

**REVISED LEGISLATIVE DIGEST**  
(4/2/2012, Amended in Committee)

[Planning Code - Eating and Drinking Definitions and Controls]

**Ordinance: 1) deleting and amending various sections of the San Francisco Planning Code to simplify and consolidate eating and drinking establishment definitions, and subject the newly-defined uses to Section 312 notification and Formula Retail controls; 2) adding Section 703.5 to establish operating conditions for Bars and Restaurants; and 3) adopting environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.**

Existing Law

Planning Code Section 145.4 deals with required ground floor commercial uses; Section 249.40A establishes the SOMA Youth and Family Special Use District; and Section 249.60 establishes the Mission Alcoholic Beverage Special Use District. Section 178 deals with the abandonment of conditional uses; Section 186.1 deals with the exemption of nonconforming uses in Neighborhood Commercial Districts; Section 303 sets forth the procedures and requirements for a conditional use, including specific criteria to be applied in authorizing specific uses; Section 305 sets forth the variance procedure; and Section 312(c) requires public notice to be given for certain changes of use.

Article 7 of the Planning Code deals with Neighborhood Commercial Districts (NCDs). Section 702.3 lists the Neighborhood Commercial Restricted Use Subdistricts; Section 703.2 sets forth the uses permitted in NCDs; and Section 703.3 deals with Formula Retail uses. The Zoning Control Tables in Sections 710 through 737 establish zoning controls for the various NCDs. Section 780.3 establishes the North Beach Special Use District; Section 781.1 references the 17<sup>th</sup> and Rhode Island Street Grocery Store Special Use Subdistrict and is a duplicate of Section 781.10; Section 781.2 establishes the Irving Street Restaurant and Fast-Food Subdistrict; Section 781.5 establishes the Mission Street Fast-Food Subdistrict; Section 781.9 establishes the Haight Street Alcohol Restricted Use Subdistrict; and Section 787 establishes the 1800 Market Street Community Center Project Special Use District. Section 790.22 defines a bar; Section 790.34 defines an Eating and Drinking Use, Section 790.90 defines a Large Fast Food Restaurant; Section 790.91 defines a Small Self-Service Restaurant; Section 790.92 defines a Full-Service Restaurant; Section 790.93 defines a Self-Service Special Food use; and Section 790.102 defines a variety of retail sales and services, including Retail Coffee Stores Sales and Services; and Section 790.135 defines a Video Store.

Article 8 of the Planning Code deals with Mixed Use Districts. Section 803.2 sets forth the uses permitted in the Mixed Use Districts. The Zoning Control Tables in Sections

810.1 through 818 and Section 840 establish zoning controls for various Mixed Use Districts. Section 890.22 defines a bar; Section 890.34 defines an eating and drinking use; Section 890.90 defines a Large Fast Food Restaurant; Section 890.91 defines a Small Self-Service Restaurant; Section 890.92 defines a Full-Service Restaurant; and Section 890.122 defines take-out food.

### Amendments to Current Law

The various definitions for eating and drinking uses in Article 7 are consolidated and simplified, the duplicative definitions in Article 8 are repealed, and conforming amendments and cross-references are made to various Zoning Control Tables and other Code sections. A Video Store is no longer a separate use in the Article 7 Tables.

Section 303 is amended to establish specific conditional use criteria for eating and drinking uses. Section 305(a) is amended to codify a Zoning Administrator code interpretation providing that if the Code provisions from which a variance is sought are made more restrictive before a variance authorization is acted upon, the more restrictive Code provisions will apply. Sections 312(c) and 703.3(c) are amended to subject the new definitions to Section 312 notification requirements and formula retail controls. Section 702.3 is amended to update the names of NCD Restricted Use Subdistricts. Section 703.2 is amended to codify a Zoning Administrator code interpretation adding wholesaling, manufacturing, or processing of foods, goods or commodities to the accessory use prohibitions of subsection (C)(i). Section 781.1 previously established the Taraval Street Restaurant and Fast-Food Subdistrict; it was deleted from the Code in error in a previous ordinance and is being added back and amended to conform with the new eating and drinking definitions. Operating conditions for eating and drinking uses have been moved from the individual definition sections and to a new Section 703.5.

### Background Information

The Neighborhood Commercial and Mixed Use District controls separately define several types of eating and drinking uses. In 2000, a Video Store was defined as a separate use and made a conditional use in all Neighborhood Commercial Districts. The Planning Code's first Formula Retail controls were established in 2004. In 2006, voters approved Proposition G, which made Formula Retail Uses a conditional use in all Neighborhood Commercial Districts.

In 2009, the Planning Department completed the NC@20 report, which examined the nature and impacts of the Neighborhood Commercial zoning over the previous two decades, and made recommendations. Two of the principal recommendations of the NC@20 report were to bolster small businesses and overhaul regulations for eating and drinking uses. This ordinance advances both of those recommendations. NC@20 notes that the distinctions between eating uses are both difficult to enforce and may no longer be relevant. In addition, some of the categories were intended – at least in part – to deal with chain stores. The onset of formula retail controls, along with the earlier advent of micro-sized chain stores, precludes this distinction. Non-residential use size controls,

which are independent of controls for food and drink uses, along with neighborhood notification processes and conditional use requirements adequately address this issue. NC@20 acknowledges that restaurant uses can impact neighbors, and recommends that Good Neighbor Policies be established for these uses. This ordinance addresses mechanical noise and vibration from restaurant machinery, like refrigerators, ice machines, and other equipment which, when poorly designed or located in rear yards, can disturb residents living above or behind restaurants at all hours. The ordinance requires that mechanical noise and vibration be confined to the premises. Noise from outdoor seating is regulated through existing controls on Outdoor Activity Areas.

In the decade since Video Store controls were enacted, the video store industry has been transformed by the Internet, and formula retail controls have been established and extended to all NC districts. As of January 2011, the country's largest video store chain is in bankruptcy protection, and the second largest is in liquidation. This ordinance will permit locally-owned, neighborhood video stores to form, grow, and relocate without conditional use authorization in certain NC districts, while retaining conditional use requirements for formula retail video stores.