

BOARD of SUPERVISORS



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May 1, 2014

File No. 131064

Sarah Jones  
Environmental Review Officer  
Planning Department  
1650 Mission Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103

Dear Ms. Jones:

On April 15, 2014, Supervisor Wiener introduced the following legislation:

**File No. 131064**

**Ordinance amending the Planning Code to expand the definition of "bona fide eating place" to include a definition based on food sales per occupant and exempting certain bona fide eating places from the definition of "bar"; and making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "A. Ausberry".

By: Andrea Ausberry, Assistant Clerk  
Land Use & Economic Development Committee

Attachment

c: Nannie Turrell, Environmental Planning  
Jeanie Poling, Environmental Planning

*Not a project under CEQA  
Guidelines Sections 15060(c)  
and 15378 because there is  
no direct or indirect physical  
change in the environment.  
Nannie Turrell  
May 1, 2014*



1 [Planning Code - Definition of Bona Fide Eating Place]

2  
3 **Ordinance amending the Planning Code to expand the definition of “bona fide eating**  
4 **place” to include a definition based on food sales per occupant and exempting certain**  
5 **bona fide eating places from the definition of “bar”; and making environmental**  
6 **findings, and findings of consistency with the General Plan, and the eight priority**  
7 **policies of Planning Code, Section 101.1.**

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

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

16 Section 1. The Board of Supervisors of the City and County of San Francisco hereby  
17 finds and determines that:

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

23 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_,  
24 adopted findings that the actions contemplated in this ordinance are consistent, on balance,  
25 with the City’s General Plan and eight priority policies of Planning Code Section 101.1. The  
Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of  
the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

1 Section 2. The Planning Code is hereby amended by amending Sections 790.22 and  
2 790.142, to read as follows:

3 **SEC. 790.22. BAR.**

4 A retail use ~~which~~ that provides on-site alcoholic beverage sales for drinking on the  
5 premises, including bars serving beer, wine and/or liquor to the customer where no person  
6 under 21 years of age is admitted (with Alcoholic Beverage Control [ABC] license types 42,  
7 48, or 61), ~~and~~ drinking establishments serving beer where minors are present (with ABC  
8 license types 42 or 60) in conjunction with other uses such as movie theaters and other  
9 entertainment, or establishments with ABC license type 47 that do not meet the definition of a Bona  
10 Fide Eating Place under Section 790.142. This use must comply with the controls set forth in  
11 Section 703.5.

12 \* \* \* \*

13  
14 **SEC. 790.142. BONA FIDE EATING PLACE.**

15 A place which is regularly and in a bona fide manner used and kept open for the  
16 service of meals to guests for compensation and which has suitable kitchen facilities  
17 connected therewith, containing conveniences for cooking of an assortment of foods which  
18 may be required for ordinary meals.

19 (a) "Meals" shall mean an assortment of foods commonly ordered at various hours  
20 of the day for breakfast, lunch or dinner. Incidental food service, comprised only of appetizers  
21 to accompany drinks is not considered a meal. Incidental, sporadic or infrequent sales of  
22 meals or a mere offering of meals without actual sales is not compliance.

23 (b) "Guests" shall mean persons who, during the hours when meals are regularly  
24 served therein, come to a bona fide public eating place for the purpose of obtaining, and  
25

1 actually order and obtain at such time, in good faith, a meal therein. Nothing in this section,  
2 however, shall be construed to require that any food be sold or purchased with any beverage.

3 (c) Actual and substantial sales of meals are required, during the normal days and  
4 meal hours that a bona fide public eating place is open; provided that "normal days of  
5 operation" shall mean a minimum of five days a week and "normal hours" of operation for  
6 meal service shall mean approximately 7:00 a.m. to 11:00 a.m. if open for breakfast; 11:00  
7 a.m. to 2:00 p.m. if open for lunch; or 5:00 p.m. to 10:00 p.m. if open for dinner.

8 (d) The premises must be equipped and maintained in good faith. This means the  
9 premises must possess working refrigeration and cooking devices, pots, pans, utensils, table  
10 service, condiment dispensers, menus, signs and enough goods to make substantial meals.  
11 The premises must comply with all regulations of the Department of Public Health.

12 (e) The restaurant must secure significant revenue from food and non-alcoholic beverage  
13 sales. Significant revenue from food and non-alcoholic beverage sales shall mean either:

14 (1) A minimum of 51 percent of the restaurant's gross receipts shall be from  
15 food and non-alcoholic beverage sales prepared and sold to guests on the premises. Records of  
16 the restaurant's gross receipts shall be provided to the Department upon request; or

17 (2) Annual gross food and non-alcoholic beverage sales prepared and sold to guests  
18 on the premises of at least \$4,200 per occupant based on the premises' maximum occupant load as  
19 determined and approved by the San Francisco Fire Department and Department of Building  
20 Inspection.

21 (f) A "bona fide eating place" does not include an adult entertainment business as  
22 defined in Planning Code Section 790.36.

23  
24 Section 3. Effective Date. This ordinance shall become effective 30 days after  
25 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
2 of Supervisors overrides the Mayor's veto of the ordinance.

3  
4 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
6 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
7 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
8 additions, and Board amendment deletions in accordance with the "Note" that appears under  
9 the official title of the ordinance.

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

12 By: \_\_\_\_\_  
13 MARLENA G. BYRNE  
14 Deputy City Attorney

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