

File No. 180777

Committee Item No. 7

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation

Date December 3, 2018

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Memorandum of Understanding (MOU) |
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| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 - Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Planning Commission Recommendation</u> |
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Completed by: Alisa Somera Date November 29, 2018

Completed by: _____ Date _____

1 [Planning Code - Prohibiting Employee Cafeterias within Office Space]

2
3 **Ordinance amending the Planning Code to prohibit Employee Cafeterias, as defined in**
4 **the Health Code, within Office space, except for existing Employee Cafeterias;**
5 **affirming the Planning Department's determination under the California Environmental**
6 **Quality Act; making findings of consistency with the General Plan, and the eight**
7 **priority policies of Planning Code, Section 101.1; and adopting findings of public**
8 **necessity, convenience, and welfare under Planning Code, Section 302.**

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

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

17 Section 1. Findings. *

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 Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
21 Supervisors in File No. 180777 and is incorporated herein by reference. The Board affirms
22 this determination.

23 (b) On _____, the Planning Commission, in Resolution No. _____, adopted
24 findings that the actions contemplated in this ordinance are consistent, on balance, with the
25 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board

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

3 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
4 ordinance will serve the public necessity, convenience, and welfare for the reasons stated in
5 Planning Commission Resolution No. _____.

6
7 Section 2. The Planning Code is hereby amended by revising Sections 102 and 202.2,
8 to read as follows:

9 **SEC. 102. DEFINITIONS.**

10 * * * *

11 **Office, General.** A Non-Retail Sales and Service Use that includes space within a structure or
12 portion thereof intended or primarily suitable for occupancy by persons or entities which
13 perform, provide for their own benefit, or provide to others at that location, services including,
14 but not limited to, the following: professional, banking, insurance, management, consulting,
15 technical, sales, and design; and the non-accessory office functions of manufacturing and
16 warehousing businesses, multimedia, software development, web design, electronic
17 commerce, and information technology. This use shall exclude Non-Retail Professional
18 Services as well as Retail Uses; repair; any business characterized by the physical transfer of
19 tangible goods to customers on the premises; wholesale shipping, receiving and storage; and
20 design showrooms or any other space intended and primarily suitable for display of goods. An
21 Office use is subject to the operating conditions of Section 202.2 of this Code.

22 * * * *

23 **SEC. 202.2. LOCATION AND OPERATING CONDITIONS.**

24 * * * *

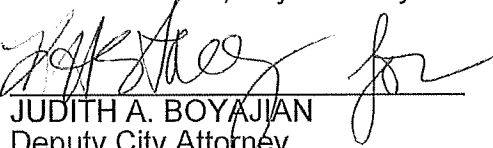
1 (i) Non-Retail Sales and Service Use; Office. An "Employee Cafeteria," as defined in
2 Section 451(h) of the Health Code, is a prohibited use in Office space. Any such use lawfully existing or
3 finally approved as of July 24, 2018 may continue and be maintained as a legal nonconforming
4 Accessory Use but may not be expanded or re-installed if abandoned.

5
6 Section 3. Effective Date. This ordinance shall become effective 30 days after
7 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
8 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
9 of Supervisors overrides the Mayor's veto of the ordinance.

10
11 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
12 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
13 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
14 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
15 additions, and Board amendment deletions in accordance with the "Note" that appears under
16 the official title of the ordinance.

17
18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 By:


21 JUDITH A. BOYAJIAN
22 Deputy City Attorney

23 n:\legan\as2018\1800715\01291966.docx

LEGISLATIVE DIGEST

[Planning Code - Prohibiting Employee Cafeterias within Office Space]

Ordinance amending the Planning Code to prohibit Employee Cafeterias, as defined in the Health Code, within Office space, except for existing Employee Cafeterias; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

Section 102 of the Planning Code defines uses and terms used throughout the Code. "Office, General" is defined in Section 102 as "A Non-Retail Sales and Service Use that includes space within a structure or portion thereof intended or primarily suitable for occupancy by persons or entities which perform, provide for their own benefit, or provide to others at that location, services including, but not limited to, the following: professional, banking, insurance, management, consulting, technical, sales, and design; and the non-accessory office functions of manufacturing and warehousing businesses, multimedia, software development, web design, electronic commerce, and information technology." It does not include "Non-Retail Professional Services as well as Retail Uses; repair; any business characterized by the physical transfer of tangible goods to customers on the premises; wholesale shipping, receiving and storage; and design showrooms or any other space intended and primarily suitable for display of goods." Section 202.2 establishes location and operating conditions for specific use categories.

Amendments to Current Law

The definition of "Office, General" in Section 102 is amended to provide it is subject to the operating conditions of Section 202.2. Section 202.2 is amended to provide that an "Employee Cafeteria," as defined in Health Code Section 451(h), is prohibited in Office space but that any such use lawfully existing or finally approved as of July 24, 2018 may continue and be maintained. It may not, however, be expanded or re-installed if abandoned. An "Employee Cafeteria" is defined in the Health Code as "a food facility located within business premises where the business employees are provided or sold food on a regular basis. Food and drink are not regularly served to the public and the food establishment is not subject to tax. The operators of the food facility are either employees of the business or are contracted by that business."

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SAN FRANCISCO PLANNING DEPARTMENT

November 7, 2018

Ms. Angela Calvillo, Clerk
Honorable Supervisor Safai
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

1650 Mission St.
Suite 400
San Francisco,
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Re: Transmittal of Planning Department Case Number 2018-010552PCA:
Prohibiting Employee Cafeterias within Office Space
Board File No. 180777
Planning Commission Recommendation: Disapproval

Dear Ms. Calvillo, Supervisor Safai, and Supervisor Peskin,

On October 23, 2018, the Planning Commission conducted duly noticed public hearings at regularly scheduled meetings to consider the proposed Ordinance, introduced by Supervisors Safai and Peskin that would amend the Planning Code to prohibit employee cafeterias, as defined in the Health Code, within Office spaces, except for existing employee cafeterias. At the hearing the Planning Commission recommended disapproval and recommended exploring alternatives to a prohibition on employee cafeterias within Office space.

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.

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,

A handwritten signature in black ink, appearing to read "Aaron D. Starr", with a long horizontal line extending to the right.

Aaron D. Starr
Manager of Legislative Affairs

cc:
Judy Boyajian, Deputy City Attorney
Suha Sandoval, Aide to Supervisor Safai

Transmittal Materials

**CASE NO. 2018-010552PCA
Prohibiting Employee Cafeterias within Office Space**

Sunny Angulo, Aide to Supervisor Peskin
Erica Major, Office of the Clerk of the Board

Attachments:

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 20327 HEARING DATE OCTOBER 25, 2018

Project Name: Prohibiting Employee Cafeterias within Office Space
Case Number: 2018-010552PCA [Board File No. 180777]
Initiated by: Supervisors Safai, Peskin / Introduced July 24, 2018
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

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RESOLUTION DISAPPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO PROHIBIT EMPLOYEE CAFETERIAS, AS DEFINED IN THE HEALTH CODE, WITHIN OFFICE SPACES, EXCEPT FOR EXISTING EMPLOYEE CAFETERIAS; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on July 24, 2018 Supervisors Safai and Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 180777, which would amend the Planning Code to prohibit Employee Cafeterias, as defined in the Health Code, within Office space, except for existing Employee Cafeterias;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on October 25, 2018; 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 **disapproves** the proposed ordinance and recommends the Board of Supervisors explore alternatives to a prohibition on employee cafeterias within Office space.

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. Measures taken to bolster the City's pedestrian environment should be supported, especially in nascent neighborhoods. This includes Ordinances that attempt to help induce patronage of ground floor retail establishments.
2. However a prohibition on employee cafeterias within office spaces is too blunt of a regulation. Employee cafeterias often hire locally, contract with local vendors and can be used by local organizations for after-hours events. In this way they are beneficial to the City. In this light, new regulations on employee cafeterias, if pursued, should include geographic considerations, cafeteria size, and an enhanced entitlement process, among other alternative regulations.
3. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are inconsistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 1

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

Policy 1.2

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

The proposed Ordinance would prevent new employee cafeterias from locating into Office spaces where they would be regulated to lessen negative effects upon existing eating and drinking establishments.

URBAN DESIGN ELEMENT

OBJECTIVE 4

IMPROVEMENT OF THE NEIGHBORHOOD ENVIRONMENT TO INCREASE PERSONAL SAFETY, COMFORT, PRIDE, AND OPPORTUNITY.

Fundamental Principles for Neighborhood Environment: Principle #16

Continuity of interest and activities at ground level in commercial buildings adjacent to pedestrian ways creates rich street life and enhances pedestrian experiences.

The proposed Ordinance would prohibit new ground-level employee cafeterias within office buildings. This results in a lost opportunity to boost street life and enhance the pedestrian experience.

DOWNTOWN AREA PLAN

OBJECTIVE 3

IMPROVE DOWNTOWN SAN FRANCISCO'S POSITION AS THE REGION'S PRIME LOCATION FOR SPECIALIZED RETAIL TRADE.

Policy 3.5

Meet the convenience needs of daytime downtown workers.

By prohibiting new employee cafeterias that may be open to the public, the proposed Ordinance does not meet the convenience of downtown workers.

TRANSIT CENTER DISTRICT PLAN

OBJECTIVE 1.4

ENSURE THE DISTRICT MAINTAINS AREAS THAT CONTAIN CONCENTRATION OF GROUND-LEVEL PUBLIC-SERVING RETAIL AND CONVENIENCE USES FOR WORKERS AND VISITORS.

OBJECTIVE 2.12

ENSURE THAT DEVELOPMENT IS PEDESTRIAN-ORIENTED, FOSTERING A VITAL AND ACTIVE STREET LIFE.

The proposed Ordinance would prevent new private eating facilities from locating at the street level where they may bolster the street life.

4. **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 help preserve existing neighborhood-serving retail or help new neighborhood-serving retail because it does not propose any Planning Code amendments that would proactively benefit 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 help conserve or protect neighborhood character because it does not propose any Planning Code amendments that bolster neighborhoods.

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 because it concerns itself with accessory uses within Office spaces.

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

Because the Ordinance proposes to restrict new cafeterias within Office spaces, it would not negatively affect MUNI transit service or overburden 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 because the Ordinance proposes to restrict allowed accessory uses within Office spaces.

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 because the Ordinance proposes to restrict accessory uses within Office spaces.

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 because the Ordinance proposes to restrict accessory uses within Office spaces.

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 because the Ordinance proposes to restrict accessory uses within Office spaces.

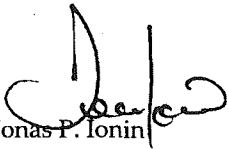
5. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare do not require the proposed amendments to the Planning Code as set forth in Section 302.

Resolution No. 20327
October 25, 2018

CASE NO. 2018-010552PCA
Prohibiting Employee Cafeterias within Office Space

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

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on October 25, 2018.



Jonas P. Ionin
Commission Secretary

AYES: Hillis, Johnson, Koppel, Melgar, Richards

NOES: None

ABSENT: Fong, Moore

ADOPTED: October 25, 2018



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: OCTOBER 11, 2018

90-DAY DEADLINE: OCTOBER 29, 2018

Project Name: Prohibiting Employee Cafeterias within Office Space
Case Number: 2018-010552PCA [Board File No. 180777]
Initiated by: Supervisors Safai, Peskin / Introduced July 24, 2018
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: **Approval with Modifications**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to prohibit Employee Cafeterias, as defined in the Health Code, within Office Space. Existing Employee Cafeterias would be allowed to remain as a legal nonconforming Accessory Use.

The Way It Is Now:

Employee Cafeterias, as defined in the Health Code, are allowed within Office Uses¹ as an Accessory Use.

The Way It Would Be:

Employee Cafeterias would be prohibited within Office Uses. Existing Employee Cafeterias lawfully existing or finally approved as of July 24, 2018 would be allowed to continue and maintained as a legal nonconforming Accessory Use but could not be expanded or re-installed if abandoned.

BACKGROUND

With the approval of the Central Market Payroll Tax Exclusion in 2011 the City has eagerly awaited the revitalization of the Mid-Market Area. Many prominent technology firms located within the Mid-Market Area to take advantage of the payroll tax relief, bringing with them thousands of new employees.² Soon

¹ Per Section 102 of the Planning Code an Office Use is defined as: A grouping of uses that includes General Office, Retail Professional Services, and Non-Retail Professional Services. This use shall exclude: retail uses other than Retail Professional Services; repair; any business characterized by the physical transfer of tangible goods to customers on the premises; wholesale shipping, receiving and storage; and design showrooms or any other space intended and primarily suitable for display of goods.

² Mayor Lee's Statement on Central Market/Tenderloin Payroll Tax Exclusion Report. October 27, 2014. Accessed September 24, 2018. <https://sfmayor.org/article/mayor-lees-statement-central-markettenderloin-payroll-tax-exclusion-report>

thereafter several restaurants followed.³ Combined with hundreds of new residential units, new and renovated hotel units, and adjacent theater and arts uses, there was a general expectation that the Mid-Market Area retail and pedestrian life would be revitalized. Unfortunately, many of the restaurants attracted to the area have since closed or continue to struggle.⁴ Further, many still perceive the area as undesirable or blighted. Some attribute, at least partially, the neighborhood's shortcomings to employee cafeterias installed by the new tenants in the area. These cafeterias typically provide free food to their employees disincentivizing them from going out and patronizing nearby businesses.

The City is also poised to approve the Central SoMa Plan, which will bring millions of square feet of new office space to the City. Central SoMa Plan is a comprehensive plan for the area surrounding much of southern portion of the Central Subway transit line. The Plan would change allowable land uses and zoning controls, increase heights on many parcels within the Plan area, proposes substantial changes to the street network to accommodate multiple modes of travel, and would provide additional recreational resources. The plan is projected to provide approximately 8,570 housing units and 32,500 jobs. The hope is that this new plan will create a vibrant new neighborhood in this area of the city; however one of the concerns is that the new office spaces in this area will also come with free employee cafeterias, which may repeat the situation we currently have in the Mid-Market.

ISSUES AND CONSIDERATIONS

Other jurisdictions

A similar proposal to this ordinance was recently enacted in Mountain View, California, although it is limited to a proposed development. In Mountain View, there a 9.9-acre site, known as Phase 2 of the San Antonio Center, was recently approved for redevelopment. The project included 120,000 square feet of commercial, retail and restaurant use, 70,000 square foot cinema, a 167-unit hotel, and 397,000 square feet of office use. To help assure patronage of the restaurants, the office uses in this project are subject to operating conditions that encourage use of the food and retail services at the San Antonio Center. Employers may subsidize or pay for employee meals if they are patronizing restaurants at the San Antonio Center. However, employers are prohibited from subsidizing meals by more than fifty percent or providing free meals for employees in the office space on a regular daily basis. This project specific regulation may also be considered for amendment at the request of office tenants or other applicants over time.⁵

³ "As Twitter Tax Break Nears Its End, Mid-Market Restaurants Feel Glimmer of Hope." Carolyn Alburger. September 19, 2018. Accessed September 25, 2018.

<https://sf.eater.com/2018/9/19/17862118/central-market-tax-exclusion-restaurants-post-mortem-future>

⁴ "Mid-Market Needs to Find its Heart in order to Become a Real Neighborhood." Brock Keeling. September 19, 2018. Accessed September 25, 2018. <https://sf.curbed.com/2018/9/19/17861316/midmarket-neighborhood-development-mission>

⁵ San Antonio Center, Phase 2.

<https://www.mountainview.gov/depts/comdev/planning/activeprojects/sanantcenter.asp>

Condition 42: Cafeteria Condition: In order to foster synergy between office, restaurant, and retail uses in the Center and realize the economic vitality of the project, the project anticipates employees in the office space will utilize food and retail services available in the Center. The applicant will encourage tenants and employees of tenants to utilize food and retail services available in the Center. Neither the applicant

Health Code Definition of Employee Cafeterias

While the Planning Code has definitions for various food serving uses, it does not have a use definition for Employee Cafeterias; however, the Health Code does and defines an Employee Cafeteria as:

a food facility located within business premises where the business employees are provided or sold food on a regular basis. Food and drink are not regularly served to the public and the food establishment is not subject to tax. The operators of the food facility are either employees of the business or are contracted by that business.⁶

Employee cafeterias vary in their provision of food and drink. Some prepare food and drink in on-site full-service kitchens requiring an exhaust ventilation system. These often offer multiple choices in cuisine, sometimes made to order, and in many ways resemble private restaurants or food courts. Others offer pre-packaged snacks, breakfast items, and beverages but do not cook food in a kitchen facility requiring an exhaust ventilation system. These are akin to employee break rooms that are furnished with some food and small domestic appliances like toasters and coffee makers. Distinguishing between these two cafeteria types is essential when seeking to regulate employee cafeterias. Cafeterias with on-site full-service kitchens directly compete with nearby restaurants, while those with only small domestic appliances are less likely to compete. Department of Public Health (DPH) Staff also makes this type of distinction in their permitting, inspections and collaboration with other City agencies.

Catering

The proposed ordinance does not prohibit employers from having lunch delivered to the office for its employees, nor is there any mechanism for this Planning Department to prohibit this type of activity. It is conceivable that office tenants restricted by this Ordinance would create large employee break rooms for caterers to provide food to their employees during the work week. Creating spaces that are just short of a full-service kitchen could serve as a work around to the proposed cafeteria prohibition.

Impacts on Jobs

Another consideration is that employee cafeteria workers often enjoy better remuneration and working conditions than their counterparts in restaurants. One source notes that entry level pay for employee cafeteria workers can be up to 30% more than the minimum wage paid to kitchen staff in San Francisco restaurants.⁷ It is also reported that employee cafeteria workers have more predictable working hours,

nor tenant(s) will subsidize meals by more than fifty percent (50%) or provide free meals for employees in the office space on a regular daily basis. An employer can subsidize or pay for employee meals as long as they are patronizing restaurants in the Center. The applicant may make a request to amend this condition. The City Manager or a designee may make a recommendation to the City Council on this matter.

⁶ San Francisco Health Code Article 8 Section 451: Food Preparation and Service Establishment

⁷ Arvanitidis, Laurel. e-mail message from the Office of Workforce and Economic Development regarding correspondence with sf.citi, October 1, 2018

Sciaccia, Annie. "The highest-paid restaurant workers are in San Francisco, survey says." Bizjournals. February 11, 2015. Accessed October 2, 2018.

have work hours amenable to child rearing and family life, and some enjoy unionization. The Ordinance would not remove these existing jobs, it would prevent new jobs like these by prohibiting new employee cafeterias.

Alternatives to a Complete Ban

As an alternative to an outright prohibition on new Employee Cafeterias, the Department believes that there are ways to incentivize businesses to not add employee cafeterias to new office space, and help encourage employees to patronize local restaurants. This approach could include relaxing certain Planning Code requirements on Office use in exchange for not adding an employee cafeteria. Conversely, when an Employee Cafeteria is added, additional requirements to encourage employees to venture out into the neighborhood could be required as conditions of approval. The following are some possible alternatives to a complete ban on cafeterias:

Incentives for foregoing an Employee Cafeteria

1. Allow Office uses at the First Story and below in zoning districts where Office uses require Conditional Use authorization

In most Downtown Commercial Districts (C-3), Office Uses at or below the ground floor require Conditional Use authorization. As an incentive to not add an Employee Cafeteria, new office space would be allowed as of right at the first story and below and could even be excluded from the FAR requirements in new buildings. To ensure an active street frontage any first story office uses should be required to be set back 10-25 feet in accordance with the Planning Code standards. Further, Landmark buildings and buildings in the C-3-R (Downtown Retail, aka Union Square) should not be allowed to avail themselves of this exemption.

2. Exempt from Gross Floor Area up to 15,000 square feet of first story space if that first story space is devoted to personal services, restaurants, and retail sales of goods intended to meet the convenience shopping and service needs of downtown workers and residents.

The definition of Gross Floor Area in Planning Code Section 102 currently exempts up to 5,000 square feet from the Gross Floor Area calculation in C-3 zoning districts if it is devoted to retail uses at the first story. Increasing the exempted amount could serve as an incentive for new buildings to not provide an employee cafeteria and allows that increased area to be used for office activities. This definition could also be amended to provide this exception to zoning districts within the Central SoMa plan area.

3. Allow Employee Cafeterias on the first story if they are open to the public

Since Employee Cafeterias are accessory uses to a principle Office Use, their allowed location is subject to the underlying zoning district's regulations on Office Uses. Allowing an Employee Cafeteria on the first story would allow an activity regulated as an Office Use where it typically is

<https://www.bizjournals.com/sanfrancisco/blog/2015/02/restaurants-san-francisco-bars-minimum-wage.html>

prohibited. The Planning Department, however, believes that the Employee Cafeteria should be open to the public. This public accessibility would help enliven the street and contribute to the quality of the public realm.

Requirements for Establishing an Employee Cafeteria

1. Require the provision of meal vouchers to employees for use at nearby restaurants.

To help offset the effect that subsidized Employee Cafeteria meals have upon local restaurants, office tenants would be required to provide their employees meal vouchers. These would be used to patronize nearby restaurants and help contribute to an enlivened pedestrian realm.

2. Require reporting to Office of Economic and Workforce Development (OEWD) as part of the DPH annual licensing for food facilities

DPH requires an annual licensing of all food facilities, including Employee Cafeterias. At the time of licensing it would be valuable to confirm the number of vouchers distributed to employees for use at local restaurants. Further, if an office has provided a cafeteria on the ground floor open to the public, it would also be valuable to know the extent to which the public is served by the employee cafeteria.

3. Amend the considerations under Planning Code Section 321 that the Planning Commission makes when considering approval of an Office development.

When the Planning Commission reviews office projects of 25,000 square feet or larger, it evaluates how well the project promotes the public welfare, convenience and necessity. When an office building project intends to allow Employee Cafeterias for future tenants, the Planning Commission should also consider how an Employee Cafeteria would promote the public welfare, convenience and necessity. Specific considerations should be made regarding existing restaurant concentration within a 300-foot radius of the office project; whether a future Employee Cafeteria will be at the first story and accessible to the public; and whether the Employee Cafeteria will provide workforce opportunities for local residents by coordinating with the OEWD to engage with the City's workforce system to provide employment opportunities and career trainings.

With this approach it is possible that new street enhancing retail spaces are created while also adding to the City's supply of office space. And when an Employee Cafeteria is established, adjacent restaurants may also see increased patronage through employer provided meal vouchers. In short, this approach can result in greater benefits to the City than a strict prohibition.

General Plan Compliance
Commerce and Industry Element

Objective 1: Manage economic growth and change to ensure enhancement of the total city living and working environment.

Policy 1.2: Assure that all commercial and industrial uses meet minimum, reasonable performance standards

The proposed Ordinance would help ensure that new employee cafeterias are regulated to lessen negative effects upon existing eating and drinking establishments.

Urban Design Element

Objective 4: Improvement of the neighborhood environment to increase personal safety, comfort, pride, and opportunity

Fundamental Principles for Neighborhood Environment: Principle #16 Continuity of interest and activities at ground level in commercial buildings adjacent to pedestrian ways creates rich street life and enhances pedestrian experiences.

The proposed Ordinance would help provide new patrons to ground level retail activity in office buildings. This will boost street life and enhance the pedestrian experience.

Downtown Area Plan

Objective 3: Improve Downtown San Francisco's position as the region's prime location for specialized retail trade.

Policy 3.5: Meet the convenience needs of daytime downtown workers

By limiting the number of new private eating facilities, the proposed Ordinance helps eating and drinking establishments open to all downtown workers thrive.

Transit Center District Plan

Objective 1.4 Ensure the District maintains areas that contain concentrations of ground-level public-serving retail and convenience uses for workers and visitors.

Objective 2.12 Ensure that development is pedestrian-oriented, fostering a vital and active street life.

The proposed Ordinance would limit the number of new private eating facilities and help ensure that ground-level eating and drinking establishments meet the demand for meals. This also bolsters the street life because many eating and drinking establishments will locate at ground-level.

Implementation

The Department has determined that this Ordinance will impact our current implementation procedures. It will require Planning Department Staff to coordinate with DPH Staff to determine if Building Permit Applications proposing tenant improvements that include a full-service kitchen with exhaust ventilation systems constitute an Employee Cafeteria as defined by the Health Code.

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. Assure that DPH has the proper procedures or Health Code amendments in place to differentiate between cafeterias with full-service kitchens requiring ventilation exhaust systems and those that do not.
2. From the various proposals outlined in this report, create a set of incentives to forego inclusion of an Employee Cafeteria in Office space and a set of additional requirements when including an Employee Cafeteria in Office space.

BASIS FOR RECOMMENDATION

The Department supports the Ordinance's intention to help maintain and enhance vibrant neighborhoods and pedestrian activity. The Department also supports the Ordinance's intention to induce patronage of neighborhood businesses; however, the Department finds that modifications should be made to better focus the proposed regulation's effects, and to provide flexibility to Office Uses regarding their decision on including an Employee Cafeteria. The modifications include the following:

Recommendation 1: Assure that DPH has the proper procedures or Health Code amendments in place to differentiate between cafeterias with full-service kitchens requiring ventilation exhaust systems and those that do not. There is a stark difference between employee cafeterias with full-service kitchens and those without. Full-service kitchens allow a cafeteria to resemble a restaurant and actively compete with the San Francisco's restaurants for patronage. Since the Ordinance seeks to control the proliferation of cafeterias that compete with restaurants, it is crucial that the implementing City agencies can focus on facilities with full-service kitchens requiring exhaust ventilation systems.

Recommendation 2: Create a set of incentives to forego inclusion of an Employee Cafeteria in Office space and a set of additional requirements when including an Employee Cafeteria in Office space. Rather than imposing a prohibition on Employee Cafeterias, the Department prefers creating a set of incentives for foregoing their inclusion and another set of additional requirements for their inclusion. The proposed alternatives listed above can help offset the negative impacts of adding Employee Cafeterias to office space by removing some of their competitive advantage of free meals through a voucher program. They can also help activate street frontages by allow employee cafeterias open to the general public on the ground floor, or they can disincentives the inclusion of cafeterias by providing incentives to office developers in the form of bonus gross floor area or additional office space.

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. 180777

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 31, 2018

File No. 180777

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

Dear Ms. Gibson:

On July 24, 2018, Supervisor Safai introduced the following proposed legislation:

File No. 180777

Ordinance amending the Planning Code to prohibit Employee Cafeterias, as defined in the Health Code, within Office space, except for existing Employee Cafeterias; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

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

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

Attachment

c: Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

Joy Navarrete

Digitally signed by Joy Navarrete
DN: cn=Joy Navarrete, o=Planning,
ou=Environmental Planning,
email=joy.navarrete@sfgov.org, c=US
Date: 2018.08.01 16:53:44 -07'00'

180777

From: Board of Supervisors, (BOS)
Sent: Tuesday, October 23, 2018 4:54 PM
To: Major, Erica (BOS)
Subject: FW: SF Chamber Letter re: Oppose File No. 180777
Attachments: 10.23.18_Oppose File No. 180777.pdf

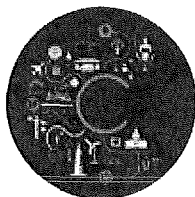
From: Mary Young <myoung@sfchamber.com>
Sent: Tuesday, October 23, 2018 2:31 PM
To: richhillissf@yahoo.com
Cc: Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>; Fewer, Sandra (BOS) <sandra.fewer@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Tang, Katy (BOS) <katy.tang@sfgov.org>; Brown, Vallie (BOS) <vallie.brown@sfgov.org>; Kim, Jane (BOS) <jane.kim@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Mayor London Breed (MYR) <mayorlondonbreed@sfgov.org>; Power, Andres (MYR) <andres.power@sfgov.org>; Cohen, Malia (BOS) <malia.cohen@sfgov.org>; Rahaim, John (CPC) <john.rahaim@sfgov.org>; Green, Andrea (CPC) <andrea.green@sfgov.org>
Subject: SF Chamber Letter re: Oppose File No. 180777

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear President Hoillis,

Please see attached letter from the San Francisco Chamber of Commerce opposing Board of Supervisors File No. 180777.

Thank you,



Mary Young
Manager, Public Policy
San Francisco Chamber of Commerce
235 Montgomery St., Ste. 760, San Francisco, CA 94104
(O) 415-352-8803 • (E) myoung@sfchamber.com





235 Montgomery St., Ste. 760, San Francisco, CA 94104
tel: 415.352.4520 • fax: 415.392.0485
sfchamber.com • twitter: @sf_chamber

October 23, 2018

President Rich Hoillis
San Francisco Planning Commission
1660 Mission Street. Ground Floor
San Francisco, CA 94103

Re: File No. 180777, Planning Code - Prohibiting Employee Cafeterias within Office Space

Dear President Hoillis,

The San Francisco Chamber of Commerce, representing the interests of thousands of local and global businesses, is writing to express concern about Board of Supervisors File No. 180777 which would prohibit new employee cafeterias within office space. While the Chamber constantly works to strengthen our local economy and support our small businesses, this ordinance reaches far beyond what is appropriate and would hurt the local economy it intends to support.

The majority of the Chamber's membership is comprised of small businesses, and our organization is deeply committed to promoting a city environment which helps these businesses succeed. We understand the challenges presented to small businesses and the author's desire to support ground floor restaurants and retail. However, though the intention behind this legislation is worthwhile, the ordinance unnecessarily targets some of the largest employers in San Francisco, puts many food-service sector jobs at risk, and discourages economic expansion - all while not addressing the real issues the proposal attempts to solve.

If this measure passes, hundreds in the food services industry and small business owners would lose their jobs and contracts with employers that maintain cafeterias. The cafeterias this legislation hopes to ban actually offer high-quality, high-wage jobs in the food-service sector, so the measure threatens the livelihood of dozens of small businesses and vendors that provide food and supplies to office cafeterias throughout the City.

While this measure does not apply to existing cafeterias, it *does* apply to companies currently in San Francisco that may have plans for growth. This hinders these companies' ability to move and places further burdens on doing business in San Francisco – an already challenging endeavor. This will limit economic development in our city, a critical miscalculation of this legislation.

The Chamber agrees that encouraging a healthy economy and small business growth is the right sentiment, but we believe strongly that this measure is the wrong approach. We look forward to working with the sponsor and the Commission to collaborate on alternative and creative solutions, but we do not support this measure and ask you to do the same.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Lazarus", with a long horizontal flourish extending to the right.

Jim Lazarus
SVP Public Policy
San Francisco Chamber of Commerce

cc: Clerk of the Board, to be distributed to all Supervisors; Andres Powers, Office of the Mayor of San Francisco; John Rahaim, San Francisco Planning Department

180777

From: Board of Supervisors, (BOS)
Sent: Monday, July 30, 2018 8:52 AM
To: BOS-Supervisors; Major, Erica (BOS)
Subject: FW: Please don't ban workplace cafeterias

From: Gabor Cselle [mailto:mail@gaborcselle.com]
Sent: Friday, July 27, 2018 1:21 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: Please don't ban workplace cafeterias

Hi there,

I live in District 1 in San Francisco at Stanyan and McAllister. I work in the technology industry.

I recently read in the media that there are plans to ban workplace cafeterias in San Francisco

Please don't ban them for these reasons:

1. **Health:** The food at my employer's cafeteria is so much more healthy than food available at local restaurants.
2. **Collaboration:** Conveniently and informally grabbing lunch with my coworkers at our workplace cafeteria fosters better teamwork and more innovation. Coordinating lunch plans is inconvenient and we'd just separately swarm out for food. Teamwork is essential and hindering it would decrease the speed San Francisco's innovation engine.
3. **Cost:** I work in the East Cut area, where lunch prices are relatively high. I'm sure my employer wouldn't offset the increase in cost with added pay, so this ban would take real money out of our family's budget. San Francisco is already hard to afford for families, and this would just add to that crisis.

Please don't ban workplace cafeterias.

Thank you,

Gabor Cselle

180777

From: Board of Supervisors, (BOS)
Sent: Monday, July 30, 2018 8:26 AM
To: BOS-Supervisors; Major, Erica (BOS)
Subject: FW: Public Comment: File 180777

From: Thomas Busse [mailto:tjbussef@gmail.com]
Sent: Saturday, July 28, 2018 11:12 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: Public Comment: File 180777

This legislation would be illegal as it is pre-empted at the Federal level by ERISA and would invite further litigation under Title VI of the Civil Rights Act of 1964.

Section 125 of ERISA preempts state and local governance of employer-provided Cafeteria Plans. When enacted in 1972, the Federal Government found such meal plans to be a Federal Concern, as employers routinely discriminated in their provision of such meal plans both on the basis of race and compensation. Through its power to tax, the Federal Government imposed strict nondiscrimination testing requirements on employers, who are required to make annual filings with the US Department of Labor in regard to meals provided to their employees and to prepare EBC documents to be given to their employees regarding their rights.

ERISA is specifically a preemption law: it prohibits state and local governments from regulating employee benefits - this includes meals provided as a form of compensation to employees. This proposal attempts to ban a form of employee compensation. This ban would disproportionately impact lower-paid employees who skew toward racial minorities. The Federal Government took an interest in making sure all employees - both low and highly compensated - had equal access to employer-provided cafeteria plans. The SF Board of Supervisors can no less ban Cafeteria Plans than it can ban 401k's. Both are forms of compensated regulated solely at the Federal Level.

Do not waste the City Attorney's time in costly and difficult ERISA complex litigation. He has whistleblowers to fire and kickback claims to robocut.

Thomas J. Busse

180777

From: Board of Supervisors, (BOS)
Sent: Monday, July 30, 2018 1:57 PM
To: BOS-Supervisors; Major, Erica (BOS)
Subject: FW: Opposed to cafeteria ban

From: jones-allen [mailto:jones-allen@att.net]
Sent: Wednesday, July 25, 2018 7:42 AM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; metro@sfchronicle.com; newstips <newstips@sfxaminer.com>
Subject: Opposed to cafeteria ban

Attention: All Members of the San Francisco Board of Supervisors,

This proposed legislation is also further proof that SF lawmakers lack creativity. Forcing people to mingle at lunchtime out of the office can not be legislated but that will not prevent a stiff necked board from forcing peers to go along with it.

The good news is Mayor London Breed is not bumb enough to sign something so silly and usinneses will get creative and prove just how asinine this proposed ban is, if the mayor turns out to be just as bumb as her former colleagues on the board.

The bad news if passed, will threatens businesses looking to be a part of the "SOMA plan."

If someone was to ask me to describe the San Francisco Board of Supervisors, I would respond: it is one big barf bag; full of their own hypocrisy.

To beg a business like Twitter to set up shop here, offer it tax breaks and then use Twitter as an example to create an asinine piece of legislation to make a law banning future businesses from following them in providing free meals for employees is exhibit A.

Allen Jones
jones-allen@att.net
(415) 756-7733

The only thing I love more than justice is the freedom to fight for it.
--Allen Jones--

BOARD of SUPERVISORS



City Hall
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Fax No. 554-5163
TDD/TTY No. 554-5227

July 31, 2018

File No. 180777

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

Dear Ms. Gibson:

On July 24, 2018, Supervisor Safai introduced the following proposed legislation:

File No. 180777

Ordinance amending the Planning Code to prohibit Employee Cafeterias, as defined in the Health Code, within Office space, except for existing Employee Cafeterias; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

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
Laura Lynch, Environmental Planning

BOARD of SUPERVISORS



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Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

July 31, 2018

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

Dear Commissioners:

On July 24, 2018, Supervisor Safai introduced the following legislation:

File No. 180777

Ordinance amending the Planning Code to prohibit Employee Cafeterias, as defined in the Health Code, within Office space, except for existing Employee Cafeterias; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

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: John Rahaim, Director of Planning
Aaron Starr, Acting Manager of Legislative Affairs
Scott Sanchez, Zoning Administrator
Lisa Gibson, Environmental Review Officer
AnMarie Rodgers, Director of Citywide Planning
Laura Lynch, Environmental Planning
Joy Navarrete, Environmental Planning

Introduction Form

By a Member of the Board of Supervisors or Mayor

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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):

Supervisors Ahsha Safai, Aaron Peskin


Subject:

Planning Code - Prohibiting Employee Cafeterias within Office Space

The text is listed:

Ordinance amending the Planning Code to prohibit Employee Cafeterias, as defined in the Health Code, within Office space, except for existing Employee Cafeterias; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Signature of Sponsoring Supervisor:



For Clerk's Use Only