

BOARD of SUPERVISORS



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**M E M O R A N D U M**

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

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

DATE: December 17, 2018

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. 181211**

**Ordinance to streamline small business permitting by, among other things, amending the Health Code to align regulation of restaurant enclosures for outdoor food service and restroom requirements with state standards; amending the Planning Code to clarify that a Type 23 liquor license may be used in conjunction with a Bar or Restaurant use, to amend the definition of a Bar to provide for consistent treatment of Type 64 liquor licenses, to modify Nighttime Entertainment use food service requirements, to reduce the distance measured for Retail Sales and Services uses in Neighborhood Commercial zoning districts to any neighborhood commercial district, to reduce the distance measured for nonconforming uses in RH (Residential, House), RM (Residential, Mixed), and RTO (Residential, Transit-Oriented) districts to any neighborhood commercial district, to amend the definition of General Entertainment to include Amusement Game Arcade, to allow as a permitted use an Outdoor Activity Area operated between 6 a.m. to 10 p.m., and to allow Limited Restaurant use as an Accessory Use; amending the Police Code to eliminate certain duplicative inspections and signoffs in connection with Place of Entertainment permits, and amending the definition of Limited Live Performance Locale to remove the requirement for food and beverage service; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and public necessity, convenience, and welfare findings pursuant to 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

1 [Health, Planning, and Police Codes - Small Business Permit Streamlining]

2  
3 **Ordinance to streamline small business permitting by, among other things, amending**  
4 **the Health Code to align regulation of restaurant enclosures for outdoor food service**  
5 **and restroom requirements with state standards; amending the Planning Code to**  
6 **clarify that a Type 23 liquor license may be used in conjunction with a Bar or**  
7 **Restaurant use, to amend the definition of a Bar to provide for consistent treatment of**  
8 **Type 64 liquor licenses, to modify Nighttime Entertainment use food service**  
9 **requirements, to reduce the distance measured for Retail Sales and Services uses in**  
10 **Neighborhood Commercial zoning districts to any neighborhood commercial district,**  
11 **to reduce the distance measured for nonconforming uses in RH (Residential, House),**  
12 **RM (Residential, Mixed), and RTO (Residential, Transit-Oriented) districts to any**  
13 **neighborhood commercial district, to amend the definition of General Entertainment to**  
14 **include Amusement Game Arcade, to allow as a permitted use an Outdoor Activity Area**  
15 **operated between 6 a.m. to 10 p.m., and to allow Limited Restaurant use as an**  
16 **Accessory Use; amending the Police Code to eliminate certain duplicative inspections**  
17 **and signoffs in connection with Place of Entertainment permits, and amending the**  
18 **definition of Limited Live Performance Locale to remove the requirement for food and**  
19 **beverage service; affirming the Planning Department's determination under the**  
20 **California Environmental Quality Act; and making findings of consistency with the**  
21 **General Plan, and the eight priority policies of Planning Code, Section 101.1, and public**  
22 **necessity, convenience, and welfare findings pursuant to Planning Code, Section 302.**

23 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.  
24 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
25 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
**Board amendment additions** are in double-underlined Arial font.  
**Board amendment deletions** are in ~~strikethrough Arial font~~.

**Asterisks (\* \* \* \*)** indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Environmental and Land Use Findings.

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

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

(c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code Amendment will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. \_\_\_\_\_, and the Board incorporates such reasons herein by reference. A copy of Planning Commission Resolution No. \_\_\_\_\_ is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_.

Section 2. Background, Purpose, and General Findings.

(a) In February 2018, the Office of Economic and Workforce Development published "State of the Retail Sector: Challenges and Opportunities for San Francisco's

1 Neighborhood Commercial Districts” (the “Retail Study”). Prepared by Strategic Economics,  
2 the Retail Study included briefs studying: the national restructuring of the retail, restaurant,  
3 and personal services industries; the factors required to support successful San Francisco  
4 retail districts; and opportunities, costs, and challenges for retail, restaurant, and personal  
5 services businesses in San Francisco, and the adaptations that businesses are making in  
6 response to changing conditions.

7 (b) The Retail Study identified a national trend in retail stores seeking to experiment  
8 with new strategies to capitalize on increasing consumer demand for experiences, as  
9 opposed to objects. The Retail Study observed that, to remain competitive with e-commerce  
10 businesses, retailers are increasingly seeking to incorporate food and drink sales, events, and  
11 classes into their businesses, and noted a number of San Francisco businesses  
12 experimenting with diverse offerings.

13 (c) While San Francisco possesses many competitive advantages that benefit local  
14 retailers and restaurants, the Retail Study observed that a significant number of neighborhood  
15 commercial districts are experiencing an increase in vacancy rates. The Retail Study also  
16 found that San Francisco businesses face challenges connected to the City’s land use  
17 regulations and permitting requirements, which can add significant cost and time to the  
18 process of opening a new business and may limit retailers’ flexibility to adapt to changing  
19 economic conditions.

20 (d) San Francisco’s nightlife and entertainment sector is an integral part of the City’s  
21 vibrant commercial corridors. Nightlife and entertainment businesses attract tourists and  
22 residents to the City’s diverse neighborhoods. The Retail Study found that nightlife and  
23 entertainment uses complement neighborhood retail sales and services by providing  
24 destinations and gathering spaces for potential retail customers.

1 (e) According to the U.S. Bureau of Labor Statistics, the nightlife and entertainment  
2 sector in San Francisco in 2017 was comprised of 3,715 restaurants, bars, live music venues,  
3 nightclubs, and other performance spaces with 63,695 employees citywide.

4 (f) A 2016 analysis by the Controller's Office found that nightlife generated \$6  
5 billion in consumer spending in 2015. The nightlife sector paid approximately \$80 million in  
6 local taxes in 2015, including \$60 million in sales tax and \$20 million in payroll and gross  
7 receipts taxes.

8 (g) Despite these significant contributions to the local economy, nightlife and  
9 entertainment businesses often face zoning barriers, burdensome permitting requirements,  
10 and duplicative inspections. Legislation to address these challenges will reduce storefront  
11 vacancies, improve the permitting process for small businesses, enable retailers to engage in  
12 creative strategies to attract customers and diversify revenues, and support the health of San  
13 Francisco's commercial corridors.

14  
15 Section 3. Article 8 of the Health Code is hereby amended by revising Sections 412  
16 and 440.5, to read as follows:

17 **SEC. 412. WIRE SCREENS, ETC., IN PLACES WHERE FOOD IS SOLD.**

18 It shall be unlawful for any person, firm, association, or corporation engaged in  
19 maintaining, conducting, carrying on, or managing a restaurant place, kitchen, meat market,  
20 fruit store, vegetable store, delicatessen store, bakery store, street vendor's store, or any  
21 other place in which or where food is prepared, sold, or disposed of for human consumption,  
22 to maintain, conduct, carry on, or manage said place or store, except in the manner provided  
23 for in this Section 412.

24 It shall be unlawful for any person, firm, association, or corporation to maintain,  
25 conduct, carry on, or manage a restaurant place or kitchen where foodstuffs are cooked, or

1 prepared, ~~sold or disposed of~~ for human consumption, unless the doors, windows, apertures, or  
2 other openings to the ~~premises or~~ place where ~~said restaurant or kitchen is conducted, maintained,~~  
3 ~~carried on or managed~~ food preparation occurs are effectively enclosed with finely woven wire  
4 mesh screens. Dining areas and bars are not required to be enclosed, provided that no food  
5 preparation occurs there other than adding ingredients to a beverage or dispensing into a serving  
6 container when the beverage is prepared for immediate service in response to an individual consumer  
7 order.

8 \* \* \* \*

9  
10 **SEC. 440.5. TOILET AND HANDWASHING FACILITIES TO BE PROVIDED.**

11 (a) Every ~~food establishment~~ permanent food facility, as defined in Section ~~27520113849~~ of  
12 the California Health and Safety Code, must provide toilet and handwashing facilities for use  
13 by employees. ~~Every such establishment as to which construction or substantial reconstruction or~~  
14 ~~rehabilitation is commenced on or after September 1, 1986, selling food for the purpose of immediate~~  
15 ~~consumption without the reasonable expectation of further preparation or addition to other foods, shall~~  
16 ~~make such toilet and handwashing facilities available for use by patrons without charge and.~~ Every  
17 permanent food facility shall provide clean toilet facilities in good repair for consumers, guests, or  
18 invitees if there is onsite consumption of food or if the permanent food facility was constructed after  
19 July 1, 1984, and has more than 20,000 square feet of floor space. In addition, such toilet facilities  
20 shall comply with the Plumbing Code of the City and County of San Francisco.

21 ~~—(b) Provisions of this Section shall not apply to roadside stands, food establishments which~~  
22 ~~are open to outside air or businesses which primarily sell at retail, meat, poultry and their by-products.~~

23 (b) For purposes of this Section 440.5, “onsite consumption of food” means the  
24 consumption of food, provided by a permanent food facility to patrons or guests, at or within the facility  
25 or within an area operated or controlled by the facility. A permanent food facility that does not offer

1 onsite consumption of food may not have on its premises any dining tables, dining chairs, dining  
2 counters, or dining standing-tables.

3  
4 Section 4. The Planning Code is hereby amended by revising Sections 102, 145.2,  
5 145.4, 186, 303.1, 703, 710, 711, 712, 713, 714, 719, 721, 728, 754, 757, 758, 759, 760, 764,  
6 and 781.9, to read as follows:

7 **SEC. 102. DEFINITIONS.**

8 \* \* \* \*

9 ~~*Amusement Game Arcade. A Retail Entertainment Arts and Recreation Use that provides eleven or*~~  
10 ~~*more amusement game devices such as video games, pinball machines, or other such similar*~~  
11 ~~*mechanical and electronic amusement devices, in a quantity which exceeds that specified in Section*~~  
12 ~~*1036.23 of the Police Code as an Ancillary Use. Mechanical amusement devices are further regulated*~~  
13 ~~*in Sections 1036 through 1036.24 of the Police Code.*~~

14 \* \* \* \*

15 **Arts Activities.** A retail Entertainment, Arts and Recreation Use that includes performance,  
16 exhibition (except exhibition of films), rehearsal, production, post-production and some  
17 schools of any of the following: Dance, music, dramatic art, film, video, graphic art, painting,  
18 drawing, sculpture, small-scale glassworks, ceramics, textiles, woodworking, photography,  
19 custom-made jewelry or apparel, and other visual, performance, and sound arts and craft. It  
20 shall exclude accredited Schools and Post-Secondary Educational Institutions. It shall include  
21 commercial arts and art-related business service uses including, but not limited to, recording  
22 and editing services, small-scale film and video developing and printing; titling; video and film  
23 libraries; special effects production; fashion and photo stylists; production, sale, and rental of  
24 theatrical wardrobes; and studio property production and rental companies. Arts spaces shall  
25 include studios, workshops, archives, and theaters, and other similar spaces customarily used

1 principally for arts activities, exclusive of a Movie Theater, *Amusement Game Arcade* arcades that  
2 provide eleven or more amusement game devices, Adult Business, and any other establishment  
3 where liquor is customarily served during performances.

4 \* \* \* \*

5 **Bar.** A Retail Sales and Service Use that provides on-site alcoholic beverage sales for  
6 drinking on the premises, including bars serving beer, wine, and/or liquor to the customer  
7 where no person under 21 years of age is admitted (with Alcoholic Beverage Control [ABC]  
8 license types 02, 23, 42, 48, or 61) and drinking establishments serving beer where minors  
9 are present (with ABC license types 40 or 60) in conjunction with other uses such as Movie  
10 Theaters and General Entertainment. Such businesses shall operate with the specified  
11 conditions in Section 202.2(a). A non-profit theater that provides on-site alcoholic beverage sales  
12 only for consumption by ticket-holding patrons on the premises, with ABC license type 64, shall not be  
13 considered a Bar use.

14 \* \* \* \*

15 **Entertainment, General.** A Retail Entertainment, Arts and Recreation Use that provides  
16 entertainment or leisure pursuits to the general public including dramatic and musical  
17 performances where alcohol is not served during performances, arcades that provide eleven or  
18 more amusement game devices (such as video games, pinball machines, or other such similar  
19 mechanical and electronic amusement devices), billiard halls, bowling alleys, skating rinks, and  
20 mini-golf, when conducted within a completely enclosed building, and which is adequately  
21 soundproofed or insulated so as to confine incidental noise to the premises. Mechanical  
22 amusement devices are further regulated in Sections 1036 through 1036.24 of the Police Code.

23 \* \* \* \*

24 **Entertainment, Arts and Recreation Use.** A Use Category that includes *Amusement Game*  
25 *Arcade*, Arts Activities, General Entertainment, Livery Stables, Movie Theater, Nighttime



1 Entertainment, Open Recreation Area, Outdoor Entertainment, Passive Outdoor Recreation  
2 and Sports Stadiums. Adult Business is not included in this definition, except for the purposes  
3 of Development Impact Fee Calculation as described in Article 4.

4 \* \* \* \*

5 **Restaurant.** A Retail Sales and Service use that serves prepared, ready-to-eat cooked foods  
6 to customers for consumption on the premises and which has seating. As a minor and  
7 incidental use, it may serve such foods to customers for off-site consumption. It may provide  
8 on-site beer, wine, and/or liquor sales for drinking on the premises (with ABC license types 02,  
9 23, 41, 47, 49, 59, ~~or 75~~, or 87); however, if it does so, it shall be required to operate as a  
10 Bona Fide Eating Place. It is distinct and separate from a Limited-Restaurant. Such  
11 businesses shall operate with the specified conditions in Section 202.2(a)(1). It shall not be  
12 required to operate within an enclosed building so long as it is also a Mobile Food Facility. A  
13 business that is both a Restaurant use and a Nighttime Entertainment use shall not be required to  
14 operate as a Bona Fide Eating Place. Any associated outdoor seating and/or dining area is  
15 subject to regulation as an Outdoor Activity Area as set forth elsewhere in this Code.

16 \* \* \* \*

## 18 **SEC. 145.2. OUTDOOR ACTIVITY AREAS IN NC DISTRICTS.**

19 The following provisions governing Outdoor Activity Areas shall apply in NC Districts.

20 In order to provide for limited commercial Outdoor Activity Areas, which promote  
21 active street life, but do not detract from the livability of surrounding uses, Outdoor Activity  
22 Areas in NC Districts shall be regulated below, except in the Outer Clement Street  
23 Neighborhood Commercial District, where Outdoor Activity Areas shall be a Principally  
24 Permitted Use if they existed prior to 1985. These provisions shall not apply to those Uses  
25 excepted from the requirement for location in an enclosed building.

1 (a) An Outdoor Activity Area operated by a Commercial Use is permitted as a  
2 Principal Use if located outside a building and contiguous to the front property line of the lot on  
3 which the Commercial Use is located, or if the Outdoor Activity Area is operated only between the  
4 hours of 6 a.m. and 10 p.m.

5 In NC-S Districts, an Outdoor Activity Area is permitted as a Principal Use if located  
6 within the boundaries of the property and in front of the primary facades which contain  
7 customer entrances and if it does not obstruct pedestrian traffic flow between store entrances  
8 and parking facilities, or if the Outdoor Activity Area is operated only between the hours of 6 a.m. and  
9 10 p.m.

10 (b) An Outdoor Activity Area which does not comply with the provisions of Paragraph 1 of  
11 this subsection (b) is permitted as a Conditional Use.

12 In addition to the criteria of Section 303(c) of this Code, the Planning Commission shall  
13 find that:

- 14 (1) The nature of the activity operated in the Outdoor Activity Area is compatible with  
15 surrounding uses;
- 16 (2) The operation and design of the Outdoor Activity Area does not significantly disturb  
17 the privacy or affect the livability of adjoining or surrounding residences;
- 18 (3) The Hours of Operation of the activity operated in the Outdoor Activity Area are  
19 limited so that the activity does not disrupt the viability of surrounding uses.

20  
21 **SEC. 145.4. REQUIRED GROUND FLOOR COMMERCIAL USES.**

22 \* \* \* \*

23 **Table 145.4**

Reference for Commercial, Neighborhood	Reference for Mixed Use Districts	Use
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<b>Commercial, and Residential- Commercial Districts</b>		
<i>102-N/A</i>	890.4	Amusement Game Arcade
* * * *		

\* \* \* \*

**SEC. 186. EXEMPTION OF LIMITED COMMERCIAL AND INDUSTRIAL  
NONCONFORMING USES IN RH, RM, RTO, AND RED DISTRICTS.**

The purpose of this Section 186 is to provide for the further continuance in RH, RM, RTO, and RED Districts of nonconforming uses of a limited commercial and industrial character, as herein described, which are beneficial to, or can be accommodated within, the residential areas in which they are located. It is hereby found and declared that, despite the general incompatibility of nonconforming uses with the purposes of this Code, and with other nearby uses, these limited commercial uses may be tolerated in residential areas, and tend to provide convenience goods and services on a retail basis to meet the frequent and recurring needs of neighborhood residents within a short distance of their homes or, within the South of Market RED Districts, tend to provide jobs and continuation of small scale service and light industrial activities. These uses tend to be small in scale, to serve primarily a walk-in trade, and cause a minimum of interference with nearby streets and properties. Accordingly, this Section recognizes the public advantages of these uses and establishes conditions for their continued operation.

(a) **Exemption from Termination Provisions.** The following nonconforming uses in R Districts shall be exempt from the termination provisions of Section 185, provided such uses comply with all the conditions specified in subsection (b) below:

1 (1) Any nonconforming use at any Story in an RTO, RH<sub>L</sub> or RM District which is located  
2 more than ~~one-fourth mile~~ 300 feet from the nearest Named Neighborhood Commercial District  
3 ~~or Restricted Use Subdistrict~~ described in Article 7 of this Code, and which complies with the use  
4 limitations specified for the First Story and below of an NC-1 District, as set forth in Section  
5 710 of this Code.

6 (2) Any nonconforming use in an RTO, RH<sub>L</sub> or RM District which is located within ~~one-~~  
7 ~~fourth mile~~ 300 feet from any Individual Area Neighborhood Commercial District ~~or restricted use~~  
8 ~~subdistrict~~ and which complies with the most restrictive use limitations specified for the First  
9 Story and below of:

10 (A) an NC-1 District, as set forth in Section 710 of this Code; or

11 (B) any Named Neighborhood Commercial District within ~~one-fourth mile~~ 300 feet of the  
12 use, as set forth in Sections 714 through 748 and 753 through 764 of this Code; ;

13 ~~— (C) Any Restricted Use Subdistrict within one-fourth mile of the use, as set forth in Sections 781~~  
14 ~~through 781.7 of this Code.~~

15 (3) In the RED Districts, any nonconforming use which is a personal service use falling  
16 within zoning category 816.31; home and business service use falling within zoning categories  
17 816.42 through 816.47; live/work unit falling within zoning category 816.55; wholesale sales,  
18 storage, or light manufacturing uses falling within zoning categories 816.64 through 816.67.

19 (b) **Conditions on Limited Nonconforming Uses.** The limited nonconforming uses  
20 described above shall meet the following conditions:

21 (1) The building shall be maintained in a sound and attractive condition, consistent with  
22 the general appearance of the neighborhood;

23 (2) Any signs on the property shall be made to comply with the requirements of Section  
24 606(c) of this Code for Limited Commercial uses;

1 (3) The hours during which the use is open to the public shall be limited to the period  
2 between 6:00 a.m. and 10:00 p.m.;

3 (4) Public sidewalk space may be occupied in connection with the use provided that it is  
4 ~~only~~ occupied only with tables and chairs as permitted by this Municipal Code;

5 (5) Truck loading shall be limited in such a way as to avoid undue interference with  
6 sidewalks, or with crosswalks, bus stops, hydrants, and other public features;

7 (6) Noise, odors, and other nuisance factors shall be adequately controlled; and

8 (7) All other applicable provisions of this Code shall be complied with.

9 (c) **Formula Retail Uses.** All uses meeting the definition of "formula retail" use per Section  
10 303.1 shall not be permitted except by conditional use authorization under the procedures of  
11 Section 303 of this Code.

12 (d) **Street Frontage.** In addition to the requirements of Section 144 of this Code, the  
13 requirements of Section 145.1(c)(6) and (7) shall apply.

14 (e) **Awnings.** Awnings are permitted, subject to the standards in Section 136.1(a) of this  
15 Code. Canopies and marquees are not permitted.

16 (f) **Termination.** Any use affected by this Section 186 which does not comply with all of the  
17 conditions herein specified shall be subject to termination in accordance with Section 185 at  
18 the expiration of the period specified in that Section, but shall be qualified for consideration as  
19 a conditional use under Section 185(e). Any such use which is in compliance with such  
20 conditions at the expiration of such period but fails to comply therewith at any later date shall  
21 be subject to termination when it ceases to comply with any of such conditions.

22 (g) **Reactivation.** Limited commercial uses in RH, RM, RTO, and RED Districts that have  
23 been discontinued or abandoned, as defined in Section 183, may be reactivated with  
24 conditional use authorization under Section 303. In approving such a use and in addition to  
25 the findings required by Section 303, the Planning Commission shall find that:

1 (1) the subject space is located on or below the ground floor and was in commercial or  
2 industrial use prior to January 1, 1960; and

3 (2) the proposed commercial use meets all the requirements of this ~~s~~Section 186 and  
4 other applicable sections of this Code.

5 (h) **Other Applicable Provisions.** The provisions for nonconforming uses contained in  
6 Sections 180 through 183 shall continue to apply to all uses affected by this Section 186,  
7 except that the cost limit for structural alterations contained in Section 181(b)(4) shall not be  
8 applicable thereto.

9  
10 **SEC. 303.1. FORMULA RETAIL USES.**

11 \* \* \* \*

12 (c) **"Retail Sales or Service Activity or Retail Sales or Service Establishment."** For the  
13 purposes of this Section 303.1, a retail sales or service activity or retail sales or service  
14 establishment shall include the following uses whether functioning as a Principal or Accessory  
15 Use, as defined in Articles 1, 2, 7, and 8 of this Code:

16 \* \* \* \*

17 - Amusement Game Arcade ~~§§ 102,~~ 890.4;

18 \* \* \* \*

19  
20 **SEC. 703. NEIGHBORHOOD COMMERCIAL DISTRICT REQUIREMENTS.**

21 \* \* \* \*

22 (d) **Accessory Uses.** Subject to the limitations set forth below and in Sections 204.1  
23 (Accessory Uses for Dwellings in All Districts), 204.4 (Dwelling Units Accessory to Other  
24 Uses), and 204.5 (Parking and Loading as Accessory Uses) of this Code, Accessory Uses as  
25 defined in Section 102 shall be permitted when located on the same lot. Any Use that does

1 not qualify as an Accessory Use shall be classified as a Principal or Conditional Use unless it  
2 qualifies as a temporary use under Sections 205 through 205.4 of this Code.

3 No Use will be considered accessory to a permitted Principal or Conditional Use that  
4 involves or requires any of the following:

5 (1) The use of more than one-third of the total floor area occupied by such use and the  
6 Principal or Conditional use to which it is accessory, except in the case of accessory off-street  
7 parking and loading and as specified in subsection (d)(3) below as accessory wholesaling,  
8 manufacturing, or processing of foods, goods, or commodities;

9 (2) Any Bar or Restaurant, or any other retail establishment which serves liquor for  
10 consumption on-site; however, this shall not prohibit take-out food activity which operates in  
11 conjunction with a Limited Restaurant, Restaurant, General Grocery, and Specialty Grocery;

12 *This shall also not prohibit a Limited Restaurant as an Accessory Use to a permitted Principal or*  
13 *Conditional Use except as specified in subsection (d)(7) below:*

14 (3) The wholesaling, manufacturing, or processing of foods, goods, or commodities on  
15 the premises of an establishment that does not also use or provide for retail sale of such  
16 foods, goods, or commodities at the same location where such wholesaling, manufacturing, or  
17 processing takes place, with the following exceptions:

18 (A) In the North Beach Special Use District where such activities are limited to 15% of  
19 the total floor area occupied by the Principal or Conditional Use to which it is accessory unless  
20 the Principal or Conditional Use is Specialty Foods Manufacturing as defined in Section 780.3  
21 of this Code; and

22 (B) Notwithstanding the floor area limitation in subsection (d)(1), a Catering Use limited  
23 to food and beverage Catering shall be permitted as an Accessory Use to Limited Restaurants  
24 if the following requirements are met:  
25

1 (i) The Catering Use does not operate more than 75% of the total time within the  
 2 Limited Restaurant's Hours of Operation on any given day; and

3 (ii) The Catering Use does not distribute or deliver individual meals to customers  
 4 directly from the subject lot, either by its own means, or through a third-party delivery service.

5 (4) Any retail Liquor Store.

6 (5) Medical Cannabis Dispensaries.

7 (6) Any General Entertainment or Nighttime Entertainment use, except for one that  
 8 involves a Limited Live Performance Permit as set forth in Police Code Section 1060 et seq.

9 (7) Within the North Beach SUD and NCD, a Limited Restaurant.

10 \* \* \* \*

11 **SEC.710. NC-1—NEIGHBORHOOD COMMERCIAL CLUSTER DISTRICT.**

12 \* \* \* \*

13 **Table 710. NEIGHBORHOOD COMMERCIAL CLUSTER DISTRICT NC-1**  
 14 **ZONING CONTROL TABLE**

<i>Neighborhood Commercial Cluster NCT-1</i>		
<u>Zoning Category</u>	<u>§ References</u>	<u>Controls</u>
* * * *		
<b><u>NON-RESIDENTIAL STANDARDS</u></b>		
<b><u>COMMERCIAL USES CHARACTERISTICS</u></b>		
* * * *		
Outdoor Activity Area	§ 102, 145.2	P if located in front of building <i>or if operated between 6 a.m. and 10 p.m.</i> ; C if located elsewhere <i>and operated between 10 p.m. and 6 a.m.</i>
* * * *		

23 \* Not listed below



(1) Additional 5 feet for NC-1 parcels with a Commercial use on the ground floor within the following areas:

(a) Within the boundaries of Sargent Street to Orizaba Avenue to Lobos Street to Plymouth Avenue to Farellones Street to San Jose Avenue to Alemany Boulevard to 19th Avenue to Randolph Street to Monticello Street and back to Sargent Street.

(b) On Noriega, Irving, Taraval, and Judah Streets west of 19th Avenue.

(2) P if located more than  $\frac{1}{4}$  mile 300 feet from any NC District ~~or Restricted Use Subdistrict~~ with more restrictive controls; otherwise, same as more restrictive control.

(3) [Note deleted.]

(4) C required for 7 or more persons.

(5) C if a Macro WTS Facility; P if a Micro WTS Facility.

(6) C in Supervisorial District 4.

**SEC. 711. NC-2—SMALL-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT.**

\* \* \* \*

**Table 711. SMALL-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT NC-2  
ZONING CONTROL TABLE**

		<u><i>SMALL-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT NCT-2</i></u>
<u><i>Zoning Category</i></u>	<u><i>§ References</i></u>	<u><i>Controls</i></u>
* * * *		
<b><u><i>NON-RESIDENTIAL STANDARDS AND USES COMMERCIAL USE CHARACTERISTICS</i></u></b>		
* * * *		
Outdoor Activity Area	§§ 102, 145.2	P if located in front <i>or if operated between 6 a.m. and 10 p.m.</i> ; C if located elsewhere <i>and operated between 10 p.m. and 6 a.m.</i>
* * * *		

1 **SEC. 712. NC-3 – MODERATE-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT.**

2 \* \* \* \*

3 **Table 712. MODERATE-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT NC-3**  
 4 **ZONING CONTROL TABLE**

5 \* \* \* \*

Zoning Category	§ References	Controls		
* * * *				
<b>NON-RESIDENTIAL STANDARDS</b>				
* * * *				
<b>NON-RESIDENTIAL USES</b>		<b>Controls by Story</b>		
		1st	2nd	3rd
* * * *				
<i>Amusement Game Arcade</i>	§ 102	C	NP	NP
Entertainment, General	§ 102	P	P	NP
* * * *				

18 **SEC. 713. NC-S – NEIGHBORHOOD COMMERCIAL SHOPPING CENTER DISTRICT.**

19 \* \* \* \*

20 **Table 713. NEIGHBORHOOD COMMERCIAL SHOPPING CENTER DISTRICT NC-S**  
 21 **ZONING CONTROL TABLE**

22 \* \* \* \*

Zoning Category	§ References	Controls		
* * * *				

**NON-RESIDENTIAL STANDARDS**

\* \* \* \*

**NON-RESIDENTIAL USES**

**Controls by Story**

**1st                      2nd                      3rd**

\* \* \* \*

<i>Amusement Game Arcade</i>	§ 102	€	NP	NP
Entertainment, General	§ 102	P(1)	P(1)	NP

\* \* \* \*

**SEC. 714. BROADWAY NEIGHBORHOOD COMMERCIAL DISTRICT.**

\* \* \* \*

**Table 714. BROADWAY NEIGHBORHOOD COMMERCIAL DISTRICT  
ZONING CONTROL TABLE**

\* \* \* \*

<b>Zoning Category</b>	<b>§ References</b>	<b>Controls</b>		
* * * *				
<b>NON-RESIDENTIAL STANDARDS AND USES</b>				
* * * *				
<b>Controls by Story</b>				
		<b>1st</b>	<b>2nd</b>	<b>3rd</b>
* * * *				
<i>Amusement Game Arcade</i>	§ 102	€	NP	NP
Entertainment, General	§ 102	P	P	NP

****				
------	--	--	--	--

**SEC. 719. HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

\*\*\*\*

**Table 719. HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT  
ZONING CONTROL TABLE**

\*\*\*\*

Zoning Category	§ References	Controls		
* * * *				
<b>NON-RESIDENTIAL STANDARDS AND USES</b>				
* * * *				
<b>Controls by Story</b>				
		<b>1st</b>	<b>2nd</b>	<b>3rd</b>
****				
<i>Amusement Game Arcade</i>	§ 102	<i>P</i>	<i>P</i>	<i>NP</i>
Entertainment, General	§ 102	C	NP	NP
****				

\*\*\*\*

*(8) Within the Haight Street Neighborhood Commercial District, that portion of an General Entertainment use comprised of mechanical amusement game devices will be considered an Amusement Game Arcade Use, for the purposes of the Planning Code.*

**SEC. 721. JAPANTOWN NEIGHBORHOOD COMMERCIAL DISTRICT.**

\*\*\*\*

1 **Table 721. JAPANTOWN NEIGHBORHOOD COMMERCIAL DISTRICT**  
 2 **ZONING CONTROL TABLE**

3 \* \* \* \*

Zoning Category		§ References	Controls		
<b>NON-RESIDENTIAL STANDARDS AND USES</b>					
* * * *					
<i>Amusement Game Arcade</i>		§ 102	<i>P</i>	<i>P</i>	<i>P</i>
Entertainment, General		§ 102	P(2)	P(2)	C(2)
* * * *					

12  
13 **SEC. 728. 24TH STREET-NOE VALLEY NEIGHBORHOOD COMMERCIAL DISTRICT.**

14 \* \* \* \*

15 **Table 728. 24TH STREET-NOE VALLEY NEIGHBORHOOD COMMERCIAL DISTRICT**  
 16 **ZONING CONTROL TABLE**

		<u><b>24TH STREET-NOE VALLEY NEIGHBORHOOD COMMERCIAL DISTRICT NCT</b></u>
<u>Zoning Category</u>	<u>§ References</u>	<u>Controls</u>
* * * *		
<b><u>NON-RESIDENTIAL STANDARDS AND USES</u></b> <b><u>COMMERCIAL USE CHARACTERISTICS</u></b>		
* * * *		
Outdoor Activity Area	§§ 102, 145.2	P if located in front <i>or if operated between 6 a.m. and 10 p.m.</i> ; C if located elsewhere <i>and operated between 10 p.m. and 6 a.m.</i>
* * * *		

1 \* \* \* \*

2 (4) 24TH STREET – NOE VALLEY SPECIALTY RETAIL USES

3 Boundaries: Only the area within the 24th Street – Noe Valley Neighborhood Commercial  
4 District. The controls shall not apply to NC-1 Districts or nonconforming uses within 1/4 mile 300  
5 feet of this District as set forth in Code §§ 710.10 and 186.

6 **Controls:** Formula Retail Limited-Restaurants are NP.

7 **SEC. 754. MISSION STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.**

8 \* \* \* \*

9 **Table 754. MISSION STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT**  
10 **ZONING CONTROL TABLE**

11 \* \* \* \*

Zoning Category	§ References	Controls		
<b>NON-RESIDENTIAL STANDARDS AND USES</b>				
* * * *				
<i>Amusement Game Arcade</i>	§ 102	C	NP	NP
Arts Activities	§ 102	P(4)	P	C
* * * *				

20 **SEC. 757. FOLSOM STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.**

21 \* \* \* \*

22 **Table 757. FOLSOM STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT**  
23 **ZONING CONTROL TABLE**

		<b><u>FOLSOM STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT NCT</u></b>
--	--	--

<u>Zoning Category</u>	<u>§ References</u>	<u>Controls</u>
* * * *		
<b><u>NON-RESIDENTIAL STANDARDS AND USES</u></b>		
<b><u>COMMERCIAL USE CHARACTERISTICS</u></b>		
* * * *		
Outdoor Activity Area	§§ 102, 145.2	P at 1st and 2nd Floors if located in front <i>or</i> operated between 6 a.m. and 10 p.m.; C if located elsewhere <i>and</i> operated between 10 p.m. and 6 a.m.
* * * *		

**SEC. 758 REGIONAL COMMERCIAL DISTRICT.**

\* \* \* \*

**Table 758. REGIONAL COMMERCIAL DISTRICT  
ZONING CONTROL TABLE**

		<b><u>REGIONAL COMMERCIAL DISTRICT</u></b> <b><u>ZONING CONTROL TABLE NCT</u></b>
<u>Zoning Category</u>	<u>§ References</u>	<u>Controls</u>
* * * *		
<b><u>NON-RESIDENTIAL STANDARDS AND USES</u></b>		
<b><u>COMMERCIAL USE CHARACTERISTICS</u></b>		
* * * *		
Outdoor Activity Area	§§ 102, 145.2	P at 1st and 2nd Floors if located in front <i>or</i> operated between 6 a.m. and 10 p.m.; C if located elsewhere <i>and</i> operated between 10 p.m. and 6 a.m.
* * * *		

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

\* \* \* \*

**Table 759. DIVISADERO STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT**

**ZONING CONTROL TABLE**

\*\*\*\*

Zoning Category	§ References	Controls		
<b>NON-RESIDENTIAL STANDARDS AND USES</b>				
****				
<i>Amusement Game Arcade</i>	§ 102	C	NP	NP
Entertainment, General	§ 102	P	P(2)	NP
****				

**SEC. 760. FILLMORE STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.**

\*\*\*\*

**Table 760. FILLMORE STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT  
ZONING CONTROL TABLE**

\*\*\*\*

Zoning Category	§ References	Controls		
<b>NON-RESIDENTIAL STANDARDS AND USES</b>				
****				
<i>Amusement Game Arcade</i>	§ 102	C	NP	NP
Entertainment, General	§ 102	P	P	NP
****				



1 **SEC. 764. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT**  
 2 **DISTRICT.**

3 \* \* \* \*

4 **Table 764. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT**  
 5 **DISTRICT**  
 6 **ZONING CONTROL TABLE**

7 \* \* \* \*

Zoning Category	§ References	Controls		
<b>NON-RESIDENTIAL STANDARDS AND USES</b>				
* * * *				
<i>Amusement Game Arcade</i>	§ 102	C	P	NP
Entertainment, General	§ 102	C(8)	NP	NP
* * * *				

15 \* \* \* \*

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

20 **SEC. 781.9. HAIGHT STREET ALCOHOL RESTRICTED USE SUBDISTRICT.**

21 \* \* \* \*

22 (b) **Boundaries.** The Haight Street Alcohol Restricted Use Subdistrict (Haight Street Alcohol  
 23 RUSD) is coterminous with the Haight Street Neighborhood Commercial District as  
 24 designated on Sectional Maps ZN06 and ZN07-7. The Haight Street Alcohol RUSD is  
 25 designated on Sectional Maps SU06 and SU07. *These controls shall also apply within 1/4-mile of*

1 *the Haight Street Alcohol RUSD to nonconforming Commercial Uses in R Districts pursuant to Section*  
2 *186 and in NC-1 Districts pursuant to Section 710 of this Code.*

3 \* \* \* \*

4  
5 Section 5. Amendment of Specific Zoning Control Tables. Zoning Control Tables 712,  
6 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 725, 726, 729, 730, 731, 732, 733,  
7 734, 750, 751, 752, 753, 754, 755, 756, 759, 760, 761, 762, 763, and 764 are hereby  
8 amended identically to the amendment of Zoning Control Table 711 in Section 4 of this  
9 ordinance, to provide in the "Controls" column that an Outdoor Activity Area is P if located in  
10 front of building or if operated between 6 a.m. and 10 p.m.; C if located elsewhere and if  
11 operated between 10 p.m. and 6 a.m.

12  
13 Section 6. Article 15.1 of the Police Code is hereby amended by revising Sections 1060  
14 and 1060.2 to read as follows:

15 **SEC. 1060. DEFINITIONS.**

16 For the purposes of this Article 15.1, unless otherwise provided in this Article, the  
17 following words and phrases shall mean:

18 \* \* \* \*

19 Limited Live Performance Locale." A locale with all the following features:

20 (a) The presentation of Live Performances is a secondary purpose of the locale  
21 rather than its primary purpose.

22 (b) The locale is indoors, or consists of an outdoor plaza, courtyard, or similar  
23 space, enclosed by surrounding buildings, with or without open means of public ingress and  
24 egress, with an area in which Live Performances are presented that is no greater than 200  
25 square feet. For purposes of this provision, "outdoor plaza, courtyard, or similar space" also

1 shall include, regardless of the square footage of the Live Performance area, (1) any Plaza as  
2 identified in Administrative Code Chapter 94 or (2) any People Place as identified in  
3 Administrative Code Chapter 94A.

4 (c) Live Performances presented at the locale conclude by 10 p.m., except as  
5 otherwise provided in Section 1060.38.1.

6 (d) The locale is not a Private Residence.

7 (e) Patrons or members are admitted to the locale, *which serves food, beverages,*  
8 *or food and beverages, including but not limited to alcoholic beverages, for consumption on the*  
9 *premises,* except this requirement shall not apply to a Plaza as identified in Administrative  
10 Code Chapter 94 or a People Place as identified in Administrative Code Chapter 94A.

11 \* \* \* \*

12  
13 **SEC. 1060.2. FILING APPLICATION AND NOTICE TO OTHER CITY DEPARTMENTS FOR**  
14 **PLACE OF ENTERTAINMENT PERMIT.**

15 (a) Every Person seeking a Place of Entertainment permit or an amendment to a  
16 permit shall file an application with the Entertainment Commission upon a form provided by  
17 the Entertainment Commission and shall pay a filing fee as provided in Section 2.26 of this  
18 Code.

19 (b) The Director shall send the application to the *following departments, which San*  
20 *Francisco Police Department, Fire Department, Department of Building Inspection, Department of*  
21 *Public Health, and Planning Department. Those departments* shall complete all necessary  
22 inspections *or approvals* and *shall endeavor to* report their determinations to the Entertainment  
23 Commission within 20 City business days of receiving the application:

24 (1) The Police Department;

25 (2) The Planning Department;

1                   (3) The Department of Building Inspection, except that this subsection (b)(3) shall not  
2 apply if the Person provides evidence of the completion of a final inspection for an issued building  
3 permit for the premises, as required by Chapter 1A of the San Francisco Building Code, if the  
4 inspection was completed in the 12 months before the date of the Person's application for a Place of  
5 Entertainment Permit;

6                   (4) The Department of Public Health, except that this subsection (b)(4) shall not apply  
7 if the Person provides evidence of a permit to operate a food preparation and service establishment on  
8 the premises, as required by Article 8 of the Health Code, current as of the date of the Person's  
9 application for a Place of Entertainment Permit; and

10                   (5) The Fire Department, except that this subsection (b)(5) shall not apply if the Person  
11 provides evidence of a place of assembly permit for the premises, as required by Chapter 1 of the San  
12 Francisco Fire Code, current as of the date of the Person's application for a Place of Entertainment  
13 Permit.

14  
15                   Section 7. Effective Date. This ordinance shall become effective 30 days after  
16 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
17 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
18 of Supervisors overrides the Mayor's veto of the ordinance.

19  
20                   Section 8. Scope of Ordinance. With the exception of the amendments to Zoning  
21 Control Tables in Section 5 of this ordinance, in enacting this ordinance, the Board of  
22 Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections,  
23 articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the  
24  
25

1 Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board  
2 amendment additions, and Board amendment deletions in accordance with the "Note" that  
3 appears under the official title of the ordinance.  
4

5 Section 9. Undertaking for the General Welfare. In enacting and implementing this  
6 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not  
7 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is  
8 liable in money damages to any person who claims that such breach proximately caused injury.  
9

10 Section 10. Severability. If any section, subsection, sentence, clause, phrase, or word of  
11 this ordinance, or any application thereof to any person or circumstance, is held to be invalid or  
12 unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect  
13 the validity of the remaining portions or applications of the ordinance. The Board of Supervisors  
14 hereby declares that it would have passed this ordinance and each and every section, subsection,  
15 sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to  
16 whether any other portion of this ordinance or application thereof would be subsequently declared  
17 invalid or unconstitutional.  
18

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

21 By:   
22 EILEEN K. CHAUVET  
23 Deputy City Attorney

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**LEGISLATIVE DIGEST**

[Health, Planning, and Police Codes - Small Business Permit Streamlining]

**Ordinance to streamline small business permitting by, among other things, amending the Health Code to align regulation of restaurant enclosures for outdoor food service and restroom requirements with state standards; amending the Planning Code to clarify that a Type 23 liquor license may be used in conjunction with a Bar or Restaurant use, to amend the definition of a Bar to provide for consistent treatment of Type 64 liquor licenses, to modify Nighttime Entertainment use food service requirements, to reduce the distance measured for Retail Sales and Services uses in Neighborhood Commercial zoning districts to any neighborhood commercial district, to reduce the distance measured for nonconforming uses in RH (Residential, House), RM (Residential, Mixed), and RTO (Residential, Transit-Oriented) districts to any neighborhood commercial district, to amend the definition of General Entertainment to include Amusement Game Arcade, to allow as a permitted use an Outdoor Activity Area operated between 6 a.m. to 10 p.m., and to allow Limited Restaurant use as an Accessory Use; amending the Police Code to eliminate certain duplicative inspections and signoffs in connection with Place of Entertainment permits, and amending the definition of Limited Live Performance Locale to remove the requirement for food and beverage service; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and public necessity, convenience, and welfare findings pursuant to Planning Code, Section 302.**

Existing Law

A. The California Health and Safety Code Section 114266, part of California Retail Food Code, requires that “each permanent food facility shall be fully enclosed in a building consisting of permanent floors, walls, and an overhead structure,” but states explicitly that this provision “does not require the enclosure of dining areas or any other operation approved for outdoor food service.” San Francisco Health Code Section 412 applies a more restrictive approach, requiring all doors, windows, apertures, or other openings in restaurant places or kitchens to be enclosed with finely woven wire mesh screens. This applies to all places where “foodstuffs are cooked, prepared, sold, or disposed of for human consumption.”

Health Code Section 412 prevents San Francisco restaurants and other eating places from creating open air experiences. It also impacts manufacturing businesses that have a food or beverage component, such as breweries that include a tasting room. In those facilities, roll-up doors often must be kept open for operational purposes. Under the existing Health Code, Section 412 a roll-up door may not be kept open in a tasting room or other dining area inside a manufacturer.

B. The California Retail Food Code (California Health and Safety Code Section 114276) requires a food facility to have toilet and handwashing facilities for patrons where there is onsite food consumption, or when the facility has more than 20,000 square feet of floor space. San Francisco Health Code Section 440.5 is more restrictive by requiring that every food establishment must provide toilet and handwashing facilities for use by patrons if the establishment is “selling food for the purpose of immediate consumption without the reasonable expectation of further preparation or addition to other foods” even if those foods are not consumed onsite.

Unlike the state law, Health Code Section 440.5 requires even a very small, to-go-only food establishment with no seating to provide a restroom for customers. This restroom requirement is a barrier for retail storefronts hoping to incorporate small food establishments (such as to-go coffee or ice cream) in order to create a unique shopping experience and attract customers who might otherwise choose to shop online.

C. The Planning Code defines “Bar” and “Restaurant” uses to include a number of state liquor license types, but does not provide clear guidance regarding the treatment of businesses with several types of licenses. A business using a Type 23 brewery liquor license is defined as a “Bar,” even though this license may be used by a brewery in conjunction with either a bar or restaurant. The lack of clarity on this point has required multiple breweries to seek Letters of Determination, adding time and money in order to move projects forward. Additionally, the definitions of Bar and Restaurant do not include a Type 02 winery liquor license, even though this license may be employed by a winery with either a bar or a restaurant.

The definitions also do not mention a Type 64 liquor license, which authorizes a nonprofit theater to serve alcoholic beverages to patrons before, during, and after theatrical performances. The lack of clear guidance has led to confusion about whether such a license would create a Bar use.

D. Under existing law an entertainment venue must have both Restaurant and Nighttime Entertainment uses as principal uses in order to hold a restaurant-style liquor license and admit patrons of all ages. Under Section 102 of the Planning Code, a “Restaurant” serving alcohol must operate as a “Bona Fide Eating Place,” defined to include requirements that the business (1) must receive at least 51% of its gross receipts from food sales; and (2) must be open and serving meals at least five days a week.

Some ticketed venues may not receive 51% of their gross receipts from food sales, and may not be open five days a week.

E. Section 710 of the Planning Code (zoning table note 2) provides that in NC-1 zoning Retail Sales and Service uses, including Restaurant and Bar uses, are principally permitted, unless the business is located within one quarter mile of any neighborhood commercial district or restricted use district with more restrictive controls. In those cases, the more restrictive

zoning control applies. Similarly, for nonconforming uses in RH, RM, and RTO districts under Planning Code Section 186(a), a nonconforming use may be legitimized if, among other requirements, it conforms with NC-1 zoning, or of any neighborhood commercial district or restricted use district with more restrictive controls located within one quarter mile of the proposed use.

This requirement has prevented businesses from opening due to zoning restrictions in other neighborhoods. This requirement applies even if a zoning district with more permissive zoning is located between the proposed use and the more restrictive district. The proposed change seeks to implement a recommendation from the Planning Department's 2009 report, NC @ 20, which stated that "it is recommended that a suitable relaxation of the ¼ mile radius provisions be examined" (page 66).

F. The Planning Code defines Amusement Game Arcade as any business that includes 11 or more mechanical amusement devices (including pinball machines and arcade games). A business with 10 or fewer devices is considered a Nighttime Entertainment use. Amusement Game Arcades do not fall within the category of General Entertainment, which includes "entertainment or leisure pursuits to the general public including...billiard halls, bowling alleys, skating rinks, and mini-golf." In many zoning districts, General Entertainment is either principally permitted or permitted with a Conditional Use Authorization; in many of these same districts, Amusement Game Arcades are not specifically enumerated and are, as a result, not permitted under the umbrella "Entertainment, Arts, and Recreation Use" category.

In recent years, a number of new businesses combining Amusement Game Arcade with other food, beverage, and retail uses have emerged, leading to piecemeal legislation to permit these uses on a district-by-district basis. These uses are not materially distinct from billiards halls and other General Entertainment uses. The Planning Department previously considered folding Amusement Game Arcade into the General Entertainment use.

G. An "Outdoor Activity Area" is defined in the Planning Code as an area "located outside of a building or in a courtyard, which is provided for the use or convenience of patrons of a commercial establishment including, but not limited to, sitting, eating, drinking, dancing, and food-service activities." In many zoning districts, while an Outdoor Activity Area in front of a building is principally permitted, back patios and rooftop areas require a Conditional Use Authorization. In most neighborhood commercial districts, a change of use to establish an Outdoor Activity Area also requires Section 312 Neighborhood Notification.

Outdoor patios, courtyards, and rooftops add unique character to businesses, and enhance the vibrancy of the City's commercial corridors. Despite these benefits, the Conditional Use Authorization requirement creates significant time and cost barriers that may be prohibitive for small businesses.

H. Under Police Code Section 1060.2, as part of the Entertainment Commission permitting process, an application for a Place of Entertainment permit is referred to the



Planning, Building, Health, and Fire Departments for inspections and signoffs. These are separate from the signoffs required to close out a building permit and sign off on the establishment of an Entertainment use. Additionally, in order to serve food or drink, a new business will also need to secure a Permit to Operate from the Department of Public Health. In order to have an occupancy above 49 people, a new business will need an assembly permit from the Fire Department.

Where a business has recently completed the process of establishing an Entertainment use, or where a business secures a health or fire permit, the requirement to undergo additional inspections is redundant and adds extra expense for new business owners.

I. A Limited Live Performance (“LLP”) permit enables a business to incorporate limited entertainment performances as a secondary use alongside the business’s primary purpose. Under Police Code Section 1060, one of the requirements for a permitted “LLP Locale” is that “[p]atrons or members are admitted to the locale, which serves food, beverages, or food and beverages, including but not limited to alcoholic beverages, for consumption on the premises.”

This requirement prevents retailers that do not wish to serve food or drink from being able to acquire an LLP permit and offer limited entertainment to complement their retail offerings.

#### Amendments to Current Law

A. Health Code Section 412 is amended to replace the existing discussion of restaurant enclosures with language that aligns with the state standard for outdoor food service, while requiring that an establishment must be fully enclosed while the business is not operating.

B. Health Code Section 440.5 is amended to align with state law requirements for restrooms by replacing “for the purpose of immediate consumption without the reasonable expectation of further preparation or addition to other foods” with “for onsite consumption, or where the establishment has more than 20,000 square feet of floor space.”

C. Planning Code Section 102 is amended to delete the definition of “Amusement Game Arcade”; change the definition of “Arts Activities” to replace a reference to “Amusement Game Arcade” with a reference to arcades with eleven or more game devices; change the definition of “Bar” to include an ABC license Type 02 winemakers license and to clarify that a non-profit theater with an ABC license Type 64 is not a “Bar” use; change the definition of “Entertainment, General” to include arcades with eleven or more game devices; change the definition of “Entertainment, Arts and Recreation Use” to delete Amusement Game Arcade; change the definition of “Restaurant” to include a ABC license Types 02, 23, and 87 liquor license and to exempt “Restaurant” uses that are also “Nighttime Entertainment” uses from needing to operate as a “Bona Fide Eating Place.”

D. The Planning Code is amended to (1) Reduce the distance measured for Retail Sales and Services uses in NC zoning districts to any neighborhood commercial district within 300

feet and delete the distance-measuring requirement for Restricted Use districts; and (2) Reduce the distance measured for nonconforming uses in RH, RM, and RTO districts to any neighborhood commercial district within 300 feet and delete the distance-measuring requirement for Restricted Use districts.

E. Planning Code 703 regarding Neighborhood Commercial Districts is amended to clarify that a Limited Restaurant Use is not prohibited as an Accessory Use, except in the North Beach Special Use District and the North Beach Neighborhood Commercial District.

F. The Planning Code's Neighborhood Commercial District zoning tables are amended to delete references to Amusement Game Arcade and to establish that, where an Outdoor Activity Area use currently requires a Conditional Use Authorization, an Outdoor Activity Area will only require a Conditional Use Authorization to establish hours of operation outside of 6am to 10pm. Neighborhood notification would still be required where required presently.

G. Planning Code Section 303.1, dealing with formula retail requirements, is amended to reflect the deletion of the definition of Amusement Game Arcade from Section 102.

H. Police Code Section 1060 is amended to change the definition of "Limited Live Performance Locale" to delete the requirement that food or beverages must be served on the premises.

I. Police Code Section 1060.2 is amended to establish that, when a business seeking a Place of Entertainment Permit files an application with the Entertainment Commission, the Entertainment Commission will send the application to the Police Department, the Planning Department, the Department of Building Inspection, the Department of Public Health, and the Fire Department to complete all necessary inspections or approvals, and the departments will report back to the Entertainment Commission within 20 City business days, but inspections for the Department of Public Health, the Department of Building Inspection, and the Fire Department will not be required if other required permits have been received or inspections performed, as specified in Section 1060.2.

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