



SAN FRANCISCO PLANNING DEPARTMENT

July 13, 2011

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

Re: Transmittal of Planning Case Number 2011.0526I
BF No. 11-0506: Creation of a Limited Live Performance Permit for Indoor
Locales

Recommendation: Approval with Modifications

Dear Supervisor Mirkarimi and Ms. Calvillo,

On July 7, 2011, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance under Board of Supervisors File Number 11-0506.

At the July 7th hearing, the Commission voted 6-0 to recommend approval with modifications of the proposed Ordinance which would create a Limited Live Performance Permit for indoor locales whose primary function is not presentation of live performances. At that hearing, the Commission requested that the proposal be amended to extend the opportunity for small-scale entertainment to be considered an accessory use in the SOMA Mixed Use Districts, the SOMA NCT, West Portal, and Pacific Avenue neighborhood commercial districts – districts in which entertainment is not currently permitted. In addition, the Planning Commission recommended that any restrictions on the visibility of entertainment from public rights-of-way be removed, as well as any requirement that doors and windows be closed while the accessory performances are underway.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission. The attached resolution and exhibit provides more detail about the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "AM - [unclear]", written over a horizontal line.

AnMarie Rodgers
Manager of Legislative Affairs

Cc: City Attorneys Paul Zarefsky and Judith Boyajian

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Attachments (one copy of the following):

Planning Commission Resolution No. 18395
Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18395

HEARING DATE: JULY 7, 2011

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Project Name: **Amendments to Planning Code Sections 102.17, 703.2, 790.38, 803.2, 803.3, and 890.37: Creation of a Limited Live Performance Permit for Indoor Locales**

Case Number: 2011.0526T [Board File No. 11-0506]

Initiated by: Supervisor Mirkarimi / Introduced April 26, 2011

Staff Contact: Sophie Hayward, Legislative Affairs
sophie.hayward@sfgov.org, 415-558-6372

Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395

Recommendation: **Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS A PROPOSED ORDINANCE THAT WOULD AMEND SECTIONS 102.17, 703.2, 790.38, 803.2, 803.3, AND 890.37 OF THE SAN FRANCISCO PLANNING CODE AND SECTIONS OF THE SAN FRANCISCO POLICE CODE AND THE SAN FRANCISCO BUSINESS AND TAX CODE TO CREATE A LIMITED LIVE PERFORMANCE PERMIT FOR INDOOR LOCALES WHOSE PRIMARY FUNCTION IS NOT PRESENTATION OF LIVE PERFORMANCES, SAID PERMIT TO INCLUDE NOISE AND HOURS RESTRICTIONS BUT NOT NECESSARILY SECURITY PLAN REQUIREMENTS; SPECIFYING APPLICATION AND LICENSE FEES AND HEARING REQUIREMENTS FOR SAID PERMIT;

PREAMBLE

Whereas, on April 26, 2011, Supervisors Mirkarimi, Wiener, Mar, and Campos introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 11-0506 which would amend Planning Code Sections 102.17 (Definition of "Nighttime Entertainment Use," 703.2 (Uses Permitted in Neighborhood Commercial Districts), 790.38 (Definition of use, "Entertainment, Other" in Neighborhood Commercial Districts), 803.2 (Uses Permitted in Chinatown Mixed Use Districts), 803.3 (Uses Permitted in Eastern Neighborhood and South of Market Mixed Use Districts), and 890.37 (Definition of "Entertainment, Other" in Mixed Use Districts) to create a Limited Live Performance Permit for indoor locales whose primary function is not presentation of live performances; and

Whereas, on July 7, 2011, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the proposed zoning changes have been determined not to be a project the California Environmental Quality Act Section 15378; and

Whereas, the 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 the applicant, Department staff, and other interested parties; and

Whereas, the 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 Commission has reviewed the proposed Ordinance; and

MOVED, that the Commission hereby recommends that the Board of Supervisors recommends *approval of the proposed Ordinance with modifications* and adopts the attached Draft Resolution to that effect.

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. The Planning Code does not currently distinguish between forms of entertainment, and that all forms of entertainment, large and small, are subject to the same controls;
2. No form of entertainment is currently considered an accessory use;
3. The existing process associated with the Place of Entertainment (POE) permits are geared toward large or late night venues whose primary use is entertainment. The POE permits do not appropriately address, and an undue burden on, cafes, restaurants, and other businesses seeking to offer limited live performance as an accessory use. The current permit costs are prohibitive for many small businesses which provide economic development and contribute to the vibrancy and diversity of mixed-use areas and neighborhood commercial districts;
4. The Commission believes that the scaled down, Limited Live Performance (and the restrictions it places on noise, hours, and the form of entertainment) permit is appropriate for thriving, neighborhood-serving commercial districts;
5. Limited Live Performance permits would be police permits managed by the Entertainment Commission, with review by the Planning Department, and would allow for certain live performances to be considered "accessory use," with restrictions on noise, space, hours, and forms of entertainment;
6. The Limited Live Performance permit would be offered at a significantly lower cost than the existing POE permit, and would therefore remove an existing obstacle for small business owners to cultivate appropriate accessory live entertainment in conjunction with permitted uses;

7. The Commission recommends that the Board of Supervisors adopt the proposed Ordinance with an amendment to extend the opportunity for small-scale entertainment to be considered an accessory use in the SOMA Mixed Use Districts, the SOMA NCT, West Portal, and Pacific Avenue neighborhood commercial districts – in which entertainment uses are currently not permitted as a primary land use category –with the issuance of the Limited Live Entertainment permit by the Police Department.
8. The Commission also recommends that the Board of Supervisors amend the Ordinance to remove any limitations or restrictions on the visibility of the accessory live entertainment from public rights-of-way, as well as any requirement that doors and windows be closed while performances occur.
9. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

I. COMMERCE & INDUSTRY ELEMENT

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

GOALS

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

OBJECTIVE 6

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

POLICY 6.2

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

POLICY 6.10

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

The Planning Code currently treats any use that requires a POE Permit as an entertainment land use, and entertainment uses cannot be considered an accessory use and therefore can only be established as a principal land use. Because an entertainment use cannot be considered an accessory use in any circumstance and can only be considered a principal use, a restaurant with a live guitarist playing background music while diners eat is treated in the same manner as a warehouse in which a DJ is playing amplified music for a large crowd. The creation of the Limited Live Performance permit (and the

restrictions it places on noise, hours, and the form of entertainment) permit is appropriate for thriving, neighborhood-serving commercial districts, and would support and promote economic development efforts in efforts in these districts.

The proposed Ordinance seeks to remedy the undue burden currently placed on small businesses such as restaurants and cafes that seek to provide limited and small forms of live entertainment to augment their primary land use.

10. The proposed replacement project is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed Ordinance will encourage neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses by allowing limited live performance as an accessory use in order to augment permitted uses in non-residential areas. The proposed new entertainment permit will encourage and foster economic growth by helping to attract and retain customers.

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed new Limited Live Performance permit is intended to provide a means for small scale, live entertainment to be permitted as an accessory to a permitted use. The proposed Ordinance includes provisions specifically intended to preserve neighborhood character, such as the limit on the hours of operation, noise levels, and the maximum area that may be dedicated to the accessory use.

- C) The City's supply of affordable housing will be preserved and enhanced:

The proposed Ordinance will have no adverse effect on the City's supply of affordable housing.

- D) The commuter traffic will 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.

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

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

- G) That landmark and historic buildings will be preserved:

Landmarks and historic buildings would be unaffected by the proposed amendments. The proposed amendments would not result in a physical impact to historic structures, and any proposed project would be reviewed under the Department's existing preservation policies.

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments. It is not anticipated that permits would be such that sunlight access, to public or private property, would be adversely impacted.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on July 7, 2011.

Linda Avery
Commission Secretary

AYES: Commissioners Olague, Antonini, Borden, Fong, Miguel, and Sugaya

NAYS: None

ABSENT: Commissioner Moore

ADOPTED: July 7, 2011



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: JULY 7, 2011

Project Name: Creation of a Limited Live Performance Permit for Indoor Locales
Case Number: 2011.0526T [Board File No. 11-0506]
Initiated by: Supervisor Mirkarimi / Introduced April 26, 2011
Staff Contact: Sophie Hayward, Legislative Affairs
sophie.hayward@sfgov.org, 415-558-6372
Reviewed by: AnMarie Rodgers, Manager of Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation: **Recommend Approval with Modifications**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend Planning Code Sections 102.17 (Definition of "Nighttime Entertainment Use," 703.2 (Uses Permitted in Neighborhood Commercial Districts), 790.38 (Definition of use, "Entertainment, Other" in Neighborhood Commercial Districts), 803.2 (Uses Permitted in Chinatown Mixed Use Districts), 803.3 (Uses Permitted in Eastern Neighborhood and South of Market Mixed Use Districts), and 890.37 (Definition of "Entertainment, Other" in Mixed Use Districts) to create a Limited Live Performance Permit for indoor locales whose primary function is not presentation of live performances.

The Way It Is Now:

The Police Code defines "Entertainment" broadly, and requires all Places of Entertainment to obtain a Place of Entertainment (POE) Permit. The Planning Code generally treats any use that requires a POE Permit as an entertainment land use, and entertainment uses cannot be considered an accessory use and therefore can only be established as a principal land use

Regulations for entertainment uses vary between zoning districts, with entertainment uses being prohibited in some districts (such as many South of Market and Eastern Neighborhoods Mixed Use Districts), while they are conditionally permitted in many Neighborhood Commercial Districts.¹ Because an entertainment use cannot be considered an accessory use in any circumstance and can only be considered a principal use, a restaurant with a live guitarist playing background music while diners eat is treated in the same manner, for the purposes of the POE Permit, as a warehouse rave in which a DJ is playing amplified music for a large crowd.

The Way It Would Be:

The proposed Ordinance would create a Limited Live Performance permit in the Police Code, and allow entertainment uses that require a Limited Live Performance police permit to be considered accessory uses in areas of the City where entertainment uses are allowed, either as principal or conditional uses.

¹ A summary chart, with an accompanying map, is attached to this case report. The chart lists the zoning districts in which entertainment as a primary land use is permitted, not permitted, and permitted with conditional use authorization.

The proposed Ordinance would:

- Create a sub-category of "Nighttime Entertainment Use," as defined in Section 102.17 of the Planning Code comprised of uses that require a "Limited Live Entertainment" police permit (in addition to uses that require "Place of Entertainment" police permits);
- Create a sub-category of the land use "Entertainment, Other," as defined in Section 790.38 and 890.37 of the Planning Code to include retail uses (other than adult entertainment) that provide live entertainment on the premises including "Limited Live Performance Locales" as defined in Section 1036 of the Police Code;
- Allow entertainment uses that require a "Limited Live Performance" police permit to be considered accessory to a permitted or conditional use in NC, Eastern Neighborhood, South of Market Mixed Use, and Chinatown Community Business districts where other entertainment is either principally or conditionally permitted (Sections 703.2(b)(1)(c)(vii), 803.2(b)(c)(v), 803.3(b)(c)(v)).
- Allow entertainment uses that require a "Limited Live Performance" police permit to be considered accessory to a permitted or conditional use in the Chinatown Mixed Use District provided that the use is either located within the Chinatown Visitor Retail District (a sub-district of the Chinatown Mixed Use District) below the second story and as an accessory to a full service restaurant (Section 803.2).

REQUIRED COMMISSION ACTION

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

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

- **Allow Limited Live Performance as an accessory use in more districts.** The Department recommends that the Commission recommend that the Board of Supervisors amend the proposed Ordinance to extend the opportunity for small-scale entertainment to be considered an accessory use in the SOMA Mixed Use Districts, the SOMA NCT, West Portal, and Pacific Avenue neighborhood commercial districts with the issuance of the Limited Live Entertainment permit by the Police Department. Note: these are districts in which entertainment uses are currently **not permitted** as a primary land use even by conditional use authorization.

BASIS FOR RECOMMENDATION

Currently, a full POE Permit is required for any live performance, regardless of whether the venue is a large nightclub or a small, neighborhood-serving restaurant with an acoustic guitar player. POE permits are costly, and often require a Conditional Use authorization in order to be permitted. In addition, there are swaths of the City that do not permit entertainment uses under any circumstance.

The existing POE permit process is geared towards large or late night venues whose primary use is entertainment. The POE permits do not appropriately address, and in fact put an undue burden on, cafes,

restaurants, and other businesses seeking to offer small or occasional live performance as an accessory use. The current permit costs are prohibitive for many small businesses and limit opportunity for added vibrancy and diversity in mixed-use areas and neighborhood commercial districts.

Limited Live Performance permits would be police permits managed by the Entertainment Commission, with review by the Planning Department, and would allow for certain live performances to be considered an "accessory use," with the following restrictions:

- The area devoted to performances would not exceed 200 square feet;
- The live performance must be subordinate to the primary use;
- The Limited Live Performance permit will be available in areas of the City where "entertainment" as a primary use is permitted by right or through Conditional Use Authorization;
- Limited live performance is permitted until 10pm for the first year; an extension to 12am may be granted in subsequent years;
- DJ performance is not permitted;
- Audible noise is not allowed outside the business.

In addition, the Limited Live Performance permit would be offered at a significantly lower cost than the existing POE permit. While a POE permit requires a \$1,700 non-refundable application fee, the proposed Limited Live Entertainment permit application fee is \$385. Under existing controls, if entertainment as a primary use requires Conditional Use authorization, an applicant must also pay the nearly \$2,000 Conditional Use authorization application fee; this would no longer be necessary if the proposed Ordinance is adopted and the proposed entertainment is meets the parameters of the Limited Live Performance Permit.

As proposed, the Ordinance would only allow Limited Live Performance to be considered an accessory use in areas of the City that permit, either by right or through Conditional Use authorization, entertainment as a primary land use. This means that non-residential areas such as the West Portal NCD, Pacific Avenue NCD, and portions of SOMA would not permit entertainment as an accessory use. While these districts do not currently allow full scale entertainment, the Department believes that the scaled down, Limited Live Performance (and the restrictions it places on noise, hours, and the form of entertainment) permit is appropriate for thriving, neighborhood-serving commercial districts.

As proposed, the restrictions built into the Limited Live Performance permit would prevent the accessory entertainment from creating a disruptive noise nuisance in surrounding neighborhoods. The proposed permit creates a wholly new, limited definition of "entertainment" that is inherently different from larger, potentially more disruptive forms of entertainment (such as raves or concert venues). As such, even in neighborhoods in which large scale entertainment (that would require a POE permit) is not permitted, the proposed Limited Live Entertainment permit is an appropriate mechanism to provide small-scale entertainment in neighborhood-serving establishments.

As outlined below, the public comments Staff has received up to this point have been positive and in many cases supportive of amending the proposed Ordinance to include additional neighborhood commercial and mixed-use areas that do not permit large scale entertainment. These districts would benefit from offering small-scale, limited live entertainment as an accessory to neighborhood-serving establishments.

In sum, the Department supports the proposed Ordinance to permit limited live performance as an accessory use in association with the proposed new Limited Live Performance police permit. Further, the Department believes that the proposed Ordinance should be amended to include non-residential commercial districts that do not permit full scale entertainment, but could benefit from limited live performance as a subordinate use to a permitted primary land use, such as a restaurant or cafe.

ENVIRONMENTAL REVIEW

The proposal to amend Planning Code Sections 102.17 (Definition of "Nighttime Entertainment Use," 703.2 (Uses Permitted in Neighborhood Commercial Districts), 790.38 (Definition of use, "Entertainment, Other" in Neighborhood Commercial Districts), 803.2 (Uses Permitted in Chinatown Mixed Use Districts), 803.3 (Uses Permitted in Eastern Neighborhood and South of Market Mixed Use Districts), and 890.37 (Definition of "Entertainment, Other" in Mixed Use Districts) would not be considered a project under CEQA Guidelines Section 15378.

PUBLIC COMMENT

Planning Department Staff has attended a community meeting in District 6 facilitated by the South of Market Business Solutions group. At that meeting, members of the public voiced support for the proposed ordinance, and many expressed the support for the idea of including commercial districts in which entertainment is not permitted as a primary land use.

Supervisor Kim's office is currently conducting outreach to constituent groups and merchant associations within District 6, and is considering an amendment to the proposed Ordinance that would include areas of SOMA that do not currently permit entertainment as a primary use, including but not limited to the SOMA NCT along 6th Street and the South Beach District.

Staff has received four emailed letters from constituents in the West Portal district, all of which support the legislation and request that the West Portal NCD, in which Entertainment is not permitted, be included as an area in which Limited Live Entertainment permits may be granted.

The Small Business Commission voted unanimously at their June 13 public hearing to recommend to the Board of Supervisors approval of the Ordinance, with the modification that the West Portal, Pacific Avenue and South of Market NC and Mixed Use Districts be included so that they may allow, with the issuance of the proposed Limited Live Entertainment permit, entertainment as an accessory to permitted uses. The full recommendation of the Small Business Commission is attached.

RECOMMENDATION:	Recommendation of Approval with Modifications
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 10-0434
- Exhibit C: Zoning Districts in which Entertainment is Currently P, NP, and C
- Exhibit D: Map Illustrating Zoning Districts in which Entertainment is P, NP, and C
- Exhibit E: June 21, 2011 Recommendation from the Small Business Commission