



SAN FRANCISCO PLANNING DEPARTMENT

July 15, 2011

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

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Re: Transmittal of Planning Case Number 2011.0639T to the Board of Supervisors File No. Board File No. 11-0592/previously 11-0279 Inner and Outer Clement NCD and Geary Subdistrict Controls

Recommendation: THE PLANNING COMMISSION RECOMMENDS THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE WITH MODIFICATIONS THAT WOULD AMEND PLANNING CODE SECTIONS 263.20, 712.1, 716.1, AND 781.4.

Dear Ms. Calvillo,

On July 14, 2011 the San Francisco Planning Commission (hereinafter "PC") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance. The proposed ordinance would amend Planning Code provisions for Inner and Outer Clement NCD and Geary Subdistrict Controls.

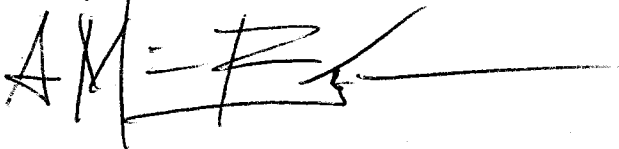
At the July 14 hearing, the PC voted 4-2 to recommend that the Board of Supervisors (herinafter "The Board") adopt the Ordinance with modifications.

Specifically, the PC recommended the following modifications:

- Remove the Prohibition on Formula Retail Pet Supply Stores.
- Modify the controls governing overconcentration of eating and drinking establishments.
- Modify the description of the Outer Clement NCD.
- Amend the NC-3 Zoning Control Table to Permit Video Stores.
- Remove the proposed Amendments to Section 263.20.
- If the Board of Supervisors decides not to remove the prohibition on formula retail pet food stores, the Commission recommends that this definition should be amended.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'AM-Rodgers', with a long horizontal line extending to the right.

AnMarie Rodgers
Manager of Legislative Affairs

Cc: Supervisor Mar
City Attorneys: Andrea Ruiz-Esquide and Chery Adams

Attachments (one copy of the following):
Planning Commission Resolution No. 18409
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution 18409

HEARING DATE: JULY 14, 2011

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Project Name: Inner and Outer Clement NCD and Geary Subdistrict Controls
Case Number: 2011.0639T [Board File No. 11-0592/previously 11-0279]
Initiated by: Supervisor Mar: Introduced June 14, 2011/March 8, 2011
Staff Contact: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
Reviewed by: David Lindsay, Team Leader NW Quadrant

Recommendation: **Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE WITH MODIFICATIONS THAT WOULD AMEND PLANNING CODE SECTIONS 263.20, 712.1, 716.1, AND 781.4 TO: 1) ALLOW EATING AND DRINKING USES AS PRINCIPALLY PERMITTED USES IN THE INNER CLEMENT AND OUTER CLEMENT NEIGHBORHOOD COMMERCIAL DISTRICTS IF THE TOTAL STREET FRONTAGE DEDICATED TO SUCH USES DOES NOT EXCEED 30% AND AS CONDITIONALLY PERMITTED USES IF THE TOTAL STREET FRONTAGE DEDICATED TO SUCH USES EXCEEDS 30%; 2) REMOVE THE PROHIBITION ON LARGE FAST-FOOD RESTAURANTS AND PROHIBIT FORMULA RETAIL PET SUPPLY STORES AND FORMULA RETAIL EATING AND DRINKING ESTABLISHMENTS IN THE GEARY BOULEVARD FAST-FOOD SUBDISTRICT; 3) MAKE VIDEO STORES A PRINCIPALLY PERMITTED USE ON THE GROUND FLOOR IN THE NC-3 AND THE INNER CLEMENT AND OUTER CLEMENT NEIGHBORHOOD COMMERCIAL DISTRICTS; 4) PERMIT A HEIGHT INCREASE OF FIVE FEET TO PERMIT TALL GROUND-FLOOR CEILING HEIGHTS IN THE 40-X AND 50-X HEIGHT AND BULK DISTRICTS IN THE NC-3 ZONING DISTRICT ALONG GEARY BOULEVARD FROM SCOTT STREET TO 28TH AVENUE, ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE PRIORITY POLICIES OF PLANNING CODE SECTION 101.1.

WHEREAS, on March 8, 2011, Supervisor Mar introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 11-0279 which would amend Section 781.4 of the San Francisco Planning Code (hereinafter "Code") to prohibit formula retail pet supply stores, as defined, in the Geary Boulevard Fast-Food Subdistrict and amend the name of the Subdistrict to reflect this new prohibited use.

WHEREAS, on June 14, 2011, Supervisor Mar introduced a proposed Ordinance under Board File Number 11-0592 which would amend Code Sections 263.20, 712.1, 716.1, and 781.4 as described above;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on July 14, 2011; and,

WHEREAS, the proposed Ordinance but for the proposed amendments to Planning Code Section 263.20 has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(3) and 15378; and

WHEREAS, the proposed amendments to Planning Code Section 263.20 are currently undergoing the public comment period for a General Rule Exclusion under the California Environmental Quality Act; 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

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed ordinance. Specifically, the Commission recommends the following modifications:

- **Remove the Prohibition on Formula Retail Pet Supply Stores.** The Commission has recently considered proposals to add a Formula Retail Pet Supply Store (DBA Pet Food Express) at 3150 California Street and 2460 Lombard Street. The Commission disapproved the proposal at 2460 Lombard Street. In the discussion there was consideration to the proximity of this NC-3 zoned parcel to the nearby Chestnut NCD¹. The Commission asked the project sponsor to find another location. The project sponsor returned with an application for 3150 California Street which was approved by Motion Number 18139². An appeal of this decision was filed with the Board of Supervisors. On September 14, 2010 the Board heard the appeal but did not overturn the Commission's decision³. With consideration to the Commission's recent actions, it seems that

¹ Specifically, Motion Number 17975 stated, "Because the Lombard Street NC-3 District, the Chestnut Street NC-2 District and the Union Street NCD are so close together, the establishment of a new Formula Retail use on Chestnut Street, Union Street or Lombard Street can affect existing locally-owned businesses in any of these commercial districts."

² In Motion 18139 the Commission stated that, "The proposed use will provide a development that is necessary and desirable with the surrounding neighborhood. A windshield survey and internet search found no other comparable pet food and supply stores in the immediate vicinity. Further, the proposed use will be located in a space that was previously occupied by a formula retail use (DBA Hollywood Video) and the proposed use is not in conflict with the current character of this section of California Street."

³ There were a couple of votes on the appeal. The initial vote to approve the Commission decision failed on a vote of 4-7. The Board would have needed 6 votes to uphold the Commission decision and would have needed 8 votes to overturn the decision. Not having enough votes to either uphold the CU or to overturn the CU the Board voted unanimously to table the item. By tabling the appeal, the Commission decision to approve the CU stands.

Conditional Use authorizations required for Formula Retail are appropriate as this process allows for either a disapproval or approval as the specific conditions warrant.

- **Modify the controls governing overconcentration of eating and drinking establishments.** The Department recommends amending the control tables to allow one more such facility to be permitted in the Inner Clement District (thereby allowing the third and final establishment to be permitted instead of conditional permitted as envisioned in Ord. 250-07) and to only allow additional facilities by Conditional Use authorization. The Department further recommends allowing new eating and drinking facilities by Conditional Use authorization only in the Outer Clement District.
- **Modify the description of the Outer Clement NCD.** Currently, the description of this district states that new eating and drinking establishments are prohibited. If the Commission approves of the proposed Ordinance, this description should be changed to state that these uses are “regulated to prevent over-concentration”.
- **Amend the NC-3 Zoning Control Table to Permit Video Stores.** While the legislative summary says that the table will be amended to allow Video Stores as a permitted use on the ground floor, the zoning control table has not been amended.
- **Remove the proposed Amendments to Section 263.20.** This proposed amendment is still undergoing CEQA review.
- **If the Board of Supervisors decides not to remove the prohibition on formula retail pet food stores, the definition should be amended.** Currently the definition of “pet supply store” in the draft Ordinance would include a retail use which “sells pet food, toys, apparatus, and similar pet items”. As written this definition would capture any retail use which sells any amount of pet supplies, this should be amended so that only stores which dedicate the majority of the occupied floor space to such sales. Without this change, pharmacies, discount stores, even corner stores may be prohibited by the proposed Ordinance.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. Adding the height bonus for active retail on a portion of Geary Boulevard represents a small increase in height that would allow for a more generous ground floor without increasing the number of floors that could be built. This would improve the urban design at the pedestrian level on Geary Boulevard, a street that is in need of more pedestrian amenities.
2. Regarding the proposal to allow Video Stores without a Conditional Use authorization, the Commission anticipates that this will have minimal effect due to the decline of this industry. Any Video Store that was also a Formula Retail store would still require a Conditional Use authorization in this area.
3. The Commission supports the Supervisor’s efforts to remove the prohibition on Large Fast-Food (\$790.90) restaurants. Controlling large chain fast-food restaurants in NCDs was difficult and inconsistent prior to the addition of Formula Retail Controls to the Planning Code in 2004. Now all Formula Retail establishments in this area would require a Conditional Use hearing before the Planning Commission, even if there is already a formal retail business in the existing space.

4. Regarding the proposal to regulate overconcentration of eating and drinking establishments in this area, as the Commission notes that the existing concentration of eating and drinking establishments is currently near or over 30% for the Inner Clement district, it seems appropriate to amend the Ordinance so that it would allow the additional restaurants envisioned in Ordinance Number 250-07 without Conditional Use but to not allow new restaurants unless either the new establishment receives a CU from the Commission or if existing eating and drinking establishments were to close. This modification would achieve the concentration levels sought by the Supervisor Mar and it would add certainty for members of the public and potential applicants. Since the Outer Clement district has had a prohibition on new such uses for some time, the Department does not have a recent survey of concentration levels for this district. Therefore, the Department recommends amending the Ordinance before you so that it only allows new eating and drinking establishments in the Outer Clement District by Conditional Use authorization, until more is known about the current concentration levels of such uses.
5. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

I. COMMERCE & INDUSTRY ELEMENT

THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN SETS FORTH OBJECTIVES AND POLICIES THAT ADDRESS THE BROAD RANGE OF ECONOMIC ACTIVITIES, FACILITIES, AND SUPPORT SYSTEMS THAT CONSTITUTE SAN FRANCISCO'S EMPLOYMENT AND SERVICE BASE.

GOALS

THE THREE GOALS OF THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN RELATE TO CONTINUED ECONOMIC VITALITY, SOCIAL EQUITY, AND ENVIRONMENTAL QUALITY.

OBJECTIVE 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT

OBJECTIVE 6

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

POLICY 6.2

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

POLICY 6.4

Encourage the location of neighborhood shopping areas throughout the city so that essential retail goods and personal services are accessible to all residents.

POLICY 6.10

Promote neighborhood commercial revitalization, including community-based and other economic development efforts where feasible.

The Ordinance and the modifications recommended by the Planning Commission will strengthen the neighborhood commercial districts vitality while protecting existing neighborhood-serving uses. The proposed Ordinance and modifications would provide enhanced opportunities for employment of neighborhood residents.

8. **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 amendments will encourage retention of neighborhood-serving retail uses while providing opportunities for employment in or ownership of such businesses in the City by making it easier for new restaurants to open and operate.

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 amendments will not have an impact on housing in Neighborhood Commercial Districts. Controls are in place in section 317 of the Planning Code that severely restricts the conversion of housing units to commercial units.

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

The proposed amendments will have no 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 amendments will 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 amendments 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;

Preparedness against injury and loss of life in an earthquake is unaffected by the proposed amendments. Any new construction or alteration associated with a use would be executed in compliance with all applicable construction and safety measures.

7. That the landmarks and historic buildings be preserved;

Landmarks and historic buildings would be unaffected by the proposed amendments. Should a proposed use be located within a landmark or historic building, such site would be evaluated under Planning Code provisions and comprehensive Planning Department policies.

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

The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments. The opportunity for a height bonus on Geary Street in conjunction with active ground floor uses would not relieve future projects from the requirements of Prop K.

8. **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 recommends that the Board ADOPT the proposed Ordinance with modifications as described in this Resolution and in the proposed Ordinance with the modification outlined above.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on July 14, 2011.



Linda D. Avery
Commission Secretary

AYES: Olague, Miguel, Antonini, and Fong

NOES: Moore and Sugaya

ABSENT: Borden

ADOPTED: July 14, 2011



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change HEARING DATE: JULY 14, 2011

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Project Name: **Inner and Outer Clement NCD and Geary Subdistrict Controls**
Case Number: 2011.0639T [Board File No. 11-0590/ previously 11-0279]
Initiated by: Supervisor Mar: Introduced June 14, 2011/March 8, 2011
Staff Contact: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
Reviewed by: David Lindsay, Team Leader NW Quadrant
Recommendation: **Recommend Approval with Modifications**

PLANNING CODE AMENDMENT

The proposed Ordinance would amend San Francisco Planning Code Sections 263.20, 712.1, 716.1, and 781.4 to:

- 1) allow eating and drinking uses as principally permitted uses in the Inner Clement and Outer Clement Neighborhood Commercial Districts if the total street frontage dedicated to such uses does not exceed 30% and as conditionally permitted uses if the total street frontage dedicated to such uses exceeds 30%;
- 2) remove the prohibition on large fast-food restaurants and prohibit formula retail pet supply stores and formula retail eating and drinking establishments in the Geary Boulevard Fast-Food Subdistrict;
- 3) make video stores a principally permitted use on the ground floor in the NC-3 and the Inner Clement and Outer Clement Neighborhood Commercial Districts;
- 4) permit a height increase of five feet to permit tall ground-floor ceiling heights in the 40-X and 50-X Height and Bulk Districts in the NC-3 Zoning District along Geary Boulevard from Scott Street to 28th Avenue.

The Way It Is Now: Inner Clement and Outer Clement Eating and Drinking Controls

- The **Inner Clement NCD** currently prohibits Large Fast Food Restaurants (§790.90) and Small Self-Service Restaurants (§790.71). Full-Service Restaurants (§790.92) are permitted conditionally, and the Commission must make certain findings in order to allow an ABC license type 47 permit to serve liquor on the premises. In addition, the Inner Clement NCD was amended by Ordinance Number 250-07 in 2007 to allow three additional Full-Service Restaurants. Since this numerical limit was established, two new Full-Service have been permitted in the district¹. The district summary states that "special controls are necessary to preserve the equilibrium of neighborhood-serving convenience and comparison shipping businesses and protect adjacent residential livability. These controls prohibit additional financial service and limit additional eating and drinking establishments, late-night commercial uses and ground-story entertainment".

¹ Since 2007, Full-Service Restaurants have been permitted at 291 3rd Avenue and 626 Clement Street.

- The **Outer Clement NCD** currently prohibits Large Fast Food Restaurants (§790.90); Small Self-Service Restaurants (§790.71); and Full-Service Restaurants (§790.92). The district summary states that “The district’s restaurants serve a neighborhood and Citywide clientele during the evening hours...Additional eating and drinking establishments are prohibited(*emphasis added*), while ground-story entertainment and financial service uses are monitored in order to limit the problems of traffic, congestion, noise and late-night activity associated with such uses and to protect existing neighborhood-serving businesses”.

The Way It Would Be: Inner Clement and Outer Clement Eating and Drinking Controls

Both the **Inner Clement NCD** and the **Outer Clement NCD** controls would be amended to allow eating and drinking uses as principally permitted uses *if* the total street frontage dedicated to such uses does not exceed 30% and as conditionally permitted uses if the total street frontage dedicated to such uses exceeds 30%.

The Way It Is Now: Formula Retail and Fast-Food Restaurant Controls in the Geary Boulevard Fast-Food Subdistrict

Currently §781.4 controls create a subdistrict that prohibits Large Fast-Food (§790.90) restaurants on parcels zoned NC-3 that are located along Geary Boulevard between 14th and 28th Avenues.

The Way It Would Be: Formula Retail and Fast-Food Restaurant Controls in the Geary Boulevard Fast-Food Subdistrict

The §781.4 Subdistrict on Geary would be amended to remove the prohibition on Large Fast-Food restaurants and to create a prohibition on formula retail pet supply stores and formula retail eating/drinking establishments.

The Way It Is Now: Video Store Controls in the NC-3, the Inner Clement and Outer Clement Neighborhood Commercial Districts

Video Stores (§790.135) are permitted by Conditional Use authorization on the first and second stories of parcels that are within the Outer Clement and Inner Clement NCD. Within the NC-3 District, Video Stores are permitted by conditional use authorization on any story of a building.

The Way It Would Be: Video Store Controls in the NC-3, the Inner Clement and Outer Clement Neighborhood Commercial Districts

Video Stores, as governed by §790.135, would become a principally permitted use on the ground floor in the Inner Clement and Outer Clement Neighborhood Commercial Districts. While the legislative summary says that this change would also occur for the NC-3 District, the zoning control table has not been amended.

The Way It Is Now: 5-Foot Height Bonus for Active Ground Floor Uses

Section 263.20 currently provides a five-foot height bonus for active ground floor uses in NCT and certain NCD Districts. Certain NC-2 and NC-3 designated parcels on parts of Mission Street and certain NC-1 parcels in District Eleven allow a height bonus of up to 5-extra feet for active uses under this control. Geary Boulevard is currently not included in this height bonus.

The Way It Would Be: 5-Foot Height Bonus for Active Ground Floor Uses

Section 263.20 would be amended to permit a height increase of five feet to permit tall ground-floor ceiling heights in the 40-X and 50-X Height and Bulk Districts in the NC-3 Zoning District along Geary Boulevard from Scott Street to 28th Avenue.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance *with modifications* to include:

- **Remove the Prohibition on Formula Retail Pet Supply Stores.** The Commission has recently considered proposals to add a Formula Retail Pet Supply Store (DBA Pet Food Express) at 3150 California Street and 2460 Lombard Street. The Commission disapproved the proposal at 2460 Lombard Street. In the discussion there was consideration to the proximity of this NC-3 zoned parcel to the nearby Chestnut NCD². The Commission asked the project sponsor to find another location. The project sponsor returned with an application for 3150 California Street which was approved by Motion Number 18139³. An appeal of this decision was filed with the Board of Supervisors. On September 14, 2010 the Board heard the appeal but did not overturn the Commission's decision⁴. With consideration to the Commission's recent actions, it seems that Conditional Use authorizations required for Formula Retail are appropriate as this process allows for either a disapproval or approval as the specific conditions warrant.
- **Modify the controls governing overconcentration of eating and drinking establishments.** The Department recommends amending the control tables to allow one more such facility to be permitted in the Inner Clement District (thereby allowing the third and final establishment to be permitted instead of conditional permitted as envisioned in Ord. 250-07) and to only allow additional facilities by Conditional Use authorization. The Department further recommends

² Specifically, Motion Number 17975 stated, "Because the Lombard Street NC-3 District, the Chestnut Street NC-2 District and the Union Street NCD are so close together, the establishment of a new Formula Retail use on Chestnut Street, Union Street or Lombard Street can affect existing locally-owned businesses in any of these commercial districts."

³ In Motion 18139 the Commission stated that, "The proposed use will provide a development that is necessary and desirable with the surrounding neighborhood. A windshield survey and internet search found no other comparable pet food and supply stores in the immediate vicinity. Further, the proposed use will be located in a space that was previously occupied by a formula retail use (DBA Hollywood Video) and the proposed use is not in conflict with the current character of this section of California Street."

⁴ There were a couple of votes on the appeal. The initial vote to approve the Commission decision failed on a vote of 4-7. The Board would have needed 6 votes to uphold the Commission decision and would have needed 8 votes to overturn the decision. Not having enough votes to either uphold the CU or to overturn the CU the Board voted unanimously to table the item. By tabling the appeal, the Commission decision to approve the CU stands.

allowing new eating and drinking facilities by Conditional Use authorization only in the Outer Clement District.

- **Modify the description of the Outer Clement NCD.** Currently, the description of this district states that new eating and drinking establishments are prohibited. If the Commission approves of the proposed Ordinance, this description should be changed to state that these uses are “regulated to prevent over-concentration”.
- **Amend the NC-3 Zoning Control Table to Permit Video Stores.** While the legislative summary says that the table will be amended to allow Video Stores as a permitted use on the ground floor, the zoning control table has not been amended.
- **If the Board of Supervisors decides not to remove the prohibition on formula retail pet food stores, the definition should be amended.** Currently the definition of “pet supply store” in the draft Ordinance would include a retail use which “sells pet food, toys, apparatus, and similar pet items”. As written this definition would capture any retail use which sells any amount of pet supplies, this should be amended so that only stores which dedicate the majority of the occupied floor space to such sales. Without this change, pharmacies, discount stores, even corner stores may be prohibited by the proposed Ordinance.
- **The Commission should consider amending the General Plan.** The General Plan states that eating and drinking establishments should be reviewed if concentration levels are more than 20% and should be prohibited if these levels exceed 25%. The proposed legislation would establish a new threshold of 30% for the district. If the Commission believes that the existing controls are out dated, the Department recommends initiating amendments to the General Plan.

BASIS FOR RECOMMENDATION

Overall Recommendation. On balance, the legislation before the Commission is consistent with recent Commission actions. The proposal would allow for a height bonus in association for active uses. The Commission has generally supported expansions of this control⁵. Adding this small increment of height, would allow for a more generous ground floor without increasing the number of floors that could be built. This would improve the urban design at the pedestrian level on Geary Boulevard, a street that is in need of more pedestrian amenities. Regarding the proposal to allow Video Stores without a Conditional Use authorization, the Department anticipates that this will have minimal effect due to the decline of this industry. Any Video Store that was also a Formula Retail store would still require a Conditional Use authorization in this area. The Department supports the Supervisor’s efforts to remove the prohibition on Large Fast-Food (§790.90) restaurants. Controlling large chain fast-food restaurants in NCDs was difficult and inconsistent prior to the addition of Formula Retail Controls to the Planning Code in 2004⁶.

⁵ The Commission has supported proposals to extend the 5-foot height bonus in their review of Board File Numbers 090319 (District 11) and 101464 (Upper Market). In review of the 2008 proposal contained in Board File Number 08-1100 (Mission Street) , the Commission took no action.

⁶ The first Formula Retail controls established in 2004 in San Francisco applied only to the Hayes-Gough NCD by Ord. 62-04. Since that time, these controls have been expanded to regulate Formula Retail uses in all NC Districts; the Japantown and Western SoMa SUDS; the Urban Mixed Use, Mixed Use-General, Residential Transit-Oriented, and Chinatown Visitor Retail districts; as well as the Residential Commercial districts. Most recently, Ord 63-11 added RC-3, RC-4, RH, RM, RTO, and RED Districts to the list of districts that require Conditional Use authorization. See

Now all Formula Retail establishments in this area would require a Conditional Use hearing before the Planning Commission, even if there is already a formal retail business in the existing space.

Issues of Overconcentration. Perhaps the most complicated portion of the Ordinance is the proposal to allow eating and drinking uses as “principally permitted” uses in the Inner Clement and Outer Clement Neighborhood Commercial Districts *if* the total street frontage dedicated to such uses does not exceed 30% *and* as “conditionally permitted” uses if the total street frontage dedicated to such uses exceeds 30%. Currently the General Plan relies on more conservative thresholds to determine if there is an over-concentration of Eating and Drinking establishments. Some of the thresholds currently in the General Plan include the following:

- The balance of commercial uses may be threatened when eating and drinking establishments occupy **more than 20% of the total occupied commercial frontage** (*emphasis added*). Proposals for eating and drinking establishments which would increase the proportion of total occupied commercial frontage above 20% should be reviewed to ensure that they would not reduce the variety of neighborhood-serving uses; nor create substantial noise, traffic, parking problems, or other nuisances in the district or surrounding neighborhood. Those establishments that would do the above should not be permitted.
- Except in districts with an established pattern of service to a broad market, such as North Beach, such establishments **should not occupy more than 25% of the total commercially-occupied frontage in a district** (*emphasis added*).
- To minimize the problems they can create, eating and drinking uses **should generally be at least 100 feet apart** (*emphasis added*) from each other, unless there are factors making clustering of uses appropriate. For example, a configuration of clustered eating and drinking uses where off-street parking is shared might be more appropriate than an even distribution of such establishments.

Determining the total occupied commercial frontage is not as straight-forward nor as accurate of a calculation as it may initially seem. The Department is able to conduct this review in preparation for hearings before the Commission, however, it is difficult and time-consuming to perform this calculation. Project sponsors would now be tasked with making lease decisions without a clear understanding of the entitlement process that lies ahead. Applicants should have clear expectations as to whether their project would necessitate a hearing. If this legislation were adopted, the applicant who erroneously estimates the total street frontage dedicated to eating and drinking uses as being under the threshold may be shocked to learn that the Department has reached a different conclusion and would require a hearing before the Commission. In addition, the “street frontage dedicated to eating and drinking” may be a misleading indicator of overconcentration if there are large restaurants that have a small street frontage but expand behind the frontage. (Neither of these districts allow eating or drinking above the ground floor either under existing or proposed controls, however, if this control were expanded to other districts Eating and Drinking square footage above the ground floor would not be included in calculations of overconcentration.)

Existing Concentration Levels. The Inner and Outer Clement districts span 12 and 10 blocks respectively. The Department surveys districts to determine concentration levels only when new applicants seek entitlements for eating and drinking establishments. Since the Outer Clement currently

also Ordinance Numbers 62-04, 8-05, 65-05, 173-05, 204-06, 180-06, 0269-08, 0298-08, 0301-08, 304-08 and the 2007 Voter’s Initiative, Proposition G.

prohibits new such establishments no survey has been completed recently. The most recent survey for the Inner Clement District was done in concert with a 2011 review of a Full-Service Restaurant for 626 Clement Street. In this case, the survey found that existing eating and drinking establishments were estimated at around 33%. Specifically, Commission Motion Number 18282 states:

“Based on a site survey of the Inner Clement Street NCD conducted by Planning staff, it is estimated that **1/3 of the frontage of the NCD is occupied by eating and drinking establishments** (emphasis added). Although this concentration exceeds the 20% threshold indicated in the Commerce and Industry Element of the General Plan, the 2007 Ordinance No. 250-07 was enacted to permit 3 new full-service restaurants or wine and/or beer bars at the ground level to occupy some of the vacant commercial tenant space within the Inner Clement Street NCD; this would allow the character of the neighborhood to evolve with the gradual shift in the City-wide economy, which has led to closures of some neighborhood retail establishments along Inner Clement Street.”

Given that the existing concentration of eating and drinking establishments is near or over 30% for the Inner Clement district, it seems appropriate to amend the Ordinance currently before the Commission so that it would allow the additional restaurants envisioned in Ordinance Number 250-07 without Conditional Use but to not allow new restaurants *unless* either the new establishment receives a CU from the Commission *or* if existing eating and drinking establishments were to close. This modification would achieve the concentration levels sought by the Supervisor Mar and it would add certainty for members of the public and potential applicants. Since the Outer Clement district has had a prohibition on new such uses for some time, the Department does not have a recent survey of concentration levels for this district. Therefore, the Department recommends amending the Ordinance before you so that it only allows new eating and drinking establishments in the Outer Clement District by Conditional Use authorization, until more is known about the current concentration levels of such uses.