

BOARD of SUPERVISORS



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## MEMORANDUM

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Date: March 27, 2024  
To: Planning Department/Planning Commission  
From: John Carroll, Assistant Clerk, Land Use and Transportation Committee  
Subject: Board of Supervisors Legislation Referral - File No. 240263  
Planning Code - Divisadero Street Neighborhood Commercial Transit District

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- California Environmental Quality Act (CEQA) Determination  
(*California Public Resources Code, Sections 21000 et seq.*)
  - Ordinance / Resolution
  - Ballot Measure
  
- Amendment to the Planning Code, including the following Findings:  
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)
  - General Plan     Planning Code, Section 101.1     Planning Code, Section 302
  
- Amendment to the Administrative Code, involving Land Use/Planning  
(*Board Rule 3.23: 30 days for possible Planning Department review*)
  
- General Plan Referral for Non-Planning Code Amendments  
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)  
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)
  
- Historic Preservation Commission
  - Landmark (*Planning Code, Section 1004.3*)
  - Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)
  - Mills Act Contract (*Government Code, Section 50280*)
  - Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Please send the Planning Department/Commission recommendation/determination to John Carroll at [john.carroll@sfgov.org](mailto:john.carroll@sfgov.org).

1 [Planning Code - Divisadero Street Neighborhood Commercial Transit District]

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3 **Ordinance amending the Planning Code to permit liquor stores in the buildings with**  
4 **off-street parking accessed on Broderick Street within the Divisadero Street**  
5 **Neighborhood Commercial Transit District; affirming the Planning Department's**  
6 **determination under the California Environmental Quality Act; and making public**  
7 **necessity, convenience, and welfare findings under Planning Code, Section 302, and**  
8 **findings of consistency with the General Plan, and the eight priority policies of**  
9 **Planning Code, Section 101.1.**

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

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

18 Section 1. Land Use and Environmental Findings.

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

24 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_,  
25 adopted findings that the action contemplated in this ordinance are consistent, on balance,  
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. \_\_\_\_\_, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code  
4 amendment will serve the public necessity, convenience, and welfare for the reasons set forth  
5 in Planning Commission Resolution No. \_\_\_\_\_, and the Board adopts such reasons  
6 as its own. A copy of said resolution is on file with the Clerk of the Board of Supervisors in  
7 File No. \_\_\_\_\_ and is incorporated herein by reference.

8  
9 Section 2. General Findings.

10 (a) Section 759 of the Planning Code contains controls for the Divisadero Street  
11 Neighborhood Commercial Transit District (“Divisadero NCT”). When the district was initially  
12 established as the Divisadero Street Neighborhood Commercial District in 2014 by Ordinance  
13 No. 227-14 (originally codified in Section 746 of the Planning Code), the district incorporated  
14 the controls in Section 783, the Divisadero Street Alcohol Restricted Use District (“RUD”), and  
15 then deleted Section 783. The RUD was established in 2004 by Ordinance No. 41-04 and  
16 contained strict limitations on alcohol establishments within the district, including a prohibition  
17 on new liquor stores.

18 (b) On October 2, 2003, the Planning Commission, in Resolution No. 16672, adopted  
19 findings and made recommendations regarding the RUD. The Planning Commission’s  
20 recommendations included that the mixed-use development at Fell Street and Broderick  
21 Street be exempt from the RUD controls. A copy of said resolution is on file with the Clerk of  
22 the Board of Supervisors in File No. 031151 and is incorporated herein by reference.

23 (c) The mixed-use development at Fell Street and Broderick Street is located on the  
24 westernmost extension of the Divisadero NCT, the only place where the district borders  
25 Broderick Street. It does not contain any frontage along or direct pedestrian access from

1 Divisadero Street. The mixed-use development is also the only development within the  
 2 Divisadero NCT that has dedicated off-street parking and pedestrian access from Broderick  
 3 Street.

4 (d) As indicated by the Planning Commission’s recommendation 20 years ago to  
 5 exempt the mixed-use development at Fell Street and Broderick Street from the controls on  
 6 liquor stores in the RUD, the Board of Supervisors finds that allowing new liquor stores at the  
 7 buildings within the development will not result in pedestrian or vehicle obstruction along the  
 8 Divisadero Street corridor.

9 (e) The Board of Supervisors further finds that changing economic conditions within  
 10 the Divisadero NCT, including recovery from the COVID-19 pandemic and the growth of  
 11 online retail sales and financing applications replacing traditional brick-and-mortar storefronts,  
 12 warrant relaxing the prohibition of liquor stores at this location.

13  
 14 Section 3. Article 7 of the Planning Code is hereby amended by revising Section 759,  
 15 to read as follows:

16 **SEC. 759. DIVISADERO STREET NEIGHBORHOOD COMMERCIAL TRANSIT**  
 17 **DISTRICT.**

18 \* \* \* \*

19 **Table 759. DIVISADERO STREET NEIGHBORHOOD COMMERCIAL TRANSIT**  
 20 **DISTRICT**  
 21 **ZONING CONTROL TABLE**

		Divisadero St. NCT		
Zoning Category	§ References	Controls		
		<b>Controls by Story</b>		
		<b>1st</b>	<b>2nd</b>	<b>3rd+</b>

* * * *				
NON-RESIDENTIAL STANDARDS AND USES				
* * * *				
<b>Sales and Service Use Category</b>				
* * * *				
Liquor Store	§ 102	NP(5)	NP	NP
* * * *				

\* \* \* \*

(5) (a) Liquor Stores are P for the buildings located within the mixed-use development served by off-street parking accessed on Broderick Street between Fell Street and Oak Street. Otherwise, Liquor Stores are not permitted within the Divisadero Street NCD. Liquor Store uses which become inactive for more than 180 days may not be reestablished. A lawfully existing Liquor Store may relocate within the district with Conditional Use authorization;

\* \* \* \*

Section 4. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor’s veto of the ordinance.

Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment

1 additions, and Board amendment deletions in accordance with the “Note” that appears under  
2 the official title of the ordinance.

3

4 APPROVED AS TO FORM:  
5 DAVID CHIU, City Attorney

6 By: /s/ Robb Kapla  
7 ROBB KAPLA  
8 Deputy City Attorney

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## **LEGISLATIVE DIGEST**

[Planning Code - Divisadero Street Neighborhood Commercial Transit District]

**Ordinance amending the Planning Code to permit liquor stores in the buildings with off-street parking accessed on Broderick Street within the Divisadero Street Neighborhood Commercial Transit District; affirming the Planning Department’s determination under the California Environmental Quality Act; and making public necessity, convenience, and welfare findings under Planning Code, Section 302, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

### Existing Law

New liquor stores are not permitted throughout the Divisadero Street Neighborhood Commercial Transit District (“Divisadero NCT”). Liquor stores that were operating within the Divisadero NCT when the controls were established in 2004 are permitted to relocate to a new ground floor location within the district with a Conditional Use authorization, provided they have not abandoned the use by ceasing operation for more than 180 days.

### Amendments to Current Law

The Proposed Legislation would permit the establishment of new liquor stores on the ground floor of the mixed use development with off-street parking accessed on Broderick Street, at the westernmost edge of the Divisadero NCT.

### Background Information

The Divisadero NCT incorporated the strict alcohol controls of the 2004 Divisadero Street Alcohol Restricted Use District (“RUD”). A main purpose of the RUD’s controls was to limit pedestrian and vehicle disruption caused by liquor stores along Divisadero Street. When the Planning Commission considered the RUD ordinance, it recommended exempting the mixed-use development at Fell and Broderick Streets. Unlike the rest of the district, the development is accessible from an off-street parking lot on Broderick Street and is not directly accessible by pedestrians or vehicles from Divisadero Street.

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## Introduction Form

*(by a Member of the Board of Supervisors or the Mayor)*



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

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)  
*(Routine, non-controversial and/or commendatory matters only)*
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor  inquires..."
- 5. City Attorney Request
- 6. Call File No.  from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the Board on

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission       Youth Commission       Ethics Commission  
 Planning Commission       Building Inspection Commission       Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes                       No

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

Sponsor(s):

Subject:

Long Title or text listed:

Signature of Sponsoring Supervisor: