

File No. 200673 Committee Item No. 3
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date August 31, 2020

Board of Supervisors Meeting Date _____

Cmte Board

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Completed by: Erica Major Date August 27, 2020
Completed by: Erica Major Date _____

1 [Planning Code - Conversion of Certain Limited Restaurants to Restaurants - North Beach
2 Neighborhood Commercial District]

3 **Ordinance amending the Planning Code to allow certain Limited Restaurants in the**
4 **North Beach Neighborhood Commercial District to convert to Restaurants that may**
5 **apply for liquor licenses; and affirming the Planning Department’s determination under**
6 **the California Environmental Quality Act; and making findings of consistency with the**
7 **General Plan, and the eight priority 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.

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

16 Section 1. Findings. The Board of Supervisors of the City and County of San
17 Francisco hereby 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 Section 21000 et seq.). Said determination is on file with the Clerk of the Board of
21 Supervisors in File No. 200673, and is incorporated herein by reference. The Board affirms
22 this determination.

23 (b) On August 27, 2020, the Planning Commission, in Resolution No. 20779,
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

1 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
2 the Board of Supervisors in File No. 200673, and is incorporated herein by reference.

3 (c) On August 27, 2020, the Planning Commission, in Resolution No. 20779,
4 approved this legislation, recommended it for adoption by the Board of Supervisors, and
5 adopted findings that it will serve the public necessity, convenience and welfare. Pursuant to
6 Planning Code Section 302, the Board adopts these findings as its own. A copy of said
7 Resolution is on file with the Clerk of the Board of Supervisors in File No. 200673, and is
8 incorporated herein by reference herein.

9
10 Section 2. The Planning Code is hereby amended by revising Sections 722 and 780.3,
11 to read as follows:

12
13 **SEC. 722. NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT.**

14 * * * *

15 (6) NORTH BEACH LIQUOR LICENSES FOR RESTAURANTS (Section 780.3): A
16 Restaurant Use may only add ABC license types 02, 23, 41, 47, 49, 59 or 75 as a Conditional
17 Use on the First Story if, in addition to the criteria set forth in Section 303, the Planning
18 Commission finds that the Restaurant is operating as a Bona Fide Eating Place as defined in
19 Section 102. Should a Restaurant fail to operate as a Bona Fide Eating Place for any length of
20 time, the Conditional Use authorization shall be subject to immediate revocation. To verify that
21 the Restaurant is continuing to operate as a Bona Fide Eating Place, records of the
22 Restaurant's gross receipts, showing that a minimum of 51% of its gross receipts within the
23 last year is from food sales prepared and sold to guests on the premises, shall be provided to
24 the Department upon request. All records and information shall be submitted to the
25 Department under penalty of perjury.

1 **SEC. 780.3. NORTH BEACH SPECIAL USE DISTRICT.**

2 * * * *

3 (c) Controls. The following provisions shall apply within such District:

4 * * * *

5 (2) Alcohol Licenses.

6 (A) A Restaurant may provide on-site beer, wine, and/or liquor sales
7 for drinking on the premises (with ABC license types 02, 23, 41, 47, 49, 59 or 75) as a
8 Conditional Use on the First Story if, in addition to the criteria set forth in Section 303, the
9 Planning Commission finds, based on information submitted to the Department by the
10 applicant, that the Restaurant is and will continue to operate as a Bona-Fide Eating Place as
11 defined in Section 102. Should a Restaurant fail to operate as a Bona-Fide Eating Place for
12 any length of time, the Conditional Use authorization shall be subject to immediate revocation
13 per Planning Code Section 303(f). To verify that the Restaurant is continuing to operate as a
14 Bona-Fide Eating Place, records of the Restaurant’s gross receipts, showing that a minimum
15 of 51% of its gross receipts within the last year preceding the Department’s request is from
16 food sales prepared and sold to guests on the premises, shall be provided to the Department
17 upon request. All records and information shall be submitted to the Department under penalty
18 of perjury.

19 (B) Subject to the requirements set forth in this subsection (B), a Limited
20 Restaurant that existed as of March 1, 2020, may apply for a permit to convert to Restaurant use within
21 three months after the effective date of the ordinance in Board File No. 200673. The application to
22 convert to Restaurant Use shall include records submitted under penalty of perjury showing that the
23 Limited Restaurant has operated as a Bona Fide Eating Place for at least four full calendar months
24 between March 1, 2019 and February 29, 2020. The Department shall reject the application if the
25 records do not support the application for such conversion; otherwise, it shall approve it. If the

1 application to convert is approved, Restaurant Use shall be principally permitted, including for
2 purposes of being eligible to apply for a Conditional Use Authorization to permit the sale of alcohol on
3 the premises under Section 780.3(c)(2)(A). This subsection 780.3(c)(2)(B) shall expire three months
4 after the effective date of the ordinance in Board File No. 200673, and the City Attorney shall
5 thereafter cause this subsection to be removed from the Planning Code and the remaining subsections
6 of this Section 780.3 to be renumbered accordingly.

7 * * * *

8
9 Section 3. Effective Date. This ordinance shall become effective 30 days after
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
12 of Supervisors overrides the Mayor’s veto of the ordinance.

13
14 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
18 additions, and Board amendment deletions in accordance with the “Note” that appears under
19 the official title of the ordinance.

20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By: /s/ Andrea Ruiz-Esquide
23 ANDREA RUIZ-ESQUIDE
24 Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Conversion of Certain Limited Restaurants to Restaurants - North Beach Neighborhood Commercial District]

Ordinance amending the Planning Code to allow certain Limited Restaurants in the North Beach Neighborhood Commercial District to convert to Restaurants that may apply for liquor licenses; and affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Existing Law

The Planning Code defines a Restaurant as “[a] Retail Sales and Service use that serves prepared, ready-to-eat cooked foods to customers for consumption on the premises and which has seating. (...) It may provide on-site beer, wine, and/or liquor sales for drinking on the premises (with ABC [California Alcoholic Beverage Control Board] license types 02, 23, 41, 47, 49, 59, 75, or 87) (...)” It specifically states that a restaurant is “distinct and separate from a Limited-Restaurant. A Limited Restaurant, in turn, is “[a] Retail Sales and Service Use that serves ready-to-eat foods and/or drinks to customers for consumption on or off the premises, that may or may not have seating. (...) It includes, but is not limited to, foods provided by sandwich shops, coffee houses, pizzerias, ice cream shops, bakeries, delicatessens, and confectioneries (...). It shall not provide on-site beer and/or wine sales for consumption on the premises, but may sell beer and/or wine for consumption off the premises,” with an ABC license.

In the North Beach Neighborhood Commercial District, Restaurants may add a liquor license from the ABC to provide on-site beer, wine and/or liquor by applying for a Conditional Use permit from the Planning Commission, subject to some the requirement that the Restaurant show that it is a Bona Fide Eating Place as defined in the Planning Code. Under the Code, a “Bona Fide Eating Place” is “[a] place that is regularly and in a bona fide manner used and kept open for the service of meals to guests for compensation and that has suitable kitchen facilities connected therewith, containing conveniences for cooking of an assortment of foods that may be required for ordinary meals.” Limited Restaurants, on the other hand, currently cannot request a Conditional Use permit to add a liquor license.

Amendments to Current Law

This ordinance would amend the controls for the North Beach Neighborhood Commercial District to allow Limited Restaurants in that district that existed as of March 1, 2020, to apply for a permit to convert to Restaurant use within three months after the effective date of the ordinance. If the application to convert is approved, the Restaurant use shall be principally permitted, including for purposes of being eligible to apply for a Conditional Use Authorization

FILE NO. 200673

to permit the sale of alcohol on the premises, in the same manner Restaurants are currently allowed to do it. The ordinance expires three months after its effective date.

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August 28, 2020

Ms. Angela Calvillo, Clerk
Honorable Supervisor Peskin
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Transmittal of Planning Department Case Number 2020-006126PCA :

Conversion of Limited Restaurants in North Beach
Board File No. 200673

Planning Commission Recommendation: Approval with Modification

Dear Ms. Calvillo and Supervisor Peskin,

On August 27, 2020, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Peskin that would amend the Planning Code allow certain Limited Restaurants in the North Beach Special Use District (North Beach SUD) to convert to Restaurants. At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications were as follows:

1. Exempt Limited Restaurants applying to convert to Restaurants via the proposed Ordinance from neighborhood notice.
2. Only describe a prohibition on "gelaterias" or "specialty bakeries" in the Findings Section of the Ordinance. Do not place the guidance in the Codified Ordinance language.
3. Amend the prohibition in the North Beach SUD on Limited Restaurants locating in former Restaurant spaces. Allow Limited Restaurants that convert to Restaurants through the proposed Ordinance to located in former Limited Restaurant spaces.
4. Amend both the North Beach NCD and the North Beach SUD to allow the conversion of certain Limited Restaurants to Restaurants.
5. Increase the period Limited Restaurants may apply from 3 months after the effective date, to 6 months after the effective date. Add clarifying language to state that the application must be submitted to the

Planning Department by the deadline, and do not delete the provision from the Code until a year after the effective date.

6. Encourage the Board of Supervisors to expand this program city-wide through an amendment to this legislation, or a new Ordinance.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information, please do not hesitate to contact me.

Sincerely,



Aaron D. Starr
Manager of Legislative Affairs

cc: Andrea Ruiz-Esquide Deputy City Attorney
Lee Hepner, Aide to Supervisor Peskin
Erica Major, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution
Planning Department Executive Summary



EXECUTIVE SUMMARY

PLANNING CODE TEXT AMENDMENT

HEARING DATE: August 27, 2020

90-Day Deadline: September 30, 2020

Project Name: Conversion of Certain Limited Restaurants to Restaurants - North Beach Neighborhood Commercial District

Case Number: 2020-006126PCA [Board File No.200673]

Initiated by: Supervisor Peskin / Introduced June 23, 2020

Staff Contact: Audrey Merlone, Legislative Affairs
Audrey.Merlone@sfgov.org, 628-652-7534

Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533

Recommendation: Approval with Modifications

Planning Code Amendment

The proposed Ordinance would amend the Planning Code to allow certain Limited Restaurants in the North Beach Special Use District (North Beach SUD) to convert to Restaurants. This will allow them to obtain an ABC license to sell alcohol for on-site consumption. The Ordinance will also add several ABC license types to the North Beach Neighborhood Commercial District (North Beach NCD) controls that may be obtained in conjunction with a Restaurant.

The Way It Is Now:

1. A Restaurant use in the North Beach NCD may only add ABC license types 41 (On-Sale Beer & Wine-Eating Place), 47 (On-Sale General- Eating Place), 49 (On-Sale General- Seasonal), or 75 (Brewpub-Restaurant), with a Conditional Use authorization in conjunction with their Bona Fide Eating Place.
2. Limited Restaurants in the North Beach SUD may only convert to a Restaurant with Conditional Use authorization and may not locate in a location last occupied by a Limited Restaurant. Restaurants in the North Beach SUD may only sell alcohol on-site with Conditional Use authorization.

The Way It Would Be:

1. A Restaurant use in the North Beach NCD may also hold ABC license types 02 (Winegrower), 23 (Small Beer Manufacturer), or 59 (On-Sale Beer & Wine- Seasonal), with a Conditional Use authorization in conjunction with their Bona Fide Eating Place.
2. Limited Restaurants in the North Beach SUD may convert to a Restaurant without Conditional Use authorization if the Limited Restaurant:
 - a. Existed as of March 1, 2020; and
 - b. Operated as a Bona Fide Eating Place for at least four calendar months between March 1, 2019 and February 29, 2020.

Once the Limited Restaurant has converted to a Restaurant, it would be able to apply for a Conditional Use authorization to sell alcohol for on-site consumption. This provision would expire three months after the effective date of the Ordinance after which time it will be deleted from the Planning Code. The Ordinance is not proposing to alter the controls on where Restaurants may operate. Restaurants would still be prohibited in spaces last occupied by a Limited Restaurant.

Issues and Considerations

Anticipated Amendments

Supervisor Peskin's Office has informed staff of several anticipated amendments to the originally introduced Ordinance. The anticipated amendments are described below:

1. Remove the Conditional Use authorization requirement in order to sell alcohol on-site for qualifying Limited Restaurants who convert to Restaurants through this program.
2. Alter the dates of operation requirements for Limited Restaurants participating in the program from at least four months between March 1, 2019 and February 29, 2020 to between January 1, 2020 and August 1, 2020 for at least three months.
3. Add to the Ordinance's Findings Section that gelaterias and specialty bakeries may not qualify for the program.
4. Alter the legislation to ensure the controls in the SUD and NCD do not conflict with each other.

North Beach Zoning Districts and Alcohol Controls

The Planning Code defines a Restaurant as a:

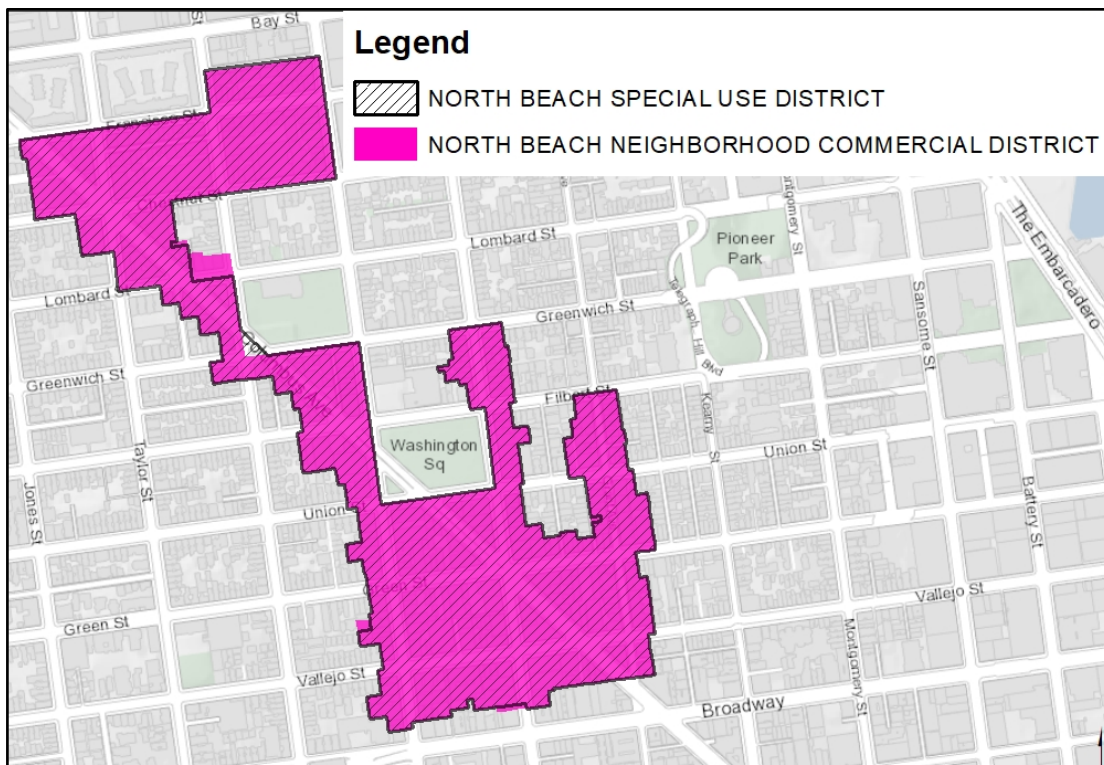
Retail Sales and Service use that serves prepared, ready-to-eat cooked foods to customers for consumption on the premises and which has seating . . . It may provide on-site beer, wine, and/or liquor sales for drinking on the premises (with ABC license types 02, 23, 41, 47, 49, 59, 75, or 87)". It specifically states that a Restaurant is "distinct and separate from a Limited Restaurant.

A Limited Restaurant is a:

Retail Sales and Service Use that serves ready-to-eat foods and/or drinks to customers for consumption on or off the premises, that may or may not have seating . . . It includes, but is not limited to, foods provided by sandwich shops, coffee houses, pizzerias, ice cream shops, bakeries, delicatessens, and confectioneries . . . It shall not provide on-site beer and/or wine sales for consumption on the premises but may sell beer and/or wine for consumption off the premises,” with an ABC license.

The North Beach NCD and SUD contain strict, tailored controls that regulate Limited Restaurant, Restaurant, and Bar uses. Alcohol sales are similarly restricted and tailored to the District. The two Districts largely overlap; however, the NCD contains several more parcels than the SUD (see map). Currently, in the North Beach NCD and SUD Limited Restaurants and Restaurants require Conditional Use authorization. Alcohol sales in conjunction with a Restaurant also requires Conditional Use authorization wherein the Restaurant must prove it operates as a Bona Fide Eating Place. In the North Beach SUD, Restaurants, Limited-Restaurants and Bars may be permitted as a Conditional Use on the First Story only if the proposed new Restaurant, Limited Restaurant, or Bar would occupy a space that is currently or was last legally occupied by one of the uses described below:

- (A) A Bar may occupy a space that is currently or last legally occupied by a Bar;
- (B) A Restaurant may occupy a space that is currently or was last legally occupied by a Restaurant or Bar; and
- (C) A Limited Restaurant may occupy a space that is currently or was last legally occupied by a Limited Restaurant, Restaurant or Bar.
- (D) No other use shall be allowed to convert to a Limited Restaurant, Restaurant or Bar.



The prohibition on Restaurants locating in spaces most recently occupied by Limited Restaurants would need to be lifted for the proposed Ordinance to function as intended. The Ordinance as written does not allow Limited Restaurants to convert to Restaurants if they intend to operate in the same location.

The North Beach NCD and SUD are not only complex, but also share almost identical boundaries. They are often cross-listed in the Code or contain footnotes copied directly from the other District. As such, any changes that are intended for the North Beach SUD and NCD should be reflected in **both** Code Sections. The Ordinance as currently drafted only proposes to allow the conversion of certain Limited Restaurants in the North Beach SUD.

Bona Fide Eating Place

Per the Planning Code, all Restaurants must operate as a Bona Fide Eating Place to sell alcohol. Planning Code Section 102 defines a Bona Fide Eating Place as:

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

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

(b) "Guests" shall mean persons who, during the hours when meals are regularly served therein, come to a bona fide public eating place for the purpose of obtaining, and actually order and obtain at such time, in good faith, a meal therein. Nothing in this section, however, shall be construed to require that any food be sold or purchased with any beverage.

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

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

(e) A minimum of 51 percent of the restaurant's gross receipts shall be from food sales prepared and sold to guests on the premises. Records of the restaurant's gross receipts shall be provided to the Department upon request.

The North Beach SUD specifically calls out the requirement for all Restaurants that sell alcohol to operate as a Bona Fide Eating Place, with the failure to do so resulting in the revocation of a Conditional Use authorization to sell alcohol.

Limited Restaurants may or may not operate as a Bona Fide Eating Place. Qualifying as a Bona Fide Eating Place requires a Limited Restaurant to sell food that is eaten as meals (rather than snacks, appetizers, or desserts), with

seating for patrons to eat on-site. Bakeries and ice cream parlors that only serve desserts are Limited Restaurants, but are not a Bona Fide Eating Place and would not qualify for the proposed program. If, however, a bakery or ice cream parlor serves meals for on-site dining and otherwise meets all other provisions of a Bona Fide Eating Place, that business would qualify for the program. In the North Beach NCD and SUD there are at least 20 Limited Restaurants. Staff's research has found that approximately 8 to 10 of those Limited Restaurants also qualify as a Bona Fide Eating Place.

One anticipated amendment from Supervisor Peskin is to make explicit in the Findings Section of the Ordinance or in the Codified Ordinance that "gelatarias" and "specialty bakeries" may not participate in the conversion program. The Planning Code does not define "gelatarias" or "specialty bakeries¹," therefore, listing these types of businesses in the Codified Ordinance as "prohibited" would present challenges for implementation. Further, introducing a new use definition into the Code presents other challenges and would be excessive for such a short and limited program. Understanding this, Supervisor Peskin has indicated that this prohibition will be added to the uncodified Findings Section of the Ordinance. Doing this will help guide the ZA's interpretation of the program while avoiding the introduction of an undefined term, or a new use definition.

COVID-19 and Restaurants

One of the many unfortunate consequences of the pandemic will be an increase in the number of storefront vacancies across the City. The loss of revenue from the shutdown, combined with the costs of reworking their space to operate within the appropriate protocols for social distancing, will prove too high a burden for some businesses that were already struggling financially.² This includes Restaurants and Limited Restaurants across the City. In recognition of these difficult times, the State's Department of Alcohol Beverage Control (ABC) passed a temporary measure in March that allows restaurants to sell beer, wine, and pre-mixed drinks for pick-up and delivery.³ Expanded alcohol sales have been one way for many Restaurants to stay in business during the COVID-19 pandemic.

The proposed Ordinance intends to give Limited Restaurants that operate as Bona Fide Eating Places the same benefits that alcohol sales have provided to Restaurants during the pandemic; however, the ordinance does not remove other City-imposed hurdles that slow down the approval process. Applications will still be required to go through neighborhood notification. Neighborhood notification requires projects be routed to a planner to review the application, and prepare the notice for mailing. The notification period alone is 30-days, but the entire process can take 60 days or more depending on the backlog at the time. Further, neighborhood notification could also lead to the application being subject to a Discretionary Review before the Planning

¹ The North Beach SUD does define Specialty Food Manufactures, but that use also includes a number of different types of businesses including coffee roasters, confectionaries, chocolatiers, and makers of homemade ice cream and handmade gelato or sorbet.

² J. Sabatini, "San Francisco plots economic course to rise from out of the recession," *The San Francisco Examiner*, 01-May-2020. [Online]. Available: <https://www.sfexaminer.com/news/san-francisco-plots-economic-course-from-out-of-the-recession/>

³ E. Webeck, "Coronavirus: Emergency measure makes it easier for California restaurants to sell alcohol — and for you to get it," *The Mercury News*, 20-March-2020. [Online]. Available: <https://www.mercurynews.com/2020/03/20/coronavirus-emergency-measure-makes-it-easier-for-restaurants-to-sell-alcohol-and-for-you-to-get-it/>

Commission, causing even further delays. Many of these Limited Restaurants need immediate relief and subjecting them to neighborhood notification will only delay that relief.

General Plan Compliance

Objective 2 of the Commerce and Industry Element is to “Maintain and enhance a sound and diverse economic base and fiscal structure for the City”. Policy 2.1 of this Objective is to “Seek to retain existing commercial and industrial activity and to attract new such activity to the City”. The proposed Ordinance, with all recommended modifications, will assist certain existing small businesses in North Beach to stay financially solvent during the COVID-19 pandemic. The Golden Gate Restaurant Association has stated that up to half of the 800 restaurants it represents in San Francisco may be forced to permanently close.⁴ Alcohol sales have been one way existing Restaurants have found some economic relief while the City continues prohibit indoor dining. The Commission should support any Ordinance that may assist local businesses in staying afloat.

Racial and Social Equity Analysis

Understanding the benefits, burdens and opportunities to advance racial and social equity that proposed Planning Code and Zoning Map amendments provide is part of the Department’s Racial and Social Equity Initiative. This is also consistent with the Mayor’s Citywide Strategic Initiatives for equity and accountability and with the forthcoming Office of Racial Equity, which will require all Departments to conduct this analysis.

The proposed amendments cannot be directly tied to a negative or positive impact in advancing the City’s racial and social equity. There is not enough data to support the claim for the small number of businesses that it will affect. The North Beach SUD and NCD controls are complicated, and as such could be difficult to navigate for non-native speakers. The proposed Ordinance, though just as complicated, will at least provide an easier permitting route for a small group of Limited Restaurants. Further, the Ordinance is helping to preserve businesses with a pattern of smaller sized retail spaces within the neighborhood commercial corridor. These types of businesses frequently hire from the adjacent neighborhood, serving a source of employment for the neighborhood’s youth, entry level workers, and immigrants.

To further racial and social equity, the controls on Limited Restaurants and Restaurants in North Beach should be reexamined. This examination should look at whether or not the multiple layers of controls and the high application costs are preventing marginalized communities from opening a business in the district.

Implementation

Staff has found approximately 8-10 Limited Restaurants who would qualify for the proposed Ordinance, which is a small number. The Department has determined, therefore, that this Ordinance will not impact our current implementation procedures or significantly increase the Department’s workload.

⁴ P.Djegal, “San Francisco restaurants, bars on brink of closing up for good,” *KRON4*. 30-July-2020. [Online]. Available: <https://www.kron4.com/news/bay-area/san-francisco-restaurants-bars-on-brink-of-closing-up-for-good/>

Recommendation

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Exempt Limited Restaurants applying to convert to Restaurants via the proposed Ordinance from neighborhood notice.
2. Only describe a prohibition on “gelatarias” or “specialty bakeries” in the Findings Section of the Ordinance. Do not place the guidance in the Codified Ordinance language.
3. Amend the prohibition in the North Beach SUD on Limited Restaurants locating in former Restaurant spaces. Allow Limited Restaurants that convert to Restaurants through the proposed Ordinance to located in former Limited Restaurant spaces.
4. Amend both the North Beach NCD and the North Beach SUD to allow the conversion of certain Limited Restaurants to Restaurants.
5. Increase the period Limited Restaurants may apply from 3 months after the effective date, to 6 months after the effective date. Add clarifying language to state that the application must be submitted to the Planning Department by the deadline, and do not delete the provision from the Code until a year after the effective date.

Basis for Recommendation

The Department supports the overall goals of this Ordinance because it will assist certain Limited Restaurants to convert to a business type that is more financially feasible during the pandemic. The existing controls do not permit existing Limited Restaurants in the North Beach NCD and SUD to convert to Restaurants, so these proposed changes will make a significant impact on the viability of existing businesses. If successful in keeping Limited Restaurants afloat in North Beach, this program should be encouraged City-wide.

Recommendation 1: Exempt Limited Restaurants applying to convert to Restaurants via the proposed Ordinance from neighborhood notice. Staff recommends exempting the qualifying Limited Restaurants from neighborhood notice. The legislation has been narrowly crafted to only allow Limited Restaurants that already function as Restaurants except for on-site alcohol consumption. Neighborhood notice will add delays and process to businesses that may not have the luxury of time to spend on extended permit timelines. Due process for the public will still be available through the ability to appeal the permit within 15 days of issuance to the Board of Appeals.

Recommendation 2: Do not codify a specific prohibition on “gelatarias” or “specialty bakeries” from the program. Place any such guidance in the findings section of the Ordinance. The Planning Code does not define “gelatarias” or “specialty bakeries” and as such listing these types of businesses in the Code as “prohibited” presents challenges for implementation. Adding guidance to the findings section will help guide the ZA's interpretation of the program while avoiding the introduction of an undefined term, or a new use definition.

Recommendation 3: Amend the prohibition in the North Beach SUD for Limited Restaurants locating in former Restaurant spaces. Allow Limited Restaurants that convert to Restaurants through the proposed Ordinance to located in former Limited Restaurant spaces. The North Beach SUD prohibits Restaurants from locating in spaces most recently occupied by Limited Restaurants. In order for this Ordinance to function as intended, this rule would need to be suspended since Limited Restaurants converting to Restaurants would not be relocating. The

Ordinance should be amended to specify that Limited Restaurants participating in the proposed Ordinance should be exempted from these controls (located in Sec. 780.3(c)(1) of the Code).

Recommendation 4: Amend both the North Beach NCD and the North Beach SUD to allow the conversion of certain Limited Restaurants to Restaurants. The North Beach NCD and SUD share almost identical boundaries. They are often cross-listed in the Code or contain footnotes copied directly from the other District. As such, any changes that are intended for the North Beach SUD and NCD should be reflected in both Code Sections.

Recommendation 5: Increase the period Limited Restaurants may apply from 3 months after the effective date, to 6 months after the effective date. Add clarifying language to state that the application must be submitted to the Planning Department by the deadline, and do not delete the provision from the Code until a year after the effective date. Many businesses are struggling to stay afloat during the pandemic. Constantly changing conditions spurred by the pandemic and shutdown restrictions have added to the daily complications for businesses trying to remain operational. The Ordinance has been narrowly crafted to only allow existing Limited Restaurants that have operated as Bona Fide Eating Places in North Beach, therefore the universe of businesses that will be eligible for this program will not change. This program should increase the amount of time Limited Restaurants have to apply for the program. It should also clarify that the application only needs to be submitted to the Department before the deadline (rather than approved). Lastly, the provision should not be deleted from the Planning Code until it is likely that the last application has been processed so that staff are able to cite the Code Section in permit documents.

Required Commission Action

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

Environmental Review

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Public Comment

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 200673



PLANNING COMMISSION RESOLUTION NO. 20779

HEARING DATE: August 27, 2020

Project Name: Conversion of Certain Limited Restaurants to Restaurants - North Beach Neighborhood Commercial District
Case Number: 2020-006126PCA [Board File No. 200673]
Initiated by: Supervisor Peskin / Introduced June 23, 2020
Staff Contact: Audrey Merlone, Legislative Affairs
Audrey.Merlone@sfgov.org, 628-652-7534
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533

RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO ALLOW CERTAIN LIMITED RESTAURANTS IN THE NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT TO CONVERT TO RESTAURANTS THAT MAY APPLY FOR LIQUOR LICENSES; AND AFFIRMING THE PLANNING DEPARTMENT’S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1.

WHEREAS, on June 23, 2020 Supervisor Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 200673, which would amend the Planning Code to allow certain Limited Restaurants in the North Beach Neighborhood Commercial District to convert to Restaurants that may apply for liquor licenses;

WHEREAS, The Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on August 27, 2020; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c) and 15378; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance. The Commission's proposed amendments are as follows:

1. Exempt Limited Restaurants applying to convert to Restaurants via the proposed Ordinance from neighborhood notice.
2. Only describe a prohibition on "gelaterias" or "specialty bakeries" in the Findings Section of the Ordinance. Do not place the guidance in the Codified Ordinance language.
3. Amend the prohibition in the North Beach SUD on Limited Restaurants locating in former Restaurant spaces. Allow Limited Restaurants that convert to Restaurants through the proposed Ordinance to located in former Limited Restaurant spaces.
4. Amend both the North Beach NCD and the North Beach SUD to allow the conversion of certain Limited Restaurants to Restaurants.
5. Increase the period Limited Restaurants may apply from 3 months after the effective date, to 6 months after the effective date. Add clarifying language to state that the application must be submitted to the Planning Department by the deadline, and do not delete the provision from the Code until a year after the effective date.
6. Encourage the Board of Supervisors to expand this program city-wide through an amendment to this legislation, or a new Ordinance.

Findings

The Commission supports the overall goals of this Ordinance because it will assist certain Limited Restaurants to convert to a business type that is more financially feasible during the pandemic. The existing controls do not permit existing Limited Restaurants in the North Beach NCD and SUD to convert to Restaurants, so these proposed changes will make a significant impact on the viability of existing businesses. If successful in keeping Limited Restaurants afloat in North Beach, this program should be encouraged City-wide.

General Plan Compliance

The proposed Ordinance and the Commission's recommended modifications are is consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

The proposed Ordinance, with all recommended modifications, will assist certain existing small businesses in North Beach to stay financially solvent during the COVID-19 pandemic. The Golden Gate Restaurant Association has stated that up to half of the 800 restaurants it represents in San Francisco may be forced to permanently close. Alcohol sales have been one way existing Restaurants have found some economic relief while the City continues prohibit indoor dining. The Commission should support any Ordinance that may assist local businesses in staying afloat.

OBJECTIVE 3

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

Policy 3.1

Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

Policy 3.2

Promote measures designed to increase the number of San Francisco jobs held by San Francisco residents.

The proposed Ordinance, with all recommended modifications, will assist in preserving businesses with a pattern of smaller sized retail spaces within the neighborhood commercial corridor. These types of businesses frequently hire from the adjacent neighborhood, serving a source of employment for the neighborhood's youth, entry level workers, and immigrants.

Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-

serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Planning Code Section 302 Findings.

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on August 27, 2020.



Jonas P. Ionin
Commission Secretary

AYES: Chan, Diamond, Fung, Imperial, Koppel, Moore

NOES: None

ABSENT: None

ADOPTED: August 27, 2020

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

July 2, 2020

File No. 200673

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On June 23, 2020, Supervisor Peskin submitted the following legislation:

File No. 200673

Ordinance amending the Planning Code to allow certain Limited Restaurants in the North Beach Neighborhood Commercial District to convert to Restaurants that may apply for liquor licenses; and affirming the Planning Department's determination under the California Environmental Quality Act; and making 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 "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment.

07/06/2020

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

BOARD of SUPERVISORS



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July 2, 2020

File No. 200673

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On June 23, 2020, Supervisor Peskin submitted the following legislation:

File No. 200673

Ordinance amending the Planning Code to allow certain Limited Restaurants in the North Beach Neighborhood Commercial District to convert to Restaurants that may apply for liquor licenses; and affirming the Planning Department's determination under the California Environmental Quality Act; and making 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

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By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

BOARD of SUPERVISORS



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San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

July 2, 2020

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On June 23, 2020, Supervisor Peskin introduced the following legislation:

File No. 200673

Ordinance amending the Planning Code to allow certain Limited Restaurants in the North Beach Neighborhood Commercial District to convert to Restaurants that may apply for liquor licenses; and affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

The proposed ordinance is being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

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

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

c: Rich Hillis, Director
Scott Sanchez, Zoning Administrator
Lisa Gibson, Environmental Review Officer
AnMarie Rodgers, Legislative Affairs
Devyani Jain, Deputy Environmental Review Officer
Adam Varat, Acting Director of Citywide Planning
Aaron Starr, Manager of Legislative Affairs
Andrea Ruiz-Esquide, Deputy City Attorney
Joy Navarrete, Major Environmental Analysis

BOARD of SUPERVISORS



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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: July 2, 2020

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 200673

Ordinance amending the Planning Code to allow certain Limited Restaurants in the North Beach Neighborhood Commercial District to convert to Restaurants that may apply for liquor licenses; and affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Dominica Donovan, Senior Policy Analyst/Commission Secretary

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

____ **No Comment**

____ **Recommendation Attached**

Chairperson, Small Business Commission

BOARD of SUPERVISORS



City Hall
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San Francisco 94102-4689
Tel. No. 554-5184
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TDD/TTY No. 554-5227

MEMORANDUM

TO: William Scott, Police Chief, Police Department

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: July 2, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Peskin on June 23, 2020:

File No. 200673

Ordinance amending the Planning Code to allow certain Limited Restaurants in the North Beach Neighborhood Commercial District to convert to Restaurants that may apply for liquor licenses; and affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: erica.major@sfgov.org.

c: Georgia Sawyer, Police Department

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only