



SAN FRANCISCO PLANNING DEPARTMENT

December 4, 2012

Supervisor Olague 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 2012.0950TZ
Board File No. 12-0796: Divisadero Street NCD

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

Reception:
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415.558.6377

Recommendation: Approval with Modifications

Dear Supervisor Olague and Ms. Calvillo,

On November 29, 2012, 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 12-0796.

At the November 29th hearing, the Commission voted 6-1 to recommend approval with modifications of the proposed Ordinance, which would create the Divisadero Street NCD.

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-Rodgers", with a long horizontal line extending to the right.

AnMarie Rodgers
Manager of Legislative Affairs

Cc: City Attorney Judith A. Boyajian

Attachments (one copy of the following):

Planning Commission Resolution No. 18751
Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18751

HEARING DATE: NOVEMBER 29, 2012

Project Name: Amendments relating to the proposed Divisadero Street NCD
Case Number: 2012.0950TZ [Board File No. 120796]
Initiated by: Supervisor Olague/ Introduced July 24, 2012
Staff Contact: Aaron Starr, Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE WITH MODIFICATIONS THAT WOULD AMEND THE SAN FRANCISCO PLANNING CODE BY: 1) ADDING SECTION 743.1 TO ESTABLISH THE DIVISADERO NEIGHBORHOOD COMMERCIAL DISTRICT; 2) REPEALING THE DIVISADERO STREET ALCOHOL RESTRICTED USE DISTRICT ESTABLISHED IN SECTION 783; 3) AMENDING SECTION 151.1 AND A PORTION OF TABLE 151.1, SECTIONS 263.20, 607.1(F), AND 702.3, THE SPECIFIC PROVISIONS OF THE SECTION 711 ZONING CONTROL TABLE, AND SECTION 790.55 TO MAKE CONFORMING AND OTHER TECHNICAL CHANGES; 4) AMENDING SHEETS ZN02 AND ZN07 OF THE ZONING MAP TO INCLUDE THE DIVISADERO NEIGHBORHOOD COMMERCIAL DISTRICT; 5) AMENDING SHEET SU02 OF THE ZONING MAP TO DELETE THE DIVISADERO STREET ALCOHOL RESTRICTED USE SUD; AND 6) ADOPTING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE PRIORITY POLICIES OF PLANNING CODE SECTION 101.1.

PREAMBLE

Whereas, on July 24, 2012, Supervisor Olague introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 12-0796 which would amend the San Francisco Planning Code by 1) adding Section 743.1 to establish the Divisadero Neighborhood Commercial District; 2) repealing the Divisadero Street Alcohol Restricted Use District established in Section 783; 3) amending Section 151.1 and a portion of Table 151.1, Sections 263.20, 607.1(f), and 702.3, the Specific Provisions of the Section 711 Zoning Control Table, and Section 790.55 to make conforming and other technical changes; 4) amending Sheets ZN02 and ZN07 of the Zoning Map to include the Divisadero Neighborhood Commercial District; 5) amending Sheet SU02 of the Zoning Map to delete the Divisadero Street Alcohol Restricted Use SUD; and 6) adopting environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1; and

Whereas, on November 29, 2012, 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, on October 23, 2012, the Project was determined to be exempt from the California Environmental Quality Act ("CEQA") under the General Rule Exclusion (CEQA Guidelines Section 15061(b)(3)) as described in the determination contained in the Planning Department files for this Project; 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.

The proposed modifications include:

1. Modify the description of the proposed Divisadero to read: "All parcels currently zoned NC-2 on blocks 1100, 1101, 1126, 1127, 1128, 1129, 1153, 1154, 1155, 1156, 1179, 1180, 1181, 1182, 1201, 1202, 1203, 1204, 1215, 1216, 1217, 1218, 1237, 1238, 1239, and 1240."
2. Reinstate the "Good Neighbor Policies"¹ for General and Specialty Groceries, which was inadvertently removed when the Ordinance was drafted. These policies are listed in the zoning control table for the proposed Divisadero Street NCD in the "SPECIFIC PROVISIONS" section.
3. Modify the Ordinance so that Bars, Restaurants, Limited-Restaurants, Movie Theaters, Other Entertainment, Philanthropic Administrative Services and Trade Shops are permitted on the second floor so long as they are not displacing "an existing residential unit," instead of allowing them only in a space where there was "no prior residential unit."
4. Modify the Philanthropic Administrative Services to remove subsections (a) and (b).

The following are clerical modifications and are only proposed to provide more clarity to the Planning Code or correct errors in the Planning Code.

5. Amend Section 201, 702.1 to add new named NCD in addition to the named NCD recently adopted for the Outer Sunset (Taraval, Noriega, Judah and Irving NCDs)
6. Amend 207.4 and 207.5 by removing specific table listings and add a sentence referring the reader to specific district tables in Articles 7 & 8. These tables are not necessary because the information

¹ These Good Neighbor Policies cover adequate lighting and window transparency standards.

is already listed in the individual use tables. This section is often overlooked when new zoning districts are added. Removing these tables will reduce the number of cross reference Code errors.

7. Make the following change to the proposed Divisadero Street NCD Use Table:

743.68	<i>Fringe Financial Service</i>	§ 790.111	P NP #
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The pound sign (#) refers to a prohibition on Fringe Financial Services, making the P confusing and inconsistent.

8. Adopt clerical changes outlined in Exhibit D.

Pending ordinances which should be accommodated in this draft ordinance: This note is being provided as a courtesy to the City Attorney and the Clerk of the Board to help identify other Ordinances which may present conflicting amendments as the legislative process proceeds.

1. Sections 263.20 BF 120774 Permitting a Height Bonus in Castro Street and 24th Street NCDs
2. Sections 151.1, 702.1 BF Pending Western SoMa Plan
3. Sections 151.1, 263.20, 702.1, 702.3, 703.3 BF Pending Code Corrections Ordinance 2012
4. Sections 151.1, 263.20, 744.1, 607.1 BF 120796 Divisadero Street NCD

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:

- Individually named neighborhood commercial districts help to preserve and enhance the character of a neighborhood and a sense of identity.
- The Divisadero Street has been transformed over the past decade by changing demographics and increased involvement from merchants and residents. Creating a named neighborhood commercial district for the Divisadero Street would help continue this transformation and allow the neighborhood to more easily respond to emerging issues and concerns.
- As written, the legislation only includes parcels that front along Divisadero Street in the proposed Divisadero Street NCD; however, several blocks along Divisadero Street contain parcels that are zoned NC-2 and do not front on Divisadero Street. This would result in orphaned NC-2 zoned parcels adjacent to the proposed Divisadero Street NCD. It's the Commission's understanding that this recommendation is consistent with the Supervisor's intent with the legislation.
- The Commission does not find that there is a benefit to excluding spaces that do not currently have a residential unit, but which may have had one 50 years ago from being occupied by a commercial use.

- Parts of the Philanthropic Administrative Services definition are redundant, unnecessary and seem to conflict with Section 317 in that they allow an office use to displace at least part of a dwelling unit without any floor area limitations.

1. **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.

OBJECTIVE 4

IMPROVE THE VIABILITY OF EXISTING INDUSTRY IN THE CITY AND THE ATTRACTIVENESS OF THE CITY AS A LOCATION FOR NEW INDUSTRY.

Policy 6.2

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

The proposed legislation would create an individually named Neighborhood Commercial Districts along Divisadero Street, which helps to preserve and enhance the character of a neighborhood and create a sense of identity. The proposed changes will also allow these areas to more easily respond to economic and technological innovation in the marketplace and society.

Policy 6.6

Adopt specific zoning districts, which conform to a generalized neighborhood commercial land use and density plan.

As amended, the proposed NCD conforms to the generalized neighborhood commercial land use and density plan published in the General Plan.

2. 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 does not propose significant changes to the controls in the subject Neighborhood Commercial Districts. However, creating named NCDs will allow the district to

respond more easily to emerging issues that may impact opportunities for resident employment in and ownership of neighborhood-serving retail uses.

- 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 legislation would create individually named Neighborhood Commercial Districts on Divisadero Street, which help to preserve and enhance the character of the various neighborhoods.

- 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 Ordinance. 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 Ordinance. Should a proposed use be located within a landmark or historic building, such site would be evaluated under typical Planning Code provisions and comprehensive Planning Department 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 Ordinance. 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 November 29, 2012.

Jonas P. Ionin
Commission Secretary

AYES: Commissioners Borden, Fong, Hillis, Moore, Sugaya, Wu

NAYS: Commissioner Antonini

ABSENT: none

ADOPTED: November 29, 2012



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Zoning Map and Planning Code Text Change

HEARING DATE: NOVEMBER 29, 2012

Project Name: **Amendments relating to the proposed Divisadero Street NCD**
Case Number: 2012.0950TZ [Board File No. 120796]
Initiated by: Supervisor Olague/ Introduced July 24, 2012
Staff Contact: Aaron Starr, Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Reviewed by: AnMarie Rodgers, Manager 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 the San Francisco Planning Code by 1) adding Section 743.1 to establish the Divisadero Neighborhood Commercial District; 2) repealing the Divisadero Street Alcohol Restricted Use District established in Section 783; 3) amending Section 151.1 and a portion of Table 151.1, Sections 263.20, 607.1(f), and 702.3, the Specific Provisions of the Section 711 Zoning Control Table, and Section 790.55 to make conforming and other technical changes; 4) amending Sheets ZN02 and ZN07 of the Zoning Map to include the Divisadero Neighborhood Commercial District; 5) amending Sheet SU02 of the Zoning Map to delete the Divisadero Street Alcohol Restricted Use SUD; and 6) adopting environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

The Way It Is Now:

- Properties along Divisadero from Haight to O'Farrell are zoned Neighborhood Commercial, Small-Scale (NC-2), which is a general zoning district found throughout the City.
- Bars, Restaurants, Limited-Restaurants, Movie Theaters, Other Entertainment, and Trade Shops are prohibited on the second floor, which is standard in most NC-2 and named Neighborhood Commercial Districts. Philanthropic Administrative Services are not permitted in the NC-2 zoning district.
- NC-2 Districts have minimum parking controls that are outlined in Planning Code Section 151.
- The Divisadero Street Alcohol Restricted Use District encompasses the NC-2 parcels on Divisadero Street between Haight and O'Farrell Streets. It restricts new Liquor Store uses, establishes certain "good neighbor" policies for liquor stores within the district, and establishes certain limitations on the sorts of alcoholic beverages that may be sold by existing liquor stores. It is intended to preserve the residential character and the neighborhood-serving commercial uses of the area by reducing the number of liquor stores along Divisadero Street.

- The Alcohol Restricted Use District is within the Fringe Financial Services Special Use District, which prohibits Fringe Financial Services (aka check cashing or pay day loan businesses) within ¼ of a mile of the district.

The Way It Would Be:

The proposed legislation would:

- Create a new named Neighborhood Commercial District along Divisadero from Haight to O'Farrell Street. See Exhibit C for a map of the proposed district.
- Permit Bars, Restaurants, Limited-Restaurants, Movie Theaters, Other Entertainment, Philanthropic Administrative Services and Trade Shops on the second floor of buildings with no prior residential use.
- Institute maximum parking controls within the Divisadero Street NCD, as outlined under Section 151.1. (Other changes outlined in this section of the Ordinance were already voted on and approved by the Planning Commission as part of the NE Legislation, they are included to ensure that this ordinance does not negate those changes.)
- Remove the Divisadero Street Alcohol Street Restricted Use Districts, but preserve the prohibition on new liquor stores in the new NCD. The Ordinance would remove the restrictions on the type of alcohol that can be sold in the Liquor Stores that already exist on Divisadero Street, which the Department has found difficult to enforce.
- Maintain the prohibition on Fringe Financial Services in the proposed Divisadero Street NCD.
- Provide a 5 foot height bonus for properties zoned 40-X along Divisadero Street. There are only two block on this stretch of Divisadero Street from Haight to Oak that are zoned 40-X. The rest of the blocks are zoned 65-X and would not be impacted by this provision.

ISSUES AND CONSIDERATIONS

NC-2 and Named Neighborhood Commercial Districts

NC-2 Districts are intended to serve as the City's Small-Scale Neighborhood Commercial District. These districts are linear shopping streets which provide convenience goods and services to the surrounding neighborhoods as well as limited comparison shopping goods for a wider market. The range of goods and services offered is varied and often includes specialty retail stores, restaurants, and neighborhood-serving offices. NC-2 Districts are commonly located along both collector and arterial streets which have transit routes. These districts range in size from two or three blocks to many blocks, although the commercial development in longer districts may be interspersed with housing or other land uses.

Named Commercial Districts are generally of the same scale and intensity as NC-2 Districts. There are currently 27 named NCDs in the City. Some of the oldest named NCDs in the City include the Broadway, Castro, Upper Fillmore, Haight and Inner and Outer Clement NCDs, and there is a trend to create more individually named NCDs throughout the City. These types of districts allow for more tailored controls and help to protect or enhance unique characteristics associated with a neighborhood. Changes that are made to a named commercial district only apply to that district, whereas changes made to NC-1 and NC-2 Districts apply citywide. For example, if a named NCD wants to control the number of nail salons because of a perceived overconcentration, then the controls for that named NCD can be changed to prohibit or require Conditional Use authorization for Personal Service uses. Conversely, if a

neighborhood wants to encourage a type of use, the controls for that named NCD can be changed so that use is principally permitted.

Alcohol Restricted Use District and Fringe Financial Services Restricted Use Districts

The Divisadero Street Alcohol Restricted Use District and the Fringe Financial Services Restricted Use District were added to this stretch of Divisadero because of community concern over liquor stores and check cashing stores. Because this area was zoned as a general zoning district, NC-2, Liquor Stores and Fringe Financial Services could not be prohibited outright without changing the zoning for all NC-2 Districts throughout the City. If this stretch of Divisadero Street has its own named NCD, the Restricted Use Districts are no longer needed to control for the over proliferation of these two uses.

NCD Height Controls

San Francisco's commercial height districts tend to be base ten numbers such as 40, 50, etc. These base ten districts may lead to buildings that are similar in height to the neighboring buildings but that are lesser in human comfort than buildings of similar scale built prior to the City's height limits. This is due to the desire to maximize the number of stories in new projects. Recent community planning efforts have highlighted some failings of these base 10 height districts. The 2008 Market & Octavia¹ and Eastern Neighborhoods² Plans recognize that the base ten height limits in neighborhood commercial districts often encourage inferior architecture. For this reason, both of these plans sought to encourage more active and attractive ground floor space by giving a five foot height bonus to buildings which meet the definition of "active ground floor" use. This five foot increase must be used for adding more space to the ground floor.

In 2008, Supervisor Sandoval sponsored a similar text amendment that extended this height increase outside of established plan areas to provide for a maximum five foot special height exception for active ground floor uses in the NC-2 and NC-3 designated parcels fronting portions of Mission Street³. Another amendment introduced by Supervisor Avalos in 2009 that now allows a maximum five foot height increase in certain NC-1 parcels in District 11⁴. Most recently, Geary Boulevard, Inner Clement, Outer Clement, the new Outer Sunset NCDs, 24th-Noe Street NCD and NC-2 zoned portions of Balboa Street were added to the list of zoning districts that allow the 5' height bonus.

The proposed Ordinance would not allow an additional floor to new projects. A 40-X and 50-X height limit can accommodate a maximum of four and five floors, respectively. Since the additional five foot height can only be used on the ground floor, the height limit still can only accommodate the same number of floors.

Philanthropic, Administrative Services

Philanthropic Administrative Services is defined as follows:

¹ Ord. 72-08, File No. 071157, App. 4/3/2008.

² Ord. 297-08, 298-08, 299-08 and 300-08, App. 12/19/2008.

³ Ord. 321-08, File no. 081100, App. 12/19/2008.

⁴ Ord. [5-10](#), File No. 090319, App. 1/22/2010

A nonretail use which provides executive, management, administrative, and clerical services and support related to philanthropic activities that serve non-profit institutions and organizations; such philanthropic activities may include funding and support of educational, medical, environmental, cultural, and social services institutions and organization. Such uses:

(a) May not be located on the first story of buildings, where the most recent prior use of which was any use other than residential or office; and

(b) May be located in a single undivided space not physically separated from a residential use; provided that:

(1) Any Residential Conversion above the first story, associated with, or following, commencement of such use shall be considered a conditional use requiring approval pursuant to Section 703.2(b)(1)(B); and

(2) Any loss of dwelling units described in Section 317 shall require approval as provided in Section 317.

This use was added to the Planning Code in 2009 to allow a private charitable foundation to operate in a residential building located at 2503 Clay Street in the Upper Fillmore NCD. Currently this use is only permitted in the Upper Fillmore NCD. According to City records, this use was never established at 2503 Clay Street and since it was added to the Planning Code no other nonprofit has taken advantage of this definition.

Because this definition was added to the Planning Code under unusual circumstances, it includes some unusual provisions listed in subsections (a) and (b) above. Subsection (a) prohibits the use from operating on the first floor and subsection (b) allows the use to operate in a residence without regard to accessory use controls and reiterates that the loss of a dwelling unit is subject to the requirements outlined in Section 317.

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 modification* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The proposed modifications include:

The proposed modifications include:

1. Modify the description of the proposed Divisadero to read: "All parcels currently zoned NC-2 on blocks 1100, 1101, 1126, 1127, 1128, 1129, 1153, 1154, 1155, 1156, 1179, 1180, 1181, 1182, 1201, 1202, 1203, 1204, 1215, 1216, 1217, 1218, 1237, 1238, 1239, and 1240."
2. Reinstate the "Good Neighbor Policies⁵" for General and Specialty Groceries, which was inadvertently removed when the Ordinance was drafted. These policies are listed in the zoning control table for the proposed Divisadero Street NCD in the "SPECIFIC PROVISIONS" section.
3. Modify the Ordinance so that Bars, Restaurants, Limited-Restaurants, Movie Theaters, Other Entertainment, Philanthropic Administrative Services and Trade Shops are permitted on the

⁵ These Good Neighbor Policies cover adequate lighting and window transparency standards.

second floor so long as they are not displacing “an existing residential unit,” instead of allowing them only in a space where there was “no prior residential unit.”

4. Modify the Philanthropic Administrative Services to remove subsections (a) and (b).

The following are clerical modifications and are only proposed to provide more clarity to the Planning Code or correct errors in the Planning Code.

5. Amend Section 201, 702.1 to add new named NCD in addition to the named NCD recently adopted for the Outer Sunset (Taraval, Noriega, Judah and Irving NCDs)
6. Amend 207.4 and 207.5 by removing specific table listings and add a sentence referring the reader to specific district tables in Articles 7 & 8. These tables are not necessary because the information is already listed in the individual use tables. This section is often overlooked when new zoning districts are added. Removing these tables will reduce the number of cross reference Code errors.
7. Make the following change to the proposed Divisadero Street NCD Use Table:

743.68	<i>Fringe Financial Service</i>	§ 790.111	P NP #
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The pound sign (#) refers to a prohibition on Fringe Financial Services, making the P confusing and inconsistent.

8. Adopt clerical changes outlined in Exhibit D.

BASIS FOR RECOMMENDATION

The Department supports creating an individually named neighborhood commercial district for Divisadero Street; named NCDs help to preserve and enhance the character of a neighborhood and they also help create a sense of identity. The Divisadero Street has been transformed over the past decade by changing demographics and increased involvement from merchants and residents. The existing Restricted Use Districts helped to provide more balance in the types of uses and services found on Divisadero Street. Creating a named neighborhood commercial district for the Divisadero Street would help continue this transformation and allow the neighborhood to more easily respond to emerging issues and concerns.

Recommendation 1

As written, the legislation only includes parcels that front along Divisadero Street in the proposed Divisadero Street NCD; however, several blocks along Divisadero Street contain parcels that are zoned NC-2 and do not front on Divisadero Street. This would result in orphaned NC-2 zoned parcels adjacent to the proposed Divisadero Street NCD. It's the Department's understanding that this recommendation is consistent with the Supervisor's intent with the legislation.

Recommendation 2

Good neighbor policies currently apply to Liquor Stores as well as General and Specialty Groceries in the Divisadero Street Alcohol Restricted Use District. This recommendation would continue the status quo.

Recommendation 3

As currently drafted, the proposed Ordinance would only allow Bars, Restaurants, Limited-Restaurants, Movie Theaters, Other Entertainment, Philanthropic Administrative Services and Trade Shops on the second floor if that building never had a residential unit in that space. The Department believes that this provision will be difficult to enforce and does not see the benefit to excluding spaces that do not currently

have a residential unit, but which may have had one 50 years ago. The proposed recommendation would allow the uses listed above if there is not currently a residential unit in that space.

Recommendation 4

Staff is recommending that subsections (a) and (b) be removed from this definition. Subsection (a) is unnecessary because uses are controlled by floor in neighborhood commercial districts; if the intention is to prohibit this use on the first floor then the use chart can show that it's prohibited on the first floor. Subsection (b) is a confusing provision that was crafted for a particular property that ended up not establishing this use. The Department doesn't think it is necessary and it seems to conflict somewhat with Section 317 in that it allows an office use to displace at least part of a dwelling unit. Further, accessory use controls allow home offices in residential units.

Recommendation 5-8

These recommendations are clerical in nature and are only proposed to correct references or to provide more clarity to the Planning Code. Some of these corrections are also in the Code Correction Ordinance and duplicated here to ensure that one Ordinance does not cancel out the other.

Pending ordinances which should be accommodated in this draft ordinance: This note is being provided as a courtesy to the City Attorney and the Clerk of the Board to help identify other Ordinances which may present conflicting amendments as the legislative process proceeds.

- Sections 263.20 BF 120774 Permitting a Height Bonus in Castro Street and 24th Street NCDs
- Sections 151.1, 702.1 BF Pending Western SoMa Plan
- Sections 151.1, 263.20, 702.1, 702.3, 703.3 BF Pending Code Corrections Ordinance 2012
- Sections 151.1, 263.20, 744.1, 607.1 BF 120814 Fillmore Street NCD

ENVIRONMENTAL REVIEW

The proposal ordinance would result in no physical impact on the environment. The Project was determined to be exempt from the California Environmental Quality Act ("CEQA") under the General Rule Exclusion (CEQA Guidelines Section 15061(b)(3)) as described in the determination contained in the Planning Department files for this Project.

PUBLIC COMMENT

As of the date of this report, the Planning Department has received several inquiries about the proposed legislation from members of the public. The Department has not received any comments explicitly stating opposition or support for the proposed ordinance.

RECOMMENDATION:	Recommendation of Approval with Modification
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 120796
- Exhibit C: Map of Proposed District
- Exhibit D: Additional Code Correction Changes
- Exhibit E: Environmental Determination

Exhibit D

263.20

(a) Intent. In order to encourage generous ground floor ceiling heights for commercial and other active uses, encourage additional light and air into ground floor spaces, allow for walk-up ground floor residential uses to be raised slightly from sidewalk level for privacy and usability of front stoops, and create better building frontage on the public street, up to an additional 5' of height is allowed along major streets in NCT districts, or in specific districts listed below, for buildings that feature either higher ground floor ceilings for non-residential uses or ground floor residential units (that have direct walk-up access from the sidewalk) raised up from sidewalk level.

(b) Applicability. The special height exception described in this section shall only apply to projects that meet all of the following criteria:

(1) project is located in a 30-X, 40-X or 50-X Height and Bulk District as designated on the Zoning Map;

(2) project is located in one of the following Districts:

(A) in an NCT district as designated on the Zoning Map;

(B) in the Upper Market Street, Inner Clement Street, Outer Clement Street, Irving Street, Taraval Street, Noriega Street, Judah Street, 24th Street- Noe Valley, Divisadero Street and Fillmore Street NCDs;

(C) on a NC-2 or NC-3 designated parcel fronting Mission Street, from Silver Avenue to the Daly City border;

(D) on a NC-2 designated parcel on Balboa Street between 2nd Avenue and 8th Avenue, and between 32nd Avenue and 39th Avenue;

(E) on a NC-1 designated parcel within the boundaries of Sargent Street to Orizaba Avenue to Lobos Street to Plymouth Avenue to Farallones Street to San Jose Avenue to Alemany Boulevard to 19th Avenue to Randolph Street to Monticello Street and back to Sargent Street; or

(F) on a NC-3 designated parcel fronting on Geary Boulevard from Masonic Avenue to 28th Avenue, except for parcels on the north side of Geary Boulevard between Palm Avenue and Parker Avenue;

(G) on a parcel zoned NC-1 ~~or NC-2~~ with a commercial use on the ground floor on Noriega, Irving, Taraval, or Judah Streets west of 19th Avenue;

~~(H) on a parcel zoned NC 1 or NC 2 with a commercial use on the ground floor on Irving Street west of 19th Avenue;~~

~~(I) on a parcel zoned NC 1 or NC 2 with a commercial use on the ground floor on Taraval Street west of 19th Avenue;~~

~~(J) on a parcel zoned NC 1 or NC 2 with a commercial use on the ground floor on Judah Street west of 19th Avenue;~~

(3) project features ground floor commercial space or other active use as defined by Section 145.1(b)(2) with clear ceiling heights in excess of ten feet from sidewalk grade, or in the case of residential uses, such walk-up residential units are raised up from sidewalk level;

(4) said ground floor commercial space, active use, or walk-up residential use is primarily oriented along a right-of-way wider than 40 feet;

(5) said ground floor commercial space or active use occupies at least 50% of the project's ground floor area; and

(6) except for projects located in NCT districts, the project sponsor has conclusively demonstrated that the additional 5' increment allowed through Section 263.20 would not add new shadow to any public open spaces.

(c) One additional foot of height, up to a total of five feet, shall be permitted above the designated height limit for each additional foot of ground floor clear ceiling height in excess of 10 feet from sidewalk grade, or in the case of residential units, for each foot the unit is raised above sidewalk grade.

607.1(f)

(2) NC-2, NCT-2, NC-S, RC, Broadway, Castro Street, Inner Clement Street, Outer Clement Street, Divisadero, Fillmore, Upper Fillmore Street, Inner Sunset, Haight Street, Hayes-Gough, Upper Market Street, North Beach, Ocean Avenue, Pacific Avenue, Polk Street, Sacramento Street, SoMa, Union Street, Valencia Street, 24th Street - Mission, 24th Street - Noe Valley, West Portal Avenue, Glen Park, Irving Street, Taraval Street, Noriega Street, and Judah Street Neighborhood Commercial Districts.

SEC. 702.3. NEIGHBORHOOD COMMERCIAL RESTRICTED USE SUBDISTRICTS.

In addition to the Neighborhood Commercial Use Districts established by Section [702.1](#) of this Code, certain Neighborhood Commercial Special Use Districts are established for the purpose of controlling the expansion of certain kinds of uses which if uncontrolled may adversely affect the character of certain Neighborhood Commercial Districts.

The purposes and provisions set forth in Sections 781.1 through ~~781.6-781.10~~, ~~and Sections 784 -786~~, and Sections ~~249.35-249.99~~ of this Code shall apply respectively within these districts. The boundaries of the districts are as shown on the [Zoning Map](#) as referred to in Section [105](#) of this Code, subject to the provisions of that Section.

Neighborhood Commercial Restricted Use Subdistricts	Section Number
Taraval Street Restaurant Subdistrict	§ 781.1
Irving Street Restaurant Subdistrict	§ 781.2
Ocean Avenue Fast Food Subdistrict	§ 781.3
Geary Boulevard Formula Retail Pet Supply Store and Formula Retail Eating and Drinking Subdistrict	§ 781.4
Mission Street Formula Retail Restaurant Subdistrict	§ 781.5
North Beach Financial Service, Limited Financial Service, and Business or Professional Service Subdistrict	§ 781.6
Chestnut Street Financial	§ 781.7
Haight Street Alcohol Restricted Use District	§ 781.9
Divisadero Street Alcohol Restricted Use District	§ 783
Lower Haight Street Alcohol Restricted Use District	§ 784
Excelsior Alcohol Special Use District	§ 785
Lower Haight Tobacco Paraphernalia Restricted Use District	§ 786
<i>Fringe Financial Service Restricted Use District</i>	§ 249.35
<i>Mission Alcohol Restricted Use District</i>	§ 249.60 (formerly 781.8)
<i>Third Street Alcohol Restricted Use District</i>	§ 249.62 (formerly 782)

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

ZONING CONTROL TABLE

No.	Zoning Category	§ References	NC-2 Controls
BUILDING STANDARDS			
711.13	Street Frontage	§ 145.1	Required §
No.	Zoning Category	§ References	NC-2
			Controls by Story
RETAIL SALES AND SERVICE			
711.54	Massage Establishment	§ 790.60 , § 1900 Health Code	C#
711.69B	Amusement Game Arcade (Mechanical Amusement Devices)	§ 790.04 - §790.4	

SPECIFIC PROVISIONS FOR NC-2 DISTRICTS

Article 7 Code Section	Other Code Section	Zoning Controls
§ 711.54	§ 790.60 , § 1900 <i>Health Code</i>	<p><i>MASSAGE ESTABLISHMENT</i></p> <p><i>Controls.</i> <i>Massage shall generally be subject to Conditional Use authorization. Certain exceptions to the Conditional Use requirement for massage are described in §790.60(c). When considering an application for a conditional use permit pursuant to this subsection, the Planning Commission shall consider, in addition to the criteria listed in Section 303(c), the additional criteria described in §303(o).</i></p>
§ 711.68	§ 249.35	<p>FRINGE FINANCIAL SERVICE RESTRICTED USE DISTRICT (FFSRUD)</p> <p>Boundaries: The FFSRUD and its ¼ mile buffer includes, but is not limited to, properties within: the Mission Alcoholic Beverage Special Use District the Haight Street Alcohol Restricted Use District; the Third Street Alcohol Restricted Use District; the Divisadero Street Alcohol Restricted Use District; the North of Market Residential Special Use District and the Assessor's Blocks and Lots fronting on both sides of Mission Street from Silver Avenue to the Daly City borders as set forth in Special Use District Maps SU11 and SU12; and includes Small-Scale Neighborhood Commercial Districts within its boundaries.</p> <p>Controls: Within the FFSRUD and its ¼ mile buffer, fringe financial services are NP pursuant to Section 249.35. Outside the FFSRUD and its ¼ mile buffer, fringe financial services are P subject to the restrictions set forth in Subsection 249.35(c)(3).</p>

SEC. 790.55. LIQUOR STORE.

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

(a) are ~~both~~ (1 a) classified as a general grocery store use as set forth in Section [790.102\(a\)](#), or a specialty grocery store use as set forth in Section [790.102\(b\)](#), and (2 b) have a gross floor area devoted to alcoholic beverages that is within the accessory use limits set forth in Section [703.2\(b\)\(1\)\(C\)\(vi\)](#); or

(b) have ~~both~~ (1 a) a use size as defined in Section [790.130](#) of this Code of greater than 10,000 gross square feet and (2 b) a gross floor area devoted to alcoholic beverages that is within accessory use limits as set forth in Section [204.2](#) or [703.2\(b\)\(1\)\(c\)](#) of this Code, depending on the zoning district in which the use is located.

(c) For purposes of Planning Code Sections [249.5](#), [781.8](#), [781.9](#), [782](#), ~~783~~, and [784](#), the retail uses explicitly exempted from this definition as set forth above shall only apply to general grocery and specialty grocery stores that exceed 5,000s/f in size, ~~shall that do~~ not:

(1 a) sell any malt beverage with an alcohol content greater than 5.7% by volume; any wine with an alcohol content of greater than 15% by volume, except for "dinner wines" that have been aged two years or more and maintained in a corked bottle; or any distilled spirits in container sizes smaller than 600 ml;

(2 b) devote more than 15% of the gross square footage of the establishment to the display and sale of alcoholic beverages; and

(3 e) sell single servings of beer in container sizes 24 oz. or smaller.

Noriega and Irving Street NCDs

Correct the reference for Business Signs in Section 739.31 and 740.31 from ~~§ 607.1(e)2~~ to [§ 607.1\(f\)2](#)

810.20

20	Use Size [Nonresidential]	§ 890.130	P up to 5,000 sq. ft. C 5,000 sq. ft. & above § 121.4 Except for <i>full-service</i> R Restaurants
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811.20

20	Use Size <i>[Nonresidential]</i>	§ 890.130	P up to 2,500 sq. ft. C 2,501 to 5,000 sq. ft. Except for full-service R Restaurants - 5,000 sq. ft. § 121.4
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811.47b reference

§ 811.47b	§ 890.37	The other entertainment use must be in conjunction with an existing full- service R Restaurant
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