

**LEGISLATIVE DIGEST**

[Planning Code - Zoning - Self-Service Restaurants, Retail Coffee Stores, and Video Stores]

**Ordinance amending Planning Code Sections 710, 730, 733A, 733A.1, 790.90, 790.91, and 790.102 to increase the maximum use size for Small Self-Service Restaurants in Neighborhood Commercial Districts to that of the non-residential use size limit for the district and eliminate the limit on the number of seats; increase the minimum size for Large Self-Service Restaurants in Neighborhood Commercial Districts to that of the non-residential use size limit for the district; principally permit Small Self-Service Restaurants and Video Stores in Neighborhood Commercial Cluster (NC-1) and Neighborhood Commercial Transit Cluster (NCT-1) Districts; conditionally permit Large Self-Service Restaurants in the Inner Sunset Neighborhood Commercial District; require that mechanical noise and vibration from Self-Service Restaurants be confined to the premises; remove the prohibition of on-site food preparation and cooking and reheating equipment in Retail Coffee Stores; and adopting findings, including environmental findings, Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.**

Existing Law

The Zoning Control Table in Section 710 establishes zoning controls for Neighborhood Commercial Cluster Districts (NC-1). Section 733A.1 and the Zoning Control Table in Section 733A define and establish zoning controls for Neighborhood Commercial Transit Cluster Districts (NCT-1). The Zoning Control Table in Section 730 establishes zoning controls for the Inner Sunset Neighborhood Commercial District.

Section 790.90 defines Large Fast Food Restaurants in Neighborhood Commercial Districts and Section 790.91 defines Small Self-Service Restaurants in Neighborhood Commercial Districts. Section 790.102 defines a variety of retail sales and services, including Retail Coffee Stores, in Neighborhood Commercial Districts.

Amendments to Current Law

The Zoning Control Tables in Sections 710 and 733A are amended to permit Small Self-Service Restaurants and Video Stores as a principally rather than a conditionally permitted use in NC-1 and NCT-1 Districts. The Zoning Control Table in Section 730.1 is amended to permit Large Self-Service Restaurants as a conditionally permitted use in the Inner Sunset Neighborhood Commercial District, where they are currently not permitted, and to permit Video Stores as a principally rather than conditionally permitted use.

The definition of Small Self-Service Restaurant in Section 790.91 is amended to increase the maximum use size to that of the non-residential use size of the district in

which the restaurant is located, and to eliminate the limit on the number of seats. It adds a requirement that mechanical noise and vibration be limited to the premises. The definition of Large Fast Food Restaurant in Section 790.90 is amended to rename Large Fast Food Restaurant to Large Self-Service Restaurant, and to increase the minimum use size to that of the non-residential use size of the district in which the restaurant is located. The definition of Sales and Services, Other Retail in Section 790.102 is amended to remove the prohibition on on-site food preparation, and equipment to cook or reheat food, in Retail Coffee Stores.

### Background Information

Neighborhood Commercial Districts were added to the Planning Code in 1987. The ordinance establishing them defined three restaurant uses: Full-Service Restaurant, Small Self-Service Restaurant, and Large Fast-Food Restaurant. Retail Coffee Store was defined as a use in 1993, and Self-Service Specialty Food was defined as a use in 2008. In 2000, Video Stores were defined as a distinct 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. For example, the addition of a microwave or toaster oven to a retail coffee store transforms the use into a small self-service restaurant, which may have different zoning controls. The self-service and fast-food restaurant categories were intended to control fast food chains, but the definition includes many locally-owned restaurants, including taquerias, creperies, and neighborhood coffee houses, which do not offer table service. The report concludes:

It should also be noted that the use size distinctions between small self service restaurants and large fast food restaurants were introduced originally – at least in large 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.

This ordinance does not completely erase the distinction between full-service and self-service restaurants. It does establish parity in permitted use size and permitting

requirements for all restaurant uses in the majority of NC Districts, while permitting a handful of NC Districts and Fast-food Subdistricts to retain their specialized restaurant controls. This legislative change will remove barriers to the establishment of locally-owned self-service restaurants, and permit these restaurant businesses to grow and relocate with greater ease.

In Retail Coffee Stores, a “Limited amount of nonprepackaged food goods may be served, such as pastries or similar goods,” but food preparation, or any equipment to cook or reheat food like a toaster or microwave oven, is prohibited. This legislative change removes the prohibition on food preparation and cooking and reheating equipment. Retail Coffee Stores will remain distinct from Self-Service Restaurants in their limitations on size – 400 square feet or 15 seats – and on serving alcoholic beverages.

NC@20 acknowledges that restaurant uses can impact neighbors, and recommended that Good Neighbor Policies be established for restaurant 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.