

1 [Additional Conditional Use Criteria for Certain Uses in Neighborhood Commercial Districts]  
2 AMENDING PART II, CHAPTER II, OF THE SAN FRANCISCO MUNICIPAL CODE  
3 (PLANNING CODE) BY AMENDING SECTION 303(c)(5)(A) TO REQUIRE  
4 CONSIDERATION OF THE CONDITIONAL USE FINDINGS OF SECTION 303(c)(1-4) IN  
5 ADDITION TO THOSE OF SECTION 303(c)(5)(A) WHEN MAKING FINDINGS  
6 ON A CONDITIONAL USE APPLICATION FOR MOVIE THEATERS, ADULT  
7 ENTERTAINMENT AND OTHER ENTERTAINMENT USES IN NEIGHBORHOOD  
8 COMMERCIAL DISTRICTS, ADOPTING FINDINGS PURSUANT TO PLANNING CODE  
9 SECTION 101.1.

10 Note: additions are underlined. Deletions are indicated by ((double parentheses)).

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

12 Section 1.

13 (a) General Findings.

14 The Board of Supervisors hereby finds and declares that the following existing  
15 conditions create a need to amend Planning Code Sections 303(c)(5)(A):

16 Section 303(c)(5)(A) currently provides a modified conditional use process for three types  
17 of uses in Neighborhood Commercial Districts: movie theaters, adult entertainment and other  
18 entertainment. This modified process consists of special findings to be made by the Planning  
19 Commission in place of the standard conditional use findings of Section 303(c)(1-4).

20 Without the standard findings required for conditional uses under Section 303(c)(1-4), the

1 range of issues to be considered by the Planning Commission in such cases is limited to the  
2 proximal location of adult entertainment uses, limiting hours of operation from 6:00 A.M. to 2:00  
3 A.M. and prohibiting electronic amplification between the hours of midnight and 6:00 A.M.

4 Neighborhood Commercial Districts are typically located within the surrounding context  
5 of a residential neighborhood. Testimony before the Planning Commission has indicated that  
6 such entertainment uses can result in conflicts and nuisance impacts related to noise, traffic,  
7 parking, loitering and littering which are not fully addressed under these limited findings.

8 By applying the standard findings of Section 303(c)(1-4) to such conditional use  
9 applications, the Planning Commission is enabled to consider the necessity or desirability of the  
10 use, the neighborhood-serving aspects of the use, whether it would be detrimental to the health,  
11 safety, convenience or general welfare of nearby residents regarding such issues as traffic, parking  
12 and noise, and that a use be consistent with the General Plan and the intent of the Neighborhood  
13 Commercial District in which it is located.

14 In evaluating these issues, the Planning Commission will have the ability to attach  
15 conditions to such authorizations to insure they operate in a manner compatible with the  
16 surroundings, or may disapprove proposals which cannot meet these standards, thereby  
17 encouraging an orderly and harmonious pattern of land use.

18 One of the Priority General Plan Policies passed by the voters as an Initiative Ordinance in  
19 1986 and found in Planning Code Section 101.1(b) states, "That existing housing and  
20 neighborhood character be conserved and protected in order to preserve the cultural and  
21 economic diversity of our neighborhoods." Requiring that the Planning Commission make the  
22 standard findings of Section 303(c)(1-4) when authorizing movie theater, adult entertainment and  
23 other entertainment uses in Neighborhood Commercial Districts will further this policy by

1 encouraging neighborhood compatibility and reducing potential nuisances in such cases.

2 The Board finds that it is necessary to the public health, safety and welfare that the  
3 existing neighborhood character of communities including and surrounding Neighborhood  
4 Commercial Districts be preserved and enhanced and that a full consideration of the standard  
5 conditional use findings of Section 303(c)(1-4) will provide a public forum and framework for  
6 decision making for entertainment uses which furthers this objective.

7 (b) Priority Policy Findings.

8 Pursuant to Section 101.1 of the Planning Code, the Board of Supervisors makes the  
9 following findings:

- 10 (1) The legislation is consistent with Priority Policy 1 in that it would encourage the  
11 retention of neighborhood-serving businesses which provide employment and  
12 ownership opportunities for local residents by promoting healthy Neighborhood  
13 Commercial Districts.
- 14 (2) The legislation is consistent with Priority Policy 2 in that it would encourage the  
15 conservation of neighborhood character by providing a noticed public hearing  
16 during which neighborhood character and compatibility issues would be discussed,  
17 as well as opportunities to modify project proposals making them compatible or  
18 otherwise disapproving potentially injurious uses.
- 19 (3) The legislation is consistent with Priority Policy 3 in that it would have no effect  
20 on city's supply of affordable housing.
- 21 (4) The legislation is consistent with Priority Policy 4 in that it would not effect

1 commuter traffic or Muni transit service.

2 (5) The legislation is consistent with Priority Policy 5 in that it would not effect  
3 industrial or service uses.

4 (6) The legislation is consistent with Priority Policy 6 in that it would have no adverse  
5 effect on the city's earthquake preparedness.

6 (7) The legislation is consistent with Priority Policy 7 in that it would not change the  
7 rules regarding landmarks and historic buildings.

8 (8) The legislation is consistent with Priority Policy 8 in that it would not effect parks  
9 and open spaces.

10 Section 2. Planning Code Section 303 is hereby amended to read as follows.

11 SEC. 303. CONDITIONAL USES.

12 (a) General. The City Planning Commission shall hear and make determinations  
13 regarding applications for the authorization of conditional uses in the specific situations in  
14 which such authorization is provided for elsewhere in this Code. The procedures for  
15 conditional uses shall be as specified in this Section and in Sections 306 through 306.6,  
16 except that Planned Unit Developments shall in addition be subject to Section 304,  
17 medical institutions and post-secondary educational institutions shall in addition be subject  
18 to the institutional master plan requirements of Section 304.5, and conditional use and  
19 Planned Unit Development applications filed pursuant to Article 7, or otherwise required  
20 by this Code for uses or features in Neighborhood Commercial Districts, and conditional  
21 use applications within South of Market Districts, shall be subject to the provisions set  
22 forth in Sections 316 through 316.8 of this Code, in lieu of those provided for in Sections  
23 306.2 and 306.3 of this Code, with respect to scheduling and notice of hearings, and in

1 addition to those provided for in Sections 306.4 and 306.5 of this Code, with respect to  
2 conduct of hearings and reconsideration.

3 (b) Initiation. A conditional use action may be initiated by application of the owner, or  
4 authorized agent for the owner, of the property for which the conditional use is sought.

5 (c) Determination. After its hearing on the application, or upon the recommendation  
6 of the Director of Planning if the application is filed pursuant to Sections 316 through  
7 316.8 of this Code and no hearing is required, the City Planning Commission shall  
8 approve the application and authorize a conditional use if the facts presented are such to  
9 establish:

10 (1) That the proposed use or feature, at the size and intensity contemplated  
11 and at the proposed location, will provide a development that is necessary or  
12 desirable for, and compatible with, the neighborhood or the community; and

13 (A) In Neighborhood Commercial Districts, if the proposed use is to be  
14 located at a location in which the square footage exceeds the limitations  
15 found in Planning Code Section 121.2(a) or 121.2(b), the following shall  
16 be considered:

17 (i) The intensity of activity in the district is not such that  
18 allowing the larger use will be likely to foreclose the location of  
19 other needed neighborhood-servicing uses in the area; and

20 (ii) The proposed use will serve the neighborhood, in whole or  
21 in significant part, and the nature of the use requires a larger size in

1 order to function; and

2 (iii) The building in which the use is to be located is designed in  
3 discrete elements which respect the scale of development in the  
4 district; and

5 (2) That such use or feature as proposed will not be detrimental to the health,  
6 safety, convenience or general welfare of persons residing or working in the  
7 vicinity, or injurious to property, improvements or potential development in the  
8 vicinity, with respect to aspects including but not limited to the following:

9 (A) The nature of the proposed site, including its size and shape, and  
10 the proposed size, shape and arrangement of structures;

11 (B) The accessibility and traffic patterns for persons and vehicles, the  
12 type and volume of such traffic, and the adequacy of proposed off-street  
13 parking and loading;

14 (C) The safeguards afforded to prevent noxious or offensive emissions  
15 such as noise, glare, dust and odor;

16 (D) Treatment given, as appropriate, to such aspects as landscaping,  
17 screening, open spaces, parking and loading areas, service areas, lighting  
18 and signs; and

19 (3) That such use or feature as proposed will comply with the applicable  
20 provisions of this Code and will not adversely affect the Master Plan; and

21 (4) With respect to applications filed pursuant to Article 7 of this Code, that  
22 such use or feature as proposed will provide development that is in conformity  
23 with the stated purpose of the applicable Neighborhood Commercial District, as

1 set forth in zoning control category .1 of Sections 710 through 729 of this Code;

2 and

3 (5) (A) With respect to applications filed pursuant to Article 7, Section  
4 703.2(a), zoning categories .46, .47, and .48, in addition to ((lieu of)) the  
5 criteria set forth above in Section 303(c)(1,4), that such use or feature will:

6 (i) Not be located within 1,000 feet of another such use, if the  
7 proposed use or feature is included in zoning category .47, as  
8 defined by Section 790.36 of this Code; and/or

9 (ii) Not be open between two a.m. and six a.m.; and

10 (iii) Not use electronic amplification between midnight and six  
11 a.m.; and

12 (iv) Be adequately soundproofed or insulated for noise and  
13 operated so that incidental noise shall not be audible beyond the  
14 premises or in other sections of the building and fixed-source  
15 equipment noise shall not exceed the decibel levels specified in the  
16 San Francisco Noise Control Ordinance.

17 (B) Notwithstanding the above, the City Planning Commission may  
18 authorize a conditional use which does not satisfy the criteria set forth in  
19 (5)(A)(ii) and/or (5)(A)(iii) above, if facts presented are such to establish  
20 that the use will be operated in such a way as to minimize disruption to  
21 residences in and around the district with respect to noise and crowd

1 control.

2 (6) With respect to applications for live/work units in RH and RM Districts  
3 filed pursuant to Section 209.9(f) or 209.9(h) of this Code, that:

4 (A) Each live/work unit is within a building envelope in existence on  
5 the effective date of Ordinance No. 412-88 (effective October 10, 1988)  
6 and also within a portion of the building which lawfully contains at the  
7 time of application a nonconforming, nonresidential use;

8 (B) There shall be no more than one live/work unit for each 1,000  
9 gross square feet of floor area devoted to live/work units within the subject  
10 structure; and

11 (C) The project sponsor will provide any off-street parking, in addition  
12 to that otherwise required by this Code, needed to satisfy the reasonably  
13 anticipated auto usage by residents of and visitors to the project.

14 Such action of the City Planning Commission, in either approving or disapproving the  
15 application, shall be final except upon the filing of a valid appeal to the Board of  
16 Supervisors as provided in Section 308.1.

17 (d) Conditions. When considering an application for a conditional use as provided  
18 herein with respect to applications for development of "dwellings" as defined in Chapter  
19 87 of the San Francisco Administrative Code, the Commission shall comply with that  
20 Chapter which requires, among other things, that the Commission not base any decision  
21 regarding the development of "dwellings" in which "protected class" members are likely to  
22 reside on information which may be discriminatory to any member of a "protected class"  
23 (as all such terms are defined in Chapter 87 of the San Francisco Administrative Code). In



1 addition, when authorizing a conditional use as provided herein, the City Planning  
2 Commission, or the Board of Supervisors on appeal, shall prescribe such additional  
3 conditions, beyond those specified in this Code, as are in its opinion necessary to secure  
4 the objectives of the Code. Once any portion of the conditional use authorization is  
5 utilized, all such conditions pertaining to such authorization shall become immediately  
6 operative. The violation of any condition so imposed shall constitute a violation of this  
7 Code and may constitute grounds for revocation of the conditional use authorization.  
8 Such conditions may include time limits for exercise of the conditional use authorization;  
9 otherwise, any exercise of such authorization must commence within a reasonable time.

10 (e) Modification of Conditions. Authorization of a change in any condition previously  
11 imposed in the authorization of a conditional use shall be subject to the same procedures  
12 as a new conditional use. Such procedures shall also apply to applications for modification  
13 or waiver of conditions set forth in prior stipulations and covenants relative thereto  
14 continued in effect by the provisions of Section 174 of this Code.

15 (f) Hotels and Motels.

16 (1) With respect to applications for development of tourist hotels and motels,  
17 the Planning Commission shall consider, in addition to the criteria set forth in  
18 Subsections (c) and (d) above:

19 (A) The impact of the employees of the hotel or motel on the demand  
20 in the City for housing, public transit, child care, and other social services.

21 To the extent relevant, the Commission shall also consider the seasonal

1 and part-time nature of employment in the hotel or motel;

2 (B) The measures that will be taken by the project sponsor to employ  
3 residents of San Francisco in order to minimize increased demand for  
4 regional transportation; and

5 (C) The market demand for a hotel or motel of the type proposed.

6 (2) Notwithstanding the provisions of Subsections (f)(1) above, the Planning  
7 Commission shall not consider the impact of the employees of a proposed hotel or  
8 motel project on the demand in the City for housing where:

9 (A) The proposed project would be located on property under the  
10 jurisdiction of the San Francisco Port Commission; and

11 (B) The sponsor of the proposed project has been granted exclusive  
12 rights to propose the project by the San Francisco Port Commission prior  
13 to June 1, 1991.

14 (3) Notwithstanding the provisions of Subsection (f)(1) above, with respect to  
15 the conversion of residential units to tourist hotel or motel use pursuant to an  
16 application filed on or before June 1, 1990 under the provisions of Chapter 41 of  
17 the San Francisco Administrative Code, the Planning Commission shall not  
18 consider the criteria contained in Subsection (f)(1) above; provided, however, that  
19 the Planning Commission shall consider the criteria contained in Subsection  
20 (f)(1)(B) at a separate public hearing if the applicant applies for a permit for new  
21 construction or alteration where the cost of such construction or alteration  
22 exceeds \$100,000. Furthermore, no change in classification from principal  
23 permitted use to conditional use in Section 216(b)(i) of this Code shall apply to

1 hotels or motels that have filed applications on or before June 1, 1990 to convert  
2 residential units to tourist units pursuant to Chapter 41 of the San Francisco  
3 Administrative Code. (Amended by Ord. 443-78, App. 10/6/78; Ord. 69-87, App.  
4 3/13/87; Ord. 412-88, App. 9/10/88; Ord. 115-90, App. 4/6/90; Ord. 47-92, App.  
5 2/14/92; Ord. 304-99, App. 12/3/99; Ord. 311-99, App. 12/3/99)

6  
7 APPROVED AS TO FORM:

8 LOUISE H. RENNE, CITY ATTORNEY

9  
10 By: Judith A. Boyajian

11 JUDITH A. BOYAJIAN

12 Deputy City Attorney

13 SAN FRANCISCO DEPARTMENT OF CITY PLANNING  
14 CATEGORICALLY EXEMPT FROM ENVIRONMENTAL

15 CLASS Not a project per

16 CERA Statutes Section 21065.

17 Diane Wong 5/24/00



# City and County of San Francisco

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

## Tails Ordinance

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**File Number:** 001422

**Date Passed:**

Ordinance amending Part II, Chapter II, of the San Francisco Municipal Code (Planning Code) by amending Section 303(c)(5)(A) to require consideration of the conditional use findings of Section 303(c)(1-4) in addition to those of Section 303(c)(5)(A) when making findings on a conditional use application for movie theaters, adult entertainment and other entertainment uses in Neighborhood Commercial Districts, adopting findings pursuant to Planning Code Section 101.1.

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October 30, 2000 Board of Supervisors — PASSED, ON FIRST READING

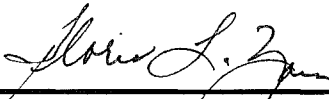
Ayes: 9 - Becerril, Bierman, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee  
Absent: 2 - Ammiano, Brown

November 6, 2000 Board of Supervisors — FINALLY PASSED


Ayes: 10 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki  
Absent: 1 - Yee

File No. 001422

I hereby certify that the foregoing Ordinance  
was **FINALLY PASSED** on November 6,  
2000 by the Board of Supervisors of the City  
and County of San Francisco.

  
\_\_\_\_\_  
Gloria L. Young  
Clerk of the Board

NOV 17 2000  
\_\_\_\_\_  
Date Approved

  
\_\_\_\_\_  
Mayor Willie L. Brown Jr.