

FILE NO. 070617

ORDINANCE NO.

1 [Zoning – modifying the definition of liquor store to remove prohibitions on grocery stores and
2 similar uses.]

3 **Ordinance amending Planning Code Sections 790.55, 790.102, 249.5, 781.8, 781.9, 782,
4 and 783, and 784 to remove grocery stores and other similar uses from prohibitions
5 placed on the establishment of liquor stores in certain districts; and making
6 environmental findings and findings of consistency with the General Plan and priority
7 policies of Planning Code Section 101.1.**

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

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

13 Section 1. Findings. The Board of Supervisors of the City and County of San
14 Francisco hereby finds and declares as follows:

15 a. The City created certain zoning districts that prohibit new off-sale liquor licenses in
16 order to address a proliferation of neighborhood liquor stores that upset the balance of
17 neighborhoods services and attracted various public nuisances and criminal activity.

18 b. Grocery stores and certain other retail establishments require the same type of
19 liquor license from the State Department of Alcoholic Beverage Control as do conventional
20 liquor stores. As a consequence, those districts where off-sale liquor licenses are prohibited
21 have unintentionally precluded the establishment of grocery stores and similar uses where
22 alcohol sales are accessory to the primary product offerings of the store and do not have the
23 negative impacts identified above

1 c. The recent citywide spate of grocery store closures and the general desirability of
2 such stores necessitate efforts to recraft alcohol restrictions in the Planning Code to be more
3 permissive toward grocery stores and similar uses.

4 Section 2. Environmental Findings, General Plan Findings, and Other Required
5 Findings.

6 a. The Planning Department has determined that the actions contemplated in this
7 Ordinance are in compliance with the California Environmental Quality Act (California Public
8 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the
9 Board of Supervisors in File No. 070617 and is incorporated herein by reference.

10 b. On September 20, 2007, the Planning Commission, in Resolution No. 17488
11 approved and recommended disapproval of for adoption by the Board this legislation and
12 adopted findings that it is consistent, on balance, with the City's General Plan and eight
13 priority policies of Planning Code Section 101.1. The Board adopts these findings as its own.
14 A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No.
15 070617, and is incorporated by reference herein.

16 c. Pursuant to Planning Code Section 302, this Board of Supervisors finds that this
17 legislation will serve the public necessity, convenience, and welfare for the reasons set forth in
18 Planning Commission Resolution No. 17488, and incorporates such reasons by reference
19 herein.

20 Section 3. The San Francisco Planning Code is hereby amended by amending Section
21 790.55, to read as follows:

22 **SEC. 790.55. LIQUOR STORE.**

23 A retail use which sells beer, wine, or distilled spirits to a customer in an open or closed
24 container for consumption off the premises and which needs a State of California Alcoholic
25 Beverage Control Board License type 20 (off-sale beer and wine) or type 21 (off-sale general).

1 This classification shall not include retail uses that (1) are classified as a general grocery store use as
2 set forth in Section 790.102(a) or (2) have both (a) a use size as defined in Section 790.130 of this Code
3 of greater than 10,000 gross square feet and (b) a gross floor area devoted to alcoholic beverages that
4 is within accessory use limits as set forth in Section 240.2 or 703.2(b)(1)(c) of this Code, depending on
5 the zoning district in which the use is located.

6 Section 4. The San Francisco Planning Code is hereby amended by amending Section
7 249.5, to read as follows:

8 **SEC. 249.5. NORTH OF MARKET RESIDENTIAL SPECIAL USE DISTRICT.**

9 (a) General. A special use district entitled the "North of Market Residential Special Use
10 District," which includes RC-4 and P Use Districts, the boundaries of which are shown on Sectional
11 Map No. 1SUb of the Zoning Map, is hereby established for the purposes set forth below.

12 (b) Purposes. In order to protect and enhance important housing resources in an area near
13 downtown, conserve and upgrade existing low and moderate income housing stock, preserve
14 buildings of architectural and historic importance and preserve the existing scale of development,
15 maintain sunlight in public spaces, encourage new infill housing at a compatible density, limit the
16 development of tourist hotels and other commercial uses that could adversely impact the residential
17 nature of the area, and limit the number of commercial establishments which are not intended primarily
18 for customers who are residents of the area, the following controls are imposed in the North of Market
19 Residential Special Use District.

20 (c) Controls. The following zoning controls are applicable in the North of Market Residential
21 Special Use District. Certain controls are set forth in other Sections of this Code and are referenced
22 herein.

23 (1) Conditional Use Criteria. In making determinations on applications for conditional
24 use authorizations required for uses located within the North of Market Residential Special Use

1 District, the City Planning Commission shall consider the purposes as set forth in Subsection (b)
2 above, in addition to the criteria of Section 303(c) of this Code.

3 (2) Notwithstanding the provisions of Section 209.8 of this Code, commercial
4 establishments shall be limited to the ground floor and the first basement floor, except that such
5 establishments may be permitted on the second story as a conditional use if authorized pursuant to
6 Section 303 and Section 249.5(c)(1) of this Code.

7 (3) Garment shops that meet the qualifications set forth in Section 236(a) may be
8 permitted on the ground floor and first basement floor as a conditional use if authorized pursuant to
9 Section 303 and Section 249.5(c)(1) of this Code.

10 (4) The following uses are not permitted: (A) A hotel, inn, hostel or motel; and (B)
11 massage establishments which are not incidental to the institutional uses permitted in Sections 217(a)
12 through (d) of the Planning Code or are not incidental to a health club, gymnasium or other facility with
13 a regular membership or other facility which is used primarily for instruction and training in body
14 building, exercising, reducing, sports, dancing or other similar physical activities.

15 (5) In the portion of the area designated as Subarea No. 1 of the North of Market
16 Residential Special Use District, as shown on Section Map 1SUb of the Zoning Map, the density ratio
17 shall be one dwelling unit for each 125 square feet of lot area; in Subarea No. 2, as shown on Section
18 Map 1SUb of the Zoning Map, the density ratio shall be one dwelling unit for each 200 feet of lot area.
19 The double density provisions of Section 209.1(m) shall not result in greater density than that
20 permitted in an RC-4 District.

21 (6) Off-street parking requirements may be modified by the City Planning Commission,
22 as provided in Section 161(h) of this Code.

23 (7) A bulk district "T" shall apply pursuant to the provisions of Section 270, Table 270
24 of this Code.

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(8) Special exceptions to the 80-foot base height limit in height and bulk districts 80-120-T and 80-130-T may be granted pursuant to the provisions of Section 263.7 of this Code.

(9) Building setbacks are required in this district pursuant to Section 132.2; provisions for exceptions are also set forth in Section 132.2 of this Code.

(10) Exceptions to the rear yard requirements for an RC-4 District may be granted pursuant to Section 134(f) of this Code.

(11) Awnings, canopies and marquees, as defined in Sections 790.20, 790.26 and 790.58 of this Code, and further regulated by the Building Code and Sections 249.5(c)(12), 136.2 and 607.4 of this Code are permitted.

(12) Signs located in the RC-4 portion of this district shall be regulated as provided in Section 607.4 of this Code.

(13) All provisions of the City Planning Code applicable in an RC-4 Use District shall apply within that portion of the district zoned RC-4, except as specifically provided above. All provisions of the City Planning Code applicable in a P Use District shall apply within that portion of the district zoned P, except as specifically provided above.

(14) All demolitions of buildings containing residential units shall be permitted only if authorized as a conditional use under Section 303 of this Code, unless the Director of the Department of Building Inspection or the Chief of the Bureau of Fire Prevention and Public Safety determines that the building is unsafe or dangerous and that demolition is the only feasible means to secure the public safety. When considering whether to grant a conditional use permit for the demolition, in lieu of the criteria set forth in City Planning Code Section 303(c), consideration shall be given to the purposes of the North of Market Residential Special Use District set forth in Section 249.5(b), above, to the adverse impact on the public health, safety and general welfare due to the loss of existing housing stock in the district and to any unreasonable hardship to the applicant if the permit is denied.

1 Demolition of residential hotel units shall also comply with the provisions of the Residential Hotel
2 Ordinance.

3 (d) Liquor Establishments. In addition to all other applicable controls set forth in this Code,
4 Liquor Establishments in the North of Market Residential Special Use District shall be subject to the
5 controls set forth in this Section.

6 (1) No Off-Sale Liquor Establishments shall be permitted in the North of Market
7 Residential Special Use District, except for grocery stores as defined in Section 790.102 of this
8 Code.

9 (2) An Off-Sale Liquor Establishment lawfully existing in the North of Market
10 Residential Special Use District and selling alcoholic beverages as licensed by the State of California
11 prior to the effective date of this legislation may continue operation only under the following conditions,
12 as provided by California Business and Professions Code Section 23790:

13 (A) The premises shall retain the same type of retail liquor license within a license
14 classification; and

15 (B) The licensed premises shall be operated continuously without substantial change
16 in mode or character of operation.

17 (3) The prohibition on Off-Sale Liquor Establishments shall not be interpreted to
18 prohibit the following, provided that the type of California liquor license does not change, the location
19 of the establishment does not change, and the square footage used for the display and sale of
20 alcoholic beverages does not increase:

21 (A) A change in ownership of an Off-Sale Liquor Establishment or an owner-to-owner
22 transfer of a California liquor license; or

23 (B) Re-establishment, restoration or repair of an existing Off-Sale Liquor
24 Establishment on the same lot after total or partial destruction or damage due to fire, riot, insurrection,
25 toxic accident or act of God; or

(C) Temporary closure of an existing Off-Sale Liquor Establishment for not more than ninety (90) days for repair, renovation or remodeling.

(4) The prohibition on Off-Sale Liquor Establishments shall not be interpreted to prohibit the following:

(A) Temporary uses, as described in Planning Code Section 205.1; or

(B) Establishment of an Off-Sale Liquor Establishment if application for such Off-Sale Liquor Establishment is on file with the California Department of Alcoholic Beverage Control prior to the effective date of this legislation; or

(C) Re-location of an existing Off-Sale Liquor Establishment in the North of Market

10 Residential Special Use District to another location within the North of Market Residential Special Use
11 District with conditional use authorization from the City Planning Commission, provided that (i) the type
12 of California liquor license does not, change, (ii) the square footage used for the display and sale of
13 alcoholic beverages does not increase, and (iii) the original premises shall not be occupied by an Off-
14 Sale Liquor Establishment unless by another Off-Sale Liquor Establishment that is also relocating from
15 within the North of Market Residential Special Use District. Any such conditional use authorization
16 shall include a requirement that the establishment comes with the "Good Neighbor Policies" set forth in
17 Subsection (d)(6) below; or

18 (D) A change in liquor license from a Type 21 (Off-Sale General) to a Type 20 (Off-
19 Sale Beer and Wine), provided that the square footage used for the display and sale of alcoholic
20 beverages does not increase.

(6) The following "Good Neighbor Policies" shall apply to all Liquor Establishments in the North of Market Residential Special Use District in order to maintain the safety and cleanliness of the premises and vicinity:

(A) Employees of the establishment shall walk a 100-foot radius from the premises some time between 30 minutes after closing time and 8:00 a.m. the following morning, and shall pick up and dispose of any discarded beverage containers and other trash left by patrons;

(B) The establishment shall provide outside lighting in a manner sufficient to illuminate street and sidewalk areas and adjacent parking, as appropriate to maintain security, without disturbing area residences;

(C) No alcoholic beverages shall be consumed on any outdoor property adjacent to the establishment and which is under the control of the establishment, excepting those areas of the property that are enclosed and not visible from the sidewalk. are intended for patron services, are supervised by the establishment, and are not located adjacent to any sidewalk areas:

(D) No more than 33 percent of the square footage of the windows and clear doors of the establishment shall bear advertising or signage of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. This requirement shall not apply to premises where there are no windows, or where existing windows are located at a height that precludes a view of the interior of the premises to a person standing outside the premises;

(E) No person under the age of 21 shall sell or package alcoholic beverages;

(F) Employees of the establishment shall regularly police the area under the control of the establishment in an effort to prevent the loitering of persons about the premises; and

(G) The establishment shall promptly remove any graffiti from the exterior of the premises.

(7) For purposes of this Section, the following definitions shall apply:

(A) "Liquor Establishment" shall mean any enterprise selling alcoholic beverages

pursuant to a California Alcoholic Beverage Control Board license.

(B) "Off-Sale Liquor Establishment" shall mean any *enterprise selling alcoholic*
~~suant to a California Alcoholic Beverage Control Board License Type 20 (Off Sale Beer~~
~~pe 21 (Off Sale General), or any other California Alcoholic Beverage Control Board~~
~~includes the privilege to sell alcoholic beverages for consumption off of the premises.~~
~~ale Liquor Establishments may include, but are not limited to, grocery stores,~~
~~and other retail sales and services establishment that is defined in Section 790.55 of this~~

(C) "Alcoholic Beverages" shall mean "alcoholic beverages," as defined by California Professions Code Sections 23004 and 23025;

(D) "Sell" or "Sale" shall mean and include any retail transaction whereby, for any consideration, an alcoholic beverage is transferred from one person to another.

Section 5. The San Francisco Planning Code is hereby amended by amending Sections 781.8 and 781.9, to read as follows:

SEC. 781.8. MISSION ALCOHOLIC BEVERAGE SPECIAL USE SUBDISTRICT.

There is an unusually large number of establishments dispensing alcoholic beverages, including beer and wine, for both on-site and off-site consumption in this area. The existence of this large number of alcoholic beverage establishments appears to contribute directly to numerous peace, health, and general welfare problems in the area, including loitering, littering, drug trafficking, pollution, public drunkenness, defacement and damaging of structures, pedestrian obstructions, as well as traffic circulation, parking and noise problems on public streets and neighborhood lots. The presence of such problems creates serious impacts on the health, safety and welfare of residents of these single- and multiple-family areas, including fear for the safety of children, elderly residents and

1 of visitors to the area. The problems also contribute to the deterioration of the neighborhood and
2 concomitant devaluation of property and destruction of community values and quality of life. The
3 number of establishments selling alcoholic beverages and the associated problems discourage more
4 desirable and needed commercial uses in the area. In order to preserve the residential character and
5 the neighborhood-serving commercial uses of the area, there shall be a Mission Alcoholic Beverage
6 Special Use Subdistrict to prohibit new establishments, or expansion of existing establishments, selling
7 alcoholic beverages for the property in the area generally bounded by Guerrero Street, San Jose
8 Avenue, Randall Street, Mission Street, Cesar Chavez Street, Potrero Avenue and Fourteenth Street
9 as designated on Sectional Map Numbers 7SU and 8SU.

10 The following restrictions shall apply within such district:

11 (a) Prohibition of New Establishments Selling Alcoholic Beverages. No new establishment
12 where alcoholic beverages are sold, served or given away for on-site or off-site consumption, shall be
13 established in this special use district as set forth below:

14 (1) No new bar, as defined in Planning Code Section 790.22, shall be permitted in this
15 special use district;

16 (2) No new off-sale liquor establishment shall be permitted in the special use district.

17 An "off-sale liquor establishment" shall mean any establishment ~~which has obtained Alcoholic~~
18 ~~Beverage Control Board License type 20 (off-sale beer and wine) or type 21 (off-sale general) selling~~
19 ~~alcoholic beverages in an open or a closed container for consumption off the premises. Typical off-sale~~
20 ~~liquor establishments may include but are not limited to the following: food markets, supermarkets,~~
21 ~~drugstores, liquor stores, bars and convenience markets that is defined in Section 790.55 of this Code.~~

22 (b) Prohibition of Expansion of Existing Establishments Selling Alcoholic Beverages. Any
23 establishment selling alcoholic beverages lawfully existing prior to the effective date of this resolution
24 and licensed by the State of California for the retail sale of alcoholic beverages for on-site and off-site
25

1 consumption, so long as otherwise lawful, may continue in existence, provided such establishment
2 remains in use, as follows:

3 (1) In the event that any such establishment ceases to operate or discontinues
4 operation for 30 days or longer as set forth in State law, such use shall be deemed abandoned;
5 (2) No establishment selling alcoholic beverages may substantially change the mode
6 or character of operation of the establishment, nor may it expand the square footage devoted
7 exclusively to the sale of alcoholic beverages, significantly increase the percentage of alcoholic
8 beverage sales as a portion of total sales, or change its type of retail liquor license within a license
9 classification.

10 (c) Exception for Bona Fide Restaurant. A bona fide restaurant shall be permitted to serve
11 alcoholic beverages in this special use district. A "bona fide restaurant" shall mean a place which is
12 regularly used and kept open for the service of meals to guests for compensation and which has (1)
13 suitable kitchen facilities for the cooking of an assortment of foods which may be required for meals,
14 (2) a primary use of sit-down service to patrons, (3) adequate seating arrangements for sit-down
15 patrons provided on the premises, (4) take-out service that is only incidental to the primary sit-down
16 use, (5) alcoholic beverages which are sold or dispensed for consumption on the premises only when
17 served at tables or sit-down counters by employees of the restaurant, and (6) a minimum of 51 percent
18 of the restaurant's gross receipts shall be from the sale of meals. A "bona fide restaurant" does not
19 include any billiard or pool hall, bowling alley, or adult entertainment business as defined in Planning
20 Code Section 790.36.

21 (d) Exception for Non-Profit Theaters. A non-profit theater shall be permitted to serve
22 alcoholic beverages in this special use district. A "non-profit theater" shall mean a building or
23 part of a building intended to be used for the specific purposes of presenting any act, play,
24 revue, pantomime, scene, song, dance act, or song and dance act, conducted or participated
25 in by one or more persons, whether or not such person or persons are compensated for such

1 performance, and which is exempted from payment of income tax under Section 23701d of
2 the California Revenue and Taxation Code and Section 501(c)(3) of the Internal Revenue
3 Code of the United States. A "non-profit theater" does not include any dance hall as defined in
4 Section 1060 of the San Francisco Police Code, billiard parlor, pool hall, bowling alley, or
5 adult entertainment business as defined in Planning Code Section 790.36.

6 **SEC. 781.9. HAIGHT STREET ALCOHOL RESTRICTED USE SUBDISTRICT.**

7 There is an unusually large number of establishments dispensing alcoholic beverages,
8 including beer and wine, for both on-site and off-site consumption in the Haight-Ashbury
9 neighborhood. A concentration of alcoholic beverage establishments in a neighborhood disrupts the
10 desired mix of land uses that contribute to a livable neighborhood and discourages more desirable and
11 needed commercial uses in the area. A concentration of establishments selling alcoholic beverages in
12 an area may therefore contribute to the deterioration of the neighborhood and to the concomitant
13 devaluation of property and destruction of community values and quality of life. These effects
14 contribute to peace, health, safety and general welfare problems in these areas, including loitering,
15 littering, public drunkenness, driving while intoxicated, defacement and damaging of structures,
16 pedestrian obstructions, as well as traffic circulation, parking and noise problems on public streets and
17 neighborhood lots, and other nuisance activities. The existence of such problems creates serious
18 impacts on the health, safety and welfare of residents of nearby single- and multiple-family areas.
19 These impacts include fear for the safety of children, elderly residents and visitors to the area.

20 (a) Haight Street Alcohol Restricted Use Subdistrict Established. In order to preserve the
21 residential character and the neighborhood-serving commercial uses of the Haight-Ashbury
22 neighborhood, the Haight Street Alcohol Restricted Use Subdistrict (Haight Street Alcohol RUSD) is
23 hereby established with boundaries coterminous with the Haight Street Neighborhood Commercial
24 District as designated on Sectional Map numbers 6 and 7. The Haight Street Alcohol RUSD is
25 designated on Section Map Numbers 6SU and 7SU.

(1) No new on-sale or off-sale liquor establishment shall be permitted in the Haight Street RUSD, except for grocery stores as defined in Section 790.102 of this Code.

(2) These controls also shall apply within 1/4-mile of the Haight Street Alcohol RUSD to nonconforming uses in R districts pursuant to Planning Code Section 186, and in NC-1 Districts, pursuant to the Special Provisions for NC-1 Districts which follows the Control Table constituting Sections 710.10 through 710.95.

(3) The prohibition on Liquor Establishments shall not be interpreted to prohibit the following:

(A) Temporary uses, as described in Planning Code Section 205.1 or 205.3; or

(B) Establishment of a Liquor Establishment if application for such Liquor

11 Establishment is on file with the California Department of Alcoholic Beverage Control prior to the
12 effective date of legislation establishing the Haight Street Alcohol RUSD.

(C) Establishment of a Liquor Establishment if: (1) such use is an eligible movie

14 theater, (2) only beer and wine are offered for consumption, and (3) such beer and wine are: (i) only
15 consumed on the premises and primarily in the main theater auditorium, (ii) only sold to and consumed
16 by ticketholders and only immediately before and during performances, and (iii) only offered in
17 conjunction with the screening of films and not as an independent element of the establishment that is
18 unrelated to the viewing of films. For purposes of this Section, an "eligible movie theater" shall be a
19 movie theater as defined in Code Section 790.64 that contains only a single screen and auditorium,
20 has seating for 150 or fewer persons, and is not a formula retail use as defined in Code Section
21 703.3(b).

(4) Continuation of existing Prohibited Liquor Establishments. In the Haight Street

23 Alcohol RUSD, any Prohibited Liquor Establishment may continue in accordance with Planning Code
24 Section 180 through 186.2, subject to the following provisions. For purposes of this Section, the Haight
25 Street Alcohol RUSD shall be considered to include, pursuant to Section 186 of this Code and to the

Special Provisions for NC-1 Districts, the area within 1/4-mile of the Haight Street Alcohol RUSD as mapped.

(A) A Prohibited Liquor Establishment lawfully existing and selling alcoholic beverages as licensed by the State of California prior to the effective date of this legislation, or subsequent legislation prohibiting that type of Liquor Establishment, so long as otherwise lawful, may continue to operate only under the following conditions, as provided by California Business and Professions Code Section 23790:

(1) Except as provided by Subsection (B) below, the premises shall retain the same type of retail liquor license within a license classification; and

(2) Except as provided by Subsection (B) below, the licensed premises shall be operated continuously, without substantial change in mode or character of operation.

(B) A break in continuous operation shall not be interpreted to include the following, provided that the location of the establishment does not change, the square footage used for the sale of alcoholic beverages does not increase, and the type of California Department of Alcoholic Beverage Control Liquor License ("ABC License") does not change except as indicated:

(1) A change in ownership of a Prohibited Liquor Establishment or an owner-to-owner transfer of an ABC License; or

(2) Re-establishment, restoration or repair of an existing Prohibited Liquor Establishment on the same lot after total or partial destruction or damage due to fire, riot, insurrection, toxic accident or act of God; or

(3) Temporary closure of an existing Prohibited Liquor Establishment for not more than ninety (90) days for repair, renovation or remodeling;

(4) Re-location of an existing Prohibited Liquor Establishment in the Haight Street Alcohol RUSD to another location within the same Haight Street Alcohol RUSD with conditional use authorization from the City Planning Commission, provided that the original premises shall not be

1 occupied by a Prohibited Liquor Establishment, unless by another Prohibited Liquor Establishment that
2 is also relocating from within the Haight Street Alcohol RUSD.

3 (5) A change from a Type 21 (off-sale general) to a Type 20 (off-sale beer and wine)
4 license.

5 (b) Definitions:

6 (1) A "liquor establishment" shall mean any enterprise selling alcoholic beverages, as
7 defined by California Business and Professions Code Section 23004 and 23025, pursuant to a
8 California Alcoholic Beverage Control Board license.

9 (2) An "on-sale liquor establishment" shall mean any liquor establishment which has
10 obtained Alcoholic Beverage Control Board License type 40 (on-sale beer), type 41 (on-sale beer and
11 wine eating place), type 42 (on-sale beer and wine public premises), type 47 (on-sale general eating
12 place), type 48 (on-sale general-public premises) or type 57 (special on-sale general) selling alcoholic
13 beverages for consumption on the premises. Typical on-sale establishments may include but are not
14 limited to bars and restaurants serving alcoholic beverages. It shall not include types 51, 52, 59, 60,
15 61, 67, 70 or 75.

16 (3) An "off-sale liquor establishment" shall mean any *liquor establishment which has*
17 *obtained Alcoholic Beverage Control Board License type 20 (off-sale beer and wine) or type 21 (off-*
18 *sale general) selling alcoholic beverages in an open or a closed container for consumption off the*
19 *premises. Typical off sale liquor establishments may include but are not limited to the following uses*
20 *licensed to sell off sale alcoholic beverages: food markets, supermarkets, drugstores, liquor stores,*
21 *bars and convenience markets. It shall not include producers and distributor's licenses for offices or*
22 *establishments not open to the general public that is defined in Section 790.55 of this Code.*

23 (4) A "prohibited liquor establishment" shall mean any establishment selling alcoholic
24 beverages lawfully existing prior to the effective date of the establishment of the Haight Street Alcohol
25

1 RUSD and licensed by the State of California for the retail sale of alcoholic beverages for on or off-site
2 consumption, so long as otherwise lawful.

3 Section 6. The San Francisco Planning Code is hereby amended by amending
4 Sections 782 and 783, to read as follows:

5 **SEC. 782. THIRD STREET ALCOHOL RESTRICTED USE DISTRICT**

6 **ESTABLISHED.**

7 There is an unusually large number of establishments dispensing alcoholic beverages,
8 including beer and wine, for both on-site and off-site consumption in the Bayview area. The existence
9 of this many alcoholic beverage establishments appears to contribute directly to numerous peace,
10 health, safety and general welfare problems in the area, including loitering, littering, drug trafficking,
11 prostitution, public drunkenness, defacement and damaging of structures, pedestrian obstructions, as
12 well as traffic circulation, parking and noise problems on public streets and neighborhood lots. The
13 existence of such problems creates serious impacts on the health, safety and welfare of residents of
14 nearby single- and multiple-family areas, including fear for the safety of children, elderly residents and
15 of visitors to the area. The problems also contribute to the deterioration of the neighborhood and
16 concomitant devaluation of property and destruction of community values and quality of life. The
17 number of establishments selling alcoholic beverages and the associated problems discourage more
18 desirable and needed commercial uses in the area.

19 (a) In order to preserve the residential character and the neighborhood-serving commercial
20 uses of the area, the Third Street Alcohol Restricted Use District (Third Street Alcohol RUD) is hereby
21 established for the property in the area generally bounded by Islais Creek to the North, Quint Street,
22 Phelps Street, Tampa Street, Bridgeview Drive, Newhall Street, Venus Street and Egbert Avenue to
23 the West, US Highway 101 to the South, and Mendell Street, La Salle Avenue, Keith Street, Palou
24 Street, Jennings Street, and Ingalls Street to the East, as designated on Sectional Map numbers 8 and
25 10. The Third Street Alcohol RUD is designated on Section Map Numbers 8SU and 10SU.

(1) No new on-sale or off-sale liquor establishment shall be permitted in the Third Street Alcohol RUD, except for grocery stores as defined in Section 790.102 of this Code.

(2) The prohibition on Liquor Establishments shall not be interpreted to prohibit the following:

(A) Temporary uses, as described in Planning Code Section 205.1 or 205.3; or

(B) Establishment of a Liquor Establishment if application for such Liquor

Establishment is on file with the California Department of Alcoholic Beverage Control prior to the effective date of legislation establishing the Third Street Alcohol RUD.

(3) Continuation of existing Prohibited Liquor Establishments. In the Third Street

10 Alcohol RUD, any Prohibited Liquor Establishment may continue in accordance with Planning Code
11 Section 180 through 186.2, subject to the following provisions.

(A) A Prohibited Liquor Establishment lawfully existing and selling alcoholic beverages

13 as licensed by the State of California prior to the effective date of this legislation, or subsequent

legislation prohibiting that type of Liquor Establishment, so long as otherwise lawful, may continue to

15 operate only under the following conditions, as provided by California Business and Professions Code

16 Section 23790:

(1) Except as provided by Subsection (B) below, the premises shall retain the same type of retail liquor license within a license classification; and

(2) Except as provided by Subsection (B) below, the licensed premises shall be

20 operated continuously, without substantial change in mode or character of operation.

21 (B) A break in continuous operation shall not be interpreted to include the following.

the location of the establishment does not change, the square footage used for the sales

23 of alcoholic beverages does not increase, and the type of California Department of Alcoholic Beverage
24 Control Liquor License ("ABC" License) does not change except as indicated:

25

(1) A change in ownership of a Prohibited Liquor Establishment or an owner-to-owner transfer of an ABC License;

(2) Re-establishment, restoration or repair of an existing Prohibited Liquor Establishment on the same lot after total or partial destruction or damage due to fire, riot, insurrection, toxic accident or act of God; or

(3) Temporary closure of an existing Prohibited Liquor Establishment for not more than ninety (90) days for repair, renovation or remodeling;

(4) Re-location of an existing Prohibited Liquor Establishment in the Third Street Alcohol RUD to another location within the same Third Street Alcohol RUD with conditional use authorization from the City Planning Commission, provided that the original premises shall not be occupied by a Prohibited Liquor Establishment, unless by another Prohibited Liquor Establishment is also relocating from within the Third Street Alcohol RUD.

(5) A change from a Type 21 (off-sale) to a Type 20 (off-sale beer and wine) license or a change from any Alcohol Beverage Control Board License type to a Type 41 (on-sale beer and wine-eating place).

(b) The following shall apply to all liquor establishments in the Third Street Alcohol RUD in order to maintain the safety of the premises and vicinity:

(1) Liquor establishments shall provide outside lighting in a manner sufficient to illuminate street and sidewalk areas and adjacent parking, as appropriate to maintain security, without disturbing area residences:

(2) No more than 33 percent of the square footage of the windows and clear doors of Liquor establishments shall bear advertising or signage of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. This requirement shall

1 not apply to premises where there are no windows, or where existing windows are located at a height
2 that precludes a view of the interior of the premises to a person standing outside the premises.

3 (c) Definitions.

4 (1) A "liquor establishment" shall mean any enterprise selling alcoholic beverages, as
5 defined by California Business and Professions Code Section 23004 and 23025, pursuant to a
6 California Alcoholic Beverage Control Board license.

7 (2) An "on-sale liquor establishment" shall mean any liquor establishment which has
8 obtained Alcoholic Beverage Control Board license type 40 (on-sale beer), type 42 (on-sale beer and
9 wine public premises), type 48 (on-sale general-public premises) or type 57 (special on-sale general)
10 selling alcoholic beverages for consumption on the premises. Typical on-sale establishments may
11 include but are not limited to bars serving alcoholic beverages. It shall not include types 41, 47, 51, 52,
12 59, 60, 61, 67, 70 or 75.

13 (3) An "off-sale liquor establishment" shall mean *liquor any establishment which has*
14 *obtained Alcoholic Beverage Control Board license type 20 (off-sale beer and wine) or type 21 (off-sale*
15 *general) selling alcoholic beverages in an open or closed container for consumption off the premises.*
16 *Typical off-sale liquor establishments may include but are not limited to the following uses licensed to*
17 *sell off-sale alcoholic beverages: food markets, supermarkets, drugstores, liquor stores, bars and*
18 *convenience markets. It shall not include producers and distributor's licenses for offices or*
19 *establishments not open to the general public that is defined in Section 790.55 of this Code.*

20 (4) A "prohibited liquor establishment" shall mean any establishment selling alcoholic
21 beverages lawfully existing prior to the effective date of the establishment of the Third Street Alcohol
22 RUD and licensed by the State of California for the retail sale of alcoholic beverages for on- or off-site
23 consumption, so long as otherwise lawful.

24 **SEC. 783. DIVISADERO STREET ALCOHOL RESTRICTED USE DISTRICT**
25 **ESTABLISHED.**

1 There are an unusually large number of establishments dispensing alcoholic beverages,
2 including beer and wine, for off-site consumption in the Small-Scale Neighborhood Commercial District
3 along Divisadero Street between Haight and Geary Streets. The existence of this many alcoholic
4 beverage establishments appears to contribute directly to numerous peace, health, safety and general
5 welfare problems in the area, including loitering, littering, public drunkenness, defacement and
6 damaging of structures, pedestrian obstructions, as well as traffic circulation, parking and noise
7 problems on public streets and neighborhood lots. The existence of such problems creates serious
8 impacts on the health, safety and welfare of residents of nearby single- and multiple-family areas,
9 including fear for the safety of children, elderly residents and of visitors to the area. The problems also
10 contribute to the deterioration of the neighborhood and concomitant devaluation of property and
11 destruction of community values and quality of life. The number of establishments selling alcoholic
12 beverages and the associated problems discourage more desirable and needed commercial uses in
13 the area.

14 (a) In order to preserve the residential character and the neighborhood-serving commercial
15 uses of the area, the Divisadero Street Alcohol Restricted Use District (Divisadero Street Alcohol RUD)
16 is hereby established for the properties in the Small-Scale Neighborhood Commercial District along
17 Divisadero Street between Haight and Geary Streets, as designated on Sectional Map numbers 2 and
18 7. The Divisadero Street Alcohol RUD is designated on Sectional Map Numbers 2SU and 8SU.

19 (1) No new off-sale liquor establishments shall be permitted in the Divisadero Street
20 Alcohol RUD, except for grocery stores as defined in Section 790.102 of this Code.

21 (2) The prohibition on Liquor Establishments shall not be interpreted to prohibit the
22 following:

23 (A) Temporary uses, as described in Planning Code Section 205.1 or 205.3; or

24

25

(B) Establishment of a Liquor Establishment if an application for such Liquor Establishment is on file with the California Department of Alcoholic Beverage Control prior to the effective date of legislation establishing the Divisadero Street Alcohol RUD.

(C) Re-location of an existing liquor establishment from outside the Divisadero Street Alcohol RUD to a location within the Divisadero Street Alcohol RUD if that liquor establishment received conditional use authorization from the City Planning Commission prior to the effective date of this legislation.

(3) Continuation of Existing Prohibited Liquor Establishments. In the Divisadero Street Alcohol RUD, any Prohibited Liquor Establishment may continue in accordance with Planning Code Section 180 through 186.2, subject to the following provisions:

(A) A Prohibited Liquor Establishment lawfully existing and selling alcoholic beverages as licensed by the State of California prior to the effective date of this legislation, or subsequent legislation prohibiting that type of Liquor Establishment, so long as otherwise lawful, may continue to operate only under the following conditions, as provided by California Business and Professions Code Section 23790:

(1) Except as provided by Subsection (B) below, the premises shall retain the same type of retail liquor license within a license classification; and

(2) Except as provided by Subsection (B) below, the licensed premises shall be operated continuously, without substantial change in mode or character of operation.

(B) A break in continuous operation shall not be interpreted to include the following, provided that the location of the establishment does not change, the square footage used for the sale of alcoholic beverages does not increase, and the type of California Department of Alcoholic Beverage Control Liquor License ("ABC License") does not change except as indicated:

(1) A change in ownership of a Prohibited Liquor Establishment or an owner-to-owner transfer of an ABC License; or

(2) Re-establishment, restoration or repair of an existing Prohibited Liquor Establishment on the same lot after total or partial destruction or damage due to fire, riot, insurrection, toxic accident or act of God; or

(3) Temporary closure of an existing Prohibited Liquor Establishment for not more than ninety (90) days for repair, renovation or remodeling;

(4) Re-location of an existing Prohibited Liquor Establishment in the Divisadero Street Alcohol RUD to another location within the same Divisadero Street Alcohol RUD with conditional use authorization from the City Planning Commission, provided that the original premises shall not be occupied by a Prohibited Liquor Establishment, unless by another Prohibited Liquor Establishment that is also relocating from with the Divisadero Street Alcohol RUD.

(b) The following shall apply to all liquor establishments in the Divisadero Street Alcohol RUD in order to maintain the safety of the premises and vicinity:

(1) Liquor establishments shall provide outside lighting in a manner sufficient to illuminate street and sidewalk areas and adjacent parking, as appropriate to maintain security, without disturbing area residences;

(2) No more than 33 percent of the square footage of the windows and clear doors of Liquor establishments shall bear advertising or signage of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. This requirement shall not apply to premises where there are no windows, or where existing windows are located at a height that precludes a view of the interior of the premises to a person standing outside the premises.

(c) Definitions:

(1) A "liquor establishment" shall mean any enterprise selling alcoholic beverages, as defined by California Business and Professions Code Section 23004 and 23025, pursuant to a California Alcoholic Beverage Control Board license.

(2) An "off-sale liquor establishment" shall mean any *liquor* establishment *which has obtained Alcoholic Beverage Control Board License type 20 (off sale beer and wine) or type 21 (off sale general) selling alcoholic beverages in an open or a closed container for consumption off the premises. Typical off sale liquor establishments may include but are not limited to the following uses licensed to sell off sale alcoholic beverages: food markets, supermarkets, drugstores, liquor stores, bars and convenience markets. It shall not include producers and distributor's licenses for offices or establishments not open to the general public that is defined in Section 790.55 of this Code.*

(3) A "prohibited liquor establishment" shall mean any establishment selling alcoholic beverages lawfully existing prior to the effective date of the establishment of the Divisadero Street Alcohol RUD and licensed by the State of California for the retail sale of alcoholic beverages for off-site consumption, so long as otherwise lawful.

SEC. 784. LOWER HAIGHT STREET ALCOHOL RESTRICTED USE DISTRICT.

(b)(3)(1) No new off-sale liquor establishments ~~selling alcoholic beverages for off-site consumption~~ shall be permitted in the Lower Haight Street Alcohol RUD, except for grocery stores as defined in Section 790.102 of this Code.

(3) An "off-sale liquor establishment" shall mean any establishment that is defined in Section 790.55 of this Code.

SEC. 790.102. SALES AND SERVICES, OTHER RETAIL.

(a) General groceries. As used herein, general groceries means:

(1) An individual retail food establishment that:

(A) Exceeds 5,000 gross square feet;

(B) Offers a diverse variety of unrelated, non-complementary food and non-food commodities, such as ~~non-alcoholic~~ beverages, dairy, dry goods, fresh produce and other perishable items, frozen foods, household products, and paper goods;

(C1) Prepares minor amounts or no food on-site for immediate consumption; and

(D) Markets the majority of its merchandise at retail prices.

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

By: John D. Malamut
Deputy City Attorney