Cafeteria will be at the first story and accessible to the public; and whether the Employee Cafeteria will provide workforce opportunities for local residents by coordinating with the OEWD to engage with the City's workforce system to provide employment opportunities and career trainings.

With this approach it is possible that new street enhancing retail spaces are created while also adding to the City's supply of office space. And when an Employee Cafeteria is established, adjacent restaurants may also see increased patronage through employer provided meal vouchers. In short, this approach can result in greater benefits to the City than a strict prohibition.

General Plan Compliance

Commerce and Industry Element

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 proposed Ordinance would help ensure that new employee cafeterias are regulated to lessen negative effects upon existing eating and drinking establishments.

Urban Design Element

Objective 4: Improvement of the neighborhood environment to increase personal safety, comfort, pride, and opportunity

Fundamental Principles for Neighborhood Environment: Principle #16 Continuity of interest and activities at ground level in commercial buildings adjacent to pedestrian ways creates rich street life and enhances pedestrian experiences.

The proposed Ordinance would help provide new patrons to ground level retail activity in office buildings. This will boost street life and enhance the pedestrian experience.

Downtown Area Plan

Objective 3: Improve Downtown San Francisco's position as the region's prime location for specialized retail trade.

Policy 3.5: Meet the convenience needs of daytime downtown workers

By limiting the number of new private eating facilities, the proposed Ordinance helps eating and drinking establishments open to all downtown workers thrive.

Transit Center District Plan

Objective 1.4 Ensure the District maintains areas that contain concentrations of ground-level public-serving retail and convenience uses for workers and visitors.

Objective 2.12 Ensure that development is pedestrian-oriented, fostering a vital and active street life.

The proposed Ordinance would limit the number of new private eating facilities and help ensure that ground-level eating and drinking establishments meet the demand for meals. This also bolsters the street life because many eating and drinking establishments will locate at ground-level.

Implementation

The Department has determined that this Ordinance will impact our current implementation procedures. It will require Planning Department Staff to coordinate with DPH Staff to determine if Building Permit Applications proposing tenant improvements that include a full-service kitchen with exhaust ventilation systems constitute an Employee Cafeteria as defined by the Health Code.

RECOMMENDATION

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Assure that DPH has the proper procedures or Health Code amendments in place to differentiate between cafeterias with full-service kitchens requiring ventilation exhaust systems and those that do not.
2. From the various proposals outlined in this report, create a set of incentives to forego inclusion of an Employee Cafeteria in Office space and a set of additional requirements when including an Employee Cafeteria in Office space.

BASIS FOR RECOMMENDATION

The Department supports the Ordinance's intention to help maintain and enhance vibrant neighborhoods and pedestrian activity. The Department also supports the Ordinance's intention to induce patronage of neighborhood businesses; however, the Department finds that modifications should be made to better focus the proposed regulation's effects, and to provide flexibility to Office Uses regarding their decision on including an Employee Cafeteria. The modifications include the following:

Recommendation 1: Assure that DPH has the proper procedures or Health Code amendments in place to differentiate between cafeterias with full-service kitchens requiring ventilation exhaust systems and those that do not. There is a stark difference between employee cafeterias with full-service kitchens and those without. Full-service kitchens allow a cafeteria to resemble a restaurant and actively compete with the San Francisco's restaurants for patronage. Since the Ordinance seeks to control the proliferation of cafeterias that compete with restaurants, it is crucial that the implementing City agencies can focus on facilities with full-service kitchens requiring exhaust ventilation systems.

Recommendation 2: Create a set of incentives to forego inclusion of an Employee Cafeteria in Office space and a set of additional requirements when including an Employee Cafeteria in Office space. Rather than imposing a prohibition on Employee Cafeterias, the Department prefers creating a set of incentives for foregoing their inclusion and another set of additional requirements for their inclusion. The proposed alternatives listed above can help offset the negative impacts of adding Employee Cafeterias to office space by removing some of their competitive advantage of free meals through a voucher program. They can also help activate street frontages by allow employee cafeterias open to the general public on the ground floor, or they can disincentives the inclusion of cafeterias by providing incentives to office developers in the form of bonus gross floor area or additional office space.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

ENVIRONMENTAL REVIEW

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 180777

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

July 31, 2018

File No. 180777

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On July 24, 2018, Supervisor Safai introduced the following proposed legislation:

File No. 180777

Ordinance amending the Planning Code to prohibit Employee Cafeterias, as defined in the Health Code, within Office space, except for existing Employee Cafeterias; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a direct or reasonably foreseeable physical change in the environment.

Attachment

c: Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

Joy Navarrete

Digitally signed by Joy Navarrete
DN: cn=Joy Navarrete, o=Planning,
ou=Environmental Planning,
email=joy.navarrete@sfgov.org, c=US
Date: 2018.08.01 16:53:44 -07'00'

**GOLDEN GATE
RESTAURANT
ASSOCIATION**

est: 1936

180777
RECEIVED IN COMMITTEE
12/10/2018

December 8, 2018

Supervisor Katy Tang
Chair, Land Use Committee
San Francisco Board of Supervisors
City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

Re: Item 5 - 180777 [Planning Code - Prohibiting Employee Cafeterias within Office Space]

Dear Supervisor Tang & Members of the Land Use Committee:

The Golden Gate Restaurant Association supports amending the non-retail cafeteria ban legislation to a Conditional Use process, reiterating our support for this approach as stated in our October 24, letter to the Planning Commission. We believe that the lens of a conditional use process provides the best vehicle for determining the "necessity" or "desirability" of a private non-retail free cafeteria in the context of the City's General Plan Priority Principles.

As highlighted in the letter to the Planning Commission (which is included) we also support changes to the Health Code to differentiate between cafeterias that operate as a full-service daily non-retail free cafeteria (or perhaps better phrased food service operation) versus a kitchen that may be used for some cooking and preparation, or that provides complimentary snacks and beverages. We also want to make it clear that this definition should not impact the catering in of food.

Below are some key considerations as to why a Conditional Use process makes sense.

Loss of Sales and Use Taxes

Restaurants, referred to as Eating and Drinking Establishments, in the Planning Department's Commerce and Industry Inventory, represent more than 65,000 jobs, with another more than 10,000 jobs being accounted for by Food Stores.¹ Eating and Drinking Places combined with

¹ San Francisco Planning Department Commerce & Industry Inventory 2017, p. 51

Food Stores, represent over 60 percent of the jobs in the retail sector and more than 50 percent of retail establishments overall, generating more than \$5.5 billion in retail sales and use taxes.

When companies offer full-service free cafeterias, millions of dollars of local sales and use taxes are lost as sales tax is not being collected; restaurants and food stores contribute twice to sales and use taxes, first in the raw product purchase and then in the sale of the final product. This secondary transaction lost can be significant to the local economy as these taxes support public transportation, local schools and the overall city budget.

And although not a local tax issue, many legal experts opine that companies offering free meals are actually skirting federal taxation on the employee benefit they are providing.

Ground Floor Economic Vitality

Office space constitutes the largest employment category by land use in San Francisco - 42 percent², representing the largest source of population to support the economic activity in our office districts. Most of our C-3 zoning in San Francisco requires mixed use ground floor retail, yet much of this space, particularly in new buildings, sits vacant.

There's been much research about how to create vibrant and safe streetscapes and active ground floors and storefronts are the key. Active retail contributes to vitality and eyes on the street, helping to create safer street environments. The financial investment for creating a ground floor restaurant experience is extremely expensive -- from the months of paying rent during renovations, the actual renovations, purchasing product, training staff, typical business start up costs, etc.; on the day a restaurant or retail business opens, it's in debt. Given the financial risk, a location's demographics (size and scope) of the market is critical in the success or failure of the business. Traffic from neighboring residents and businesses is crucial -- without which, businesses cannot survive. We saw a number of businesses in the Mid-Market and as far away as Folsom Street cite the move of companies to offices with full cafeterias for declining or disappearing traffic. Conversely, restaurants have seen significant upticks in traffic on days when cafeterias have been closed or limited.

Planning Code Requirements & Fairness

The San Francisco Planning Code regulates restaurants with size and use limits, linear saturation thresholds, numeric caps in some neighborhoods, Conditional Use requirements, and not allowing activity above the first floor. This is all done to protect the balance of uses and vitality of a neighborhood in alignment of the Priority Principles of the General Plan. Given these realities, it's absolutely reasonable to similarly look at the value of non-retail, free cafeterias and their impact on the same principles.

The General Plan's Commerce and Industry Element "sets forth objectives and policies that address the broad range of economic activities," and serves as a comprehensive guide for both

² San Francisco Planning Department Commerce & Industry Inventory 2017, p. 49

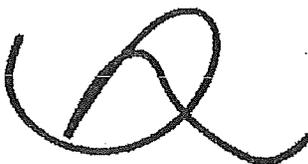
the public and private sectors when making decisions related to economic growth and change. It is framed within three overriding goals which call for continued economic vitality, social equity and environmental quality. This Element challenges decisionmakers to balance being responsive to near term needs, while also being consistent with long range goals and values.

In looking at this Element, highlighting the issue of social equity cannot be ignored; independent restaurants in particular are owned and operated by those without significant means -- ranging from cooks who want to share their vision of a particular food or hospitality, to immigrants that are able to make a living and employ their family and others by sharing food from their country of origin. Restaurants are one of the last bastions of urban manufacturing -- where a product is taken from its raw form to completion onsite. And it's an industry of opportunity where those without formal training can prosper, starting out as dishwashers and becoming restaurant owners and executive chefs. Independent restaurants also employ people without scrutinizing their immigration status, something that larger companies find imperative.

Restaurants are community gathering places where people meet their neighbors, celebrate the high and lows of their lives, meet loved ones and feel nourished through food. Every day their doors are open to those who want to eat or seek employment or ask for a donation -- they are one of the last places that prioritizes human contact in an increasingly disconnected world. Restaurants can transform communities and lives, and through hiring, community fundraisers, food donations, participation in charitable events and more play an important role of being publicly accessible space for all.

We believe that private enterprise should be able make the best decisions for their business, but we also believe that when choosing to locate in a city, there is a responsibility to that community, which only increases tenfold when tax breaks and incentives are provided. A Conditional Use for a free cafeteria does not infringe on a business enterprise from doing their core business, and may even spur some creativity around it's employee and community engagement. We hope that you will agree and support a Conditional Use process for new non-retail office cafeterias.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'Gwyneth Borden', written in a cursive style.

Gwyneth Borden
Executive Director

120977
RECEIVED IN COMM. 1172
12/10/2018

**GOLDEN GATE
RESTAURANT
ASSOCIATION**
— est. 1936 —

October 24, 2018

Rich Hillis, President
San Francisco Planning Commission
1650 Mission Street, Suite 400
San Francisco, California 94102

Re: Prohibiting Employee Cafeterias within Office Space/2018-010552PCA

Dear Commissioner Hillis & Members of the Planning Commission,

The Golden Gate Restaurant Association supports the intent of the cafeteria ban to:

- Apply only to non-retail corporate cafeterias.
- Be applicable only to new buildings zoned as office.
- Not prevent the provision of free food or snacks, rather the building out of a full service non-retail cafeteria operation.
- Still encourage catering in of food from local restaurants or caterers.
- Not impact existing cafeterias retroactively.

We support some of the recommendations of the Planning Staff, most notably creating Health Code amendments to differentiate between cafeterias that operate as a full-service daily non-retail cafeteria versus a kitchen that may be used for some cooking and preparation. In acknowledging Planning Staff's recommendation for alternative approaches, a definition distinction would allow the Commission to consider the tool of a Conditional Use authorization for the installation of a full service, non-retail cafeteria. This would allow the Commission to weigh the provision of a non-retail cafeteria in the context of the General Plan Priority Principles.

In addition to supporting changes in the Health Code, we'd like to address other items highlighted under Staff's **Issues and Considerations**:

Catering - As noted above, it is not our intent to see catering prohibited, in fact, we support incentives that encourage it.

Impact on Jobs -- While it's true that restaurant jobs have less ideal hours since their busiest times are evening and weekends, industry wages are at an all time high as there's a massive shortage of workers in the industry. If you were to search restaurant jobs, you'd find everything from neighborhood coffee shops to Michelin starred restaurants starving for talent. Additionally, according to the Planning Department's own Commerce and Industry Inventory 2016 (which is

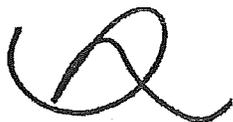
the most recent report released), eating and drinking establishments represent more than 35 percent of all retail sales tax collected in San Francisco, with more than \$4.7 billion in taxable sales that support the local economy. The survival and vitality of the local restaurant industry is critical to San Francisco's overall economy. Traditional restaurant jobs provide a path to move into the front of house jobs (which have good compensation) or small business ownership (opening a restaurant).

Alternatives to a Complete Ban

- Incentives for foregoing an Employee Cafeteria - We support the concept of creating incentives and/or implementing a CU process for cafeterias. We're agnostic on item one (CU for ground floor office), but we generally don't believe every office building must have retail space given the existing amount of vacant storefronts. We're supportive of items two (exempting Gross Floor Area up to 15,000 square feet devoted to personal services, restaurants) and three (first floor employee cafeterias open to the public), especially since our issue is with non-retail cafeterias, not cafeterias generally. One point of irony in office cafeterias is that restaurant uses are typically not allowed above the first floor in Neighborhood Commercial Districts.
- Requirements for Establishing an Employee Cafeteria - While we like the idea of meal vouchers for use at nearby restaurants, similar to what some companies already do, we oppose any attempt to legislate this requirement. We support items two (reporting to OEWD) and three (considerations under Planning Code Section 321 for office development), and think this is where the Commission could add the Conditional Use requirement for employee non-retail cafeterias.

In closing, as the Commission considers what happened in the Mid-Market area and the promise of the Central SOMA rezoning, we think it's a critical time to really think about the ground floor experience in our city. Vibrant communities have a healthy balance of uses, and the promise of new jobs has always been considered in the context of the greater economic impact they have on the overall local ecosystem. The notion of the ban is a consideration of whether the requirement of mixed use zoning can actually achieve the active streetscape our General Plan contemplates; and we hope that after careful consideration that you support our recommendations.

Sincerely yours,



Gwyneth Borden
Executive Director

CC: Supervisor Ahsha Safai
Supervisor Aaron Peskin

180777

From: Board of Supervisors, (BOS)
Sent: Tuesday, October 23, 2018 4:54 PM
To: Major, Erica (BOS)
Subject: FW: SF Chamber Letter re: Oppose File No. 180777
Attachments: 10.23.18_Oppose File No. 180777.pdf

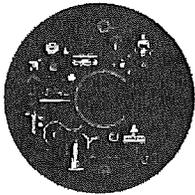
From: Mary Young <myoung@sfchamber.com>
Sent: Tuesday, October 23, 2018 2:31 PM
To: richhillissf@yahoo.com
Cc: Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>; Fewer, Sandra (BOS) <sandra.fewer@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Tang, Katy (BOS) <katy.tang@sfgov.org>; Brown, Vallie (BOS) <vallie.brown@sfgov.org>; Kim, Jane (BOS) <jane.kim@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Mayor London Breed (MYR) <mayorlondonbreed@sfgov.org>; Power, Andres (MYR) <andres.power@sfgov.org>; Cohen, Malia (BOS) <malia.cohen@sfgov.org>; Rahaim, John (CPC) <john.rahaim@sfgov.org>; Green, Andrea (CPC) <andrea.green@sfgov.org>
Subject: SF Chamber Letter re: Oppose File No. 180777

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear President Hoillis,

Please see attached letter from the San Francisco Chamber of Commerce opposing Board of Supervisors File No. 180777.

Thank you,



Mary Young
Manager, Public Policy
San Francisco Chamber of Commerce
235 Montgomery St., Ste. 760, San Francisco, CA 94104
(O) 415-352-8803 • (E) myoung@sfchamber.com





235 Montgomery St., Ste. 760, San Francisco, CA 94104
tel: 415.352.4520 • fax: 415.392.0485
sfchamber.com • twitter: @sf_chamber

October 23, 2018

President Rich Hoillis
San Francisco Planning Commission
1660 Mission Street, Ground Floor
San Francisco, CA 94103

Re: File No. 180777, Planning Code - Prohibiting Employee Cafeterias within Office Space

Dear President Hoillis,

The San Francisco Chamber of Commerce, representing the interests of thousands of local and global businesses, is writing to express concern about Board of Supervisors File No. 180777 which would prohibit new employee cafeterias within office space. While the Chamber constantly works to strengthen our local economy and support our small businesses, this ordinance reaches far beyond what is appropriate and would hurt the local economy it intends to support.

The majority of the Chamber's membership is comprised of small businesses, and our organization is deeply committed to promoting a city environment which helps these businesses succeed. We understand the challenges presented to small businesses and the author's desire to support ground floor restaurants and retail. However, though the intention behind this legislation is worthwhile, the ordinance unnecessarily targets some of the largest employers in San Francisco, puts many food-service sector jobs at risk, and discourages economic expansion - all while not addressing the real issues the proposal attempts to solve.

If this measure passes, hundreds in the food services industry and small business owners would lose their jobs and contracts with employers that maintain cafeterias. The cafeterias this legislation hopes to ban actually offer high-quality, high-wage jobs in the food-service sector, so the measure threatens the livelihood of dozens of small businesses and vendors that provide food and supplies to office cafeterias throughout the City.

While this measure does not apply to existing cafeterias, it *does* apply to companies currently in San Francisco that may have plans for growth. This hinders these companies' ability to move and places further burdens on doing business in San Francisco – an already challenging endeavor. This will limit economic development in our city, a critical miscalculation of this legislation.

The Chamber agrees that encouraging a healthy economy and small business growth is the right sentiment, but we believe strongly that this measure is the wrong approach. We look forward to working with the sponsor and the Commission to collaborate on alternative and creative solutions, but we do not support this measure and ask you to do the same.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Lazarus", with a long horizontal flourish extending to the right.

Jim Lazarus
SVP Public Policy
San Francisco Chamber of Commerce

cc: Clerk of the Board, to be distributed to all Supervisors; Andres Powers, Office of the Mayor of San Francisco; John Rahaim, San Francisco Planning Department

180777

From: Board of Supervisors, (BOS)
Sent: Monday, July 30, 2018 8:52 AM
To: BOS-Supervisors; Major, Erica (BOS)
Subject: FW: Please don't ban workplace cafeterias

From: Gabor Cselle [mailto:mail@gaborcselle.com]
Sent: Friday, July 27, 2018 1:21 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: Please don't ban workplace cafeterias

Hi there,

I live in District 1 in San Francisco at Stanyan and McAllister. I work in the technology industry.

I recently read in the media that there are plans to ban workplace cafeterias in San Francisco

Please don't ban them for these reasons:

1. **Health:** The food at my employer's cafeteria is so much more healthy than food available at local restaurants.
2. **Collaboration:** Conveniently and informally grabbing lunch with my coworkers at our workplace cafeteria fosters better teamwork and more innovation. Coordinating lunch plans is inconvenient and we'd just separately swarm out for food. Teamwork is essential and hindering it would decrease the speed San Francisco's innovation engine.
3. **Cost:** I work in the East Cut area, where lunch prices are relatively high. I'm sure my employer wouldn't offset the increase in cost with added pay, so this ban would take real money out of our family's budget. San Francisco is already hard to afford for families, and this would just add to that crisis.

Please don't ban workplace cafeterias.

Thank you,

Gabor Cselle

180777

From: Board of Supervisors, (BOS)
Sent: Monday, July 30, 2018 8:26 AM
To: BOS-Supervisors; Major, Erica (BOS)
Subject: FW: Public Comment: File 180777

From: Thomas Busse [mailto:tjbussesf@gmail.com]
Sent: Saturday, July 28, 2018 11:12 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: Public Comment: File 180777

This legislation would be illegal as it is pre-empted at the Federal level by ERISA and would invite further litigation under Title VI of the Civil Rights Act of 1964.

Section 125 of ERISA preempts state and local governance of employer-provided Cafeteria Plans. When enacted in 1972, the Federal Government found such meal plans to be a Federal Concern, as employers routinely discriminated in their provision of such meal plans both on the basis of race and compensation. Through its power to tax, the Federal Government imposed strict nondiscrimination testing requirements on employers, who are required to make annual filings with the US Department of Labor in regard to meals provided to their employees and to prepare EBC documents to be given to their employees regarding their rights.

ERISA is specifically a preemption law: it prohibits state and local governments from regulating employee benefits - this includes meals provided as a form of compensation to employees. This proposal attempts to ban a form of employee compensation. This ban would disproportionately impact lower-paid employees who skew toward racial minorities. The Federal Government took an interest in making sure all employees - both low and highly compensated - had equal access to employer-provided cafeteria plans. The SF Board of Supervisors can no less ban Cafeteria Plans than it can ban 401k's. Both are forms of compensated regulated solely at the Federal Level.

Do not waste the City Attorney's time in costly and difficult ERISA complex litigation. He has whistleblowers to fire and kickback claims to robocut.

Thomas J. Busse

180777

From: Board of Supervisors, (BOS)
Sent: Monday, July 30, 2018 1:57 PM
To: BOS-Supervisors; Major, Erica (BOS)
Subject: FW: Opposed to cafeteria ban

From: jones-allen [mailto:jones-allen@att.net]
Sent: Wednesday, July 25, 2018 7:42 AM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; metro@sfchronicle.com; newstips <newstips@sfexaminer.com>
Subject: Opposed to cafeteria ban

Attention: All Members of the San Francisco Board of Supervisors,

This proposed legislation is also further proof that SF lawmakers lack creativity. Forcing people to mingle at lunchtime out of the office can not be legislated but that will not prevent a stiff necked board from forcing peers to go along with it.

The good news is Mayor London Breed is not bumb enough to sign something so silly and usinesses will get creative and prove just how asinine this proposed ban is, if the mayor turns out to be just as bumb as her former colleagues on the board.

The bad news if passed, will threatens businesses looking to be a part of the "SOMA plan."

If someone was to ask me to describe the San Francisco Board of Supervisors, I would respond: it is one big barf bag; full of their own hypocrisy.

To beg a business like Twitter to set up shop here, offer it tax breaks and then use Twitter as an example to create an asinine piece of legislation to make a law banning future businesses from following them in providing free meals for employees is exhibit A.

Allen Jones
jones-allen@att.net
(415) 756-7733

The only thing I love more than justice is the freedom to fight for it.
--Allen Jones--

Member, Board of Supervisors
District 3



City and County of San Francisco

AARON PESKIN
佩斯金 市參事

JB
eg Dep
Leg Clerk
LU Clerk

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2019 JUL 17 PM 4:35
AK

DATE: July 17, 2019

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Supervisor Aaron Peskin, Chair, Land Use and Transportation Committee

RE: Land Use and Transportation Committee
COMMITTEE REPORTS

Pursuant to Board Rule 4.20, as Chair of the Land Use and Transportation Committee, I have deemed the following matters are of an urgent nature and request they be considered by the full Board on Tuesday, July 23, 2019, as Committee Reports:

190754 Mission Bay South - Storm Water Pump Station No. 5 Public Infrastructure Improvements

Ordinance accepting the irrevocable offer of public infrastructure improvements associated with Mission Bay South Storm Water Pump Station No. 5, including acquisition facilities located on and under portions of State Trust Parcel 5, adjacent to Terry Francois Boulevard and 16th Street; accepting said facilities for City maintenance and liability purposes, subject to specified limitations; approving an easement agreement for the Pump Station control room; adopting findings under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and the Mission Bay South Redevelopment Plan; adopting a Public Works Order; and authorizing official acts, as defined herein, in connection with this Ordinance.

190755 Mission Bay South - Parks P2 Parking Lot, P11-11A, P23, and P24 Acceptance

Ordinance dedicating Park P2 Parking Lot (a portion of Assessor's Parcel Block No. 8710, Lot No. 2, adjacent to Channel Street), Park P11-11A (east of Mission Bay Drive and Circle), and Parks P23 and P24 (adjacent to Terry Francois Boulevard between 16th Street and Illinois Street), as open public right-of-way in Mission Bay South; accepting an irrevocable offer for the acquisition facilities that comprise the Park improvements; designating said facilities for public open space and park purposes only; accepting the Parks for City maintenance and liability purposes, subject to specified limitations; amending Ordinance No. 1061 entitled "Regulating the Width of Sidewalks" to establish a new official sidewalk width on the north side of Channel Street adjacent to Park P2 Parking Lot; adopting findings under the California Environmental Quality Act; making findings of consistency with the General Plan, the eight priority policies of Planning Code, Section 101.1, and the Mission Bay South Redevelopment Plan; adopting a Public Works Order that recommends acceptance of the abovementioned Parks and related actions; and authorizing official acts, as defined herein, in connection with this Ordinance.

COMMITTEE REPORT MEMORANDUM

Land Use and Transportation Committee

190661 Planning Code - Permitting Polk/Pacific Special Area Design Guidelines

Ordinance amending the Planning Code to reference the Polk/Pacific Special Area Design Guidelines; affirming the Planning Department's determination under the California Environmental Quality Act; adopting 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.

X 180777 Planning Code - Conditional Use Authorization Required for Employee Cafeterias within Office Space

Ordinance amending the Planning Code to require a Conditional Use authorization for Employee Cafeterias, as defined, within Office space, except for existing Employee Cafeterias; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

190165 Planning Code - Legitimization Program for Non-Residential Uses at 3150-18th Street

Ordinance amending the Planning Code to establish a legitimization program for certain non-residential uses at 3150-18th Street (Assessor's Parcel Block No. 3573, Lot No. 106); affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

These matters will be heard in the Land Use and Transportation Committee at a Regular Meeting on Monday, July 22, 2019, at 1:30 p.m.

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

July 31, 2018

File No. 180777

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On July 24, 2018, Supervisor Safai introduced the following proposed legislation:

File No. 180777

Ordinance amending the Planning Code to prohibit Employee Cafeterias, as defined in the Health Code, within Office space, except for existing Employee Cafeterias; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

BOARD of SUPERVISORS



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San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

July 31, 2018

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On July 24, 2018, Supervisor Safai introduced the following legislation:

File No. 180777

Ordinance amending the Planning Code to prohibit Employee Cafeterias, as defined in the Health Code, within Office space, except for existing Employee Cafeterias; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

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 and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

c: John Rahaim, Director of Planning
Aaron Starr, Acting Manager of Legislative Affairs
Scott Sanchez, Zoning Administrator
Lisa Gibson, Environmental Review Officer
AnMarie Rodgers, Director of Citywide Planning
Laura Lynch, Environmental Planning
Joy Navarrete, Environmental Planning

BOARD of SUPERVISORS



City Hall
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MEMORANDUM

LAND USE AND TRANSPORTATION COMMITTEE SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Aaron Peskin, Chair
Land Use and Transportation Committee

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: July 23, 2019

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, July 23, 2019

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, July 23, 2019. This item was acted upon at the Committee Meeting on Monday, July 22, 2019, at 1:30 p.m., by the votes indicated.

Item No. 58 File No. 180777

Ordinance amending the Planning Code to require a Conditional Use authorization for Employee Cafeterias, as defined, within Office space, except for existing Employee Cafeterias; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Vice Chair Safai moved that this Ordinance be **AMENDED, AMENDMENT OF THE WHOLE BEARING NEW TITLE**, on Page 2, Lines 2-5, by amending Findings under Section 1 of the legislation; on Page 4, Lines 6-7, by striking 'An Office use is subject to the operating conditions of Section 202.2 of this Code.'; on Page 4, Lines 13-14, by adding 'All office uses are subject to the operating conditions of Section 202.2 of this Code.' after 'display of goods.'; on Page 5, Line 8, by striking 'July 24, 2018' and replacing it with 'July 1, 2019'; and adding other clarifying and conforming changes. The motion carried by the following vote:

Ayes: 3 - Peskin, Safai, Haney

Vice Chair Safai moved that this Ordinance be RECOMMENDED AS AMENDED AS A COMMITTEE REPORT. The motion carried by the following vote:

Ayes: 3 - Peskin, Safai, Haney

Chair Peskin moved to rescind the vote to RECOMMEND AS AMENDED AS A COMMITTEE REPORT. The motion carried by the following vote:

Ayes: 2 - Peskin, Haney
Absent: 1 - Safai

Chair Peskin moved that this Ordinance be CONTINUED AS AMENDED to the Land Use and Transportation Committee meeting of July 29, 2019. The motion carried by the following vote:

Vote: Supervisor Aaron Peskin - Aye
Supervisor Ahsha Safai - Absent
Supervisor Matt Haney - Aye

c: Board of Supervisors
Angela Calvillo, Clerk of the Board
Alisa Somera, Legislative Deputy
Jon Givner, Deputy City Attorney

Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2010 JUL 21 PM 1:59

BY _____
Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Supervisors Ahsha Safai, Aaron Peskin

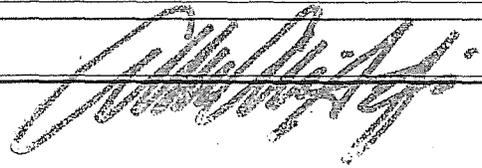
Subject:

Planning Code - Prohibiting Employee Cafeterias within Office Space

The text is listed:

Ordinance amending the Planning Code to prohibit Employee Cafeterias, as defined in the Health Code, within Office space, except for existing Employee Cafeterias; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Signature of Sponsoring Supervisor: []



: Clerk's Use Only

