



SAN FRANCISCO PLANNING DEPARTMENT

September 19, 2014

Ms. Angela Calvillo, Clerk
Honorable Supervisor Breed
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
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**Re: Transmittal of Planning Department Case Number 2014.1193T:
Arcades in the Haight Street Neighborhood Commercial District
Board File No. 140804
Planning Commission Recommendation: Approval with Modifications**

Dear Ms. Calvillo and Supervisor Breed,

On September 18, 2014, the Planning Commission conducted duly noticed public hearings at regularly scheduled meetings to consider the proposed Ordinance that would amend Planning Code Sections 719.69B and 790.4, introduced by Supervisor Breed. At the hearing the Planning Commission recommended approval with modifications.

The proposed modifications include:

- Add a Specific Provision to the Haight Street NCD Zoning Control Table to clarify that in the Haight Street NCD that portion of an Other Entertainment use comprising of Mechanical Amusement Devices will be considered an Amusement Game Arcade Use. The modification would be as follows:

Article 7 Code Section	Other Code Section	Zoning Controls
§719.48	§§790.4, 790.38	Within the Haight Street Neighborhood Commercial District, that portion of an Other Entertainment use comprised of mechanical amusement game devices will be considered an Amusement Game Arcade Use, for the purposes of the Planning Code.

The proposed amendments have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15060(c)(2) and 15378.

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

Please find attached documents relating to the actions of both Commissions. 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 'AnMarie Rodgers', with a long horizontal flourish extending to the right.

AnMarie Rodgers
Senior Policy Advisor

- cc:
- Francesca Gessner, Deputy City Attorney
 - Connor Johnston, Aide to Supervisor Breed
 - Andrea Ausberry, Office of the Clerk of the Board

- Attachments :
- Planning Commission Resolution
 - Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution 19239

HEARING DATE SEPTEMBER 18, 2014

Project Name: Arcades in the Haight Street Neighborhood Commercial District
Case Number: 2014.1193T [Board File No. 140804]
Initiated by: Supervisor Breed / Introduced July 15, 2014
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: AnMarie Rodgers, Senior Policy Advisor
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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTIONS 719.69B, 790.4 AND 719.48 TO PRINCIPALLY PERMIT AMUSEMENT GAME ARCADES ON THE FIRST AND SECOND STORIES WITHIN THE HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT, TO REVISE REFERENCES TO THE POLICE CODE WITHIN PLANNING CODE SECTION 790.4 AND TO ADD A SPECIFIC PROVISION TO THE ZONING CONTROL TABLE FOR THE HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT INDICATING THAT THE PORTION OF AN OTHER ENTERTAINMENT USE CONSISTING OF MECHANICAL AMUSEMENT DEVICES WILL BE CONSIDERED AN AMUSEMENT GAME ARCADE USE; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on July 15, 2014, Supervisor Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 140804, which would amend Planning Code Sections 719.69B, 790.4 and 719.48 to principally permit Amusement Game Arcades on the first and second stories in the Haight Street Neighborhood Commercial District (NCD), revise references to the Police Code within Planning Code Section 790.4 and add a Specific Provision to the Zoning Control Table for the Haight Street NCD indicating that the portion of an Other Entertainment use consisting of Mechanical Amusement Devices will be considered an Amusement Game Arcade use;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on September 18, 2014; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15378 and 15060(c)(2); and

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

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

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

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modification** the proposed ordinance.

The Commission recommended modification would add a Specific Provision to the Zoning Control Table for the Haight Street NCD indicating that the portion of an Other Entertainment use consisting of Mechanical Amusement Devices will be considered an Amusement Game Arcade use.

Specifically, the Commission recommends the Specific Provision as follows:

Article Code Section	Other Code Section	Zoning Controls
§719.48	§§790.4, 790.38	Within the Haight Street Neighborhood Commercial District, that portion of an Other Entertainment use comprised of mechanical amusement game devices will be considered an Amusement Game Arcade Use, for the purposes of the Planning Code.

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. Existing controls on Amusement Game Arcades are based on older conceptions of pinball and other mechanical amusement devices as games of chance and extensions of gambling and arcades as magnets for vandalism, petty crime and drug use.
2. Today mechanical amusement devices complement home video game consoles as well the games available on personal mobile devices. This context places mechanical amusement devices and the Amusement Game Arcade within a purely recreational niche.
3. In the current wave of interest, Amusement Game Arcades are seen as venues for social interaction and for forming community around friendly competition. Popular support for Amusement Game Arcades is evident in the growth of pinball leagues and venues across the US.
4. Loosening Planning Code restrictions on where Amusement Game Arcades may locate meets the popular demand for this use, expands small business opportunities, diversifies the breadth of available services within neighborhood commercial districts, enhances the unique character of the

City's neighborhood commercial districts, and complements the modernizing of controls on this use occurring in the Police Code.

5. Concerns about an increase in nuisance as a result of the spread of Amusement Game Arcades are allayed by the number of existing controls in place to address such issues.
6. **General Plan Compliance.** The proposed amendments to the Planning Code are not addressed in the General Plan; the Commission finds that the proposed Ordinance is not inconsistent with the Objectives and Policies of the General Plan.

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 1

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

Policy 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

The proposed Ordinance will facilitate the establishment of a retail use that provides net benefits in the form recreational and community gathering spaces. Any potential undesirable consequences may be addressed through existing regulatory controls.

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

The proposed Ordinance will allow the commercial activity to locate on the first and second stories within the Haight Street NCD. This will help maintain a favorable social and cultural climate in San Francisco as it adds to the number of recreational activities available to employees and hence enhances San Francisco as a location of firms.

OBJECTIVE 6

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

Policy 6.1

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

The proposed Ordinance will allow the provision of a neighborhood-serving retail establishment that can add to the diversity and distinction of the Haight Street NCD.

7. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance will allow neighborhood serving retail uses to locate on the first and second floors of the Haight Street NCD.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance will allow retail uses that conserve and protect the unique character to locate in the Haight Street NCD and as such will preserve the diversity of the Upper Haight neighborhood.

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

The proposed Ordinance is exclusively concerned with the establishment of retail uses and will not have an adverse effect on the City's supply of affordable housing.

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

The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance will not result in the displacement of any industrial or service sector establishments due to commercial office development because the proposed Ordinance is concerned with the regulations on retail uses.

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

The proposed Ordinance will not have an impact on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance will not have an impact on the City's Landmarks and historic buildings.

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

The proposed Ordinance will not have an impact on the City's parks and open space and their access to sunlight and vistas.

- 8. Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

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

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on September 18, 2014.

Jonas P. Ionin
Commission Secretary

AYES: Antonini, Fong, Hillis, Johnson, Moore, Richards, Wu

NOES:

ABSENT:

ADOPTED: September 18, 2014



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: SEPTEMBER 18, 2014

Project Name: Arcades in the Haight Street Neighborhood Commercial District
Case Number: 2014.1193T [Board File No. 140804]
Initiated by: Supervisor Breed / Introduced July 15, 2014
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: AnMarie Rodgers, Senior Policy Advisor
anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation: **Recommend Approval with Modification**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend Planning Code Section 719.69B to principally permit Amusement Game Arcades on the first and second stories in the Haight Street Neighborhood Commercial District (NCD) and amend Section 790.4 to update references to the Police Code within the definition of Amusement Game Arcade.

The Way It Is Now:

The Haight Street NCD prohibits Amusement Game Arcades on any story.¹

Planning Code Section 790.4 defines Amusement Game Arcades as a retail use providing eleven or more amusement game devices and further references Police Code to clarify the use.²

The Way It Would Be:

The proposed Ordinance would principally permit Amusement Game Arcades (Mechanical Amusement Devices) on the 1st and 2nd stories within the Haight Street NCD.

The proposed Ordinance would also update references to the specific Police Code sections within Planning Code Section 790.4 to reflect forthcoming changes to the Police Code.³

¹ Planning Code Section 719.69B prohibits Amusement Game Arcades on all stories.

² The Planning Code defines the Amusement Game Arcade use as follows:

A retail use which provides eleven or more amusement game devices such as video games, pinball machines, or other such similar mechanical and electronic amusement devices, in a quantity which exceeds that specified in Section [1036.31](#) of the Police Code as accessory uses. Mechanical amusement devices are further regulated in Sections [1036](#) through [1036.35](#) of the Police Code.

³ Board File 140776 is companion legislation to the proposed Ordinance (BF 140804) and is proposing to amend Police Code Section 1036. Amendments would update Police permit review procedures, lessen

ISSUES AND CONSIDERATIONS

Existing Regulatory Environment. The existing controls on Amusement Game Arcades and Mechanical Amusement Devices (MADs) date back to the early 1980's. In that era there was concern about the rapid proliferation of Amusement Game Arcades and the potential nuisances created by the use including the number of mechanical amusement game devices in any one location, increased congestion on sidewalks around Arcades, the accessibility to Arcades by minors during school hours and the occurrence of crime and other anti-social behavior in areas near Arcades.

Controls in the Planning Code and the Police Code exist to address these concerns around nuisance. For example, the Planning Code considers a use with up to 10 MADs an Other Entertainment Use and is allowed in the vast majority of NCDs.⁴ However, a use with 11 or more MADs is considered an Amusement Game Arcade and is not typically allowed in the NCDs.⁵ Further, all NCDs prohibit Amusement Game Arcades on the second story.

The Police Code regulates MADs chiefly through Section 1036. Section 1036 controls the number of MADs allowed in a location based on the square foot area of retail floor area, and also prohibits establishments in neighborhood commercial districts from having 11 or more mechanical amusement devices.

Proposed Changes to Existing Controls. Companion legislation (BF 140776) to the proposed Ordinance is seeking to loosen Police Code regulation on MADs and arcades in a modernization effort responding to the current perceptions and realities. Proposed changes include the following:

- Eliminating the Police permit requirement for up to 4 MADs in a bar and up to 10 MADs within any other premise;
- Eliminate the Police Code minimum area requirement for MADs in retail establishments; and
- Eliminate the Police Code prohibition on arcades within areas zoned neighborhood commercial.

It is important to note that the changes to the Planning Code in the proposed Ordinance would principally permit Amusement Game Arcades and would not require Section 312 neighborhood notification but would maintain the requirement of Conditional Use Authorization for uses with 10 or fewer MADs. This would create a counterintuitive permitting process as a less intensive use would be subject to a much more robust process.

permitting restrictions, and remove obsolete provisions including Police Code Sections 1036.31 and 1036.35.

⁴ Only five NCDs (West Portal, Pacific Avenue, SOMA, Folsom and RCD) prohibit Other Entertainment uses. In all other NCDs Other Entertainment is allowed either as of right with Section 312 Notification or by Conditional Use Authorization.

⁵ Only five NCDs (NC-3, NC-S, Broadway, Mission St and Excelsior) allow Amusement Game Arcades with Conditional Use Authorization.

Last, the forthcoming reorganization of Article 2 will incorporate the existing Amusement Game Arcades use into the broader General Entertainment use category. This change will establish uniform, modernized controls across the city for Amusement Game Arcades and is anticipated to be adopted and effective by mid-year 2015

Pinball Resurgence. In recent years, pinball has enjoyed a resurgence of interest, as evidenced by the opening of new pinball venues, a pinball museum and new commercial pinball manufacturers of varying sizes. The demographic groups leading this resurgence are not adolescents. This current wave of popularity is driven by Baby Boomer and Gen-X hobbyists, collectors and nostalgists.⁶ These are groups that have the disposable income to purchase vintage and new machines and the desire to form peer networks spanning metropolitan regions.

In the US, the interest in pinball is supported by the Professional and Amateur Pinball Association (an industry trade organization), by multiple local, national and international pinball tournaments and by, as mentioned above, the reemergence of arcades and other locations to play pinball.

In the Bay Area, there are five competitive pinball leagues including one that meets at the Free Gold Watch (1767 Waller Street), an establishment in the Haight Street Neighborhood Commercial District.

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 amendment* to the proposed Ordinance. Department Staff recommends the following:

1. **Principally permit Amusement Game Arcades in the Haight Street NCD on the 1st and 2nd stories.**
2. **Add a Specific Provision to the Haight Street NCD Zoning Control Table to clarify that in the Haight Street NCD that portion of an Other Entertainment use comprising of MADs will be considered an Amusement Game Arcade Use.** This change would ensure that smaller complementary MAD uses with 10 or fewer devices are not given more rigorous review than larger principal MAD uses. The Specific Provision to the Haight Street NCD Zoning Control Table would be as follows:

Article Code Section	Other Code Section	Zoning Controls
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⁶The following internet sites and articles document the pinball resurgence: <http://loriengreen.com/portfolio/pinball-documentary/>, <http://keepingmycool.blogspot.com/2012/10/the-case-for-pinball-resurgence.html>, <http://pinballbayarea.com/>, <http://www.sfgate.com/bayarea/article/Enthusiasm-over-pinball-at-full-tilt-in-Bay-Area-2477358.php>

§719.48	§§790.4, 790.38	Within the Haight Street Neighborhood Commercial District, that portion of an Other Entertainment use comprised of mechanical amusement game devices will be considered an Amusement Game Arcade Use.
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- 3. Revise Planning Code Section 790.4 to update references to Police Code Section 1036 in light of the forthcoming revisions from the companion legislation (BF140776).**

BASIS FOR RECOMMENDATION

The Department supports the proposed Ordinance, with the amendment, because it updates regulations on mechanical amusement devices to correspond to how the devices are currently perceived and used. Existing controls on Amusement Game Arcades are based on older notions of pinball and other MADs as games of chance and extensions of gambling and arcades as magnets for vandalism, petty crime and drug use. Today MADs complement home video game consoles as well the games available on personal mobile devices. This context places MADs and the Amusement Game Arcade within a purely recreational niche.

Recommendation 1: Principally permit Amusement Game Arcades in the Haight Street Neighborhood Commercial District on the 1st and 2nd stories.

Beyond modernizing the controls on Amusement Game Arcades, the loosening of restrictions on their establishment satisfies a number of policies within the Commerce and Industry Element of the General Plan that look to attract and retain commercial activities that serve neighborhood residents, that look to enliven and distinguish neighborhood commercial districts and that create an atmosphere of interest in the City of San Francisco as a whole.⁷

In this current wave of interest, Amusement Game Arcades are seen as venues for social interaction and for forming community around friendly competition. Popular support for Amusement Game Arcades is evident in the growth of pinball leagues and venues across the US. The support for the easing of restrictions within the Haight Street NCD is also evident by the number of letters of support received by way of Supervisor London Breed’s office.

While there may be concerns about an increase of nuisance as a result of loosening the controls on Amusement Game Arcades, multiple controls exist to address these. For example, past concerns about smoking in the Amusement Game Arcades are now addressed by the prohibition on indoor smoking

⁷ Policy 1.1: Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated; Policy 2.1: Seek to retain existing commercial and industrial activity and to attract new such activity to the city; Policy 2.3: Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location; Policy 6.1: Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city’s neighborhood commercial districts, while recognizing and encouraging diversity among the districts

found in the San Francisco Health Code.⁸ Concerns that the use will attract alcohol consumption are addressed by the restriction on new Bars or Liquor Stores in the Haight Street NCD.⁹ Concerns that the loosening of controls will facilitate the spread of gambling are allayed by the fact that San Francisco Police Code prohibits the operation of or any machine or device upon which money or any other article or thing of value is staked, bet, hazarded, won or lost upon chance.¹⁰

Finally, the loosening of restrictions on the establishment of Amusement Game Arcades within the Planning Code goes hand in hand with the current updates to the Police Code articles dealing with MADs. These changes look to modernize permit review processes, and eliminate obsolete provisions.

Recommendation 2: Add a Specific Provision to the Haight Street NCD Zoning Control Table to clarify that in the Haight Street NCD that portion of an Other Entertainment use comprising of MADs will be considered an Amusement Game Arcade Use. Without the addition of the Specific Provision clarifying that the portion of an Other Entertainment use comprising of MADs is to be considered an Amusement Game Arcade use, the Planning Code would be amended to streamline the approval process for a use proposing 11 or more MADs while maintaining the current Conditional Use Authorization requirement for a use proposing 10 or fewer MADs. This amendment would prevent more strict control of less intensive uses.

This recommendation is also in line with the intention of Recommendation #1, which is to ease controls on the use of MADs.

Recommendation 3: Revise Planning Code Section 790.4 to update references to Police Code Section 1036 in light of the forthcoming revisions. Given that the companion legislation (BF 140776) is eliminating the Police Code sections referenced in the Planning Code and that as of the date of this report the companion legislation had passed the first reading of the Board of Supervisors, it is necessary to the integrity and accuracy of the Planning Code to update Section 790.4. The updates would also be in conformity with the efforts of this Ordinance to modernize the regulations on Amusement Game Arcades.

ENVIRONMENTAL REVIEW

The proposal to amend Planning Code Sections 719.69B and 790.4 would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Sections 15378 and 15060(c)(2) of the CEQA Guidelines.

⁸ San Francisco Health Code Article 19F Section 1009.22(a) prohibits smoking in buildings containing business establishments, among other uses.

⁹ Planning Code Section 719.41, 719.45 and 781.9 prohibit alcohol sales without a bona fide eating place.

¹⁰ Article 3 of the San Francisco Police Code broadly prohibits the use of machines for the purpose of gambling.

PUBLIC COMMENT

As of the date this report, the Planning Department received multiple letters from members of the public, by way of Supervisor London Breed's office, expressing support for an Amusement Game Arcade use within the within the Haight Street Neighborhood Commercial District.

RECOMMENDATION: Recommendation of Approval with Modifications

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 140804
- Exhibit C: Letters of Support for Amusement Game Arcade use within the Haight Street NCD