

FILE NO. 991953

ORDINANCE NO. 169-00

1 Conditional Use Abatement]
2 AMENDING PART II, CHAPTER II, OF THE SAN FRANCISCO MUNICIPAL CODE
3 ("PLANNING CODE") BY AMENDING SECTION 303 THEREOF TO CLARIFY THE
4 APPEAL DELAY IN THE EFFECTIVE DATE OF A CONDITIONAL USE APPROVAL
5 AND TO PROVIDE A PROCESS FOR ABATING CONDITIONAL USES WHICH
6 VIOLATE THEIR CONDITIONS OF APPROVAL OR BECOME A PUBLIC NUISANCE,
7 WHICH WOULD INVOLVE A PUBLIC HEARING WITH APPEALS TO CONSIDER
8 REVOKING THE CONDITIONAL USE PERMIT, MODIFYING CONDITIONS OF
9 APPROVAL OR TAKING OTHER ABATEMENT ACTION.

10 Note: additions are underlined. Deletions are indicated by
11 ((double parenthesis)).

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

14 Section 1. (a) **General Findings.**

15 The Planning Code, which controls uses that can be
16 established on property in the City and County of San Francisco,
17 disallows some uses and allows others, depending upon the zoning
18 district. Some uses are allowed only at the discretion of the
19 Planning Commission, which may approve a use subject to
20 reasonable conditions intended to make the use compatible with
21 its surroundings. These uses are known as "conditional uses" and
22 the process authorizing them is delineated in Planning Code
23 Section 303.

24 Once some conditional uses are approved, their owners or

1 operators fail to implement their conditions of approval and some
2 conditional uses can become a public nuisance. Since conditional
3 uses are not uses that are allowed "as-of-right" but are allowed
4 at the discretion of the Planning Commission, the Planning
5 Commission has the obligation to exert appropriate control over
6 these uses after they have been approved and established. The
7 Commission should have appropriate means of mitigating some of
8 these violations of conditions short of revoking the
9 authorization if the violation is within the subject matter
10 jurisdiction of the Planning Commission.

11 Problems with various uses are normally investigated and
12 abated by the Zoning Administrator, but if compliance with
13 conditions is not forthcoming, or if a conditional use becomes a
14 public nuisance, a public hearing may be the best method of
15 exploring possible solutions. The proposed amendment to Section
16 303 of the Planning Code would give the Planning Commission, the
17 Director of Planning and the Zoning Administrator, as well as
18 members of the public and the owner and operator of the
19 conditional use involved a procedure for discussing problems and
20 would give the Planning Commission the authority to implement
21 solutions if the violation is within the subject matter
22 jurisdiction of the Planning Commission. The intent of this
23 legislation is to create a procedure for abating Conditional Uses
24 found to be problematic, rather than to create new grounds for
25 abatement.

1 (b) **Priority Policy Findings.** Since every conditional use,
2 with its conditions must conform to the Priority Policies of
3 Planning Code Section 101.1, the proposed amendment would
4 conform to these policies in that it would help enforce
5 conditions that support them:

- 6 a. The proposed amendment would protect existing neighborhood
7 serving retail uses and the future employment
8 opportunities they offer to residents because the
9 amendment would offer the opportunity to solve problems
10 associated with a conditional use that may hamper the
11 operations of these existing uses.
- 12 b. The proposed amendment would protect neighborhood
13 character by offering the opportunity to solve problems
14 associated with a conditional use that may be threatening
15 the character of its neighborhood.
- 16 c. The proposed amendment would affect the City's supply of
17 affordable housing if one of the conditions the amendment
18 would help enforce were one requiring the construction of
19 affordable dwelling units or a condition that would
20 protect or enhance an environment conducive to the
21 construction or habitation of affordable housing.
- 22 d. The proposed amendment would enhance municipal transit if
23 one of the conditions the amendment would help enforce
24 were one to mitigate potential interference with transit
25 or a condition that would encourage transit use by patrons

1 or employees of the conditional use.

2 e. The proposed amendment would affect the diversity of the
3 City's economic base or opportunities for resident
4 employment if one of the conditions the amendment would
5 help enforce would encourage or require resident
6 employment or a form of employment outreach to those who
7 might not otherwise be employed.

8 f. The proposed amendment would enhance the community's
9 preparation for an earthquake if one of the conditions the
10 amendment would help enforce were designed to implement a
11 seismic safety strategy.

12 g. The proposed amendment would enhance the preservation of
13 landmarks because specific measures to preserve landmarks
14 are common conditions that the amendment would help
15 enforce.

16 h. The proposed amendment could enhance parks and open spaces
17 if one of the conditions the amendment would help enforce
18 were designed to protect or enhance parks and open spaces.

19 Section 2. Article 3 of the San Francisco Planning Code is
20 hereby amended by amending Section 303 as follows:

21
22 **SEC. 303. CONDITIONAL USES. (a) General.** The City Planning
23 Commission shall hear and make determinations regarding
24 applications for the authorization of conditional uses in the
25 specific situations in which such authorization is provided for

1 elsewhere in this Code. The procedures for conditional uses shall
2 be as specified in this Section and in Sections 306 through
3 306.6, except that Planned Unit Developments shall in addition be
4 subject to Section 304, medical institutions and post-secondary
5 educational institutions shall in addition be subject to the
6 institutional master plan requirements of Section 304.5, and
7 conditional use and Planned Unit Development applications filed
8 pursuant to Article 7, or otherwise required by this Code for
9 uses or features in Neighborhood Commercial Districts, and
10 conditional use applications within South of Market Districts,
11 shall be subject to the provisions set forth in Sections 316
12 through 316.8 of this Code, in lieu of those provided for in
13 Sections 306.2 and 306.3 of this Code, with respect to scheduling
14 and notice of hearings, and in addition to those provided for in
15 Sections 306.4 and 306.5 of this Code, with respect to conduct of
16 hearings and reconsideration.

17 (b) **Initiation.** A conditional use action may be initiated
18 by application of the owner, or authorized agent for the owner,
19 of the property for which the conditional use is sought.

20 (c) **Determination.** After its hearing on the application,
21 or upon the recommendation of the Director of Planning if the
22 application is filed pursuant to Sections 316 through 316.8 of
23 this Code and no hearing is required, the City Planning
24 Commission shall approve the application and authorize a
25 conditional use if the facts presented are such to establish:

1 (1) That the proposed use or feature, at the size and
2 intensity contemplated and at the proposed location, will provide
3 a development that is necessary or desirable for, and compatible
4 with, the neighborhood or the community; and

5 (2) That such use or feature as proposed will not be
6 detrimental to the health, safety, convenience or general welfare
7 of persons residing or working in the vicinity, or injurious to
8 property, improvements or potential development in the vicinity,
9 with respect to aspects including but not limited to the
10 following:

11 (A) The nature of the proposed site, including its size
12 and shape, and the proposed size, shape and arrangement of
13 structures;

14 (B) The accessibility and traffic patterns for persons
15 and vehicles, the type and volume of such traffic, and the
16 adequacy of proposed off-street parking and loading;

17 (C) The safeguards afforded to prevent noxious or
18 offensive emissions such as noise, glare, dust and odor;

19 (D) Treatment given, as appropriate, to such aspects as
20 landscaping, screening, open spaces, parking and loading areas,
21 service areas, lighting and signs; and

22 (3) That such use or feature as proposed will comply with
23 the applicable provisions of this Code and will not adversely
24 affect the Master Plan; and

25 (4) With respect to applications filed pursuant to

1 Article 7 of this Code, that such use or feature as proposed will
2 provide development that is in conformity with the stated purpose
3 of the applicable Neighborhood Commercial District, as set forth
4 in zoning control category .1 of Sections 710 through 729 of this
5 Code; and

6 (5) (A) With respect to applications filed pursuant to Article
7 7, Section 703.2(a), zoning categories .46, .47, and .48, in lieu
8 of the criteria set forth above in Section 303(c)(1-4), that such
9 use or feature will:

10 (i) Not be located within 1,000 feet of another such use,
11 if the proposed use or feature is included in zoning category
12 .47, as defined by Section 790.36 of this Code; and/or

13 (ii) Not be open between two a.m. and six a.m.; and

14 (iii) Not use electronic amplification between midnight and
15 six a.m.; and

16 (iv) Be adequately soundproofed or insulated for noise and
17 operated so that incidental noise shall not be audible beyond the
18 premises or in other sections of the building and fixed-source
19 equipment noise shall not exceed the decibel levels specified in
20 the San Francisco Noise Control Ordinance.

21 (B) Notwithstanding the above, the City Planning
22 Commission may authorize a conditional use which does not satisfy
23 the criteria set forth in (5) (A) (ii) and/or (5) (A) (iii) above, if
24 facts presented are such to establish that the use will be
25 operated in such a way as to minimize disruption to residences in

1 and around the district with respect to noise and crowd control.

2 (6) With respect to applications for live/work units in
3 RH and RM Districts filed pursuant to Section 209.9(f) or
4 209.9(h) of this Code, that:

5 (A) Each live/work unit is within a building envelope in
6 existence on the effective date of Ordinance No. 412-88
7 (effective October 10, 1988) and also within a portion of the
8 building which lawfully contains at the time of application a
9 nonconforming, nonresidential use;

10 (B) There shall be no more than one live/work unit for
11 each 1,000 gross square feet of floor area devoted to live/work
12 units within the subject structure; and

13 (C) The project sponsor will provide any off-street
14 parking, in addition to that otherwise required by this Code,
15 needed to satisfy the reasonably anticipated auto usage by
16 residents of and visitors to the project.

17 Such action of the City Planning Commission, in either
18 approving or disapproving the application, shall be final except
19 upon the filing of a valid appeal to the Board of Supervisors as
20 provided in Section 308.1. The action of the Planning Commission
21 approving a conditional use does not take effect until the appeal
22 period is over or while the approval is under appeal.

23 (d) **Conditions.** When authorizing a conditional use as
24 provided herein, the City Planning Commission, or the Board of
25 Supervisors on appeal, shall prescribe such additional

1 conditions, beyond those specified in this Code, as are in its
2 opinion necessary to secure the objectives of the Code. Once any
3 portion of the conditional use authorization is utilized, all
4 such conditions pertaining to such authorization shall become
5 immediately operative. The violation of any condition so imposed
6 shall constitute a violation of this Code and may constitute
7 grounds for revocation of the conditional use authorization. Such
8 conditions may include time limits for exercise of the
9 conditional use authorization; otherwise, any exercise of such
10 authorization must commence within a reasonable time.

11 (e) **Modification of Conditions.** Authorization of a change
12 in any condition previously imposed in the authorization of a
13 conditional use shall be subject to the same procedures as a new
14 conditional use. Such procedures shall also apply to applications
15 for modification or waiver of conditions set forth in prior
16 stipulations and covenants relative thereto continued in effect
17 by the provisions of Section 174 of this Code.

18 (f) **Conditional Use Abatement.** The Planning Commission
19 may consider the possible revocation of a conditional use or the
20 possible modification of or placement of additional conditions on
21 a conditional use when the Planning Commission determines, based
22 upon substantial evidence, that the conditional use is not in
23 compliance with a condition of approval, is in violation of law
24 if the violation is within the subject matter jurisdiction of the
25 Planning Commission or operates in such a manner as to create

1 hazardous, noxious or offensive conditions enumerated in Section
2 202(c) if the violation is within the subject matter jurisdiction
3 of the Planning Commission and these circumstances have not been
4 abated through administrative action of the Director, the Zoning
5 Administrator or other City authority. Such consideration shall
6 be the subject of a public hearing before the Planning Commission
7 but no fee shall be required of the applicant or the subject
8 conditional use operator.

9 (1) The Director of Planning or the Planning Commission
10 may seek a public hearing on conditional use abatement when the
11 Director or Commission has substantial evidence of a violation of
12 conditions of approval, a violation of law, or operation which
13 creates hazardous, noxious or offensive conditions enumerated in
14 Section 202(c).

15 (2) The notice for the public hearing on a conditional
16 use abatement shall be subject to the notification procedure as
17 described in Sections 306.3 and 306.8 except that notice to the
18 property owner and the operator of the subject establishment or
19 use shall be mailed by regular and certified mail.

20 (3) In considering a conditional use revocation, the
21 Commission shall consider substantial evidence of how any
22 required condition has been violated or not implemented or how
23 the conditional use is in violation of the law if the violation
24 is within the subject matter jurisdiction of the Planning
25 Commission or operates in such a manner as to create hazardous,

1 noxious or offensive conditions enumerated in Section 202(c) if
2 the violation is within the subject matter jurisdiction of the
3 Planning Commission. As an alternative to revocation, the
4 Commission may consider how the use can be required to meet the
5 law or the conditions of approval, how the hazardous, noxious or
6 offensive conditions can be abated, or how the criteria of
7 Section 303(c) can be met by modifying existing conditions or by
8 adding new conditions which could remedy a violation.

9 (4) Appeals. A decision by the Planning Commission to
10 revoke a conditional use, to modify conditions or to place
11 additional conditions on a conditional use or a decision by the
12 Planning Commission refusing to revoke or amend a conditional
13 use, may be appealed to the Board of Supervisors within 30 days
14 after the date of action by the Planning Commission pursuant to
15 the provisions of Section 308.1(b). The Board of Supervisors may
16 disapprove the action of the Planning Commission in an abatement
17 matter by the same vote necessary to overturn the Commission's
18 approval or denial of a conditional use. The Planning
19 Commission's action on a conditional use abatement issue shall
20 take effect when the appeal period is over or, upon appeal, when
21 there is final action on the appeal.

1 (5) Reconsideration. The decision by the Planning Commission
2 with regards to a conditional use abatement issue or by the Board
3 of Supervisors on appeal shall be final and not subject to
4 reconsideration within a period of one year from the effective
5 date of final action upon the earlier abatement proceeding,
6 unless the Director of Planning determines that:

7 (A) There is substantial new evidence of a new conditional
8 use abatement issue that is significantly different than the
9 issue previously considered by the Planning Commission; or

10 (B) There is substantial new evidence about the same
11 conditional use abatement issue considered in the earlier
12 abatement proceeding, this new evidence was not or could not be
13 reasonably available at the time of the earlier abatement
14 proceeding, and that new evidence indicates that the Commission's
15 decision in the earlier proceeding has not been implemented
16 within a reasonable time or raises significant new issues not
17 previously considered by the Planning Commission.

18 The decision of the Director of Planning regarding the
19 sufficiency and adequacy of evidence to allow the reconsideration
20 of a conditional use abatement issue within a period of one year
21 from the effective date of final action on the earlier abatement
22 proceeding shall be final.

1 ((f))(g) **Hotels and Motels.**

2 (1) With respect to applications for development of
3 tourist hotels and motels, the Planning Commission shall
4 consider, in addition to the criteria set forth in Subsections
5 (c) and (d) above:

6 (A) The impact of the employees of the hotel or motel on
7 the demand in the City for housing, public transit, child care,
8 and other social services. To the extent relevant, the Commission
9 shall also consider the seasonal and part-time nature of
10 employment in the hotel or motel;

11 (B) The measures that will be taken by the project
12 sponsor to employ residents of San Francisco in order to minimize
13 increased demand for regional transportation; and

14 (C) The market demand for a hotel or motel of the type
15 proposed.

16 (2) Notwithstanding the provisions of Subsections (f)(1)
17 above, the Planning Commission shall not consider the impact of
18 the employees of a proposed hotel or motel project on the demand
19 in the City for housing where:

20 (A) The proposed project would be located on property
21 under the jurisdiction of the San Francisco Port Commission; and

22 (B) The sponsor of the proposed project has been granted
23 exclusive rights to propose the project by the San Francisco Port
24 Commission prior to June 1, 1991.

25 (3) Notwithstanding the provisions of Subsection (f)(1)

1 above, with respect to the conversion of residential units to
2 tourist hotel or motel use pursuant to an application filed on or
3 before June 1, 1990 under the provisions of Chapter 41 of the San
4 Francisco Administrative Code, the Planning Commission shall not
5 consider the criteria contained in Subsection (f)(1) above;
6 provided, however, that the Planning Commission shall consider
7 the criteria contained in Subsection (f)(1)(B) at a separate
8 public hearing if the applicant applies for a permit for new
9 construction or alteration where the cost of such construction or
10 alteration exceeds \$100,000. Furthermore, no change in
11 classification from principal permitted use to conditional use in
12 Section 216(b)(i) of this Code shall apply to hotels or motels
13 that have filed applications on or before June 1, 1990 to convert
14 residential units to tourist units pursuant to Chapter 41 of the
15 San Francisco Administrative Code.

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17 APPROVED AS TO FORM:

18 LOUISE H. RENNE, CITY ATTORNEY

19
20 By: 

21 JUDY BOYAJIAN

22 Deputy City Attorney



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 991953

Date Passed:

Ordinance amending Part II, Chapter II, of the San Francisco Municipal Code ("Planning Code") by amending Section 303 thereof to clarify the appeal delay in the effective date of a conditional use approval and to provide a process for abating conditional uses which violate their conditions of approval or become a public nuisance, which would involve a public hearing with appeals to consider revoking the conditional use permit, modifying conditions of approval or taking other abatement action.

May 3, 2000 Board of Supervisors — SUBSTITUTED

June 19, 2000 Board of Supervisors — PASSED ON FIRST READING

Ayes: 10 - Ammiano, Becerril, Bierman, Brown, Katz, Leno, Newsom, Teng,
Yaki, Yee

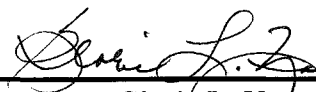
Absent: 1 - Kaufman

June 26, 2000 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom,
Teng, Yaki, Yee

File No. 991953

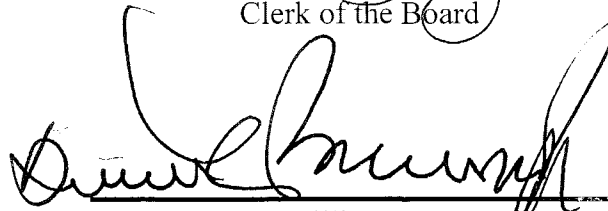
I hereby certify that the foregoing Ordinance
was FINALLY PASSED on June 26, 2000 by
the Board of Supervisors of the City and
County of San Francisco.



Gloria L. Young
Clerk of the Board

JUL - 7 2000

Date Approved



Mayor Willie L. Brown Jr.