

1 [Zoning – Conditional Use for Change in Use or Demolition of a Movie Theater.]

2

3 **Ordinance amending the Planning Code to add Section 221.1 and to amend sections**
 4 **703.2, 803.2, and 803.3 to require conditional use authorization for any project involving**
 5 **the change in use or demolition of a movie theater; amending Planning Code section**
 6 **303 to require specific findings as part of a conditional use authorization for a change**
 7 **in use or demolition of a movie theater; making findings of consistency with the**
 8 **General Plan and priority policies of the Planning Code Section 101.1; making**
 9 **environmental findings; and making the Ordinance inapplicable to uses for which an**
 10 **environmental evaluation application was submitted on or before July 27, 2004.**

11 Note: Additions are *single-underline italics Times New Roman*;
 12 deletions are ~~*strikethrough italics Times New Roman*~~.
 13 Board amendment additions are double underlined.
 Board amendment deletions are ~~strikethrough normal~~.

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

15 Section 1. General Findings.

16 (a) San Francisco has a proud tradition of neighborhoods and thriving commercial
17 districts that reflect the diverse character of the city.

18 (b) Movie theaters serve as important anchors in many of these neighborhood
19 commercial districts, helping generate pedestrian traffic critical for the economic vitality of
20 surrounding retail stores, restaurants and other small businesses.

21 (c) Movie theaters contribute to the unique character of our neighborhoods and
22 significantly enhance the quality of life of the City's residents.

23 (d) Over the last twenty years, San Francisco has lost more than thirty-five movie
24 theaters, including such neighborhood institutions as the Alhambra Theater (Russian Hill), the
25 Avenue Theater (Silver Terrace), the Haight Theater (Haight-Ashbury), the Apollo Theater

1 (Excelsior), the New Mission Theater (Mission), the Coliseum Theater (Richmond), the
2 Parkside Theater (Taraval), the Pagoda Palace (North Beach), the Noe Theater (Noe Valley),
3 the Surf Theater (Outer Sunset), the El Capitan Theater (Mission) and the El Rey Theater
4 (Ingleside).

5 (e) Many of the remaining neighborhood theaters are threatened with potential
6 closures, conversion or demolition in the near future, including such theaters as the Cinema
7 21 (Marina), the Roxie (Mission), the Coronet (Richmond), the Metro (Pacific Heights), the
8 Presidio (Marina), the Balboa (Richmond), the Vogue (Presidio Heights), and the Empire
9 (West Portal).

10 (f) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this
11 ordinance will serve the public necessity, convenience and welfare for the reasons specified in
12 this legislation and in Planning Commission Motion No. , a copy of which is in Clerk of
13 the Board of Supervisors file No. . Said motion is incorporated herein by reference.

14 (g) Pursuant to Planning Code Section 101.1, this Board of Supervisors finds that
15 this ordinance is consistent with the priority policies of Section 101.1(b) of the Planning Code
16 and the General Plan for the reasons set forth in said Planning Commission Motion No. .

17 Section 2. Specific Findings. The Board finds that in order to effectuate this
18 legislation, the Planning Department, prior to Planning Commission action on a conditional
19 use application subject to this Ordinance, should consult with other affected city departments,
20 including, but not limited to, the Mayor's Office of Economic Development, the Mayor's Office
21 of Neighborhood & Community Services, the Small Business Commission, and the Film
22 Commission, to assist in determining the neighborhood impacts of particular changes in use
23 or demolition of a movie theater.

24 Section 3. Environmental Findings. The Planning Department has determined that the
25 actions contemplated in this Ordinance are in compliance with the California Environmental

1 Quality Act (California Public Resources Code sections 21000 et seq.). Said determination is
2 on file with the Clerk of the Board of Supervisors in File No. and is incorporated herein
3 by reference.

4 Section 4. The San Francisco Planning Code is hereby amended by adding Section
5 221.1 to read as follows:

6 SEC. 221.1. LIMITATION ON CHANGE IN USE OR DEMOLITION OF MOVIE
7 THEATER USE.

8 Notwithstanding any other provision of this Article, a change in use or demolition of a movie
9 theater use, as set forth in Section 221(d), shall require conditional use authorization pursuant to
10 Section 303. This Section shall not authorize a change in use if the new use or uses are otherwise
11 prohibited.

12 Section 5. The San Francisco Planning Code is hereby amended by amending Section
13 703.2 to read as follows:

14 SEC. 703.2. USES PERMITTED IN NEIGHBORHOOD COMMERCIAL DISTRICTS.

15 A use is the specific purpose for which a property or building is used, occupied,
16 maintained, or leased. Whether or not a use is permitted in a specific district is set forth or
17 summarized and cross-referenced in Sections 710.1 through 730.95 of this Code for each
18 district class.

19 (a) Use Categories. The uses, functions, or activities, which are permitted in
20 each Neighborhood Commercial District class include those listed below by zoning control
21 category and number and cross-referenced to the Code Section containing the definition.

22

| No. | Zoning Control Categories for Uses | Section Number of Use Definition |
|-----|------------------------------------|----------------------------------|
| .24 | Outdoor Activity Area | § 790.70 |
| .25 | Drive-up Facility | § 790.30 |

| | | | |
|----|-----|----------------------------------|-----------|
| 1 | .26 | Walk-up Facility | § 790.140 |
| 2 | .27 | Hours of Operation | § 790.48 |
| 3 | .38 | Residential Conversion | § 790.84 |
| 4 | .39 | Residential Demolition | § 790.86 |
| 5 | .40 | Other Retail Sales and Services | § 790.102 |
| 6 | .41 | Bar | § 790.22 |
| 7 | .42 | Full-service Restaurant | § 790.92 |
| 8 | .43 | Large Fast-Food Restaurant | § 790.90 |
| 9 | .44 | Small Self-Service Restaurant | § 790.91 |
| 10 | .45 | Liquor Store | § 790.55 |
| 11 | .46 | Movie Theater | § 790.64 |
| 12 | .47 | Adult Entertainment | § 790.36 |
| 13 | .48 | Other Entertainment | § 790.38 |
| 14 | .49 | Financial Service | § 790.110 |
| 15 | .50 | Limited Financial Service | § 790.112 |
| 16 | .51 | Medical Service | § 790.114 |
| 17 | .52 | Personal Service | § 790.116 |
| 18 | .53 | Business or Professional Service | § 790.108 |
| 19 | .54 | Massage Establishment | § 790.60 |
| 20 | .55 | Tourist Hotel | § 790.46 |
| 21 | .56 | Automobile Parking | § 790.8 |
| 22 | .57 | Automotive Gas Station | § 790.14 |
| 23 | .58 | Automotive Service Station | § 790.17 |
| 24 | .59 | Automotive Repair | § 790.15 |
| 25 | .60 | Automotive Wash | § 790.18 |

| | | | |
|----|-----|-------------------------------|-----------|
| 1 | .61 | Automobile Sale or Rental | § 790.12 |
| 2 | .62 | Animal Hospital | § 790.6 |
| 3 | .63 | Ambulance Service | § 790.2 |
| 4 | .64 | Mortuary | § 790.62 |
| 5 | .65 | Trade Shop | § 790.124 |
| 6 | .66 | Storage | § 790.117 |
| 7 | .67 | Video Store | § 790.135 |
| 8 | .70 | Administrative Service | § 790.106 |
| 9 | .80 | Hospital or Medical Center | § 790.44 |
| 10 | .81 | Other Institutions, Large | § 790.50 |
| 11 | .82 | Other Institutions, Small | § 790.51 |
| 12 | .83 | Public Use | § 790.80 |
| 13 | .90 | Residential Use | § 790.88 |
| 14 | .95 | Community Residential Parking | § 790.10 |

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16 (b) Use Limitations. The uses permitted in Neighborhood Commercial
17 Districts are either principal, conditional, accessory, or temporary uses as stated in this
18 Section, and include those uses set forth or summarized and cross-referenced in the zoning
19 control categories as listed in Paragraph (a) in Sections 710.1 through 729.95 of this Code for
20 each district class.

21 (1) Permitted Uses. All permitted uses shall be conducted within an enclosed
22 building in Neighborhood Commercial Districts, unless otherwise specifically allowed in this
23 Code. Exceptions from this requirement are: uses which, when located outside of a building,
24 qualify as an outdoor activity area, as defined in Section 790.70 of this Code; accessory off-
25 street parking and loading and other uses listed below which function primarily as open-air

1 uses, or which may be appropriate if located on an open lot, outside a building, or within a
2 partially enclosed building, subject to other limitations of this Article 7 and other sections of
3 this Code.

4

| 5 | No. | Zoning Control Category |
|----|-----|--------------------------------------|
| 6 | .56 | Automobile Parking |
| 7 | .57 | Automotive Gas Station |
| 8 | .58 | Automotive Service Station |
| 9 | .60 | Automotive Wash |
| 10 | .61 | Automobile Sale or Rental |
| 11 | .81 | Other Institutions, Large (selected) |
| 12 | .83 | Public Use (selected) |
| 13 | .95 | Community Residential Parking |

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15 If there are two or more uses in a structure and none is classified below under
16 Section 703.2(b)(1)(C) of this Code as accessory, then each of these uses will be considered
17 separately as independent principal, conditional or temporary uses.

18 (A) Principal Uses. Principal uses are permitted as of right in a Neighborhood
19 Commercial District, when so indicated in Sections 710.1 through 729.95 of this Code for
20 each district class.

21 (B) Conditional Uses. Conditional uses are permitted in a Neighborhood
22 Commercial District when authorized by the Planning Commission; whether a use is
23 conditional in a given district is indicated in Sections 710.10 through 729.95. Conditional uses
24 are subject to the provisions set forth in Sections 178, 179, 303, and 316 through 316.8 of this Code.

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1 (i) _____ An establishment which sells beer or wine with motor vehicle fuel is a
2 conditional use, and shall be governed by section 229. ~~Conditional uses are subject to the~~
3 ~~provisions set forth in Sections 178, 179, and 316 through 316.8 of this Code.~~

4 (ii) _____ Notwithstanding any other provision of this Article, a change in use or
5 demolition of a movie theater use, as set forth in Section 790.64, shall require conditional use
6 authorization. This Subsection shall not authorize a change in use if the new use or uses are otherwise
7 prohibited.

8 (C) Accessory Uses. Except as prohibited in Section 728 and subject to the
9 limitations set forth below and in Sections 204.1 (Accessory Uses for Dwelling Units in R and
10 NC Districts), 204.4 (Dwelling Units Accessory to Other Uses), and 204.5 (Parking and
11 Loading as Accessory Uses) of this Code, a related minor use which is either necessary to the
12 operation or enjoyment of a lawful principal use or conditional use, or is appropriate, incidental
13 and subordinate to any such use, shall be permitted as an accessory use when located on the
14 same lot. Any use which does not qualify as an accessory use shall be classified as a
15 principal or conditional use, unless it qualifies as a temporary use under Sections 205 through
16 205.2 of this Code.

17 No use will be considered accessory to a permitted principal or conditional use
18 which involves or requires any of the following:

19 (i) The use of more than 1/3 of the total floor area occupied by such use and
20 the principal or conditional use to which it is accessory, except in the case of accessory off-
21 street parking and loading;

22 (ii) Any bar, restaurant, other entertainment, or any retail establishment
23 which serves liquor for consumption on-site;

24 (iii) Any take-out food use, as defined in Section 790.122, except for a take-
25 out food use which occupies 100 square feet or less (including the area devoted to food

1 preparation and service and excluding storage and waiting areas) in a general grocery or
2 specialty grocery store;

3 (iv) Any take-out food use, as defined in Section 790.122, except for a take-
4 out food use operating as a minor and incidental use within a full-service restaurant;

5 (v) The wholesaling, manufacturing or processing of foods, goods, or
6 commodities on the premises of an establishment which does not also use or provide for
7 primarily retail sale of such foods, goods or commodities at the same location where such
8 wholesaling, manufacturing or processing takes place.

9 The foregoing rules shall not prohibit take-out food activity which operates in
10 conjunction with a fast-food restaurant or a self-service restaurant. A fast-food restaurant or a
11 self-service restaurant, by definition, includes take-out food as an accessory and necessary
12 part of its operation.

13 (D) Temporary Uses. Temporary uses are permitted uses, subject to the
14 provisions set forth in Section 205 of this Code.

15 (2) Not Permitted Uses.

16 (A) Uses which are not specifically listed in this Article are not permitted
17 unless they qualify as a nonconforming use pursuant to Sections 180 through 186.1 of this
18 Code or are determined by the Zoning Administrator to be permitted uses in accordance with
19 Section 307(a) of this Code.

20 (B) No use, even though listed as a permitted use, shall be permitted in a
21 Neighborhood Commercial District which, by reason of its nature or manner of operation,
22 creates conditions that are hazardous, noxious, or offensive through the emission of odor,
23 fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste, or excessive
24 noise.

25

1 (C) The establishment of a use that sells alcoholic beverages, other than
2 beer and wine, concurrent with motor vehicle fuel is prohibited, and shall be governed by
3 Section 229.

4 Section 6. The San Francisco Planning Code is hereby amended by amending Section
5 803.2 to read as follows:

6 SEC. 803.2. USES PERMITTED IN CHINATOWN MIXED USE DISTRICTS.

7 A use is the specific purpose for which a property or building is used, occupied,
8 maintained, or leased. Whether or not a use is permitted in a specific Chinatown Mixed Use
9 District is set forth, summarized or cross-referenced in Sections 810.1 through 812.96 of this
10 Code for each district class.

11 (a) Use Categories. The uses, functions, or activities, which are permitted in
12 each Chinatown Mixed Use District class include those listed in Table 803.2 below by zoning
13 control category and numbered and cross-referenced to the Code Section containing the
14 definition.

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16 TABLE 803.2 USE CATEGORIES PERMITTED IN THE CHINATOWN MIXED USE
17 DISTRICTS

18

| No. | Zoning Control Categories for Uses | Section Number of Use Definition |
|----------|---------------------------------------|-------------------------------------|
| 803.2.24 | Outdoor Activity Area | §890.71 |
| 803.2.25 | Drive-up Facility | §890.30 |
| 803.2.26 | Walk-up Facility | §890.140 |
| 803.2.27 | Hours of Operation | §890.48 |

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| | | | |
|----|-----------|-----------------------------|----------|
| 1 | 803.2.38a | Residential Conversion, | §890.84 |
| 2 | | Residential Hotels | |
| 3 | 803.2.38b | Residential Demolition, | §890.86 |
| 4 | | Residential Hotels | |
| 5 | 803.2.39a | Residential Conversion, | §890.84 |
| 6 | | Apartments | |
| 7 | 803.2.39b | Residential Demolition, | §890.86 |
| 8 | | Apartments | |
| 9 | 803.2.40a | Other Retail Sales and | §890.102 |
| 10 | | Services | |
| 11 | 803.2.40b | Gift Store—Tourist-oriented | §890.39 |
| 12 | 803.2.40c | Jewelry | §890.51 |
| 13 | 803.2.41 | Bar | §890.22 |
| 14 | 803.2.42 | Full-service Restaurant | §890.92 |
| 15 | 803.2.43 | Fast-food Restaurant—Small | §890.90 |
| 16 | 803.2.44 | Fast-food Restaurant—Large | §890.91 |
| 17 | 803.2.45 | Take-out Food | §890.122 |
| 18 | 803.2.46 | Movie Theater | §890.64 |
| 19 | 803.2.47 | Adult Entertainment | §890.36 |
| 20 | 803.2.48 | Other Entertainment | §890.37 |
| 21 | 803.2.49 | Financial Service | §890.110 |
| 22 | 803.2.50 | Limited Financial Service | §890.112 |
| 23 | 803.2.51 | Medical Service | §890.114 |
| 24 | 803.2.52 | Personal Service | §890.116 |
| 25 | | | |

| | | | |
|----|----------|--------------------------------|----------|
| 1 | 803.2.53 | Professional Service | §890.108 |
| 2 | 803.2.54 | Massage Establishment | §890.60 |
| 3 | 803.2.55 | Tourist Hotel | §890.46 |
| 4 | 803.2.56 | Automobile Parking Lot, | §890.9 |
| 5 | | Community Commercial | |
| 6 | 803.2.57 | Automobile Parking Garage, | §890.10 |
| 7 | | Community Commercial | |
| 8 | 803.2.58 | Automobile Parking Lot, Public | §890.11 |
| 9 | 803.2.59 | Automobile Parking Garage, | §890.12 |
| 10 | | Public | |
| 11 | 803.2.60 | Automotive Gas Station | §890.14 |
| 12 | 803.2.61 | Automotive Service Station | §890.18 |
| 13 | 803.2.62 | Automotive Repair | §890.15 |
| 14 | 803.2.63 | Automotive Wash | §890.20 |
| 15 | 803.2.64 | Automobile Sale or Rental | §890.13 |
| 16 | 803.2.65 | Animal Hospital | §890.6 |
| 17 | 803.2.66 | Ambulance Service | §890.2 |
| 18 | 803.2.67 | Mortuary | §890.62 |
| 19 | 803.2.68 | Trade Shop | §890.124 |
| 20 | 803.2.70 | Administrative Service | §890.106 |
| 21 | 803.2.71 | Light Manufacturing, Wholesale | §890.54 |
| 22 | | Sales or Storage | |
| 23 | 803.2.73 | Business Services | §890.111 |
| 24 | 803.2.80 | Hospital or Medical Center | §890.44 |
| 25 | | | |

| | | | |
|---|----------|---|----------|
| 1 | 803.2.81 | Other Institutions | \$890.50 |
| 2 | 803.2.82 | Public Use | \$890.80 |
| 3 | 803.2.90 | Residential Use | \$890.88 |
| 4 | 803.2.95 | Automobile Parking Lot, Community Residential | \$890.7 |
| 5 | | | |
| 6 | 803.2.96 | Automobile Parking Garage, Community Residential | \$890.8 |
| 7 | | | |
| 8 | | | |

9 (b) Use Limitations. Uses in Chinatown Mixed Use Districts are either
10 permitted, conditional, accessory, temporary, or are not permitted.

11 (1) Permitted Uses. All permitted uses in Chinatown Mixed Use Districts shall
12 be conducted within an enclosed building, unless otherwise specifically allowed in this Code.
13 Exceptions from this requirement are: accessory off-street parking and loading; uses which,
14 when located outside of a building, qualify as an outdoor activity area, as defined in Section
15 890.71 of this Code; and uses which by their nature are to be conducted in an open lot or
16 outside a building, as described in Sections 890 through 890.140 of this Code.

17 If there are two or more uses in a structure and none is classified under Section
18 803.2(b)(1)(C) of this Code as accessory, then each of these uses will be considered
19 separately as an independent permitted, conditional, temporary or not permitted use.

20 (A) Principal Uses. Principal uses are permitted as of right in a Chinatown
21 Mixed Use District, when so indicated in Sections 810.1 through 812.96 of this Code for each
22 district class.

23 (B) Conditional Uses.

24 ~~(i)~~ Conditional uses are permitted in a China-town Mixed Use District when
25 authorized by the Planning Commission; whether a use is conditional in a given district is

1 indicated in Sections 810 through 812. Conditional uses are subject to the provisions set forth in
2 Section 303 of this Code.

3 _____ (i) An establishment which sells beer and wine with motor vehicle fuels is a
4 conditional use, and shall be governed by Section 229. ~~Conditional uses are subject to the~~
5 ~~provisions set forth in Section 303 of this Code.~~

6 _____ (ii) Any use or feature which lawfully existed and was permitted as a principal
7 or conditional use on the effective date of these controls which is not otherwise
8 nonconforming or noncomplying as defined in Section 180 of this Code, and which use or
9 feature is not permitted under this Article is deemed to be a permitted conditional use subject
10 to the provisions of this Code.

11 _____ (iii) Notwithstanding any other provision of this Article, a change in use or
12 demolition of a movie theater use, as set forth in Section 890.64, shall require conditional use
13 authorization. This Subsection shall not authorize a change in use if the new use or uses are otherwise
14 prohibited.

15 (C) Accessory Uses. Subject to the limitations set forth below and in Sections
16 204.1 (Accessory Uses for Dwelling Units in R Districts) and 204.5 (Parking and Loading as
17 Accessory Uses) of this Code, a related minor use which is either necessary to the operation
18 or enjoyment of a lawful principal use or conditional use or is appropriate, incidental and
19 subordinate to any such use, shall be permitted in Chinatown Mixed Use Districts as an
20 accessory use when located on the same lot. Any use not qualified as an accessory use shall
21 only be allowed as a principal or conditional use, unless it qualifies as a temporary use under
22 Sections 205 through 205.2 of this Code.

23 No use in a Chinatown Mixed Use District will be considered accessory to a
24 principal use which involves or requires any of the following:
25

1 (i) The use of more than 1/3 of the total floor area occupied by both the
2 accessory use and the principal use to which it is accessory, combined, except in the case of
3 accessory off-street parking;

4 (ii) Any bar, restaurant, other entertainment, or any retail establishment
5 which serves liquor for consumption on-site;

6 (iii) Any take-out food use, except for a take-out food use which occupies 100
7 square feet or less (including the area devoted to food preparation and service and excluding
8 storage and waiting areas) in a retail grocery or specialty food store;

9 (iv) The wholesaling, manufacturing or processing of foods, goods, or
10 commodities on the premises of an establishment which does not also provide for primarily
11 retail sale of such foods, goods or commodities at the same location where such wholesaling,
12 manufacturing or processing takes place.

13 The above shall not prohibit take-out food activity which operates in conjunction
14 with a fast-food restaurant. A fast-food restaurant, by definition, includes take-out food as an
15 accessory and necessary part of its operation.

16 (D) Temporary Uses. Uses not otherwise permitted are permitted in
17 Chinatown Mixed Use Districts to the extent authorized by Sections 205, 205.1 or 205.2 of this
18 Code.

19 (2) Not Permitted Uses.

20 (A) Uses which are not listed in this Article are not permitted in a Chinatown
21 Mixed Use District unless determined by the Zoning Administrator to be permitted uses in
22 accordance with Section 307(a) of this Code.

23 (B) No use, even though listed as a permitted use or otherwise allowed, shall
24 be permitted in a Chinatown Mixed Use District which, by reason of its nature or manner of
25 operation, creates conditions that are hazardous, noxious, or offensive through the emission

1 of odor, fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste, or
2 excessive noise.

3 (C) The establishment of a use that sells alcoholic beverages, other than
4 beer and wine, concurrent with motor vehicle fuel is prohibited, and shall be governed by
5 Section 229.

6 Section 7. The San Francisco Planning Code is hereby amended by amending Section
7 803.3 to read as follows:

8 SEC. 803.3. USES PERMITTED IN SOUTH OF MARKET USE DISTRICTS.

9 (a) Use Categories. A use is the specified purpose for which a property or
10 building is used, occupied, maintained, or leased. Whether or not a use is permitted in a
11 specific South of Market district is generally set forth, summarized or cross-referenced in
12 Sections 813.3 through 818 of this Code for each district class.

13 (b) Use Limitations. Uses in South of Market districts are either permitted,
14 conditional, accessory, temporary or are not permitted.

15 (1) Permitted Uses. If there are two or more uses in a structure, any use not
16 classified below under Section 803.3(b)(1)(C) of this Code as accessory will be considered
17 separately as an independent permitted, conditional, temporary or not permitted use.

18 (A) Principal Uses. Principal uses are permitted as of right in a South of
19 Market district, when so indicated in Sections 813 through 818 of this Code for the district.
20 Additional requirements and conditions may be placed on particular uses as provided
21 pursuant to Section 803.5 and other applicable provisions of this Code.

22 (B) Conditional Uses. Conditional uses are permitted in a South of Market
23 district, when authorized by the Planning Commission; whether a use is conditional in a given
24 district is generally indicated in Sections 813 through 818 of this Code. Conditional uses are

25

1 subject to the applicable provisions set forth in Sections 178, 179, 263.11, 303, 316.8, and 803.5 of this
2 Code.

3 _____ (i) An establishment which sells beer or wine with motor vehicle fuel is a
4 conditional use, and shall be governed by Section 229. ~~Conditional uses are subject to the~~
5 ~~applicable provisions set forth in Sections 178, 179, 263.11, 303, 316 through 316.8, and 803.5 of this~~
6 ~~Code.~~

7 _____ (ii) Notwithstanding any other provision of this Article, a change in use or
8 demolition of a movie theater use, as set forth in Section 890.64, shall require conditional use
9 authorization. This Section shall not authorize a change in use if the new use or uses are otherwise
10 prohibited.

11 (C) Accessory Uses. Subject to the limitations set forth below and in Sections
12 204.1 (Accessory Uses for Dwelling Units in R and NC Districts), 204.2 (Accessory Uses for
13 Uses Other Than Dwellings in R Districts), 204.4 (Dwelling Units Accessory to Other Uses),
14 and 204.5 (Parking and Loading as Accessory Uses) of this Code, an accessory use is a
15 related minor use which is either necessary to the operation or enjoyment of a lawful principal
16 use or conditional use, or is appropriate, incidental and subordinate to any such use, and shall
17 be permitted as an accessory use in a South of Market district. In order to accommodate a
18 principal use which is carried out by one business in multiple locations within the same
19 general area, such accessory use need not be located in the same structure or lot as its
20 principal use provided that (1) the accessory use is located within 1,000 feet of the principal
21 use; (2) the multiple locations existed on April 6, 1990 (the effective date of this amendment);
22 and (3) the existence of the multiple locations is acknowledged in writing by the Zoning
23 Administrator within 60 days after the effective date of this amendment. Any use which does
24 not qualify as an accessory use shall be classified as a principal use.

1 No use will be considered accessory to a principal use which involves or
2 requires any of the following:

3 (i) The use of more than one-third of the total occupied floor area which is
4 occupied by both the accessory use and principal use to which it is accessory, combined,
5 except in the case of accessory off-street parking or loading which shall be subject to the
6 provisions of Sections 151, 156 and 157 of this Code;

7 (ii) A hotel, motel, inn, hostel, nighttime entertainment, adult entertainment,
8 massage establishment, large fast food restaurant, or movie theater use in a RED, SPD,
9 RSD, SLR, SLI or SSO District;

10 (iii) Any take-out food use, except for a take-out food use which occupies 100
11 square feet or less (including the area devoted to food preparation and service and excluding
12 storage and waiting areas) in a restaurant, bar, catering establishment, bakery, retail grocery
13 or specialty food store.

14 (iv) Any sign not conforming to the limitations of Section 607.2(f)(3).

15 (D) Temporary Uses. Temporary uses not otherwise permitted are permitted
16 in South of Market Districts to the extent authorized by Sections 205 through 205.3 of this
17 Code.

18 Section 8. The San Francisco Planning Code is hereby amended by amending Section
19 303 to read as follows:

20 SEC. 303. CONDITIONAL USES.

21 (a) General. The City Planning Commission shall hear and make
22 determinations regarding applications for the authorization of conditional uses in the specific
23 situations in which such authorization is provided for elsewhere in this Code. The procedures
24 for conditional uses shall be as specified in this Section and in Sections 306 through 306.6,
25 except that Planned Unit Developments shall in addition be subject to Section 304, medical

1 institutions and post-secondary educational institutions shall in addition be subject to the
2 institutional master plan requirements of Section 304.5, and conditional use and Planned Unit
3 Development applications filed pursuant to Article 7, or otherwise required by this Code for
4 uses or features in Neighborhood Commercial Districts, and conditional use applications
5 within South of Market Districts, shall be subject to the provisions set forth in Sections 316
6 through 316.8 of this Code, in lieu of those provided for in Sections 306.2 and 306.3 of this
7 Code, with respect to scheduling and notice of hearings, and in addition to those provided for
8 in Sections 306.4 and 306.5 of this Code, with respect to conduct of hearings and
9 reconsideration.

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

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

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

21 (A) In Neighborhood Commercial Districts, if the proposed use is to be
22 located at a location in which the square footage exceeds the limitations found in Planning
23 Code § 121.2(a) or 121.2(b), the following shall be considered:
24
25

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

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

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

8 (2) That such use or feature as proposed will not be detrimental to the health,
9 safety, convenience or general welfare of persons residing or working in the vicinity, or
10 injurious to property, improvements or potential development in the vicinity, with respect to
11 aspects including but not limited to the following:

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

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

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

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

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

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

1 (5)(A) With respect to applications filed pursuant to Article 7, Section 703.2(a),
2 zoning categories .46, .47, and .48, in addition to the criteria set forth above in Section
3 303(c)(1—4), that such use or feature will:

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

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

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

9 (iv) Be adequately soundproofed or insulated for noise and operated so that
10 incidental noise shall not be audible beyond the premises or in other sections of the building
11 and fixed-source equipment noise shall not exceed the decibel levels specified in the San
12 Francisco Noise Control Ordinance.

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

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

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

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

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

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

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

9 (d) Conditions. When considering an application for a conditional use as
10 provided herein with respect to applications for development of "dwellings" as defined in
11 Chapter 87 of the San Francisco Administrative Code, the Commission shall comply with that
12 Chapter which requires, among other things, that the Commission not base any decision
13 regarding the development of "dwellings" in which "protected class" members are likely to
14 reside on information which may be discriminatory to any member of a "protected class" (as
15 all such terms are defined in Chapter 87 of the San Francisco Administrative Code). In
16 addition, when authorizing a conditional use as provided herein, the City Planning
17 Commission, or the Board of Supervisors on appeal, shall prescribe such additional
18 conditions, beyond those specified in this Code, as are in its opinion necessary to secure the
19 objectives of the Code. Once any portion of the conditional use authorization is utilized, all
20 such conditions pertaining to such authorization shall become immediately operative. The
21 violation of any condition so imposed shall constitute a violation of this Code and may
22 constitute grounds for revocation of the conditional use authorization. Such conditions may
23 include time limits for exercise of the conditional use authorization; otherwise, any exercise of
24 such authorization must commence within a reasonable time.

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

6 (f) Conditional Use Abatement. The Planning Commission may consider the
7 possible revocation of a conditional use or the possible modification of or placement of
8 additional conditions on a conditional use when the Planning Commission determines, based
9 upon substantial evidence, that the applicant for the conditional use had submitted false or
10 misleading information in the application process that could have reasonably had a substantial
11 effect upon the decision of the Commission or the conditional use is not in compliance with a
12 condition of approval, is in violation of law if the violation is within the subject matter
13 jurisdiction of the Planning Commission or operates in such a manner as to create hazardous,
14 noxious or offensive conditions enumerated in Section 202(c) if the violation is within the
15 subject matter jurisdiction of the Planning Commission and these circumstances have not
16 been abated through administrative action of the Director, the Zoning Administrator or other
17 City authority. Such consideration shall be the subject of a public hearing before the Planning
18 Commission but no fee shall be required of the applicant or the subject conditional use
19 operator.

20 (1) The Director of Planning or the Planning Commission may seek a public
21 hearing on conditional use abatement when the Director or Commission has substantial
22 evidence submitted within one year of the effective date of the Conditional Use authorization
23 that the applicant for the conditional use had submitted false or misleading information in the
24 application process that could have reasonably had a substantial effect upon the decision of
25 the Commission or substantial evidence of a violation of conditions of approval, a violation of

1 law, or operation which creates hazardous, noxious or offensive conditions enumerated in
2 Section 202(c).

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

7 (3) In considering a conditional use revocation, the Commission shall
8 consider whether and how the false or misleading information submitted by the applicant
9 could have reasonably had a substantial effect upon the decision of the Commission, or the
10 Board of Supervisors on appeal, to authorize the conditional use, substantial evidence of how
11 any required condition has been violated or not implemented or how the conditional use is in
12 violation of the law if the violation is within the subject matter jurisdiction of the Planning
13 Commission or operates in such a manner as to create hazardous, noxious or offensive
14 conditions enumerated in Section 202(c) if the violation is within the subject matter jurisdiction
15 of the Planning Commission. As an alternative to revocation, the Commission may consider
16 how the use can be required to meet the law or the conditions of approval, how the
17 hazardous, noxious or offensive conditions can be abated, or how the criteria of Section
18 303(c) can be met by modifying existing conditions or by adding new conditions which could
19 remedy a violation.

20 (4) Appeals. A decision by the Planning Commission to revoke a conditional
21 use, to modify conditions or to place additional conditions on a conditional use or a decision
22 by the Planning Commission refusing to revoke or amend a conditional use, may be appealed
23 to the Board of Supervisors within 30 days after the date of action by the Planning
24 Commission pursuant to the provisions of Section 308.1(b) The Board of Supervisors may
25 disapprove the action of the Planning Commission in an abatement matter by the same vote

1 necessary to overturn the Commission's approval or denial of a conditional use. The Planning
2 Commission's action on a conditional use abatement issue shall take effect when the appeal
3 period is over or, upon appeal, when there is final action on the appeal.

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

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

12 (B) There is substantial new evidence about the same conditional use
13 abatement issue considered in the earlier abatement proceeding, this new evidence was not
14 or could not be reasonably available at the time of the earlier abatement proceeding, and that
15 new evidence indicates that the Commission's decision in the earlier proceeding ha not been
16 implemented within a reasonable time or raises significant new issues not previously
17 considered by the Planning Commission. The decision of the Director of Planning regarding
18 the sufficiency and adequacy of evidence to allow the reconsideration of a conditional use
19 abatement issue within a period of one year from the effective date of final action on the
20 earlier abatement proceeding shall be final.

21 (g) Hotels and Motels.

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

25

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

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

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

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

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

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

16 (3) Notwithstanding the provisions of Subsection (f)(1) above, with respect to
17 the conversion of residential units to tourist hotel or motel use pursuant to an application filed
18 on or before June 1, 1990 under the provisions of Chapter 41 of the San Francisco
19 Administrative Code, the Planning Commission shall not consider the criteria contained in
20 Subsection (f)(1) above; provided, however, that the Planning Commission shall consider the
21 criteria contained in Subsection (f)(1)(B) at a separate public hearing if the applicant applies
22 for a permit for new construction or alteration where the cost of such construction or alteration
23 exceeds \$100,000. Furthermore, no change in classification from principal permitted use to
24 conditional use in Section 216(b)(i) of this Code shall apply to hotels or motels that have filed
25

1 applications on or before June 1, 1990 to convert residential units to tourist units pursuant to
2 Chapter 41 of the San Francisco Administrative Code.

3 (h) Internet Services Exchange.

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

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

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

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

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

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

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

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

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

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

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

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

18 (B) Upon the effective date of the requirement of a conditional use permit for
19 an Internet Services Exchange, the Planning Department shall submit to the Board of
20 Supervisors and to the Director of the Department of Building Inspection a written report
21 covering all existing Internet Services Exchanges and those Internet Services Exchanges
22 seeking to obtain a conditional use permit, which report shall state the address, assessor's
23 block and lot, zoning classification, square footage of the Internet Services Exchange
24 constructed or to be constructed, a list of permits previously issued by the Planning and/or
25 Building Inspection Departments concerning the Internet Services Exchange, the date of

1 issuance of such permits, and the status of any outstanding requests for permits from the
2 Planning and/or Building Inspection Departments concerning Internet Services Exchange; and

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

11 (i) Formula Retail Uses.

12 (1) With respect to an application for a formula retail use as defined in
13 Section 703.3, whenever a conditional use permit is required per Section 703.3(f), the
14 Planning Commission shall consider, in addition to the criteria set forth in Subsection (c)
15 above:

16 (A) The existing concentrations of formula retail uses within the neighborhood
17 commercial district.

18 (B) The availability of other similar retail uses within the neighborhood
19 commercial district.

20 (C) The compatibility of the proposed formula retail use with the existing
21 architectural and aesthetic character of the neighborhood commercial district.

22 (D) The existing retail vacancy rates within the neighborhood commercial
23 district.

24 (E) The existing mix of Citywide-serving retail uses and neighborhood-
25 serving retail uses within the neighborhood commercial district.

1 (j) Large-Scale Retail Uses. With respect to applications for the
2 establishment of large-scale retail uses under Section 121.6, in addition to the criteria set forth
3 in Subsections (c) and (d) above, the Commission shall consider the following:

4 (A) The extent to which the retail use's parking is planned in a manner that
5 creates or maintains active street frontage patterns;

6 (B) The extent to which the retail use is a component of a mixed-use project
7 or is designed in a manner that encourages mixed-use building opportunities;

8 (C) The shift in traffic patterns that may result from drawing traffic to the
9 location of the proposed use; and

10 (D) The impact that the employees at the proposed use will have on the
11 demand in the City for housing, public transit, childcare, and other social services.

12 (k) Movie Theater Uses.

13 (l) With respect to a change in use or demolition of a movie theater use as set forth in
14 Sections 221.1, 703.2(b)(1)(B)(ii), 803.2(b)(2)(B)(iii) or 803.3 (b)(1)(B)(ii), in addition to the criteria
15 set forth in Subsections (c) and (d) above, the Commission shall make the following findings:

16 (A) Preservation of a movie theater use is no longer economically viable and cannot
17 effect a reasonable economic return to the property owner;

18 (i) For purposes of defining "reasonable economic return," the Planning
19 Commission shall be guided by the criteria for "fair return on investment" as set forth in
20 Section 228.4(a).

21 (B) The change in use or demolition of the movie theater use will not undermine the
22 economic diversity and vitality of the surrounding neighborhood commercial district; and

23 (C) The resulting project will preserve the architectural integrity of important
24 historic features of the movie theater use affected.

1 Section 9. This is an uncodified section of the legislation. The provisions of this
2 legislation shall not apply to those uses for which the City received an environmental
3 evaluation application on or before July 27, 2004, the introduction date of this legislation.

4
5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By: _____
8 John D. Malamut
9 Deputy City Attorney