

AMENDMENT OF THE WHOLE  
3/3/03

FILE NO. 021772

ORDINANCE NO.

1 [Conditional Use Revocation.]

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3 **Ordinance amending the San Francisco Planning Code by amending Section 303 to**  
4 **provide for the revocation of a conditional use authorization upon a finding that the**  
5 **applicant provided false information in obtaining the conditional use; adopting findings**  
6 **under Planning Code Section 302.**

7 Note: Additions are single-underline italics Times New Roman;  
8 deletions are ~~strikethrough italics Times New Roman~~.  
9 Board amendment additions are double underlined.  
Board amendment deletions are ~~strikethrough normal~~.

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

11 Section 1. Pursuant to Planning Code Section 302, the Board of Supervisors hereby  
12 finds that this ordinance will serve the public necessity, convenience and welfare.

13 Section 2. The San Francisco Planning Code is hereby amended by amending Section  
14 303, to read as follows:

15 SEC. 303. CONDITIONAL USES.

16 (a) General. The City Planning Commission shall hear and make determinations  
17 regarding applications for the authorization of conditional uses in the specific situations in  
18 which such authorization is provided for elsewhere in this Code. The procedures for  
19 conditional uses shall be as specified in this Section and in Sections 306 through 306.6,  
20 except that Planned Unit Developments shall in addition be subject to Section 304, medical  
21 institutions and post-secondary educational institutions shall in addition be subject to the  
22 institutional master plan requirements of Section 304.5, and conditional use and Planned Unit  
23 Development applications filed pursuant to Article 7, or otherwise required by this Code for  
24 uses or features in Neighborhood Commercial Districts, and conditional use applications  
25 within South of Market Districts, shall be subject to the provisions set forth in Sections 316

1 through 316.8 of this Code, in lieu of those provided for in Sections 306.2 and 306.3 of this  
2 Code, with respect to scheduling and notice of hearings, and in addition to those provided for  
3 in Sections 306.4 and 306.5 of this Code, with respect to conduct of hearings and  
4 reconsideration.

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

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

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

14 (A) In Neighborhood Commercial Districts, if the proposed use is to be located at a  
15 location in which the square footage exceeds the limitations found in Planning Code §  
16 121.2(a) or 121.2(b), the following shall be considered:

17 (i) The intensity of activity in the district is not such that allowing the larger use will  
18 be likely to foreclose the location of other needed neighborhood-servicing uses in the area;  
19 and

20 (ii) The proposed use will serve the neighborhood, in whole or in significant part,  
21 and the nature of the use requires a larger size in order to function; and

22 (iii) The building in which the use is to be located is designed in discrete elements  
23 which respect the scale of development in the district; and

24 (2) That such use or feature as proposed will not be detrimental to the health,  
25 safety, convenience or general welfare of persons residing or working in the vicinity, or

1 injurious to property, improvements or potential development in the vicinity, with respect to  
2 aspects including but not limited to the following:

3 (A) The nature of the proposed site, including its size and shape, and the proposed  
4 size, shape and arrangement of structures;

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

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

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

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

13 (4) With respect to applications filed pursuant to Article 7 of this Code, that such use  
14 or feature as proposed will provide development that is in conformity with the stated purpose  
15 of the applicable Neighborhood Commercial District, as set forth in zoning control category .1  
16 of Sections 710 through 729 of this Code; and

17 (5)(A) With respect to applications filed pursuant to Article 7, Section 703.2(a), zoning  
18 categories .46, .47, and .48, in addition to the criteria set forth above in Section 303(c)(1—4),  
19 that such use or feature will:

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

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

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

24 (iv) Be adequately soundproofed or insulated for noise and operated so that  
25 incidental noise shall not be audible beyond the premises or in other sections of the building

1 and fixed-source equipment noise shall not exceed the decibel levels specified in the San  
2 Francisco Noise Control Ordinance.

3 (B) Notwithstanding the above, the City Planning Commission may authorize a  
4 conditional use which does not satisfy the criteria set forth in (5)(A)(ii) and/or (5)(A)(iii) above,  
5 if facts presented are such to establish that the use will be operated in such a way as to  
6 minimize disruption to residences in and around the district with respect to noise and crowd  
7 control.

8 (C) The action of the Planning Commission approving a conditional use does not  
9 take effect until the appeal period is over or while the approval is under appeal.

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

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

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

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

20 Such action of the City Planning Commission, in either approving or disapproving the  
21 application, shall be final except upon the filing of a valid appeal to the Board of Supervisors  
22 as provided in Section 308.1.

23 (d) Conditions. When considering an application for a conditional use as provided  
24 herein with respect to applications for development of "dwellings" as defined in Chapter 87 of  
25 the San Francisco Administrative Code, the Commission shall comply with that Chapter which

1 requires, among other things, that the Commission not base any decision regarding the  
2 development of "dwellings" in which "protected class" members are likely to reside on  
3 information which may be discriminatory to any member of a "protected class" (as all such  
4 terms are defined in Chapter 87 of the San Francisco Administrative Code). In addition, when  
5 authorizing a conditional use as provided herein, the City Planning Commission, or the Board  
6 of Supervisors on appeal, shall prescribe such additional conditions, beyond those specified in  
7 this Code, as are in its opinion necessary to secure the objectives of the Code. Once any  
8 portion of the conditional use authorization is utilized, all such conditions pertaining to such  
9 authorization shall become immediately operative. The violation of any condition so imposed  
10 shall constitute a violation of this Code and may constitute grounds for revocation of the  
11 conditional use authorization. Such conditions may include time limits for exercise of the  
12 conditional use authorization; otherwise, any exercise of such authorization must commence  
13 within a reasonable time.

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

19 (f) Conditional Use Abatement. The Planning Commission may consider the  
20 possible revocation of a conditional use or the possible modification of or placement of  
21 additional conditions on a conditional use when the Planning Commission determines, based  
22 upon substantial evidence, that the applicant for the conditional use had submitted false or  
23 misleading information in the application process that could have reasonably had a substantial  
24 effect upon the decision of the Commission or the conditional use is not in compliance with a  
25 condition of approval, is in violation of law if the violation is within the subject matter

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

8 (1) The Director of Planning or the Planning Commission may seek a public hearing  
9 on conditional use abatement when the Director or Commission has substantial evidence  
10 submitted within one year of the effective date of the Conditional Use authorization that *the*  
11 *applicant for the conditional use had submitted false or misleading information in the application*  
12 *process that could have reasonably had a substantial effect upon the decision of the*  
13 *Commission or substantial evidence* of a violation of conditions of approval, a violation of law, or  
14 operation which creates hazardous, noxious or offensive conditions enumerated in Section  
15 202(c).

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

20 (3) In considering a conditional use revocation, the Commission shall consider  
21 *whether and how the false or misleading information submitted by the applicant affected could have*  
22 *reasonably had a substantial effect upon the decision of the Commission, or the Board of*  
23 *Supervisors on appeal, to authorize the conditional use,* substantial evidence of how any required  
24 condition has been violated or not implemented or how the conditional use is in violation of the  
25 law if the violation is within the subject matter jurisdiction of the Planning Commission or

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

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

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

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

23 (B) There is substantial new evidence about the same conditional use abatement  
24 issue considered in the earlier abatement proceeding, this new evidence was not or could not  
25 be reasonably available at the time of the earlier abatement proceeding, and that new

1 evidence indicates that the Commission's decision in the earlier proceeding has not been  
2 implemented within a reasonable time or raises significant new issues not previously  
3 considered by the Planning Commission. The decision of the Director of Planning regarding  
4 the sufficiency and adequacy of evidence to allow the reconsideration of a conditional use  
5 abatement issue within a period of one year from the effective date of final action on the  
6 earlier abatement proceeding shall be final.

7 (g) Hotels and Motels.

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

11 (A) The impact of the employees of the hotel or motel on the demand in the City for  
12 housing, public transit, childcare, and other social services. To the extent relevant, the  
13 Commission shall also consider the seasonal and part-time nature of employment in the hotel  
14 or motel;

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

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

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

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

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

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

12           (h)     Internet Services Exchange.

13           (1)     With respect to application for development of Internet Services Exchange as  
14 defined in Section 209.6(c), the Planning Commission shall, in addition to the criteria set forth  
15 in Subsection (c) above, find that:

16           (A)     The intensity of the use at this location and in the surrounding neighborhood is  
17 not such that allowing the use will likely foreclose the location of other needed neighborhood-  
18 serving uses in the area;

19           (B)     The building in which the use is located is designed in discrete elements, which  
20 respect the scale of development in adjacent blocks, particularly any existing residential uses;

21           (C)     Rooftop equipment on the building in which the use is located is screened  
22 appropriately.

23           (D)     The back-up power system for the proposed use will comply with all applicable  
24 federal state, regional and local air pollution controls.

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1 (E) Fixed-source equipment noise does not exceed the decibel levels specified in  
2 the San Francisco Noise Control Ordinance.

3 (F) The building is designed to minimize energy consumption, such as through the  
4 use of energy-efficient technology, including without limitation, heating, ventilating and air  
5 conditioning systems, lighting controls, natural ventilation and recapturing waste heat, and as  
6 such commercially available technology evolves;

7 (G) The project sponsor has examined the feasibility of supplying and, to the extent  
8 feasible, will supply all or a portion of the building's power needs through on-site power  
9 generation, such as through the use of fuel cells or co-generation;

10 (H) The project sponsor shall have submitted design capacity and projected power  
11 use of the building as part of the conditional use application; and

12 (2) As a condition of approval, and so long as the use remains an Internet Services  
13 Exchange, the project sponsor shall submit to the Planning Department on an annual basis  
14 power use statements for the previous twelve-month period as provided by all suppliers of  
15 utilities and shall submit a written annual report to the Department of Environment and the  
16 Planning Department which shall state: (a) the annual energy consumption and fuel  
17 consumption of all tenants and occupants of the Internet Services Exchange; (b) the number  
18 of all diesel generators located at the site and the hours of usage, including usage for testing  
19 purposes; (c) evidence that diesel generators at the site are in compliance with all applicable  
20 local, regional, state and federal permits, regulations and laws; and (d) such other information  
21 as the Planning Commission may require.

22 (3) The Planning Department shall have the following responsibilities regarding  
23 Internet Services Exchanges:

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1           (A)    Upon the effective date of the requirement of a conditional use permit for an  
2 Internet Services Exchange, the Planning Department shall notify property owners of all  
3 existing Internet Services Exchanges that the use has been reclassified as a conditional use;

4           (B)    Upon the effective date of the requirement of a conditional use permit for an  
5 Internet Services Exchange, the Planning Department shall submit to the Board of  
6 Supervisors and to the Director of the Department of Building Inspection a written report  
7 covering all existing Internet Services Exchanges and those Internet Services Exchanges  
8 seeking to obtain a conditional use permit, which report shall state the address, assessor's  
9 block and lot, zoning classification, square footage of the Internet Services Exchange  
10 constructed or to be constructed, a list of permits previously issued by the Planning and/or  
11 Building Inspection Departments concerning the Internet Services Exchange, the date of  
12 issuance of such permits, and the status of any outstanding requests for permits from the  
13 Planning and/or Building Inspection Departments concerning Internet Services Exchange; and

14           (C)    Within three years from the effective date of the requirement of a conditional use  
15 permit for an Internet Services Exchange, the Planning Department, in consultation with the  
16 Department of Environment, shall submit to the Board of Supervisors a written report, which  
17 report shall contain the Planning Commission's evaluation of the effectiveness of the  
18 conditions imposed on Internet Services Exchanges, and whether it recommends additional or  
19 modified conditions to reduce energy and fuel consumption, limit air pollutant emissions, and  
20 enhance the compatibility of industrial uses, such as Internet Services Exchanges, located  
21 near or in residential or commercial districts.

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1 APPROVED AS TO FORM:  
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