

File No. 190248 Committee Item No. 2
 Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS
 AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date July 8, 2019

Board of Supervisors Meeting _____ Date _____
 Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Referral SBC 031219 |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | CEQA Determination 042819 |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | SBC Response 050819 |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | PLN Transmittal 052119 |
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Completed by: Erica Major Date July 3, 2019
 Completed by: Erica Major Date _____

1 [Planning Code - Uses in the Upper Market NCT and NCT-3 Zoning Districts]

2
3 **Ordinance amending the Planning Code to revise the NCT-3 (Moderate-Scale**
4 **Neighborhood Commercial Transit) District controls to allow Arts Activities,**
5 **Philanthropic Administrative Services, and Public Facilities as a principal use on all**
6 **stories, revise the Upper Market Neighborhood Commercial Transit (NCT) District**
7 **controls to allow Arts Activities and Institutional Uses as a principal use on the first**
8 **and second stories and as a conditional use on the third story and above and to allow**
9 **General Entertainment as a principal use on the first and second stories, modify the**
10 **requirements for liquor stores and bars in the NCT-3 and Upper Market Street NCT**
11 **Districts, add additional conditional use criteria for liquor stores and require liquor**
12 **stores to comply with standard location and operating conditions, and add additional**
13 **uses to the definition of Open Air Sales; affirming the Planning Department's**
14 **determination under the California Environmental Quality Act; making findings of**
15 **consistency with the General Plan, and the eight priority policies of Planning Code,**
16 **Section 101.1; and adopting findings of public necessity, convenience, and general**
17 **welfare under Planning Code, Section 302.**

18 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
19 **Additions to Codes** are in *single-underline italics Times New Roman font*.
20 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
21 **Board amendment additions** are in double-underlined Arial font.
22 **Board amendment deletions** are in ~~strikethrough Arial font~~.
23 **Asterisks (* * * *)** indicate the omission of unchanged Code
24 subsections or parts of tables.

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

Section 1. Findings.

1 (a) The Planning Department has determined that the actions contemplated in this
2 ordinance comply with the California Environmental Quality Act (California Public Resources
3 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
4 Supervisors in File No. 190248 and is incorporated herein by reference. The Board affirms
5 this determination.

6 (b) On May 9, 2019, the Planning Commission, in Resolution No. 20450, adopted
7 findings that the actions contemplated in this ordinance are consistent, on balance, with the
8 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board
9 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
10 Board of Supervisors in File No. 190248, and is incorporated herein by reference.

11 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that
12 these Planning Code amendments will serve the public necessity, convenience, and general
13 welfare for the reasons set forth in Planning Commission Resolution No. 20450.

14
15 Section 2. The Planning Code is hereby amended by revising Sections 102, 202.2,
16 303, 752, and 764, to read as follows:

17 **SEC. 102. DEFINITIONS.**

18 * * * *

19 **Liquor Store.** A Retail Sales and Service Use that sells beer, wine, or distilled spirits to a
20 customer in an open or closed container for consumption off the premises and that needs a
21 State of California Alcoholic Beverage Control Board License type 20 (off-sale beer and wine)
22 or type 21 (off-sale general). This classification shall not include retail uses that:

23 * * * *

24 (c) For purposes of Planning Code Sections 249.5, 781.8, 781.9, 782, and 784, the
25 retail uses explicitly exempted from this definition as set forth above shall only apply to

1 General Grocery and Specialty Grocery stores that exceed 5,000 square feet in size and shall
2 not:

3 * * * *

4 (3) sell single servings of beer in container sizes 24 ounces or smaller.

5 Liquor Store uses are subject to the operating conditions of Section 202.2(a)(6). Where conditionally
6 permitted, the Conditional Use authorization shall also satisfy the conditions of Section 303(z).

7 * * * *

8 **Open Air Sales.** A Commercial Use Characteristic generally categorized as a Retail
9 Sales and Service Use that involves open air sale of new and/or used merchandise, except
10 vehicles, but including agricultural products, plants and gardening supplies, building materials,
11 crafts, and/or art work.

12 * * * *

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

14 (a) **Retail Sales and Service Uses.** The Retail Sales and Service Uses listed
15 below shall be subject to the corresponding conditions:

16 * * * *

17 (6) Liquor Stores. Liquor Stores, as defined in Section 102, shall comply with the
18 following requirements:

19 (A) The business operator shall maintain the main entrance to the building
20 and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the
21 Department of Public Works Streets and Sidewalk Maintenance Standards, maintained by the
22 Department's Bureau of Street Use and Mapping. In addition, the business operator shall be
23 responsible for daily monitoring of the sidewalk within a one-block radius of the subject business to
24 maintain the sidewalk free of litter associated with the business during business hours in accordance
25 with Article 1, Section 34 of the Police Code.

1
2 (B) The business operator shall provide outside lighting sufficient to
3 illuminate street and sidewalk areas and adjacent parking as appropriate to maintain security, without
4 disturbing area residents.

5 (C) The store frontage shall comply with the visibility requirements of Section
6 145.1(c)(6) and the signage requirements of Article 6 of this Code. In addition, all advertising and
7 signage shall be placed and maintained in a manner that ensures that law enforcement personnel have
8 a clear and unobstructed view of the interior of the premises, including the area in which the cash
9 registers are maintained, from the exterior public sidewalk or entrance to the premises.

10 * * * *

11 **SEC. 303. CONDITIONAL USES.**

12 * * * *

13 (z) Liquor Stores. With regard to the Conditional Use application for a Liquor Store use,
14 the Planning Commission shall consider, in addition to the criteria set forth in subsection (c) above:

15 (A) the existing concentration of Liquor Store uses within 300 feet of the proposed
16 location; and

17 (B) the availability of General Grocery or Specialty Grocery stores in the area
18 selling alcoholic beverages as well as a range of foods.

19 **SEC. 752. NCT-3 – MODERATE-SCALE NEIGHBORHOOD COMMERCIAL TRANSIT**
20 **DISTRICT.**

21 (a) NCT-3 Districts are walkable and transit-oriented moderate- to high-density
22 mixed-use neighborhoods of varying scale concentrated near transit services. The NCT-3
23 Districts are mixed use districts that support neighborhood-serving eCommercial #Uses on
24 lower floors and housing above. These districts are well-served by public transit and aim to
25 maximize residential and commercial opportunities on or near major transit services. The

1 district's form can be either linear along transit-priority corridors, concentric around transit
2 stations, or broader areas where transit services criss-cross the neighborhood. Housing
3 density is limited not by lot area, but by the regulations on the built envelope of buildings,
4 including height, bulk, setbacks, and lot coverage, and standards for Residential Uses,
5 including open space and exposure, and urban design guidelines. Residential parking is not
6 required and generally limited. Commercial establishments are discouraged or prohibited from
7 building accessory off-street parking in order to preserve the pedestrian-oriented character of
8 the district and prevent attracting auto traffic. There are prohibitions on access (i.e. driveways,
9 garage entries) to off-street parking and loading on critical stretches of NC and transit streets
10 to preserve and enhance the pedestrian-oriented character and transit function.

11 (b) NCT-3 Districts are intended in most cases to offer a wide variety of comparison
12 and specialty goods and services to a population greater than the immediate neighborhood,
13 additionally providing convenience goods and services to the surrounding neighborhoods.
14 NCT-3 Districts include some of the longest linear commercial streets in the City, some of
15 which have continuous retail development for many blocks. Large-scale lots and buildings and
16 wide streets distinguish the districts from smaller-scaled commercial streets, although the
17 districts may include small as well as moderately scaled lots. Buildings may range in height,
18 with height limits varying from four to eight stories.

19 (c) NCT-3 building standards permit moderately large eCommercial #Uses and
20 buildings. Rear yards are protected at residential levels.

21 (d) A diversified commercial environment is encouraged for the NCT-3 District, and
22 a wide variety of uses are permitted with special emphasis on neighborhood-serving
23 businesses. Eating and aD~~r~~inking, eE~~n~~tertainment, and financial service uses generally are
24 permitted with certain limitations at the first and second stories. Auto-oriented uses are
25 somewhat restricted. Other retail businesses, personal services and offices are permitted at

1 all stories of new buildings. Limited storage and administrative service activities are permitted
 2 with some restrictions.

3 (e) Housing development in new buildings is encouraged above the second story.
 4 Existing ~~R~~Residential ~~u~~Units are protected by limitations on demolitions and upper-story
 5 conversions. Accessory Dwelling Units are permitted within the district pursuant to
 6 subsections 207(c)(4) and 207(c)(6) of this Code.

7 **Table 752. MODERATE-SCALE NEIGHBORHOOD COMMERCIAL TRANSIT**
 8 **DISTRICT NCT-3**
 9 **ZONING CONTROL TABLE**

		NCT-3		
Zoning Category	§ References	Controls		

NON-RESIDENTIAL STANDARDS AND USES				

		Controls by Story		
		1st	2nd	3rd+

Entertainment, Arts and Recreation Use Category				
Entertainment, Arts and Recreation Uses*	§ 102	NP	NP	NP
*****	*****	*****	*****	*****
Arts Activities	§ 102	<i>P NP(5)</i>	<i>P NP(6)</i>	<i>P NP(6)</i>
*****	*****	*****	*****	*****

Institutional Use Category				
Institutional Uses*	§ 102	P	P	P
Hospital	§ 102	C	C	C
Medical Cannabis Dispensary**	§§ 102, 202.2(e)	DR	DR	NP
<i>Philanthropic Admin. Services</i>	<i>§ 102</i>	<i>NP</i>	<i>NP</i>	<i>NP</i>
<i>Public Facilities</i>	<i>§ 102</i>	<i>C</i>	<i>C</i>	<i>C</i>
* * * *				
Sales and Service Use Category				
Retail Sales and Service Uses*	§§ 102, 202.2(a)	P	P	P
Liquor Store	§ 102	<i>C NP</i>	NP	NP
* * * *	* * * *	* * * *	* * * *	* * * *

* Not listed below

* * * *

~~(5) P in the geographic area described as Flexible Retail Zones in Section 202.9.~~

~~(6) C in the geographic area described as Flexible Retail Zones in Section 202.9.~~

SEC. 764. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.

The Upper Market Street Neighborhood Commercial Transit District is located on Market Street from Church to Noe Streets, and on side streets off Market. Upper Market Street is a multi-purpose commercial district that provides *limited convenience goods and services* to adjacent neighborhoods, but also serves as a shopping street for a broader trade area. ~~A large number of offices are located on Market Street within easy transit access to downtown.~~ The

width of Market Street and its use as a major arterial diminish the perception of the Upper Market Street Transit District as a single commercial district. The street appears as a collection of dispersed centers of commercial activity, concentrated at the intersections of Market Street with secondary streets.

* * * *

The Upper Market Street Transit District controls are designed to promote moderate-scale development which contributes to the definition of Market Street's design and character. They are also intended to preserve the existing mix of eCommercial uUses and maintain the livability of the district and its surrounding residential areas. Large-lot and use development is reviewed for consistency with existing development patterns. Rear yards are protected at all levels. To promote mixed-use buildings, most eCommercial uUses are permitted with some limitations above the second story. In order to maintain continuous retail frontage and preserve a balanced mix of eCommercial uUses, ground-story neighborhood-serving uses are encouraged, and eEating and dDrinking, eEntertainment, and financial service uses are limited. Ground floor-commercial space is required along Market and Church Streets. Most automobile Automotive Service and dDrive-uUp Facility uses are prohibited or conditional.

Housing development in new buildings is encouraged above the sSecond sStory. Existing upper-story rResidential uUnits are protected by limitations on demolitions and upper-story conversions. Accessory Dwelling Units are permitted within the district pursuant to subsection s 207(c)(4) and 207(c)(6) of this Code.

Table 764. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT ZONING CONTROL TABLE

		Upper Market Street NCT
Zoning Category	§ References	Controls

NON-RESIDENTIAL STANDARDS AND USES				

		Controls by Story		
		1st	2nd	3rd+
Entertainment, Arts and Recreation Use Category				
Entertainment, Arts and Recreation Uses*	§ 102	NP	NP	NP
<i>Amusement Game Arcade</i>	§ 102	C	P	NP
<i>Arts Activities</i>	§ 102	P	P	C
*****	*****	*****	*****	*****
Entertainment, General	§ 102	<u>P</u> C(8)	<u>P</u> NP	NP
*****	*****	*****	*****	*****
Institutional Use Category				
Institutional Uses	§ 102	P	<u>P</u> C	C
*****	*****	*****	*****	*****
<i>Philanthropic Admin. Services</i>	§ 102	NP	NP	NP
<i>Public Facilities</i>	§ 102	C	C	C
*****	*****	*****	*****	*****
Sales and Service Use Category				
Retail Sales and Service Uses*	§§ 102, 202.2(a)	P	P	NP
*****	*****	*****	*****	*****
Bar	§§ 102, 202.2(a)	C(7)	<u>C</u> NP(7)	NP
*****	*****	*****	*****	
Liquor Store	§ 102	C(2)	NP	NP
*****	*****	*****	*****	*****
Restaurant	§§ 102, 202.2(a)	<u>P</u> C(4)	<u>C</u> (4) NP	NP

1	Restaurant, Limited	§§ 102, 202.2(a)	P	<u>C</u> NP	NP
2	****	****	****	****	****
3	Services, Health	§ 102	<u>C</u> P	P	C
4	****				

5 Not listed below

6 ****

7 (2) ~~[Note deleted.] C not required if selling only beer and wine and not distilled spirits.~~

8 ****

9 (4) UPPER MARKET STREET LIQUOR LICENSES FOR RESTAURANTS

10 **Boundaries:** Applicable to the Upper Market Street Neighborhood Commercial Transit District.

11 **Controls:** A Restaurant Use may only add a Bar use (ABC license types 47, 49 or 75) as a eConditional uUse on the ground level if, in addition to the criteria set forth in Section 303, the Planning Commission finds that the Restaurant is operating as a Bona Fide Eating Place. Should a Restaurant fail to operate as a Bona Fide Eating Place for any length of time, the eConditional uUse authorization for the Bar use shall be subject to immediate revocation.

12 ****

13 ~~(8) Within the Upper Market Neighborhood Commercial Transit District, up to four mechanical amusement devices are considered an accessory use and up to ten mechanical amusement devices will be considered an Amusement Game Arcade use.~~

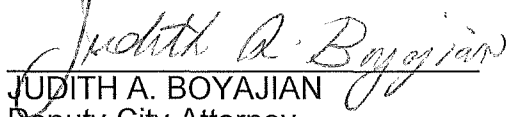
17 Section 3. Effective Date. This ordinance shall become effective 30 days after
 18 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
 19 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
 20 of Supervisors overrides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

22 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
 23 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
 24

1 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
2 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
3 additions, and Board amendment deletions in accordance with the "Note" that appears under
4 the official title of the ordinance.

5
6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8 By:


9 JUDITH A. BOYAJIAN
Deputy City Attorney

10 n:\legana\as2018\1900283\01342812.docx

LEGISLATIVE DIGEST

[Planning Code - Uses in the Upper Market NCT and NCT-3 Zoning Districts]

Ordinance amending the Planning Code to revise the NCT-3 (Moderate-Scale Neighborhood Commercial Transit) District controls to allow Arts Activities, Philanthropic Administrative Services, and Public Facilities as a principal use on all stories, revise the Upper Market Neighborhood Commercial Transit (NCT) District controls to allow Arts Activities and Institutional Uses as a principal use on the first and second stories and as a conditional use on the third story and above and to allow General Entertainment as a principal use on the first and second stories, modify the requirements for liquor stores and bars in the NCT-3 and Upper Market Street NCT Districts, add additional conditional use criteria for liquor stores and require liquor stores to comply with standard location and operating conditions, and add additional uses to the definition of Open Air Sales; 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 general welfare under Planning Code, Section 302.

Existing Law

- Planning Code Section 102 defines terms used throughout the Code.
- Section 202.2 establishes location and operating conditions for specified uses.
- Section 303 establishes a procedure for considering requests for a Conditional Use authorization and requires the Planning Commission to make specific findings for certain uses.
- Section 752 establishes the NCT-3 (Moderate-Scale Neighborhood Transit District) and contains a Zoning Control Table for specified standards and uses.
- Section 764 establishes the Upper Market Street Neighborhood Commercial Transit District and contains a Zoning Control Table for specified standards and uses.

Amendments to Current Law

- Section 102 is revised to add a requirement that Liquor Store uses are subject to the operating conditions of Section 202.2(a)(6) and the Conditional Use criteria of Section 303(y). It is also revised to add plants and gardening supplies and building materials to the definition of Open Air Sales.
- Section 202.2 is revised to add operating conditions for Liquor Stores.
- Section 303 is revised to add specific Conditional Use criteria for Liquor Stores.
- The NCT-3 Zoning Control Table is revised to allow Arts Activities, Philanthropic Administrative Services, and Public Facilities as Principal Uses on all Stories and a Liquor Store as a Conditional Use on the First Story.

- The Upper Market Street Neighborhood Commercial Transit District Zoning Control Table is revised to allow Arts Activities, Philanthropic Administrative Services, and Public Facilities as a Principal Use on the First and Second Stories and a Conditional Use on the Third Story and above and to not require a Conditional Use authorization for a Liquor Store on the First Story if it only sells beer and wine.

Background Information

Both the City and private sources report increases in commercial storefront vacancies in the Upper Market/Castro District between 2015 and 2017. The City's Office of Economic and Workforce Development (OEWD) reports an increase from 7.2 to 10.2% and the Upper Market/Castro Community Benefit District and neighborhood blog Hoodline report an increase from 8.5 to 12.9% during that period. Most of the reported vacancies by Hoodline for 2017 were on Market Street between Dolores and Castro Streets.

In a Policy Analysis Report issued on March 5, 2019 by the Board of Supervisors Budget and Legislative Analyst, it is reported that Planning Department records show Conditional Use authorization – the most common type of discretionary approval issued in the Upper Market/Castro commercial district between 2015 and 2017 – took an average of 332 days, or nearly one year, to be approved. When combined with obtaining a building permit and approval for construction work performed, the entire process can take over one and a half years for projects requiring both approvals. The associated commercial storefronts are often vacant during this application review and construction time.

The Upper Market/Castro commercial district is subject to more restrictive Conditional Use authorization requirements for commercial development projects than two other comparable commercial areas: Valencia Street and Hayes Valley. Additionally, as the Budget and Legislative Analyst's Report states, it takes 56 days longer for a Conditional Use approval in the Upper Market/Castro district than it does in the Valencia Street and Hayes Valley districts and businesses in the Valencia Street and Hayes Valley districts can open larger spaces without a Conditional Use authorization.

The Budget and Legislative Analyst's Report suggested that the Board of Supervisors propose legislation to reduce the number of projects that require Conditional Use authorizations in the Upper Market/Castro District through Planning Code amendments to make the requirements more like those in other similar commercial corridors such as Hayes Valley and Valencia Street.

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SAN FRANCISCO PLANNING DEPARTMENT

May 21, 2019

Ms. Angela Calvillo, Clerk
Honorable Supervisor Mandelman
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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Planning
Information:
415.558.6377

**Re: Transmittal of Planning Department Case Number 2019-003581PCA:
Uses in the Upper Market NCT & NCT-3 Zoning Districts
Board File No. 190248
Planning Commission Recommendation: *Approval with Modification***

Dear Ms. Calvillo and Supervisor Mandelman,

On May 9, 2019, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Mandelman that would amend the Planning Code to revise the NCT-3 and Upper Market Street NCTs, add additional conditional use criteria for liquor stores and require liquor stores to comply with standard location and operating conditions, and add additional uses to the definition of Open Air Sales. At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications were as follows:

Liquor Stores

1. Amend the proposed Location and Operating Condition on sidewalk cleanliness to align with that of the North of Market Residential Special Use District.
2. Explore Creating uniform Liquor Store Location and Operating Conditions for Liquor Stores citywide.
3. Add quantitative measures for the proposed concentration analyses in the new Conditional Use findings for Liquor Stores requiring Conditional Use authorization

Upper Market Street NCT

4. Principally permit Arts Activities on the 3rd Story and above.
5. Maintain Health Services as a principally permitted use on the 1st Story.
6. Remove Note 7 for Bar uses on the 2nd Story.

NCT-3

7. Exempt Liquor Stores operating only with a Type 20 ABC License (Beer and Wine sale only) from Conditional Use authorization at the 1st Story.

Upper Market Street NCT and NCT-3

8. Amend Planning Code Section 145.4 to consider Art Activities and Liquor Stores on the 1st Story as Active Uses

Citywide

9. Eliminate the Philanthropic Administrative Services use type from the Planning Code
10. Include Health Services uses in the list of uses in Planning Code Section 303.1(c) that are subject to Formula Retail controls.

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

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

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

Sincerely,



Aaron D. Starr
Manager of Legislative Affairs

cc:

Judith A. Boyajian, Deputy City Attorney
Tom Temprano, Aide to Supervisor Mandelman
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. 20450 HEARING DATE MAY 9, 2019

Project Name: Uses in the Upper Market NCT & NCT-3 Zoning Districts
Case Number: 2019-003581PCA [Board File No. 190248]
Staff Contact: Diego Sanchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

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RESOLUTION APPROVING A PROPOSED ORDINANCE WITH MODIFICATIONS THAT WOULD REVISE THE NCT-3 (MODERATE-SCALE NIEGHBORHOOD COMMERCIAL TRANSIT) DISTRICT CONTROLS TO ALLOW ARTS ACTIVITIES, PHILANTHROPIC ADMINISTRATIVE SERVICES, AND PUBLIC FACILITIES AS A PRINCIPAL USE ON ALL STORIES, REVISE THE UPPER MARKET NIEGHBORHOOD COMMERCIAL TRANSIT (NCT) DISTRICT CONTROLS TO ALLOW ARTS ACTIVITIES AND INSTITUTIONAL USES AS A PRINCIPAL USE ON THE FIRST AND SECOND STORIES AND AS A CONDITIONAL USE ON THE THIRD STORY AND ABOVE AND TO ALLOW GENERAL ENTERTAINMENT AS A PRINCIPAL USE ON THE FIRST AND SECOND STORIES, MODIFY THE REQUIREMENTS FOR LIQUOR STORES AND BARS IN THE NCT-3 AND UPPER MARKET STREET NCT DISTRICTS, ADD ADDITIONAL CONDITIONAL USE CRITERIA FOR LIQUOR STORES AND REQUIRE LIQUOR STORES TO COMPLY WITH STANDARD LOCATION AND OPERATING CONDITIONS, AND ADD ADDITIONAL USES TO THE DEFINITION OF OPEN AIR SALES; 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 March 12, 2019 Supervisor Mandelman introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 190248, which would revise the upper market neighborhood commercial transit (nct) district controls to allow arts activities and institutional uses as a principal use on the first and second stories and as a conditional use on the third story and above and to allow general entertainment as a principal use on the first and second stories, modify the requirements for liquor stores and bars in the nct-3 and upper market street nct districts;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on May 9, 2019; 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

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

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

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

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

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance. The modifications include:

Liquor Stores

1. Amend the proposed Location and Operating Condition on sidewalk cleanliness to align with that of the North of Market Residential Special Use District.
2. Explore Creating uniform Liquor Store Location and Operating Conditions for Liquor Stores citywide.
3. Add quantitative measures for the proposed concentration analyses in the new Conditional Use findings for Liquor Stores requiring Conditional Use authorization.

Upper Market Street NCT

4. Principally permit Arts Activities on the 3rd Story and above.
5. Maintain Health Services as a principally permitted use on the 1st Story.
6. Remove Note 7 for Bar uses on the 2nd Story.

NCT-3

7. Exempt Liquor Stores operating only with a Type 20 ABC License (Beer and Wine sale only) from Conditional Use authorization at the 1st Story.

Upper Market Street NCT and NCT-3

8. Amend Planning Code Section 145.4 to consider Art Activities and Liquor Stores on the 1st Story as Active Uses.

Citywide

9. Eliminate the Philanthropic Administrative Services use type from the Planning Code.
10. Include Health Services uses in the list of uses in Planning Code Section 303.1(c) that are subject to Formula Retail controls.

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. Facilitating the entry of new uses into the Upper Market Street NCT and the NCT-3 while generally lessening entitlement requirements in the process can help increase the vibrancy of these commercial corridors.
2. Adding scrutiny to the operating practices and concentration of Liquor Stores can help compatibility with adjacent neighborhoods and balance the mix of available uses in the City's commercial corridors.
3. Taken together, the proposed amendments to the Planning Code will help increase the allure of the Upper Market Street NCT and the NCT-3 corridors for visitors, tourists, and residents.
4. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

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

The proposed Ordinance will help promote the economic vitality of the Upper Market NCT and the NCT-3 zoning districts by increasing the number of allowed uses at the street level of those neighborhood commercial districts.

ARTS ELEMENT

OBJECTIVE I-1

RECOGNIZE THE ARTS AS NECESSARY TO THE QUALITY OF LIFE FOR ALL SEGMENTS OF SAN FRANCISCO.

Policy I-1.4

Provide access to the creative process and cultural resources for all neighborhoods, cultural communities, and segments of the city and its populations.

By easing the restrictions on Arts Activities in the Upper Market NCT and the NCT-3 zoning districts, the proposed Ordinance provide access to the creative process and the cultural resources for those neighborhoods.

OBJECTIVE I-2

INCREASE THE CONTRIBUTION OF THE ARTS TO THE ECONOMY OF SAN FRANCISCO.

Policy I-2.2

Continue to support and increase the promotion of the arts and arts activities throughout the City for the benefit of visitors, tourists, and residents.

The proposed Ordinance supports and promotes the arts and arts activities for visitors, tourists, and residents by easing the restrictions on Arts Activities in the Upper Market NCT and the NCT-3 zoning districts

OBJECTIVE VI-1

SUPPORT THE CONTINUED DEVELOPMENT AND PRESERVATION OF ARTISTS' AND ARTS ORGANIZATIONS' SPACES

Policy VI-1.7

Encourage the use of available and existing facilities under local government jurisdiction by artists and arts organizations

Policy VI-1.8

Include arts spaces in new public construction when appropriate.

Policy VI-1.9

Create opportunities for private developers to include arts spaces in private developments city-wide.

By allowing Arts Activities in the Upper Market NCT and the NCT-3 zoning districts the proposed Ordinance encourages the use of existing facilities for artists and arts organizations, provides the possibility that arts spaces are included in new public constructions, and creates opportunities for private developers to include arts spaces in their projects.

COMMUNITY FACILITIES ELEMENT

OBJECTIVE 5

DEVELOPMENT OF A SYSTEM OF FIREHOUSES WHICH WILL MEET THE OPERATING REQUIREMENTS OF THE FIRE DEPARTMENT IN PROVIDING FIRE PROTECTION SERVICES AND WHICH WILL BE IN HARMONY WITH RELATED PUBLIC SERVICE FACILITIES AND

WITH ALL OTHER FEATURES AND FACILITIES OF LAND DEVELOPMENT AND TRANSPORTATION PROVIDED FOR OTHER SECTIONS OF THE GENERAL PLAN.

OBJECTIVE 6

DEVELOPMENT OF A PUBLIC LIBRARY SYSTEM IN SAN FRANCISCO WHICH WILL MAKE ADEQUATE AND EFFICIENT LIBRARY SERVICE FREELY AVAILABLE TO EVERYONE WITHIN THE CITY, AND WHICH WILL BE IN HARMONY WITH RELATED PUBLIC SERVICE FACILITIES AND WITH ALL OTHER FEATURES AND FACILITIES OF LAND DEVELOPMENT AND TRANSPORTATION PROVIDED FOR IN OTHER SECTIONS OF THE GENERAL PLAN.

The proposed Ordinance facilitates the development of the firehouse and public library system by easing the restrictions on public facilities within the Upper Market NCT and the NCT-3 zoning districts.

MARKET AND OCTAVIA AREA PLAN

OBJECTIVE 1.1

CREATE A LAND USE PLAN THAT EMBRACES THE MARKET AND OCTAVIA NEIGHBORHOOD'S POTENTIAL AS A MIXED-USE URBAN NEIGHBORHOOD.

Policy 1.1.3

Encourage housing and retail infill to support the vitality of the Hayes-Gough, Upper Market, and Valencia Neighborhood Commercial Districts.

Policy 1.1.8

Reinforce continuous retail activities on Market, Church, and Hayes Streets, as well as on Van Ness Avenue.

The proposed Ordinance will help assure continuous retail activities on Market Street exist and are vibrant as the Ordinance proposes to expand the number of allowed uses and lessen their entitlement requirements at the street level.

5. **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 will have a beneficial effect on neighborhood serving retail uses and may improve opportunities for resident employment in and ownership of neighborhood-serving retail as the Ordinance proposes to increase the number of allowed uses in the Upper Market Street NCT and the NCT-3 zoning districts.

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 will have a beneficial effect on neighborhood character as the Ordinance proposes to lessen entitlement requirements for uses that can contribute to neighborhood character.

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

The proposed Ordinance will not have an effect on the City's supply of affordable housing as it concerns itself with non-Residential uses.

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

The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking as the Ordinance concerns itself with lessening entitlement requirements for certain uses as well as providing increase scrutiny to the operation of Liquor Stores.

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 will 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 concerns itself with retail, arts, entertainment and institutional uses.

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

The proposed Ordinance will not have an adverse effect on City's preparedness against injury and loss of life in an earthquake because it deals with the entitlement requirements and operating practices of retail arts, entertainment and institutional uses.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance will not have an adverse effect on the City's Landmarks and historic buildings as the Ordinance proposes to amend the entitlement requirements and operating conditions for retail arts, entertainment and institutional uses.

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

The proposed Ordinance will not have an adverse effect on the City's parks and open space and their access to sunlight and vistas as the Ordinance proposes to amend land use regulations on retail arts, entertainment and institutional uses.

6. **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.

Resolution No. 20450
May 9, 2019

CASE NO. 2019-003581PCA
Uses in the Upper Market NCT & NCT-3 Zoning Districts

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

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on May 9, 2019.



Jonas P. Ionin
Commission Secretary

AYES: Fung, Hillis, Koppel, Melgar, Moore

NOES: None

ABSENT: Johnson, Richards

ADOPTED: May 9, 2019



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment HEARING DATE: MAY 9, 2019 90-DAY DEADLINE: JUNE 10, 2019

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Project Name: Uses in the Upper Market NCT & NCT-3 Zoning Districts
Case Number: 2019-003581PCA [Board File No. 190248]
Initiated by: Supervisor Mandelman / Introduced March 12, 2019
Staff Contact: Diego Sanchez, 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**

PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to revise the NCT-3 (Moderate-Scale Neighborhood Commercial Transit) District controls to allow Arts Activities, Philanthropic Administrative Services, and Public Facilities as a principal use on all stories, revise the Upper Market Neighborhood Commercial Transit (NCT) District controls to allow Arts Activities and Institutional Uses as a principal use on the first and second stories and as a conditional use on the third story and above and to allow General Entertainment as a principal use on the first and second stories, modify the requirements for liquor stores and bars in the NCT-3 and Upper Market Street NCT Districts, add additional conditional use criteria for liquor stores and require liquor stores to comply with standard location and operating conditions, and add additional uses to the definition of Open Air Sales.

The Way It Is Now

Liquor Stores are not subject to any specific location or operating conditions or, when requiring Conditional Use authorization, any specific Conditional Use authorization findings

The Way It Would Be

Liquor Stores would be subject to new locational and operating conditions, including maintaining the building entrance and sidewalks in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards; daily monitoring of the sidewalks within a one-block radius of the subject business to maintain them free of litter associated with the business; maintaining lighting to illuminate adjacent street, sidewalk, and parking areas for security purposes; compliance with the storefront transparency and fenestration requirements in Planning Code Section 145.1; and maintain a clear line of sight from the public right of way to the cash registers. In addition, when a Liquor Store requires Conditional Use authorization, the Planning Commission shall consider the existing

concentration of Liquor Stores within 300 feet of the proposed location and the availability of General Grocery or Specialty Grocery Stores in the area selling alcoholic beverages in addition to a range of foods.

Open Air Sales is a commercial use characteristic that is generally categorized as a Retail Sales and Service use involving the open-air sale of new and/or used merchandise, including agricultural products, crafts, and/or art work

Plants and gardening supplies and building materials would be explicitly included in the list of goods sold as an Open Air Sales activity

NCT-3

Controls by Story

Zoning Category	1st	2nd	3rd+
Arts Activities	NP	NP	NP
Philanthropic			
Admin Services	NP	NP	NP
Public Facilities	C	C	C
Liquor Store	NP	NP	NP

NCT-3 (changes in yellow)

Controls by Story

Zoning Category	1st	2nd	3rd+
Arts Activities	P	P	P
Philanthropic			
Admin Services	P	P	P
Public Facilities	P	P	P
Liquor Store	C	NP	NP

Upper Market St NCT

Controls by Story

Zoning Category	1st	2nd	3rd+
Arts Activities	NP	NP	NP
Entertainment, General	C	NP	NP
Institutional Uses	P	C	C
Philanthropic			
Admin Services	NP	NP	NP
Public Facilities	C	C	C
Bar	C(7)	NP(7)	NP
Liquor Store	C	NP	NP
Restaurant	C	NP	NP
Restaurant, Limited	P	NP	NP
Services, Health	P	P	C

(7) an existing Bar on the ground floor operating under a Conditional Use authorization may expand to the second floor if: (a) the space to be converted has not been in Residential use within the previous five years, (b) an internal staircase connecting the ground floor Bar

Upper Market St NCT (changes in yellow)

Controls by Story

Zoning Category	1st	2nd	3rd+
Arts Activities	P	P	C
Entertainment, General	P	P	NP
Institutional Uses	P	P	C
Philanthropic			
Admin Services	P	P	C
Public Facilities	P	P	C
Bar	C(7)	C(7)	NP
Liquor Store	C(2)	NP	NP
Restaurant	P	C	NP
Restaurant, Limited	P	C	NP
Services, Health	C	P	C

(7) an existing Bar on the ground floor operating under a Conditional Use authorization may expand to the second floor if: (a) the space to be converted has not been in Residential use within the previous five years, (b) an internal staircase connecting the ground floor Bar use and the upper floor

use and the upper floor already exists,
and (c) there will be no expansion of the
building envelope

already exists, and (c) there will be no
expansion of the building envelope.

(2) P at 1st Story if ABC license type 20 (beer
and wine only)

ISSUES AND CONSIDERATIONS

Location and Operating Conditions and Liquor Stores

The Planning Code imposes locational and operating conditions for specific uses to help further planning goals or to prevent potential nuisance or hazards.¹ For example, Automotive Uses selling vehicle fuel are prohibited from selling liquor and require Conditional Use authorization to sell beer or wine. Similarly, Eating and Drinking uses have conditions on sidewalk cleanliness, noise and odor control, and the handling of garbage, recycling and compost containers. These conditions are in place to help reduce the negative impacts that Eating and Drinking can have on their surroundings. Having one set of standard locational and operating conditions that apply equally to the same uses throughout the city clarifies expectations for the operator, regulator and public.

Liquor Stores also have location and operating conditions; however, the location and operating conditions are not found in one single Planning Code section, they are not applicable to all Liquor Stores, and the conditions are not uniform across all Planning Code Sections. Instead they are found in various alcohol restricted use subdistricts, special use districts or Neighborhood Commercial District zoning control tables and apply only to Liquor Stores in those areas.² Further, some districts impose more or different conditions than others. For example, the Third Street Alcohol Restricted Use District imposes lighting, signage and unobstructed sightline conditions while the Lower Polk Alcohol Restricted Use District includes none of these. Another example is the difference between the cleanliness conditions for the Divisadero Street Neighborhood Commercial Transit District (DNCT) and the North of Market Residential Special Use District (NMRSUD). The DNCT uses the following cleanliness condition, one which is typically used for Eating and Drinking uses:

The business operator shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards. In addition the operator shall be responsible for daily monitoring of the sidewalk within a one-block radius of the subject business to maintain the sidewalk free of

¹ Planning Code Section 202.2, Location and Operating Conditions

² Planning Code Section 249.5, North of Market Residential Special Use District; Planning Code Section 249.60, Mission Alcoholic Beverage Special Use District; Planning Code Section 249.62, Third Street Alcohol Restricted Use District; Planning Code Section 720, Excelsior-Outer Mission Neighborhood Commercial District; Planning Code Section 759, Divisadero Street Neighborhood Commercial Transit District; Planning Code Section 781.9, Haight Street Alcohol Restricted Use Subdistrict; Planning Code Section 784, Lower Haight Street Alcohol Restricted Use Subdistrict; Planning Code Section 788, Lower Polk Street Alcohol Restricted Use Subdistrict

litter associated with the business during business hours in accordance with Article 1 Section 34 of the San Francisco Police Code. For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works.³

The NMRSUD condition, in place for over 20 years and created expressly for Liquor Stores, is as follows:

Employees of the establishment shall walk a 100-foot radius from the premises sometime between 30 minutes after closing time and 8:00 a.m. the following morning, and shall pick up and dispose of any discarded beverage containers and other trash left by patrons.⁴

This lack of uniformity between the operating conditions of the various Liquor Store regulating districts merits further investigation. It is possible that operators, regulators, and the public would be better served by having one set of Liquor Store conditions located in only one Planning Code Section. This would avoid perceptions that some Liquor Stores are being overburdened by more strenuous operating conditions than others due to accretion in the Planning Code or geography. However, it is worthwhile to recall that many of the Liquor Store regulations in the Planning Code stem from collaborative efforts to address neighborhood specific concerns. One set of conditions may or may not satisfy all concerns.

Permit Processing Timeframes

Recently the San Francisco Chronicle published an article raising concerns about permit processing times' contribution to prolonged storefront vacancies in the City's commercial corridors.⁵ The article reported on permit processing times in the Upper Market/Castro, Hayes Valley, and Valencia Street commercial corridors and found timelines stretching into the hundreds of days. Among the mentioned commercial corridors, timelines were longest in the Upper Market/Castro commercial corridor. Indeed, a March 5 Budget and Legislative Analyst (BLA) report noted that the Conditional Use authorization process adds more than 330 days to permit processing times in the Upper Market/Castro commercial corridor.⁶ This is almost 60 days longer than the other mentioned commercial corridors. Given these timeframes, the BLA report suggested several policy options to address this concern, including reducing the number of projects that require Conditional Use authorization. This would lessen work backlogs and permit review timeframes, resulting in decreased storefront vacancy durations.

Factors Integral to a Successful Commercial Corridor

In 2018, the San Francisco Office of Economic and Workforce Development (OEWD) released the State of the Retail Sector: Challenges and Opportunities for San Francisco's Neighborhood Commercial Districts

³ Planning Code Section 759, Divisadero Street Neighborhood Commercial Transit District

⁴ Ordinance 55-99

<https://sfgov.legistar.com/View.ashx?M=F&ID=2586983&GUID=449E8400-78D1-474C-8A4B-C32238BC6DAB>

⁵ Matier, Phil. "SF takes its time OKing retail makeovers — look at all the empty storefronts." San Francisco Chronicle. <https://www.sfchronicle.com/bayarea/philmatier/article/SF-takes-its-time-OKing-retail-makeovers-look-13736702.php> Accessed April 3, 2019

⁶ City and County of San Francisco Board of Supervisors Budget and Legislative Analyst "Commercial Vacancies in the Upper Market/Castro and City Permitting" March 5, 2019. https://sfbos.org/sites/default/files/BLA.CommcIVacancies.UMC_Permitting.030519.pdf

report (Report).⁷ Very broadly, the Report looked at changing national retail trends and their effect upon the City's neighborhood commercial districts (NCDs). Among the topics explored in depth were the factors required to support successful retail corridors in San Francisco. Two of those factors the Report highlighted are "Trade Area Characteristics" and "Anchors and Mix of Uses."

Trade Area Characteristics refer to the geographic area from where the majority of a NCD's customers reside. The Report found that trade area incomes and population densities helped support a successful NCD. It also found that visitors to an NCD's institutional service providers, such as medical offices, or public facilities, like libraries, are an important source of demand.

An anchor is a use, retail or non-retail, which attracts foot traffic to the retail corridor. Anchors include grocery stores, a cluster of related retail stores or eating and drinking uses, or a civic, cultural, entertainment or institutional use. Regarding a mix of uses, the Report recommends a retail corridor include goods and services that serve daily needs as well as for comparison shopping; personal services, eating and drinking uses, and entertainment uses; independent and Formula Retail uses; ground floor uses that reflect community character; affordable neighborhood-serving goods, services, and experiences; and some amount of office and housing uses. This mix is recommended because businesses rely on each other and other non-retail uses to generate foot traffic. For example, an individual may come to a retail corridor to buy groceries, visit the dentist, or attend an arts or cultural event, but also stay to shop at other corridor businesses. It is important that a retail corridor capture this synergy between establishments.

To help assure retail corridor vibrancy, modifications to land use controls must encourage uses that attract visitors and anchor tenants, while also ensuring a balanced mix of uses. This includes eliminating restrictions or lessening entitlement requirements on uses that are drivers of demand, including arts and entertainment uses, and restaurants. It could also include quantitative limits on particular uses. In the case of Liquor Stores, it can be useful to limit the amount of linear frontage in an NCD dedicated to that use. This is a method used in the Planning Code for other retail uses and the limits range from 20% to 35% concentration within a 300-foot radius of a proposed use of concern.⁸ Another method would be to count the number of uses of concern, or uses selling similar products, within a specific geography. This is method is utilized in the Mission Street Neighborhood Commercial Transit District to assure an availability of various neighborhood-serving uses.⁹

Philanthropic Administrative Services

The Planning Code defines a Philanthropic Administrative Service Use as an Institutional Use providing executive, management, administrative and clerical services to philanthropic activities serving non-profit institutions and organizations. The Planning Code further clarifies philanthropic activities to include

⁷ San Francisco Office of Economic and Workforce Development "State of the Retail Section: Challenges and Opportunities for San Francisco's Neighborhood Commercial Districts" 15 February 2018 <https://oewd.org/sites/default/files/Invest%20In%20Neighborhoods/State%20of%20the%20Retail%20Sector%20-%20Final%20Report.pdf>

⁸ Planning Code Section 303(o), Conditional Uses: Eating and Drinking Uses; Planning Code Section 303.1(d)(1) Formula Retail Uses: Conditional Use Criteria

⁹ Planning Code Section 754, Mission Street Neighborhood Commercial Transit District, Zoning Control Table, Note 7

funding and support of cultural and social service organizations, among others. The Planning Code restricts Philanthropic Administrative Service uses from locating on the First Story of buildings unless the prior use was a Residential or Office use.¹⁰

Philanthropic Administrative Service uses resemble office uses in that they typically do not lend themselves to attracting customers or clients from off the street. The Planning Code recognizes this fact by not considering them active commercial uses, suitable to promoting an active, pedestrian orientation on important commercial streets.¹¹ As such, Philanthropic Administrative Service uses can be considered too insular and inappropriate for the 1st story of buildings on commercial corridors and land use controls should be modified in accordance.

Health Services

Health Service Uses are Retail uses providing medical services by professionals licensed by a State-sanctioned Board.¹² The breadth of services a Health Service use may provide is vast and is generally outpatient care. Among them include urgent care, dentistry, optometry, psychiatry, and kidney dialysis.

The location of these services influences the frequency at which they are accessed. People who must travel longer or greater distances to health services are less likely to use outpatient and preventive health services. This can lead them to more frequently visit the emergency room, suggesting that patients are less reliant on costly emergency care when primary care is readily available.

The Health Care Services Master Plan (HCSMP) also recognizes the need for accessible health services.¹³ Priority 3 of the HCSMP calls for increasing access to health care and services for several different San Francisco populations, including lower income populations, seniors, people with disabilities, and people without regular automobile access. Modifications to land use controls on Health Service Uses should align with this larger City goal.

General Plan Compliance

On balance the Ordinance, and Staff's proposed modifications, align with the Objectives and Policies of the General Plan. The Ordinance is generally harmonious with the Arts Element because the proposed Planning Code amendments ease restrictions on where Arts Activities are allowed, thus increasing access and promoting the arts. Similarly, by allowing Public Facilities within the Upper Market Street NCT and the NCT-3 zoning districts the Ordinance helps further the goals within the Community Facilities Element. The proposed controls on Liquor Stores, in combination with the expansion of allowed uses and the change in entitlement process for a wide variety of street activating uses, helps invigorate and balance the availability of goods and services in the Upper Market Street NCT and the NCT-3 zoning districts. This aligns with the goals of the Commerce and Industry Element as well as the Market and Octavia Area Plan.

¹⁰ Planning Code Section 102, Definition of Philanthropic Administrative Service

¹¹ Planning Code Section 145.4, Required Ground Floor Commercial Uses

¹² Planning Code Section 102, Definition of Health Service

¹³ San Francisco Health Care Services Master Plan. October 2013.

<https://www.sfdph.org/dph/files/HCSMP/Final/FINAL-HCSMP-October2013.pdf>

Implementation

The Department has determined that this ordinance will not impact our current implementation procedures.

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:

Liquor Stores

1. Amend the proposed Location and Operating Condition on sidewalk cleanliness to align with that of the North of Market Residential Special Use District.
2. Explore Creating uniform Liquor Store Location and Operating Conditions for Liquor Stores citywide.
3. Add quantitative measures for the proposed concentration analyses in the new Conditional Use findings for Liquor Stores requiring Conditional Use authorization.

Upper Market Street NCT

4. Principally permit Arts Activities on the 3rd Story and above.
5. Maintain Health Services as a principally permitted use on the 1st Story.
6. Remove Note 7 for Bar uses on the 2nd Story.
7. Prohibit Philanthropic Administrative Services on the 1st Story and principally permit them on the 3rd Story and above.

NCT-3

8. Exempt Liquor Stores operating only with a Type 20 ABC License (Beer and Wine sale only) from Conditional Use authorization at the 1st Story.
9. Prohibit Philanthropic Administrative Services on the 1st Story.

Upper Market Street NCT and NCT-3

10. Amend Planning Code Section 145.4 to consider Art Activities and Liquor Stores on the 1st Story as Active Uses.

BASIS FOR RECOMMENDATION

The Department supports the Ordinance because it facilitates the entry of new uses into and generally lessens entitlement requirements in the Upper Market Street NCT and the NCT-3. Most of the proposed changes to the Planning Code would help attract uses that make those NCDs vibrant, inviting places for residents and visitors alike. This includes principally permitting libraries, museums and cafes at the street level. Similarly, the Department is also in support of the proposed changes to Liquor Store regulations. Adding scrutiny to the operating practices and concentration of Liquor Stores can help compatibility with adjacent neighborhoods and balance the mix of available uses in the City's NCDs.

The Department is proposing the following modifications to improve implementation and to further the aim of facilitating the entry of uses that drive demand for the goods and services within the Upper Market Street NCT and the NCT-3 zoning districts:

Liquor Stores

Recommendation 1: Amend the proposed Location and Operating Condition on sidewalk cleanliness to align with that of the North of Market Residential Special Use District. Staff recommends aligning the proposed cleanliness operating condition for Liquor Stores with the North of Market Residential Special Use District condition because it corresponds to a long-standing condition created for Liquor Stores. It is also more realistic to expect operators to clean within a 100-foot radius rather than a one-block radius, especially when the long side of a typical rectangular block can exceed 500 feet in length.

Recommendation 2: Explore creating uniform Liquor Store Location and Operating Conditions for Liquor Stores citywide. It is possible that having one set of operating conditions for Liquor Stores is convenient for Liquor Store operators, government regulators and concerned neighbors. A uniform set of condition creates parity and avoids the perception that certain Liquor Stores are unfairly overburdened simply because of their location. At the same time, many of the Liquor Store regulations in the Planning Code stem from collaborative efforts to address geographically specific concerns. A "one-size" approach may not fit all concerned communities. In this context, Staff is recommending that discussions begin with the District Supervisors and community stakeholders in which the existing Liquor Store restricted use or special use districts are located.

Recommendation 3: Add quantitative measures for the proposed concentration analyses in the new Conditional Use findings for Liquor Stores requiring Conditional Use authorization. Maintaining a balanced mix of uses within an NCD is essential. Imposing a concentration analysis to Liquor Stores requiring Conditional Use authorization can help assure that this use does not crowd out other needed uses. However, for Staff to discern whether an overconcentration exists and make a recommendation accordingly, a quantitative threshold would greatly help. Staff is proposing using 25% of linear frontage occupied by existing Liquor Stores within a 300-foot radius of a proposed Liquor Store as the threshold signifying an overconcentration. With respect to the proposed consideration on the availability of grocery stores selling alcoholic beverages, Staff is recommending explicitly requiring a count of those grocery stores.

Upper Market Street NCT

Recommendation 4: Principally permit Arts Activities on the 3rd Story and above. The ordinance proposes to principally permit Arts Activities on the first and second floors but requires a CU on the third floor and above. Arts Activity uses can be integral uses for attracting patrons to an NCD. It is not uncommon that individuals attending an arts event look to dine or shop afterwards. Permitting Arts Activity Uses to the greatest extent helps to capture this potential synergy. This aligns with General Plan policies that seek to increase access to arts and cultural resources; that seek to promote the arts for visitors, tourists and residents; and that create opportunities for new arts and artists' space to be created in new development.

Recommendation 5: Maintain Health Service Uses as a principally permitted use on the 1st Story. The Health Care Services Master Plan (HCSMP) states that unhindered access to health care services is critical to the well-being of San Franciscans. This is particularly the case for the City's senior population, its population of persons with disabilities, and for those without regular automobile access. The HCSMP also makes increasing access one of three health priorities for the City. Health Service Uses can also play an important role in creating a vibrant NCD. Often when one visits the dentist or chiropractor, one also attends to other errands in the same commercial corridor, helping multiple businesses with one trip.

Requiring Conditional Use authorization for Health Service Uses inhibits these uses from expeditiously opening and delays the possible synergies between uses.

Recommendation 6: Remove Note 7 for Bar uses on the 2nd Story. Note 7 in the Upper Market Street NCT was created to allow one specific Bar use to secure Conditional Use authorization for its plans to expand into the second floor. It was drafted so that no other Bar use could avail itself of the Conditional Use authorization process and expand. Now that the Ordinance is proposing to allow Bars on the second story with Conditional Use authorization, this note is unnecessary. As such, it should be removed from the Upper Market Street NCT zoning control table.

Recommendation 7: Prohibit Philanthropic Administrative Services on the 1st Story and principally permit them on the 3rd Story and above. The ordinance proposes to principally permit Philanthropic Administrative Services at all stories. Philanthropic Administrative Service uses are akin to office uses. In this way they do not attract customers from off the street, like retail uses do. This can have a deadening effect at the street level in an NCD. Allowing them on upper stories avoids this while providing patrons, in the form of the Philanthropic Administrative Services employees, for the street level businesses.

NCT-3

Recommendation 8: Exempt Liquor Stores operating only with a Type 20 ABC License (Beer and Wine sale only) from Conditional Use authorization at the 1st Story. The ordinance proposes to principally permit Liquor Stores only selling beer and wine in the Upper Market NCT, but not in the NCT-3 zoning district. Given the concerns regarding protracted permit review timeframes for uses requiring CU, Staff recommends reducing the number of uses subject to CU, including Liquor Stores only selling beer and wine in the NCT-3 zoning district. Liquor Stores would still be subject to neighborhood notification in addition to the proposed operating conditions on cleanliness, lighting and storefront visibility, helping assure neighborhood compatibility.

Recommendation 9: Prohibit Philanthropic Administrative Services on the 1st Story. The ordinance proposes to principally permit Philanthropic Administrative Services on the 1st story. As mentioned, Philanthropic Administrative Service uses are office-like in many ways, including in how they do not attract foot traffic. This use is better suited for stories above the first story. This allows more active uses the opportunity to locate at the street level.

Upper Market Street NCT and NCT-3

Recommendation 10: Amend Planning Code Section 145.4 to consider Art Activities and Liquor Stores on the 1st Floor as Active Uses. The Planning Code establishes a set of important commercial corridors where pedestrian-oriented commercial uses are required. The stretch of Market Street in the Upper Market Street NCT and the NCT-3 is identified as a corridor where pedestrian-oriented uses are required. To principally permit Arts Activities and Liquor Stores and enjoy the foot traffic and economic activity these uses generate, they must be considered Active Uses under Planning Code Section 145.4, Required Ground Floor Commercial Uses.

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

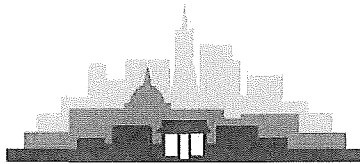
The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

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: Map of Upper Market Street and NCT-3 Zoning Districts of districts
- Exhibit C: Board of Supervisors File No. 190248



SAN FRANCISCO

OFFICE OF SMALL BUSINESS

CITY AND COUNTY OF SAN FRANCISCO
LONDON BREED, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

May 8, 2019

Ms. Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: BOS File No. 190248 – Uses in the Upper Market NCT and NCT-3 Zoning Districts

Small Business Commission Recommendation to the Board of Supervisors: **Approval.**

Dear Ms. Calvillo,

On April 8, 2019 the Small Business Commission (SBC or the Commission) heard BOS File No. 190248 – Planning Code - Uses in the Upper Market NCT and NCT-3 Zoning Districts. Mr. Tom Temprano, aide to Supervisor Mandelman provided the SBC with an overview of the legislation. The Commission voted unanimously (7-0) to recommend that the Board of Supervisors approve the legislation.

The SBC enthusiastically supports the intent of this legislation which will reduce land use regulatory burdens that prospective retailers have faced when attempting to open brick and mortar establishments in the Upper Market and the Castro. Compared to similar commercial corridors, the Upper Market and the Castro have been subject to more stringent regulatory hurdles which has contributed to the challenge of filling retail vacancies. This legislation will help reduce a high number of vacancies in the area and contribute to the economic vitality of the neighborhood. The Commission commended the Supervisor's office for being proactive in proposing a solution for a nuanced challenge and for his outreach to neighborhood groups. The SBC is confident that this legislation will also positively contribute to and complement efforts to streamline permitting requirements for small businesses.

Thank you for considering the Commission's comments. Please feel free to contact me should you have any questions.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

cc: Rafael Mandelman, Member, Board of Supervisors,
Sophia Kittler, Mayor's Liaison to the Board of Supervisors
John Rahaim, Director, Planning Department
Lisa Pagan, Office of Economic and Workforce Development
Erica Major, Clerk, Land Use and Transportation Committee

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

March 12, 2019

File No. 190248

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

Dear Ms. Gibson:

On March 5, 2019, Supervisor Mandelman introduced the following proposed legislation:

File No. 190248

Ordinance amending the Planning Code to revise the NCT-3 (Moderate-Scale Neighborhood Commercial Transit) District controls to allow Arts Activities, Philanthropic Administrative Services, and Public Facilities as a principal use on all stories, revise the Upper Market Neighborhood Commercial Transit (NCT) District controls to allow Arts Activities and Institutional Uses as a principal use on the first and second stories and as a conditional use on the third story and above and to allow General Entertainment as a principal use on the first and second stories, modify the requirements for liquor stores and bars in the NCT-3 and Upper Market Street NCT Districts, add additional conditional use criteria for liquor stores and require liquor stores to comply with standard location and operating conditions, and add additional uses to the definition of Open Air Sales; 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 general welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

Handwritten signature of Erica Major.

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

Attachment

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

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

joy navarrete

Digitally signed by joy navarrete
DN: cn=eng, dc=sfgov, dc=cityofsanfrancisco, ou=City Planning, ou=Environmental Planning, cn=joy navarrete, email=joy.navarrete@sfgov.org
Date: 2019.03.21 16:08:27 -0700

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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



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

March 12, 2019

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

Dear Commissioners:

On March 5, 2019, Supervisor Mandelman introduced the following legislation:

File No. 190248

Ordinance amending the Planning Code to revise the NCT-3 (Moderate-Scale Neighborhood Commercial Transit) District controls to allow Arts Activities, Philanthropic Administrative Services, and Public Facilities as a principal use on all stories, revise the Upper Market Neighborhood Commercial Transit (NCT) District controls to allow Arts Activities and Institutional Uses as a principal use on the first and second stories and as a conditional use on the third story and above and to allow General Entertainment as a principal use on the first and second stories, modify the requirements for liquor stores and bars in the NCT-3 and Upper Market Street NCT Districts, add additional conditional use criteria for liquor stores and require liquor stores to comply with standard location and operating conditions, and add additional uses to the definition of Open Air Sales; 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 general 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.

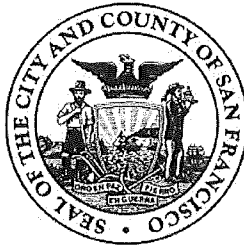
Angela Calvillo, Clerk of the Board

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
Scott Sanchez, Acting Deputy Zoning Administrator
Corey Teague, Zoning Administrator
Lisa Gibson, Environmental Review Officer
Devyani Jain, Deputy Environmental Review Officer
AnMarie Rodgers, Director of Citywide Planning
Dan Sider, Director of Executive Programs
Aaron Starr, Manager of Legislative Affairs
Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

BOARD of SUPERVISORS



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

MEMORANDUM

TO: William Scott, Police Chief, Police Department

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

DATE: March 12, 2019

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Mandelman, on March 5, 2019:

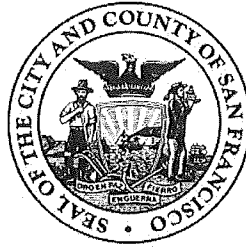
File No. 190248

Ordinance amending the Planning Code to revise the NCT-3 (Moderate-Scale Neighborhood Commercial Transit) District controls to allow Arts Activities, Philanthropic Administrative Services, and Public Facilities as a principal use on all stories, revise the Upper Market Neighborhood Commercial Transit (NCT) District controls to allow Arts Activities and Institutional Uses as a principal use on the first and second stories and as a conditional use on the third story and above and to allow General Entertainment as a principal use on the first and second stories, modify the requirements for liquor stores and bars in the NCT-3 and Upper Market Street NCT Districts, add additional conditional use criteria for liquor stores and require liquor stores to comply with standard location and operating conditions, and add additional uses to the definition of Open Air Sales; 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 general welfare under Planning Code, Section 302.

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

c: Rowena Carr, Police Department
Asja Steeves, Police Department
Deirdre Hussey, Police Department
Sergeant Rachael Kilshaw, Police Department

BOARD of SUPERVISORS



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

MEMORANDUM

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

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

DATE: January 2, 2019

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

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, which is being referred to the Small Business Commission for comment and recommendation.

File No. 190248

Ordinance amending the Planning Code to revise the NCT-3 (Moderate-Scale Neighborhood Commercial Transit) District controls to allow Arts Activities, Philanthropic Administrative Services, and Public Facilities as a principal use on all stories, revise the Upper Market Neighborhood Commercial Transit (NCT) District controls to allow Arts Activities and Institutional Uses as a principal use on the first and second stories and as a conditional use on the third story and above and to allow General Entertainment as a principal use on the first and second stories, modify the requirements for liquor stores and bars in the NCT-3 and Upper Market Street NCT Districts, add additional conditional use criteria for liquor stores and require liquor stores to comply with standard location and operating conditions, and add additional uses to the definition of Open Air Sales; 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 general welfare under Planning Code, Section 302.

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

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

- No Comment
- Recommendation Attached

Chairperson, Small Business Commission

cc: Dominica Donovan

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2019 SEP 5 PM 2:04
Time stamp
or meeting date

BY [Signature]

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):

Mandelman

Subject:

Planning Code - Uses in the Upper Market NCT and NCT-3 Zoning Districts

The text is listed:

Ordinance amending the Planning Code to 1) revise the NCT-3 (Moderate-Scale Neighborhood Commercial Transit) District controls to allow Arts Activities, Philanthropic Administrative Services, and Public Facilities as a Principal Use on all Stories, 2) revise the Upper Market Neighborhood Commercial Transit (NCT) District controls to allow Arts Activities and Institutional Uses as a Principal Use on the First and Second Stories and as a Conditional Use on the Third Story and above and to allow General Entertainment as a Principal Use on the First and Second Stories, 3) modify the requirements for Liquor Stores and Bars in the NCT-3 and Upper Market Street NCT Districts, 4) add additional Conditional Use criteria for Liquor Stores and require Liquor Stores to comply with standard location and operating conditions, and 5) add additional uses to the definition of Open Air Sales; and 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 general welfare under Planning Code, Section 302.