



SAN FRANCISCO PLANNING DEPARTMENT

April 23, 2012

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

**Re: Transmittal of Planning Case Number 2012.0106T
BF No. 12-0125: Mobile Food Facilities at Certain Institutions in Specified
Districts**

Recommendation: Approval with Modifications

Dear Supervisor Wiener and Ms. Calvillo,

On April 19, 2012, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance under Board of Supervisors File Number 12-0125.

At the April 19th Hearing, the Commission voted 6-0 to recommend approval with modifications of the proposed Ordinance which would amend Planning Code Section 205.4 to allow intermittent temporary uses, including Mobile Food Facilities, within RH, RM, RED, and RTO Zoning Districts on parcels that contain medical institutions or post-secondary institutions. At that hearing, the Commission requested that the proposal be amended to clarify the noticing requirements by adding language to Section 205.4 and to Section 312. Specifically, the Commission recommended the following amendments:

Section 205.4(b) – Add a new subsection (1) that reads:

- (1) If an intermittent activity is located within an RH, RM, RED, or RTO district pursuant to the above conditions, notification pursuant to Section 312 shall be required if any portion of the vending space, as defined above, is located within 50 feet of a parcel that contains a residential use, or if the vending space exceeds 300 square feet. Notwithstanding the requirements of this subsection, and in order to eliminate redundant notification, notification shall not be required for the resumption of an intermittent activity or the extension of time for an intermittent activity when all of the following criteria are met: (i) an intermittent activity is currently authorized on the property or has been authorized on the property within the 12 months immediately preceding the filing of an application for resumption or extension; (ii) the existing or recent intermittent activity lawfully exceeds or exceeded the thresholds of Subsections (1)(A) and/or (B), above, and was the subject of neighborhood notice under Section 312 at the time of its establishment; and iii) the intermittent activity would not further exceed the thresholds of Subsections (1)(A) and/or (B), above.

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Section 312(B) – Insert one line to reference that intermittent temporary uses require neighborhood notification in specific instances:

(b) **Applicability.** *Except as indicated herein, all building permit applications for demolition, new construction, changes in use to a formula retail use as defined in Section 703.3 of this Code or alterations which expand the exterior dimensions of a building shall be subject to the notification and review procedures required by Subsection 312(d). Subsection 312(d) shall also apply to intermittent temporary uses that require notification, as listed in Section 205.4. Subsection 312(f) regarding demolition permits and approval of replacement structures shall apply to all NC and Eastern Neighborhoods Mixed Use Districts. For the purposes of this Section, addition to a building of the features listed in Section 136(c)(1) through 136(c)(24) and 136(c)(26) shall not be subject to notification under this Section.*

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission. The attached resolution and exhibit provides more detail about the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'AM - Rodgers', with a long horizontal line extending to the right.

AnMarie Rodgers
Manager of Legislative Affairs

Cc: City Attorney John D. Malamut

Attachments (one copy of the following):

Planning Commission Resolution No. 18587
Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18587 APRIL 19, 2012

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

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

Case Number: 2012.0160T [Board File No. 12-0125]

Initiated by: Supervisor Wiener / Introduced February 7, 2012

Staff Contact: Sophie Hayward, Legislative Affairs
sophie.hayward@sfgov.org, 415-558-6372

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

Recommendation: **Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTIONS 205.4 (TEMPORARY USES: INTERMITTENT USES) AND 312 (THE PROVISIONS FOR INTERMITTENT TEMPORARY USES AND FOR PERMIT REVIEW PROCEDURES FOR ALL NC AND EASTERN NEIGHBORHOODS MIXED USE DISTRICTS) TO ALLOW INTERMITTENT TEMPORARY USES TO BE LOCATED WITHIN RH, RM, RED, AND RTO ZONING DISTRICTS ON PARCELS THAT CONTAIN OR ARE PART OF MEDICAL OR POST-SECONDARY INSTITUTIONS, UNDER SPECIFIC CONDITIONS THAT INCLUDE HOURS OF OPERATIONS, AND SUBJECT TO NEIGHBORHOOD NOTICING REQUIREMENT IN CERTAIN CIRCUMSTANCES.

PREAMBLE

Whereas, on February 7, 2012 Supervisor Wiener introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 12-0125 which would amend Planning Code Section 205.4 (Temporary Uses: Intermittent Uses) to allow intermittent temporary uses, such as Mobile Food Facilities (MFFs) and farmers markets to locate on parcels that contain medical or post-secondary educational institutional uses within RH, RM, RED, and RTO Zoning Districts, provided that they do not operate between 10pm and 7am, and that they provide neighborhood notification under specific circumstances; and

Whereas, on April 19, 2012, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the proposed zoning changes have been determined to not be subject to CEQA review under Section 15060(c)(2) of the CEQA Guidelines; and

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties; and

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

Whereas, the Commission has reviewed the proposed Ordinance; and

MOVED, that the Commission hereby recommends that the Board of Supervisors recommends *approval of the proposed Ordinance with modifications* as detailed below and adopts the attached Draft Resolution to that effect. Modifications to the proposed Ordinance are intended to clarify the neighborhood notification procedures that will be required for newly permitted intermittent temporary uses in certain circumstances. Specific modifications to the proposed Ordinance are:

Section 205.4(b) – Add a new subsection (1) that reads:

- (1) *If an intermittent activity is located within an RH, RM, RED, or RTO district pursuant to the above conditions, notification pursuant to Section 312 shall be required if any portion of the vending space, as defined above, is located within 50 feet of a parcel that contains a residential use, or if the vending space exceeds 300 square feet. Notwithstanding the requirements of this subsection, and in order to eliminate redundant notification, notification shall not be required for the resumption of an intermittent activity or the extension of time for an intermittent activity when all of the following criteria are met: (i) an intermittent activity is currently authorized on the property or has been authorized on the property within the 12 months immediately preceding the filing of an application for resumption or extension; (ii) the existing or recent intermittent activity lawfully exceeds or exceeded the thresholds of Subsections (1)(A) and/or (B), above, and was the subject of neighborhood notice under Section 312 at the time of its establishment; and iii) the intermittent activity would not further exceed the thresholds of Subsections (1)(A) and/or (B), above.*

Section 312(B) – Insert one line to reference that intermittent temporary uses require neighborhood notification in specific instances:

- (b) **Applicability.** *Except as indicated herein, all building permit applications for demolition, new construction, changes in use to a formula retail use as defined in Section 703.3 of this Code or alterations which expand the exterior dimensions of a building shall be subject to the notification and review procedures required by Subsection 312(d). Subsection 312(d) shall also apply to intermittent temporary uses that require notification, as listed in Section 205.4. Subsection 312(f) regarding demolition permits and approval of replacement structures shall apply to all NC and Eastern Neighborhoods Mixed Use Districts. For the purposes of this Section, addition to a building of the features listed in Section 136(c)(1) through 136(c)(24) and 136(c)(26) shall not be subject to notification under this Section.*

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. Planning Code Section 205.4, which defines Intermittent Temporary Uses was established by Ordinance Number 297-10, signed by Mayor Newsom in December, 2010;
2. The 2010 Ordinance established the “intermittent” temporary use category within the Planning Code specifically to recognize facilities such as Mobile Food Facilities and farmers markets, which fit comfortably neither in the “temporary use” nor the “permanent use” categories typically used throughout the Planning Code to identify and regulate land use;
3. Intermittent temporary uses such as MFFs or farmers markets can provide a substantial amenity to nearby residents and employees when located and operated appropriately. Mobile Food Facilities add vitality to the street, contribute to the richness of San Francisco’s culinary and cultural offerings, and provide economic opportunities especially for small business-persons;
4. While the restrictions in-place that regulate intermittent temporary uses serve to minimize potential impacts to nearby uses, a number of potentially desirable locations for MFFs are not permitted due to their locations within strictly residential zoning districts;
5. The proposed Ordinance seeks to allow two very limited exceptions to the prohibition of MFFs within RH, RM, RED, and RTO Zoning Districts: MFFs would be permitted on parcels that contain medical or post-secondary institutions. Further, these newly permitted MFFs would not be permitted to operate between the hours of 10pm and 7am, and would require 30-day neighbor notification in certain circumstances;
6. The Planning Commission believes that these limited exceptions ensure that the potential for impacts to nearby residential uses are appropriately minimized, while allowing an activity that has shown to be beneficial to the City as a whole;
7. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

I. COMMERCE & INDUSTRY ELEMENT

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

GOALS

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

OBJECTIVE 1

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

POLICY 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

The proposed Ordinance acknowledges that there are a limited number of parcels within residential zoning districts that contain non-residential uses, such as medical or post-secondary institutions. In these specific circumstances, intermittent temporary uses, such as MFFs provide a valuable amenity for the surrounding community. The proposed Ordinance also includes specific restrictions on those uses, such as a prohibition to operate between the hours of 10pm and 7am. Neighborhood notification would also be required in specific circumstances. These measures combined provide substantial net benefits while minimizing undesirable consequences.

OBJECTIVE 6

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

POLICY 6.4

Encourage the location of neighborhood shopping areas throughout the city so that essential retail goods and personal services are accessible to all residents.

While the proposed Ordinance would modify controls within the strictly residential zoning districts, it would acknowledge the limited non-residential uses that do exist within RH, RM, RED, or RTO districts, such as medical or post-secondary institutions. The proposed Ordinance would allow intermittent temporary uses, such as MFFs, that would provide a beneficial good and service to a greater area of the City, and would be located on parcels that typically have a high number of employees and clientele, all of whom would be served by the newly permitted uses.

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

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

The proposed Ordinance will encourage neighborhood-serving opportunities for employment in or ownership of such businesses by allowing new intermittent temporary uses within R Districts under specific circumstances.

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

The proposed legislation would extend the provision for intermittent temporary uses such as food trucks and farmers markets to residential districts in very limited circumstances. Further, any proposed intermittent temporary use within an R District would, if the Planning Department's recommended modifications are incorporated, would require neighborhood notification.

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

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

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

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

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

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

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

Preparedness against injury and loss of life in an earthquake is unaffected by the proposed amendments. Any new construction or alteration associated with a use would be executed in compliance with all applicable construction and safety measures.

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

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

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

The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments. It is not anticipated that the intermittent temporary uses would result in an impact to sunlight access or to public or private property.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on April 19, 2012.

Linda Avery
Commission Secretary

AYES: Commissioners Antonini, Fong, Moore, Miguel, Sugaya, and Wu

NAYS: None

ABSENT: Commissioner Borden

ADOPTED: April 19, 2012



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: APRIL 19, 2012

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

Case Number: 2012.0160T [Board File No. 12-0125]

Initiated by: Supervisor Wiener / Introduced February 7, 2012

Staff Contact: Sophie Hayward, Legislative Affairs
sophie.hayward@sfgov.org, 415-558-6372

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

Recommendation: **Recommend Approval with Modifications**

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PLANNING CODE AMENDMENT

The proposed Ordinance would amend Planning Code Section 205.4 (Temporary Uses: Intermittent Activities) to allow mobile food facilities (food trucks) in RH, RM, RED, and RTO Districts when they meet certain criteria and they are located on parcels that contain or are part of medical institutions or post-secondary educational institutions.

The Way It Is Now:

Planning Code Section 205 provides the framework for provisions for four types of Temporary Uses recognized in the Code:

- Section 205.1 describes temporary uses that are authorized for up to sixty days (such as carnivals, exhibitions, and festivals);
- Section 205.2 describes temporary uses that are authorized for up to two years (such as rental or sales offices for a new residential development);
- Section 205.3 describes temporary uses that are authorized for 24 hours (such as a performance, exhibition, dance, celebration or festival that requires a liquor license or an entertainment permit); and
- Section 205.4 describes temporary uses that are considered "intermittent," or an outdoor use occurs with some regularity (such as food trucks, farmers' markets, and open-air markets).

Intermittent temporary uses, as outlined in Section 205.4, are often associated with Mobile Food Facilities (MFFs), and are permitted in all Zoning Districts except the residential districts: Residential House (RH), Residential Mixed (RM), Residential Enclave (RED), and Residential Transit-Oriented (RTO). MFFs are

allowed in the remaining districts provided that the use is limited to either 12-hours per day, 6 days per week maximum or to no more than 24-hours per day, 3 days per week.¹

While MFFs within permitted Zoning Districts may be authorized administratively by the Zoning Administrator, notification is required in two specific circumstances:

- (1) if the proposed use is located within a Zoning District that requires 312 neighbor notification and the proposed vending space is greater than 300 square feet, or
- (2) if any portion of the vending space is located within 50 feet of an RH, RM, RED, or RTO District.

The Way It Would Be:

The proposed ordinance would allow an intermittent activity (such as an MFF) within RH, RM, RED, or RTO Zoning Districts, provided that the use is located on a parcel that contains a medical institution or a post-secondary institution, and that the existing time limitations for intermittent uses outlined in the Planning Code are enforced. Further, any intermittent activity permitted in these Residential districts is subject to additional restrictions on hours of operation between the hours of 10pm and 7am.

REQUIRED COMMISSION ACTION

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

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The specific modifications recommended by Staff are intended to clarify the noticing procedures for the newly permitted temporary intermittent uses. Specifically, the Department recommends that a new subsection be added to Section 205.4(b), and that Section 312 be updated to reflect the noticing requirements of 205.4, as detailed below:

Section 205.4(b) – Add a new subsection (1) that reads:

- (1) *If an intermittent activity is located within an RH, RM, RED, or RTO district pursuant to the above conditions, notification pursuant to Section 312 shall be required if any portion of the vending space, as defined above, is located within 50 feet of a parcel that contains a residential use, or if the vending space exceeds 300 square feet. Notwithstanding the requirements of this subsection, and in order to eliminate redundant notification, notification shall not be required for the resumption of an intermittent activity or the extension of time for an intermittent activity when all of the following criteria are met: (i) an intermittent activity is currently authorized on the property or has been authorized on the property within the 12 months immediately preceding the filing of an application for resumption or extension; (ii) the existing or recent intermittent activity lawfully exceeds or exceeded the thresholds of Subsections (1)(A) and/or (B), above, and was the subject of neighborhood notice under Section 312 at the time of its establishment; and iii) the intermittent activity would not further exceed the thresholds of Subsections (1)(A) and/or (B), above.*

¹ These restrictions do not apply to MFFs that are located within a Public (P) District that is greater than one acre in size, such as the Civic Center.

Section 312(B) – Insert one line to reference that intermittent temporary uses require neighborhood notification in specific instances:

- (b) ***Applicability.** Except as indicated herein, all building permit applications for demolition, new construction, changes in use to a formula retail use as defined in Section 703.3 of this Code or alterations which expand the exterior dimensions of a building shall be subject to the notification and review procedures required by Subsection 312(d). Subsection 312(d) shall also apply to intermittent temporary uses that require notification, as listed in Section 205.4. Subsection 312(f) regarding demolition permits and approval of replacement structures shall apply to all NC and Eastern Neighborhoods Mixed Use Districts. For the purposes of this Section, addition to a building of the features listed in Section 136(c)(1) through 136(c)(24) and 136(c)(26) shall not be subject to notification under this Section.*

BASIS FOR RECOMMENDATION

Basis for Approval of Proposed Ordinance: Planning Code Section 205.4 was established by Ordinance Number 297-10, signed by Mayor Newsom in December, 2010. That Ordinance established the “intermittent” temporary use category within the Planning Code specifically to recognize facilities such as Mobile Food Facilities and farmers markets, which seemed to be neither the “temporary use” nor the “permanent use” categories typically used throughout the Code. As noted in the Department’s 2010 case report, “When located and operated appropriately, Mobile Food Facilities add vitality to the street, contribute to the richness of San Francisco’s culinary and cultural offerings, and provide economic opportunities especially for small business-persons. MFFs can also provide a substantial amenity to nearby residents and employees.”²

The proposed Ordinance builds on the success of the original 2010 Ordinance. While the current controls seek to minimize potential impacts to nearby uses, a number of potentially desirable locations for intermittent temporary activities are not permitted due to their locations within strictly residential zoning districts. The proposed Ordinance would allow two very limited exceptions to the prohibition of MFFs within these residential zoning districts, thereby allowing MFFs on parcels that contain medical or post-secondary institutions. These newly permitted MFFs would not be permitted to operate between the hours of 10pm and 7am. These limited exceptions ensure that the potential for impacts to nearby residential uses are appropriately minimized, while allowing an activity that has shown to be beneficial to the City as a whole.

Basis for Recommended Modifications: The Department’s proposed modifications add a requirement for notification that is consistent with current notification procedures for MFFs. To maintain this consistency, the Ordinance should be modified to clarify that in certain circumstances, MFFs will require neighborhood notification. Specifically, MFFs that are located within 50’ of a parcel that contains a residential use, and MFFs that occupy more than 300 square feet of vending space will require a 30-day notification to owners within 150’ of the proposed activity. In practice, this means that those uses that require notification will be required to file a Building Permit Application for a new use, pursuant to Section 312 of the Planning Code. Since the passage of the 2010 Ordinance that created the Intermittent Temporary Use category (Ordinance Number 297-10), no proposed Intermittent Temporary Use has

² Executive Summary for Case No. 2010.0908T, Board File No. 101351, November 4, 2010, available in the Case Docket 2010.0908T at 1650 Mission Street, San Francisco, CA 94103.

triggered the neighborhood notification requirement. This may be evidence of the success of the controls as it may indicate that MFF proposals are being located in a manner that does not require notification.

In sum, the Department supports the proposed Ordinance to allow intermittent temporary uses at medical and post-secondary institutions within RH, RM, RED, and RTO Zoning Districts, and recommends modifications to clarify notification requirements.

Additional Issues to Consider: Formula Retail controls, as outlined in Planning Code Section 703.3, do not apply to temporary uses, including intermittent temporary uses. While Department Staff is not aware of specific proposals for any formula retail restaurants to open MFFs within San Francisco, there has recently been discussion of the idea in the New York City area. The Commission may want to consider the possibility that formula retail establishments may, in the future, seek to locate MFFs in San Francisco, and whether it would be appropriate to consider further amendments to Section 205.4 to apply formula retail controls to MFFs.

ENVIRONMENTAL REVIEW

The proposal to amend Planning Code Section 205.4 to allow intermittent temporary uses at certain types of institutions within RH, RM, RED, and RTO districts is not a physical activity and is not subject to CEQA review under Section 15060(c)(2) of the CEQA Guidelines.

PUBLIC COMMENT

As of the date of this report, the Planning Department has received no public comment in regard to the proposed Ordinance.

RECOMMENDATION: Recommendation of Approval with Modifications
