

1 [Haight Street Alcohol Restricted Use Subdistrict – Permissible bar use in movie theaters.]

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3 **Ordinance amending Planning Code Section 781.9 to allow a bar use in a movie theater**  
4 **under specified circumstances in the Haight Street Alcohol Restricted Use Subdistrict;**  
5 **and making environmental findings and findings of consistency with the priority**  
6 **policies of Planning Code Section 101.1 and the General Plan.**

7 Note: Additions are *single-underline italics Times New Roman*;  
8 deletions are *strikethrough italics Times New Roman*.  
9 Board amendment additions are double underlined.  
Board amendment deletions are ~~strikethrough normal~~.

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

11 Section 1. Findings. The Board of Supervisors of the City and County of San Francisco  
12 hereby finds and determines that:

13 (a) On \_\_\_\_\_, 2005, at a duly notice public hearing, the Planning Commission  
14 in Motion No. \_\_\_\_\_, found that the proposed Planning Code amendment was consistent  
15 with the City’s General Plan and with Planning Code Section 101.1(b). A copy of said Motion  
16 is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and is incorporated  
17 herein by reference. The Board finds that proposed Planning Code amendment is consistent  
18 with the City’s General Plan and with Planning Code Section 101.1(b) for the reasons set forth  
19 in said Motion.

20 (b) Pursuant to Planning Code Section 302, the Board finds that the proposed  
21 Planning Code amendment will serve the public necessity, convenience and welfare for the  
22 reasons set forth in Planning Commission Resolution No. \_\_\_\_\_, which reasons are  
23 incorporated herein by reference.

24 (c) The Planning Department has determined that the actions contemplated in this  
25 Ordinance are in compliance with the California Environmental Quality Act (California Public

1 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the  
2 Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference.

3 Section 2. The San Francisco Planning Code is hereby amended by amending Section  
4 781.9 to read as follows:

5 SEC. 781.9. HAIGHT STREET ALCOHOL RESTRICTED USE SUBDISTRICT.

6 There is an unusually large number of establishments dispensing alcoholic  
7 beverages, including beer and wine, for both on-site and off-site consumption in the Haight-  
8 Ashbury neighborhood. A concentration of alcoholic beverage establishments in a  
9 neighborhood disrupts the desired mix of land uses that contribute to a livable neighborhood  
10 and discourages more desirable and needed commercial uses in the area. A concentration of  
11 establishments selling alcoholic beverages in an area may therefore contribute to the  
12 deterioration of the neighborhood and to the concomitant devaluation of property and  
13 destruction of community values and quality of life. These effects contribute to peace, health,  
14 safety and general welfare problems in these areas, including loitering, littering, public  
15 drunkenness, driving while intoxicated, defacement and damaging of structures, pedestrian  
16 obstructions, as well as traffic circulation, parking and noise problems on public streets and  
17 neighborhood lots, and other nuisance activities. The existence of such problems creates  
18 serious impacts on the health, safety and welfare of residents of nearby single- and multiple-  
19 family areas. These impacts include fear for the safety of children, elderly residents and  
20 visitors to the area.

21 (a) Haight Street Alcohol Restricted Use Subdistrict Established. In order to  
22 preserve the residential character and the neighborhood-serving commercial uses of the  
23 Haight-Ashbury neighborhood, the Haight Street Alcohol Restricted Use Subdistrict (Haight  
24 Street Alcohol RUSD) is hereby established with boundaries coterminous with the Haight  
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1 Street Neighborhood Commercial District as designated on Sectional Map numbers 6 and 7.  
2 The Haight Street Alcohol RUSD is designated on Section Map Numbers 6SU and 7SU.

3 (1) No new on-sale or off-sale liquor establishment shall be permitted in the  
4 Haight Street RUSD.

5 (2) These controls also shall apply within ¼-mile of the Haight Street Alcohol  
6 RUSD to nonconforming uses in R districts pursuant to Planning Code Section 186, and in  
7 NC-1 Districts, pursuant to the Special Provisions for NC-1 Districts which follows the Control  
8 Table constituting Sections 710.10 through 710.95.

9 (3) The prohibition on Liquor Establishments shall not be interpreted to  
10 prohibit the following:

11 (A) Temporary uses, as described in Planning Code Section 205.1 or 205.3;  
12 or

13 (B) Establishment of a Liquor Establishment if application for such Liquor  
14 Establishment is on file with the California Department of Alcoholic Beverage Control prior to  
15 the effective date of legislation establishing the Haight Street Alcohol RUSD.

16 (C) Establishment of a Liquor Establishment if: (1) such use is an eligible movie  
17 theater, (2) only beer and wine are offered for consumption, and (3) such beer and wine are: (i) only  
18 consumed on the premises and primarily in the main theater auditorium, (ii) only sold to and consumed  
19 by ticketholders and only immediately before and during performances, and (iii) only offered in  
20 conjunction with the screening of films and not as an independent element of the establishment that is  
21 unrelated to the viewing of films. For purposes of this section, an “eligible movie theater” shall be a  
22 movie theater as defined in Code Section 790.64 that contains only a single screen and auditorium, has  
23 seating for 150 or fewer persons, and is not a formula retail use as defined in Code Section 703.3(b).

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1           (4) Continuation of existing Prohibited Liquor Establishments. In the Haight  
2 Street Alcohol RUSD, any Prohibited Liquor Establishment may continue in accordance with  
3 Planning Code Section 180 through 186.2, subject to the following provisions. For purposes  
4 of this section, the Haight Street Alcohol RUSD shall be considered to include, pursuant to  
5 Section 186 of this Code and to the Special Provisions for NC-1 Districts, the area within ¼-  
6 mile of the Haight Street Alcohol RUSD as mapped.

7           (A) A Prohibited Liquor Establishment lawfully existing and selling alcoholic  
8 beverages as licensed by the State of California prior to the effective date of this legislation, or  
9 subsequent legislation prohibiting that type of Liquor Establishment, so long as otherwise  
10 lawful, may continue to operate only under the following conditions, as provided by California  
11 Business and Professions Code Section 23790:

12           (1) Except as provided by Subsection (B) below, the premises shall retain the  
13 same type of retail liquor license within a license classification; and

14           (2) Except as provided by Subsection (B) below, the licensed premises shall  
15 be operated continuously, without substantial change in mode or character of operation.

16           (B) A break in continuous operation shall not be interpreted to include the  
17 following, provided that the location of the establishment does not change, the square footage  
18 used for the sale of alcoholic beverages does not increase, and the type of California  
19 Department of Alcoholic Beverage Control liquor license ("ABC License") does not change  
20 except as indicated:

21           (1) A change in ownership of a Prohibited Liquor Establishment or an owner-  
22 to-owner transfer of an ABC License; or

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1                   (2)     Re-establishment, restoration or repair of an existing Prohibited Liquor  
2 Establishment on the same lot after total or partial destruction or damage due to fire, riot,  
3 insurrection, toxic accident or act of God; or

4                   (3)     Temporary closure of an existing Prohibited Liquor Establishment for not  
5 more than ninety (90) days for repair, renovation or remodeling;

6                   (4)     Re-location of an existing Prohibited Liquor Establishment in the Haight  
7 Street Alcohol RUSD to another location within the same Haight Street Alcohol RUSD with  
8 conditional use authorization from the City Planning Commission, provided that the original  
9 premises shall not be occupied by a Prohibited Liquor Establishment, unless by another  
10 Prohibited Liquor Establishment that is also relocating from within the Haight Street Alcohol  
11 RUSD.

12                  (5)     A change from a Type 21 (off-sale general) to a Type 20 (off-sale beer  
13 and wine) license.

14                  (b)     Definitions:

15                  (1)     A “liquor establishment” shall mean any enterprise selling alcoholic  
16 beverages, as defined by California Business and Professions Code Section 23004 and  
17 23025, pursuant to a California Alcoholic Beverage Control Board license.

18                  (2)     An “on-sale liquor establishment” shall mean any liquor establishment  
19 which has obtained Alcoholic Beverage Control Board License type 40 (on-sale beer), type 41  
20 (on-sale beer and wine eating place), type 42 (on-sale beer and wine public premises), type  
21 47 (on-sale general eating place), type 48 (on-sale general- public premises) or type 57  
22 (special on-sale general) selling alcoholic beverages for consumption on the premises.

23 Typical on-sale establishments may include but are not limited to bars and restaurants serving  
24 alcoholic beverages. It shall not include types 51, 52,59, 60, 61 67, 70 or 75.

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1                   (3)     An “off-sale liquor establishment” shall mean any liquor establishment  
2     which has obtained Alcoholic Beverage Control Board License type 20 (off-sale beer and  
3     wine) or type 21 (off-sale general) selling alcoholic beverages in an open or a closed  
4     container for consumption off the premises. Typical off-sale liquor establishments may  
5     include but are not limited to the following uses licensed to sell off-sale alcoholic beverages:  
6     food markets, supermarkets, drugstores, liquor stores, bars and convenience markets. It shall  
7     not include producers and distributor's licenses for offices or establishments not open to the  
8     general public.

9                   (4)     A “prohibited liquor establishment” shall mean any establishment selling  
10    alcoholic beverages lawfully existing prior to the effective date of the establishment of the  
11    Haight Street Alcohol RUSD and licensed by the State of California for the retail sale of  
12    alcoholic beverages for on or off-site consumption, so long as otherwise lawful.

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14    APPROVED AS TO FORM:  
15    DENNIS J. HERRERA, City Attorney

16    By:           \_\_\_\_\_

17           John D. Malamut  
              Deputy City Attorney

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