



December 12, 2022

Ms. Angela Calvillo, Clerk
Honorable Supervisor Peskin
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 Department Case Number 2022-009701PCA:
Grocery Stores in Polk Street Neighborhood Commercial District
Board File No. 221023

Planning Commission Recommendation: Approval with Modification

Dear Ms. Calvillo and Supervisor Peskin,

On December 1, 2022, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Peskin that would amend Planning Code Section 121.2 and 723. At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications were as follows:

1. Principally permit General Grocery uses up to 5,000 square feet in all Neighborhood Commercial Districts.
2. Allow storefront mergers for proposed General Grocery uses up to 5,000 square feet.
3. Eliminate the CUA requirement for removing a Legacy Business General Grocery if it is to be replaced by another General Grocery.

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.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

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: Austin Yang, Deputy City Attorney
Sunny Angulo, Aide to Supervisor Peskin
Erica Major, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution
Planning Department Executive Summary



PLANNING COMMISSION RESOLUTION NO. 21212

HEARING DATE: DECEMBER 1, 2022

Project Name: Grocery Stores in Polk Street Neighborhood Commercial District
Case Number: 2022-009701PCA [Board File No. 221023]
Initiated by: Supervisor Peskin / Introduced September 27, 2022
Staff Contact: Veronica Flores, Legislative Affairs
 Veronica.Flores@sfgov.org, 628-652-7525
Reviewed by: Aaron Starr, Manager of Legislative Affairs
 aaron.starr@sfgov.org, 628-652-7533

RESOLUTION APPROVING WITH MODIFICATION A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO AUTHORIZE REPLACEMENT OF A LEGACY GENERAL GROCERY USE WITH A SUBSEQUENT GENERAL GROCERY USE IN EXCESS OF 4,000 SQUARE FEET IN THE POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT; 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.

WHEREAS, on September 27, 2022 Supervisor Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 221023, which would amend the Planning Code to authorize replacement of a Legacy General Grocery use with a subsequent General Grocery use in excess of 4,000 square feet in the Polk Street Neighborhood Commercial District (NCD);

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on December 1, 2022; and,

WHEREAS, the proposed Ordinance is 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; 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 49 South Van Ness Avenue, Suite 1400, 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 **approves with modifications** the proposed ordinance. The Commission's proposed recommendations are as follows:

1. Principally permit General Grocery uses up to 5,000 square feet in all Neighborhood Commercial Districts.
2. Allow storefronts mergers for proposed General Grocery uses up to 5,000 square feet.
3. Eliminate the CUA requirement for removing a Legacy Business General Grocery if it is to be replaced by another General Grocery.

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:

General Grocery uses are an important daily essential in our neighborhoods.

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 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

OBJECTIVE 6

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

Policy 6.1

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

The Department supports the proposed Ordinance because it supports the Commerce and Industry Element's goals to strengthen neighborhood-serving goods and services. The proposed Ordinance would support the retention and expansion of a General Grocery use within the Polk Street NCD. This ensures that a wide range of goods that are affordable to all economic levels of the community. Additionally, the proposed expansion may result in additional blue-collar jobs within the neighborhood.

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 have a negative effect on 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 or neighborhood character.

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.

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.

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.

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.

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.

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 December 1, 2022.



Jonas P. Ionin Digitally signed by Jonas P. Ionin
Date: 2022.12.01 10:00:00 -0800

Jonas P. Ionin
Commission Secretary

AYES: Braun, Diamond, Imperial, Koppel, Moore, Tanner

NOES: None

ABSENT: Ruiz

ADOPTED: December 1, 2022



EXECUTIVE SUMMARY

PLANNING CODE TEXT AMENDMENT

HEARING DATE: December 1, 2022

90-Day Deadline: January 1, 2022

Project Name: Grocery Stores in Polk Street Neighborhood Commercial District
Case Number: 2022-009701PCA [Board File No. 221023]
Initiated by: Supervisor Peskin / Introduced September 27, 2022
Staff Contact: Veronica Flores, Legislative Affairs
Veronica.Flores@sfgov.org, 628-652-7525
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533

Recommendation: Approval with Modifications

Planning Code Amendment

The proposed Ordinance would amend the Planning Code to authorize replacement of a Legacy General Grocery use with a subsequent General Grocery use in excess of 4,000 square feet in the Polk Street Neighborhood Commercial District (NCD).

The Way It Is Now:	The Way It Would Be:
Non-Residential Uses are generally limited to 4,000 square feet in the Polk Street NCD, except for Movie Theaters.	In addition to Movie Theaters, the enlargement of an existing General Grocery use on the same Lot may exceed 4,000 square feet.
Replacing a Legacy Business within the Polk Street NCD generally requires a Conditional Use Authorization (CUA).	In addition to the existing exceptions, a Legacy Business General Grocery that is replaced by another General Grocery expanding into a building on the same Lot would not require a CUA.
Storefront mergers are generally prohibited in the Polk Street NCD.	In addition to the existing exceptions, a Legacy Business General Grocery that is replaced by another

	General Grocery expanding into a building on the same Lot may merge storefronts.
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Background

Real Food Company closed their doors at their 2140 Polk Street location and Bi-Rite subsequently entered into a long-term lease with the property. The existing Polk Street NCD controls make it difficult for Bi-Rite to open in this location and prohibit it from expanding the commercial space to accommodate either space needs. They will operate out of the former Real Food Company space until they are able to merge with the adjacent vacant storefront under this Ordinance. Bi-Rite is a local, multi-generational, family-owned business operating in San Francisco for the past 80 years. Their mission is “Creating Community Through Food”. Bi-Rite currently has two market locations and an ice cream shop. The proposed Polk Street location would be their third grocery store.

Issues and Considerations

Polk Street NCD

The Polk Street NCD spans the Nob Hill, Russian Hill, and Pacific Heights neighborhoods. The NCD extends from Filbert Street to the north through Post Street to the south, with an additional segment along Larkin Street from California Street to Post Street. Polk Street NCD is a dense neighborhood of mixed-use buildings with residential units above ground-floor commercial uses. Polk Street is pedestrian-oriented, focuses on small-scale commercial spaces, and is highly accessible by public transportation.

The Polk Street NCD has strict Non-Residential Use Size limitations, a prohibition on storefront mergers, and an additional layer of oversight on existing Legacy Businesses through an additional CUA requirement to remove or replace a Legacy Business. The proposed Ordinance achieves an approval path for the proposed Bi-Rite by including very specific and tailored exceptions within the NCD to allow Bi Rite to expand into the adjacent storefront. In the recent past, there have been several project and site-specific Planning Code amendments within and outside Polk Street NCD, suggesting the need for a more holistic look at the regulation in our NCDs. Some controls may no longer be desirable or as relevant, and it may be time to rethink the NCD controls to better align it with the community’s goals, and the new realities we are facing post pandemic. This proactive approach could eliminate the need for future minimally scoped Ordinances such as this.

General Grocery Stores

All San Franciscans should have access to healthy, affordable groceries, and residents of this area need more than just access to a corner store for their daily essentials. This was particularly emphasized during the recent COVID-19 pandemic when access to essentials was often very limited. The City should support efforts to retain General Grocery when it is possible.

When General Grocery uses close, they create additional problems beyond just access to healthy, affordable food. If residents need to travel farther to get basic groceries, they may end up driving to a farther General Grocery increasing greenhouse gas emissions. Alternatively, residents may opt to use public transportation,

which could be cumbersome depending on the number of groceries purchased and how often. In the case of public transportation, this also raises mobility concerns for those with health conditions or impairments.

Legacy Businesses

In 2013, San Francisco Heritage created an online guide of “Legacy Bars and Restaurants” which highlighted iconic establishments that contribute to the culture, character, and lore of San Francisco. This guide included 100 restaurants and bars that had been in business for at least 40 years, possessed distinctive architecture or interior design, and/or contributed to a sense of history in the surrounding neighborhood. This initiative also promoted businesses that have been local institutions, but do not qualify for formal historic designation.

The [Legacy Business Registry](#) was first created in March 2015. To be eligible, businesses must be at least 30 years old, have been nominated by a member of the Board of Supervisors or Mayor, and appear in front of the Small Business Commission to prove they have made a significant impact on the history or culture of their neighborhood. If a Legacy Business closes, they remain on the Registry for four years after closing.

In response to the increasing number of small business closures and escalating commercial rents, then Supervisor Campos formalized the “Legacy Bars and Restaurants” initiative, which ultimately transformed into the Legacy Business Program as we know it today. As commercial rents continue to rise, protecting small businesses and preserving these Legacy Businesses from displacement is even more imperative. One way to do so is to discourage landlords from evicting Legacy Businesses to replace them or develop the site into other, potentially more lucrative, uses. Some NCDs, including the Polk Street NCD, have an additional layer of protection for Legacy Businesses by requiring a CUA to remove or replace a Legacy Business. The Office of Small Business has a Small Business Development Center (SBDC) which offers relocation assistance for Legacy Businesses that decide to close their physical location but keep their business registration open.

Real Food Company

The Real Food Company was one of the first dedicated natural food stores in San Francisco. They opened at 2140 Polk Street in 1976 and became a Legacy Business in 2017. The Historic Preservation Commission recommended safeguarding the following features and traditions that defined Real Food Company:

- Tradition of offering of natural and locally-sourced foods, including bulk food options, fresh produce, natural meats, dairy, artisan cheeses, beer, and wine.
- Practice of serving as an incubator for up-and-coming local, independently-owned food companies.
- Historic storefront, including aluminum sash, angled vestibule entry, and transom, as well as historic tile at the bulkhead.
- Vertically-divided transom with turned mullions and rounded cut corners and applied ornament at the recessed area.

Real Food Company has decided to close their doors without looking for an alternative location.

Bi-Rite

Bi-Rite has two Legacy Business locations at 3639 18th Street and 550 Divisadero Street. The Legacy Business Registry originally considered different locations of the same business separately if they had different Employer

Identification Numbers (EIN) based on different ownership structures. This policy has since changed and now businesses may have all their locations listed under the Legacy Business Registry if there is a common owner and the business model is the same. The Bi-Rite proposed on Polk Street would have a common owner as the two other locations and thus would be automatically included in the Legacy Business Registry.

Land Use Tools

One tool we currently use to retain General Grocery is by requiring Conditional Use authorization to remove a General Grocery use if it exceeds 5,000 square feet; however, this land use tool is not always the most effective way to retain important uses. While it can help prevent uses from being displaced by business that can pay a higher rent, it cannot prevent one from closing due to other economic or business factors. Another tool we have at our disposal is removing barriers to opening new General Grocery Store uses, so that new businesses can quickly open with less permitting costs and process. This tool also has its limitations, but one that the City should consider when prioritizing specific uses in our NC Districts.

Land Use planning and zoning are founded on property controls and what Uses are deemed appropriate for each parcel, neighborhood, and the city. Land Use should not be influenced by specific users such as a specific tenant or business.

A change from a Legacy Business General Grocery to another General Grocery is not a change of Use.

As written, the Ordinance is limited in scope and impacts a very specific project by outlining situational qualifiers; however, a change in a Legacy Business is not necessarily a change in Use. In this case with the Legacy Business Real Food Company changing to a proposed Bi-Rite, the Use is still a General Grocery despite the name on the front of the store. From a Land Use perspective, General Grocery uses are already permitted in Polk Street NCD up to 2,000 square feet, or up to 4,000 square feet with a CUA. The proposed Ordinance seeks to bypass these restrictions within the Polk Street NCD for a specific business. Instead of focusing on a specific business or tenant, other measures could and should be taken to change the regulations on the Use as a whole. This is an opportunity to revisit the Polk Street NCD controls holistically and determine what land uses are desirable for the community.

Use Size

Neighborhood Commercial and Neighborhood Commercial Transit Districts have varying Non-Residential Use Size limitations, with certain Use Sizes triggering a CUA. In the case of the Polk Street NCD, a Non-Residential Use triggers a CUA if the Use exceeds 2,000 square feet and is not permitted above 4,000 square feet except for a Movie Theater.

When a Use Size exceeds what is principally permitted in a Zoning District, it is analogous to a noncomplying structure as it is a physical characteristic of the property. Once that Use Size is established, it remains on the property until it is removed. Some districts, such as North Beach, Castro, and Chinatown require a CUA to maintain noncomplying Use Size if replacing or removing the original Use.

In the example of the proposed Polk Street location, if Bi-Rite merges the storefronts and expands the existing grocery store, that Use Size remains intact if it does not expand any further. This means that if Bi-Rite opens at this location and leaves a few years later, another Use could operate at this location using all ~5,000 square feet without applying for a CUA.

General Plan Compliance

The Department supports the proposed Ordinance because it supports the Commerce and Industry Element's goals to strengthen neighborhood-serving goods and services. The proposed Ordinance would support the retention and expansion of a General Grocery use within the Polk Street NCD. This ensures that a wide range of goods that are affordable to all economic levels of the community. Additionally, the proposed expansion may result in additional blue-collar jobs within the neighborhood.

Racial and Social Equity Analysis

The Planning Code amendments in the proposed Ordinance will directly benefit Bi-Rite, a small, family-owned business. This increases opportunities for a local market owned by a person of color. Bi-Rite has experienced success at the other two market locations and the ice cream shop. The proposed Ordinance would further their success.

The neighborhood and local residents will also benefit from the proposed Ordinance. Polk Street NCD permits a variety of commercial uses on the ground floor, but General Grocery is an important and essential need which should be prioritized. The proposed Ordinance responds to a local General Grocery use interested in opening a new location on Polk Street. Bi-Rite is not the most affordable grocery store; however, Supervisor Paskin's office has worked closely with the community to understand what type of grocery store they want to see in this neighborhood. These collective efforts ensure a General Grocery stays within the neighborhood.

General Grocery uses are already permitted at the proposed location, but Bi-Rite requires further support to secure this site and expand the location according to their vision. If Bi-Rite wanted to open a new location elsewhere, they might not have required as many legislative remedies in districts that have more permissive controls than the Polk Street NCD. The Polk Street NCD has so many additional layers of restrictions that are preventing Bi-Rite from opening and expanding on Polk Street as-of-right, despite being an essential need and also being owned by a small business-owner who is a person of color. This may be a good opportunity to revisit the community goals and simplify Polk Street zoning controls in hopes that necessary and desirable Uses, such as General Grocery, can more easily open in the district.

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. Principally permit General Grocery uses up to 5,000 square feet in all Neighborhood Commercial Districts.
2. Allow storefront mergers for all proposed General Grocery uses up to 5,000 square feet.
3. Eliminate the CUA requirement for removing a Legacy Business General Grocery if it is to be replaced by another General Grocery.

Basis for Recommendation

The Department supports the overall goals of this Ordinance because General Grocery uses are an important neighborhood-serving retail Use. The City needs to do what it can to preserve General Grocery uses and make sure residents have access to healthy, affordable groceries. The following recommendations further support General Grocery uses:

Recommendation 1: 1. Principally permit General Grocery uses up to 5,000 square feet in all Neighborhood Commercial Districts.

Non-residential Use Sizes have various limits depending on the NCD or zoning district. While neighborhoods vary, the community need for General Grocery remains the same. Permitting General Grocery uses up to 5,000 square feet in NCDs makes it easier for businesses to provide groceries and essentials to our residents. In some NCDs such as Polk Street NCD, a proposed General Grocery greater than 2,000 square feet requires a CUA. This entitlement should not be required for such an important use as General Grocery. The Use Size limit triggering a CUA also varies from NCD to NCD, but the need for General Grocery is universal. Additionally, NCDs have maximum Non-Residential Use Sizes such as 4,000 square feet in Polk Street for example. However, 5,000 square feet is an appropriate size for General Grocery uses in NCDs to provide basic needs to residents. Larger General Grocery stores would still be permitted in districts with larger Non-Residential Use Size maximums such as in NC-3 Moderate-Scale NCD and NC-S Neighborhood Commercial Shopping Center District. This recommendation removes barriers to opening or expanding General Grocery uses less than 5,000 square feet.

The majority of NCDs have a Non-Residential Use Size maximum of 4,000 square feet, with a few exceptions allowing a Non-Residential Use Size of up to 6,000 or 10,000 square feet. Therefore, if a 5,000 square foot General Grocery use opens but then later closes years later, the established 5,000 square foot Use Size is still in keeping with a majority of the NCDs because it is not egregiously larger than the current cap.

Recommendation 2: Allow storefront mergers for all proposed General Grocery uses up to 5,000 square feet.

Along the theme of removing barriers for opening or expanding General Grocery, this recommendation is to allow storefront mergers for General Groceries citywide. Currently, Polk and North Beach NCDs prohibit storefront mergers. As drafted, the Ordinance only allows storefront mergers for Polk Street NCD if it is related to a General Grocery expanding into the same building on the same Lot. The recommendation would allow General Groceries in all districts to merge storefronts up to 5,000 square feet. Storefront mergers for other Uses would still be prohibited within the Polk and North Beach NCDs. Exempting General Grocery from storefront mergers of up to 5,000 square feet helps retain and expand grocery stores in our neighborhoods.

Recommendation 3: Eliminate the CUA requirement for removing a Legacy Business General Grocery if it is to be replaced by another General Grocery.

There are a few districts that require a CUA to remove or replace a Legacy Business. This provision was added to districts such as the Polk, Pacific, and North Beach NCDs as an additional layer to protect Legacy Businesses and help prevent wrongful evictions; however, whether a General Grocery is a Legacy Business or not, the Use is still the same. A CUA is currently required if another General Grocery were to replace one of these Legacy Business General Grocery in the aforementioned districts. The CUA will likely be granted because General Groceries are necessary and desirable for our neighborhoods. General Grocery uses are a basic need, and this recommended modification would remove a barrier that creates unnecessary hardships on our neighborhoods. Additionally, removing the Legacy Business qualifier from General Grocery changes focuses on the land use, instead of a specific tenant that is a Legacy Business.

This recommended modification does not impact the Formula Retail controls. A CUA would still be required if the proposed General Grocery is Formula Retail. In that case, there would still be an entitlement process and an opportunity to review the proposed Formula Retail General Grocery.

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 received one public comment in support of the proposed Ordinance from Sam Mogannam, the owner of the Bi-Rite Family Businesses. The letter emphasizes the goal of retaining and expanding a grocery store within this neighborhood. Mr. Mogannam also shared Bi-Rite helped incubate programs specifically designed to increase food security within San Francisco and the greater Bay Area.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 221023
- Exhibit C: Letters of Support

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PLANNING COMMISSION DRAFT RESOLUTION

HEARING DATE: December 1, 2022

Project Name: Grocery Stores in Polk Street Neighborhood Commercial District
Case Number: 2022-009701PCA [Board File No. 221023]
Initiated by: Supervisor Peskin / Introduced September 27, 2022
Staff Contact: Veronica Flores, Legislative Affairs
Veronica.Flores@sfgov.org, 628-652-7525
Reviewed by: Aaron Starr, Manager of Legislative Affairs
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RESOLUTION APPROVING WITH MODIFICATION A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO AUTHORIZE REPLACEMENT OF A LEGACY GENERAL GROCERY USE WITH A SUBSEQUENT GENERAL GROCERY USE IN EXCESS OF 4,000 SQUARE FEET IN THE POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT; 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.

WHEREAS, on September 27, 2022 Supervisor Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 221023, which would amend the Planning Code to authorize replacement of a Legacy General Grocery use with a subsequent General Grocery use in excess of 4,000 square feet in the Polk Street Neighborhood Commercial District (NCD);

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on December 1, 2022; and,

WHEREAS, the proposed Ordinance is 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; 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 49 South Van Ness Avenue, Suite 1400, 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 **approves with modifications** the proposed ordinance. The Commission's proposed recommendations are as follows:

1. Principally permit General Grocery uses up to 5,000 square feet in all Neighborhood Commercial Districts.
2. Allow storefronts mergers for proposed General Grocery uses up to 5,000 square feet.
3. Eliminate the CUA requirement for removing a Legacy Business General Grocery if it is to be replaced by another General Grocery.

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:

General Grocery uses are an important daily essential in our neighborhoods.

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 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

OBJECTIVE 6

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

Policy 6.1

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

The Department supports the proposed Ordinance because it supports the Commerce and Industry Element's goals to strengthen neighborhood-serving goods and services. The proposed Ordinance would support the retention and expansion of a General Grocery use within the Polk Street NCD. This ensures that a wide range of goods that are affordable to all economic levels of the community. Additionally, the proposed expansion may result in additional blue-collar jobs within the neighborhood.

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 have a negative effect on 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 or neighborhood character.

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.

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.

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.

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.

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.

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 December 1, 2022.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: December 1, 2022

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1 [Planning Code - Grocery Stores in Polk Street Neighborhood Commercial District]

2

3 **Ordinance amending the Planning Code to authorize replacement of a Legacy General**
4 **Grocery use with a subsequent General Grocery use in excess of 4,000 square feet in**
5 **the Polk Street Neighborhood Commercial District; affirming the Planning**
6 **Department's determination under the California Environmental Quality Act; and**
7 **making findings of consistency with the General Plan, and the eight priority policies of**
8 **Planning Code, Section 101.1.**

9

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

13

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

15

16 Section 1. Environmental and Land Use Findings.

16

17

(a) The Planning Department has determined that the actions contemplated in this
18 ordinance comply with the California Environmental Quality Act (California Public Resources
19 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
20 Supervisors in File No. 221023 and is incorporated herein by reference. The Board affirms
21 this determination.

21

22

(b) On _____, the Planning Commission, in Resolution No. _____,
23 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
24 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The

25

1 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
2 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

3
4 Section 2. The Planning Code is hereby amended by revising Sections 121.2 and 723,
5 to read as follows:

6 **SEC. 121.2. NON-RESIDENTIAL USE SIZE LIMITS IN NEIGHBORHOOD**
7 **COMMERCIAL AND NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICTS.**

8 * * * *

9 (b) In order to protect and maintain a scale of development appropriate to each
10 district, Non- Residential Uses that exceed the square footage stated in the table below shall
11 not be permitted, except in the following circumstances:

12 (1) In the Castro Street Neighborhood Commercial District, a Child Care
13 Facility, School, Post-Secondary Educational Institution, Religious Institution, Social Service
14 or Philanthropic Facility, Community Facility, or a Residential Care Facility as defined in
15 Section 102 of this Code that is operated by a non-profit and is neighborhood-serving may
16 exceed this Subsection 121.2(b) with Conditional Use authorization.

17 (2) In the Regional Commercial District, Schools and Childcare Facilities as
18 defined in Section 102 may exceed this Subsection 121.2(b) with Conditional Use
19 authorization.

20 (3) In the Polk Street Neighborhood Commercial District, this subsection
21 121.2(b) shall not apply to a Movie Theater use, or the expansion of an existing General Grocery
22 Use, as defined in Section 102 of this Code, and pursuant to the controls of Section 723.

23 The use area shall be measured as the Gross Floor Area for each individual Non-
24 Residential use.

District	Use Size Limits
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1	West Portal	4,000 sq. ft. <u>square feet</u>
2	North Beach	
3	Castro Street	
4	Polk Street	
5	Pacific Avenue	
6	Regional Commercial District	25,000 square feet

7 **SEC. 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

8 (a) **Background.** Sitting in the gulch between Nob and Russian Hills and Pacific
9 Heights, the Polk Street Neighborhood Commercial District extends for a mile as a north-
10 south linear strip, and includes a portion of Larkin Street between Post and California Streets.
11 Polk Street’s dense mixed-use character consists of buildings with residential units above
12 ground-story commercial use. The district has an active, pedestrian-oriented, and continuous
13 commercial frontage along Polk Street for almost all of its length. Larkin Street and side
14 streets in the district have a greater proportion of residences than Polk Street itself. California
15 Street and Hyde Street also have active, pedestrian-oriented, and commercial frontage that is
16 small-scale. The district is well served by transit and includes the historic California Cable Car.
17 To preserve and maintain the district’s small-scale, fine grain storefronts, the consolidation or
18 merger of existing retail or commercial spaces or storefronts is generally prohibited and lot
19 mergers are controlled. The district provides convenience goods and services to the
20 residential communities in the Polk Gulch neighborhood and to the residents on the west
21 slopes of Nob and Russian Hills. It has many apparel and specialty stores, as well as some
22 automobile uses, which serve a broader trade area. Commercial uses also include offices, as
23 well as movie theaters, restaurants, and bars which keep the district active into the evening.

24 (b) **Controls.**

25 * * * *

1 (2) **Replacement of a Legacy Business Requires Conditional Use**

2 **Authorization.** Where an immediately prior use was a Legacy Business, as defined under
3 Administrative Code Section 2A.242, the controls require any new Non-Residential ~~Use~~ use to
4 obtain Conditional Use authorization; provided, however, that this requirement shall not apply
5 where: (A) the subject non-residential space has had no occupant and has not been open to
6 the public for three or more years from the date the application for the new use is filed, ~~or~~ (B)
7 ~~where~~ the Legacy Business has removed itself or has been otherwise removed from the
8 Legacy Business Registry, or (C) the Legacy Business is an existing General Grocery use and is
9 replaced by another business classified as a General Grocery use, and only if the existing General
10 Grocery use is expanded into a building on the same Lot.

11 (3) **Merger of Storefronts Prohibited.** To preserve and maintain the district's
12 small-scale, fine grain storefronts, the consolidation or merger of existing ground floor retail or
13 commercial spaces or storefronts shall be prohibited, except that two adjacent storefronts may
14 be consolidated or merged if: (A) the storefronts are for a Legacy Business on a corner lot
15 within the same building and Block and Lot number, and provided that the consolidation or
16 merger of storefronts would not result in a use size in excess of the principally permitted use
17 size within the Polk Street NCD, or (B) the storefronts are merged by a General Grocery use in
18 association with the replacement of a Legacy Business that is also a General Grocery use, and the
19 expansion of the General Grocery use is within a building on the same Lot, and is consistent with the
20 size limitations in Section 121.2.

21 * * * *

22 **Table 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT**
23 **ZONING CONTROL TABLE**

		Polk Street NCD
Zoning Category	§ References	Controls

NON-RESIDENTIAL STANDARDS AND USES (7)				
* * * *				
		Controls by Story		
		1st	2nd	3rd+
* * * *				
Sales and Service Use Category				
Retail Sales and Service Uses*	§§ 102, 202.2(a), 202.3	P	P	NP
* * * *				
Flexible Retail	§ 102	NP	NP	NP
<i>Grocery, General</i>	<u>§§ 102,</u> <u>121.2 (2)</u>	<u>P (2)</u>	<u>P</u>	<u>NP</u>
* * * *				

* * * *

(2) USE SIZE EXEMPTION: Per Planning Code Section 121.2(b), Use Size shall generally not exceed 4,000 square feet except that a Movie Theater as defined in Section 102 may exceed 4,000 square feet. In addition, the enlargement of an existing General Grocery use on the same Lot, and in association with the replacement of a Legacy Business that is also a General Grocery use, may exceed 4,000 square feet.

* * * *

Section 3. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board 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 DAVID CHIU, City Attorney

9

10 By: /s/ Austin Yang
11 AUSTIN M. YANG
12 Deputy City Attorney

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November 21, 2022

Re: 2022-009701PCA: Planning Code – Grocery Stores in Polk Street Neighborhood Commercial District

Dear San Francisco City Planning Commission,

I'm writing today to express support for, and encourage you to pass, 2022-009701PCA.

As a San Francisco institution since 1940, Bi-Rite Market has been in my family since 1964 and under my guidance since 1997. In 2019 we were inducted to the San Francisco Legacy Business registry. In the past 25 years, Bi-Rite has become a family of successful businesses comprised of the original Market and world-renowned Creamery in the Mission, a second Market in the Western Addition, and a Catering commissary kitchen in the Bayview. We're excited to now be taking over the legacy established by the original Real Foods Co. on Polk Street, preserving its San Francisco Legacy business status, providing long-term continuity within the neighborhood, and ensuring the community continues to have access to nourishing, healthful food.

Integral to Bi-Rite's success through the past 25 years has been our unwavering commitment to build a healthier, more equitable, sustaining community. Each year we support hundreds of local, San Francisco nonprofit organizations and schools with direct cash and product donations. And we've helped incubate programs specifically designed to increase food security within San Francisco and the greater Bay Area. Our Markets serve as anchors in their neighborhoods, bringing people into the commercial corridors and creating meaningful synergies with the other merchants we partner and collaborate with.

Understanding that supporting a healthy community is only feasible when our staff is healthy, each member of Bi-Rite's 265+ staff receives full benefits, including employer-funded health care, 401(k) with company match, paid time off, and a 40% discount on food. And we became a Certified B Corporation in 2015, voluntarily being held accountable by the third-party to use our business as a force for good: serving our staff, guests, planet, and community responsibly.

Our Vision for Bi-Rite Market Polk Street

- Providing long-term continuity within the neighborhood, specifically ensuring Polk Street continues to have a grocery store, is incredibly important which is why we're entering into a long-term lease (26 years) with the family who have owned the property for nearly a century.
- Additionally, upon takeover, we'll try hard to minimize disruptions to the neighborhood's access to the grocery store as we conduct some necessary maintenance and deep cleaning. During this time, we'll work with guests to provide access to groceries through our other Markets and/or delivery.
- Real Foods Co. currently has about 25 employees. Once we take over, we're projecting we'll have 45-50 staff, increasing the number of jobs by nearly 100%. And within 18-24 months of opening, and with the ability to expand into the adjacent retail space, we're planning to grow the team to a total of 75-90 staff, over 3x the current number.



- Expanding into the adjacent retail space will increase sales growth opportunities for our producer partners of small, local, socially responsible producers, farmers, and ranchers; which includes many San Francisco based food companies.
- Expanding into the adjacent space will also improve our ability to serve the evolving needs of the community by increasing space for more offerings, especially prepared foods. And it will also create a more comfortable shopping flow and experience for our guests.

Thank you for your time. We look forward to serving the Russian Hill and surrounding communities and are grateful for the opportunity.

In community,

Sam Mogannam
Founding Partner
Bi-Rite Family of Businesses
3639 18th Street, San Francisco, CA 94110