



SAN FRANCISCO PLANNING DEPARTMENT

December 19, 2014

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

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415.558.6377

**Re: Transmittal of Planning Department Case Number 2014.1609T:
Arcades in the Upper Market Street Neighborhood Commercial Transit District
Board File No. 140982
Planning Commission Recommendation: Approval with Modification**

Dear Ms. Calvillo and Supervisor Wiener,

On December 18, 2014, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed amendments to the Upper Market Street Neighborhood Commercial Transit District (NCT) introduced by Supervisor Scott Wiener. At the hearing, the Planning Commission recommended approval with modification.

The proposed modification is:

- 1) To modify the proposed language in the Specific Provision for the Upper Market Street Neighborhood Commercial Transit District to read as follows:

Article 7 Code Section	Other Code Section	Zoning Controls
§733.48	§§790.4, 790.38	Within the Upper Market Street Neighborhood Commercial Transit District, up to four mechanical amusement devices are considered an accessory use and up to ten mechanical amusement devices will be considered an Amusement Game Arcade use.

The proposed amendments have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 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 Planning Commission.

Please find attached documents relating to the actions of the Planning Commission. 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 "Aaron D. Starr", with a long horizontal line extending to the right.

Aaron D. Starr
Manager of Legislative Affairs

cc:

Jon Givner, Deputy City Attorney
Judith A. Boyajian, Deputy City Attorney
Andres Power, Aide to Supervisor Wiener

Attachments:

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 19299

HEARING DATE DECEMBER 18, 2014

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Project Name: Arcades in the Upper Market Street Neighborhood Commercial Transit District
Case Number: 2014.1609T [Board File No. 140982]
Initiated by: Supervisor Weiner / Reintroduced November 18, 2014
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTIONS 733.69B AND 733.48 TO PRINCIPALLY PERMIT AMUSEMENT GAME ARCADES ON THE FIRST AND SECOND STORY IN UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT AND TO ADD A SPECIFIC PROVISION TO THE ZONING CONTROL TABLE FOR THE UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT INDICATING THAT UP TO FOUR MECHANICAL AMUSEMENT DEVICES ARE CONSIDERED AN ACCESSORY USE AND UP TO TEN MECHANICAL AMUSEMENT DEVICES ARE 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 November 18, 2014, Supervisor Weiner reintroduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 140982, which would amend Planning Code Sections 733.69B to principally permit Amusement Game Arcades on the first and second stories in the Upper Market Street Neighborhood Commercial Transit District (NCT) and add a Specific Provision to the Zoning Control Table for the Upper Market Street NCT indicating that the portion of an Other Entertainment use consisting of Mechanical Amusement Devices will be considered an Amusement Game Arcade use for the purposes of the Planning Code;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on December 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 is:

- 1) To modify the proposed language in the Specific Provision for the Upper Market Street Neighborhood Commercial Transit District to read as follows:

Article 7 Code Section	Other Code Section	Zoning Controls
§733.48	§§790.4, 790.38	Within the Upper Market Street Neighborhood Commercial Transit District, up to four mechanical amusement devices are considered an accessory use and up to ten mechanical amusement devices will be considered an Amusement Game Arcade use.

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 largely based on older conceptions of mechanical amusement devices and Arcades. Both were viewed as contributing to truancy, petty crime and drug use. In this context, an overlapping and extensive regulatory process was seen as necessary to preserve the general welfare.
2. Today mechanical amusement devices are but one outlet available for gaming. The explosive rise of home video game consoles and games on personal mobile devices has taken “market share” from mechanical amusement devices and Arcades. It has also reinforced the recreational nature of gaming.
3. The current interest in mechanical amusement devices and the Arcade is fueled by nostalgia and a desire to form communities around friendly competition. Popular support for Arcades is evident in the growth of pinball leagues and venues across the US.

4. Easing Planning Code regulations on mechanical amusement devices and Amusement Game Arcades helps satisfy the demand for their use, expands new business opportunities, allows existing businesses to augment their retail offering, contributes to the character of 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 allows new commercial activity in a district where it once was largely prohibited. This added commercial activity will help maintain a favorable social and cultural climate in San Francisco as it adds to the number of recreational activities available to employees. This enhances San Francisco as a location for 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 encourages the retention of neighborhood-serving retail establishments by allowing them to expeditiously add new retail offerings. The Ordinance also allows new retail activity in a neighborhood commercial district where it was once prohibited.

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 allows existing neighborhood-serving retail to expeditiously expand their retail offering. It also allows new retail activity to locate in areas where they were once prohibited, which may enhance opportunities for resident employment in and ownership of such retail businesses.

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 contribute to neighborhood character to augment their retail offerings and as such will preserve the diversity of the neighborhood commercial districts.

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 a negative effect 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 a negative effect 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 a negative effect 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 December 18, 2014.

Jonas P. Ionin
Commission Secretary

AYES: Commissioners Antonini, Johnson, Moore, Richards, Wu

NOES:

ABSENT: Commissioners Hillis, Fong

ADOPTED: December 18, 2014



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment HEARING DATE: DECEMBER 18, 2014

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Project Name: Arcades in the Upper Market Street Neighborhood Commercial Transit District
Case Number: 2014.1609T [Board File No. 140982]
Initiated by: Supervisor Weiner / Reintroduced November 18, 2014
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: **Recommend Approval with Modifications**

PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Upper Market Street Neighborhood Commercial Transit District (NCT) Section 733 (Zoning Control Table) to principally permit Amusement Game Arcades on the first and second story and add a Specific Provision to the Zoning Control Table clarifying that the portion of an Other Entertainment use comprised of mechanical amusement game devices (MADs) will be considered an Amusement Game Arcade (Arcades).

The Way It Is Now:

1. The Upper Market Street NCT prohibits Arcades on any story.¹
2. The Upper Market Street NCT allows Other Entertainment uses, which include uses with up to 10 MADs², on the first story with Conditional Use authorization.

The Way It Would Be:

1. The Upper Market Street NCT would principally permit Arcades on the first and second stories.
2. The Upper Market Street NCT would consider businesses with 10 or fewer MADs as Arcades, instead of an Other Entertainment Use.

¹ Planning Code Section 790.4 defines Amusement Game Arcades as:

A retail use which provides 11 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 1036.23 of the Police Code as an Ancillary Use. Mechanical amusement devices are further regulated in Sections 1036 through 1036.24 of the Police Code.

² A March, 2002 Zoning Administrator Interpretation on the definition of Amusement Game Arcades considers a use with up to 10 MADs an Other Entertainment use.

ISSUES AND CONSIDERATIONS

Existing Regulations

Of the 39 Neighborhood Commercial Districts (NCDs) in the City, 31 prohibit Arcades, seven require Conditional Use Authorization and only one principally permits them.³ These regulations are largely based on older notions of Arcades. At that time concern focused on the proliferation of Arcades and the potential nuisances created by the use. Concerns included increased congestion on sidewalks around Arcades, the accessibility to Arcades by minors during school hours and an increase in crime and other anti-social behavior in areas near Arcades.

In March 2002, the Zoning Administrator issued an interpretation to the Planning Code which considers business with up to 10 MADs an Other Entertainment use. This interpretation recognizes that retail businesses, such as bars and restaurants, often feature a small number of MADs. This small number is not commonly considered a full scale Arcade, but rather a complement to that retail business. Because Other Entertainment is a use more widely permitted than Arcades, the interpretation serves to allow this activity throughout the City.⁴

The Police Code also regulates MADs and Arcades, chiefly through Section 1036. Section 1036 establishes minimum permitting requirements for MADs and Arcades based on the number of requested MADs and the type of commercial establishment in which the MADs would be located, among other considerations.

Current Attitudes on Arcades

The current interest in Arcades is in large part led by Baby Boomer and Gen-X hobbyists, collectors and nostalgists. These groups view Arcades as venues for social interaction and for forming community around friendly competition. As a result of this attitudinal change, and in conjunction with increased regulation on smoking and gambling, popular concerns about possible nuisance have subsided.⁵

Recent Amendments to Arcade Regulation

In 2014 Supervisor London Breed introduced two ordinances modernizing Arcade regulations. The first relaxed Police Code regulation on MADs and Arcades.⁶ Among other changes, it eliminated the Police permit requirement for up to one MAD in a bar and up to 10 MADs in a use other than a bar.

The second amended the Haight Street NCD (Planning Code Section 719) to principally permit Arcades on the first and second stories and consider that portion of an Other Entertainment use an Arcade use.⁷

³ Arcades require Conditional Use Authorization in the NC-3, NC-S, Broadway, Mission St., Excelsior, Divisadero and Fillmore NCDs; the Haight Street NCD principally permits them.

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 San Francisco Health Code Article 19F Section 1009.22(a) prohibits smoking in buildings containing business establishments, among other uses; Article 3 of the San Francisco Police Code broadly prohibits the use of machines for the purpose of gambling.

⁶ Regulating Mechanical Amusement Devices and Arcades (BF 140776).

This Ordinance was unanimously approved by the Planning Commission and the Board of Supervisors. Mayor Lee signed the Ordinance into law on November 7, 2014.

Proposed Changes to the Planning Code Arcade Regulations

The proposed Ordinance adds a specific provision to the Upper Market Street NCT Zoning Control Table to consider any number of MADs an Arcade, and therefore a principally permitted activity. This avoids a counterintuitive situation where a less intensive use (an Other Entertainment use with up to 10 MADs) is subject to a lengthier review process (typically Conditional Use Authorization), while a more intensive use (an Amusement Game Arcade with at least 11 MADs) is permitted as of right. However, changes to definition of Amusement Game Arcade could also address this issue.

REQUIRED COMMISSION ACTION

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

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Amend the Planning Code to principally permit Amusement Game Arcades in all NCDs on the first story. In NCDs where Other Entertainment is allowed on the second story, principally permit Amusement Game Arcades on the second story.
2. Amend Planning Code Section 790.4 (definition of Amusement Game Arcade) to eliminate any reference to the number of MADs. Section 790.4 would read 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 1036.23 of the Police Code as an Ancillary Use.~~ Mechanical amusement devices are further regulated in Sections 1036 through 1036.24 of the Police Code.

3. Amend Planning Code Section 703.2(b)(1)(C) (Accessory Uses in NCDs) to allow up to four MADs as an accessory use in NCDs. The added subsection would read as follows:

No use will be considered accessory to a permitted principal or conditional use which involves or requires any of the following:

....

(ix) Five or more Mechanical Amusement Devices.

⁷ Arcades in the Haight Street Neighborhood Commercial District (BF 140804).

BASIS FOR RECOMMENDATION

The Department supports the proposed Ordinance, with amendments, because it modernizes existing Arcade regulations in all neighborhood commercial districts. MADs and Arcades are no longer viewed as potential nuisances to their surrounding communities. They complement many other retail activities and help round out the recreational and social offerings of the City. This is conducive to creating an environment that attracts and retains businesses, residents and visitors.

Recommendation 1: Amend the Planning Code to principally permit Amusement Game Arcades in all NCDs on the first story. In NCDs where Other Entertainment is allowed on the second story, principally permit Amusement Game Arcades on the second story.

Allowing Arcades to locate on the first floor of NCDs recognizes that they have similar land use impacts to apparel stores, laundromats or cafes, all of which are typically allowed on the ground floor in NC Districts. These are all commonly found in NCDs and are locations where individuals come, congregate for a period of time, and then move about their daily lives. As mentioned above, Arcades are a low-impact recreational use and operational concerns are already addressed in existing nuisance regulations.

Allowing Arcades on the second floor where Other Entertainment is allowed reinforces a pattern of non-residential uses above the ground floor in more intensive NCDs, such as NC-2 and NC-3 Districts. It also adds a measure of sensitivity in those NCDs that are smaller in scale and lack an established pattern of non-residential uses above the ground floor, such as NC-1 Districts and more restrictive named NCDs.

Recommendation 2: Amend Planning Code Section 790.4 (definition of Amusement Game Arcade) to eliminate any reference to the number of MADs

This recommendation would remove a potential inconsistency in the Planning Code that could require a more intensive approval process for a less intensive use. The ZA's 2002 interpretation states that businesses with 10 or fewer MADs are considered Other Entertainment, while businesses with 10 or more MADs are Arcades. In most NCDs, Other Entertainment requires a CU, and the Department's recommendation would make Arcades principally permitted on the ground floor in all NCDs. Therefore, keeping the numerical distinction in the definition could require a CU for a business with 10 or fewer MADs when an Arcade would be principally permitted. If the numerical distinction is deleted, the 2002 Zoning Administrator Interpretation would also be deleted. Further, this proposal is less cumbersome than adding a specific provision to each NCD use table, as proposed in the Ordinance.

Recommendation 3: Amend Planning Code Section 703.2(b)(1)(C) (Accessory Uses in NCDs) to allow up to four MADs as an accessory use in NCDs

According to the Entertainment Commission, the majority of businesses that seek Amusement Game Arcade permits are only looking to add four MADs to their business. These businesses are typically bars. True Amusement Game Arcades tend to have many more than four MADs. For example, Free Gold Watch in the Upper Haight NCD has over 35 MADs, and Pacific Pinball in the City of Alameda has 100 MADs. Allowing up to four MADs as an accessory use avoids requiring building permit applications for an activity that is minor and incidental, and will also reduce the permitting review process for the majority of new MAD operators.

ENVIRONMENTAL REVIEW

The proposed Ordinance would result in no physical impact on the environment. The proposed amendments are exempt from environmental review under Sections 15060(c)(2) and 15378 of the CEQA Guidelines.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any public comment regarding 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. 140982

