

1 [Planning Code - Definition of Bona Fide Eating Place]

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3 **Ordinance amending the Planning Code to expand the definition of “bona fide eating**
4 **place” to include a definition based on food sales per occupant; and making**
5 **environmental findings, and findings of consistency with the General Plan, and the**
6 **eight priority policies of Planning Code, Section 101.1.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.
9 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
10 **Board amendment additions** are in double-underlined Arial font.
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.
12 **Asterisks (* * * *)** indicate the omission of unchanged Code
13 subsections or parts of tables.

11

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

13 Section 1. The Board of Supervisors of the City and County of San Francisco hereby
14 finds and determines that:

15 (a) The Planning Department has determined that the actions contemplated in this
16 ordinance comply with the California Environmental Quality Act (California Public Resources
17 Code Sections 21000 et seq.) and this Board adopts this determination as its own. Said
18 determination is on file with the Clerk of the Board of Supervisors in File No. _____ and
19 is incorporated herein by reference.

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

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1 Section 2. The Planning Code is hereby amended by amending Section 790.142, to
2 read as follows:

3 **SEC. 790.142. BONA FIDE EATING PLACE.**

4 A place which is regularly and in a bona fide manner used and kept open for the
5 service of meals to guests for compensation and which has suitable kitchen facilities
6 connected therewith, containing conveniences for cooking of an assortment of foods which
7 may be required for ordinary meals.

8 (a) "Meals" shall mean an assortment of foods commonly ordered at various hours
9 of the day for breakfast, lunch or dinner. Incidental food service, comprised only of appetizers
10 to accompany drinks is not considered a meal. Incidental, sporadic or infrequent sales of
11 meals or a mere offering of meals without actual sales is not compliance.

12 (b) "Guests" shall mean persons who, during the hours when meals are regularly
13 served therein, come to a bona fide public eating place for the purpose of obtaining, and
14 actually order and obtain at such time, in good faith, a meal therein. Nothing in this section,
15 however, shall be construed to require that any food be sold or purchased with any beverage.

16 (c) Actual and substantial sales of meals are required, during the normal days and
17 meal hours that a bona fide public eating place is open; provided that "normal days of
18 operation" shall mean a minimum of five days a week and "normal hours" of operation for
19 meal service shall mean approximately 7:00 a.m. to 11:00 a.m. if open for breakfast; 11:00
20 a.m. to 2:00 p.m. if open for lunch; or 5:00 p.m. to 10:00 p.m. if open for dinner.

21 (d) The premises must be equipped and maintained in good faith. This means the
22 premises must possess working refrigeration and cooking devices, pots, pans, utensils, table
23 service, condiment dispensers, menus, signs and enough goods to make substantial meals.
24 The premises must comply with all regulations of the Department of Public Health.

1 (e) The restaurant must secure significant revenue from food sales. Significant revenue from
2 food sales shall mean either:

3 (1) A minimum of 51 percent of the restaurant's gross receipts shall be from
4 food sales prepared and sold to guests on the premises. Records of the restaurant's gross
5 receipts shall be provided to the Department upon request; or

6 (2) Annual gross food sales prepared and sold to guests on the premises of at least
7 \$5,200 per occupant based on the premises' maximum occupant load as determined and approved by
8 the San Francisco Fire Department and Department of Building Inspection.

9 (f) A "bona fide eating place" does not include an adult entertainment business as
10 defined in Planning Code Section 790.36.

11 Section 3. Effective Date. This ordinance shall become effective 30 days after
12 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
13 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
14 of Supervisors overrides the Mayor's veto of the ordinance.

15 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
16 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
17 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
18 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
19 additions, and Board amendment deletions in accordance with the "Note" that appears under
20 the official title of the ordinance.

21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: _____
24 MARLENA G. BYRNE
25 Deputy City Attorney

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