

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

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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 *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

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

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

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

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

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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.

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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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