

1 [Planning –Haight Street Neighborhood Commercial District - Full-Service Restaurants.]

2
3 **Ordinance amending Planning Code Sections 719.1 and 781.9 concerning the Haight**
4 **Street Neighborhood Commercial District to provide for up to four new full-service**
5 **restaurant uses that satisfy specific requirements and obtain conditional use**
6 **authorization, making environmental findings, and making findings of consistency with**
7 **the General Plan and priority policies of Planning Code Section 101.1.**

8 Note: Additions are *single-underline italics Times New Roman*;
9 deletions are *strikethrough italics Times New Roman*.
10 Board amendment additions are double underlined.
11 Board amendment deletions are ~~strikethrough normal~~.

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

13 Section 1. Findings. The Board of Supervisors of the City and County of San Francisco
14 hereby finds and declares as follows:

15 (1) The Haight Street Neighborhood Commercial District ("Haight Street NCD") and
16 surrounding neighborhoods have evolved in recent years, bringing a demand for new
17 commercial facilities, some of which are prohibited under current zoning controls.

18 (2) The underlying premise that led to the original prohibition of full-service restaurant uses
19 in the Haight Street NCD – that being to preserve existing convenience businesses and to
20 minimize growth impacts on neighborhood residents – remains sound.

21 (3) Demand to establish full-service restaurants in and around the Haight Street NCD
22 continues to accumulate.

23 (4) Enforcement of the existing prohibition on new full-service restaurants within ¼ mile of
24 the Haight Street NCD impedes the ability of nearby neighborhoods to respond to increased
25 demand for restaurant services.

1 (5) By allowing a limited number of new full-service restaurants to locate within ¼ mile of
2 the Haight Street NCD, the neighborhood will have additional land use planning options. This
3 flexibility will accommodate the needs of neighborhood residents and maintain the vibrancy of
4 the community, without risking more significant and undesirable land use shifts.

5 (6) New full-service restaurants allowed pursuant to this ordinance may occupy vacant
6 commercial spaces in the neighborhood.

7 (7) New full-service restaurants will be limited by number and by conditional use criteria to
8 avoid displacing other neighborhood-serving uses.

9 (8) Such new full-service restaurants will attract patrons who would support existing and
10 future local businesses within the Haight Street NCD and nearby neighborhoods.

11

12 Section 2. Environmental Findings, General Plan Findings, and Other Required Findings.

13 (a) The Planning Department has determined that the actions contemplated in this
14 Ordinance are in compliance with the California Environmental Quality Act (California Public
15 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the
16 Board of Supervisors in File No. _____ and is incorporated herein by
17 reference.

18 (b) On _____, 2007, the Planning Commission, in Resolution No.
19 _____ approved and recommended for adoption by the Board this legislation and
20 adopted findings that it is consistent, on balance, with the City's General Plan and eight
21 priority policies of Planning Code Section 101.1 The Board adopts these findings as its own.
22 A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No.
23 _____, and is incorporated by reference herein.

24

25

1 (c) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this
2 legislation will serve the public necessity, convenience, and welfare for the reasons set forth in
3 Planning Commission Resolution No. _____, and incorporates such reasons by
4 reference herein.

5

6 Section 3. The San Francisco Planning Code is hereby amended by amending
7 Section 719.1 to read as follows:

8 **SEC. 719.1. HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

9 Northwest of the City's geographical center, the Haight Street Neighborhood
10 Commercial District is located in the Haight-Ashbury neighborhood, extending along Haight
11 Street between Stanyan and Central Avenue, including a portion of Stanyan Street between
12 Haight and Beulah. The shopping area provides convenience goods and services to local
13 Haight-Ashbury residents, as well as comparison shopping goods and services to a larger
14 market area. The commercial district is also frequented by users of Golden Gate Park on
15 weekends and by City residents for its eating, drinking, and entertainment places. Numerous
16 housing units establish the district's mixed residential-commercial character.

17 The Haight Street District controls are designed to protect the existing building scale
18 and promote new mixed-use development which is in character with adjacent buildings. The
19 building standards regulate large-lot and use development and protect rear yards above the
20 ground story and at residential levels. To promote the prevailing mixed-use character, most
21 commercial uses are directed primarily to the ground story with some upper-story restrictions
22 in new buildings. In order to maintain the balanced mix and variety of neighborhood-serving
23 commercial uses and regulate the more intensive commercial uses which can generate
24 congestion and nuisance problems, special controls prohibit additional ~~eating and~~ drinking
25

1 uses, limit additional eating establishments, restrict expansion and intensification of existing
 2 eating and drinking establishments, and limit entertainment and tourist hotels. Prohibitions of
 3 most automobile and drive-up uses protect the district's continuous retail frontage.

4 Housing development in new buildings is encouraged above the ground story. Existing
 5 residential units are protected by prohibition of upper-story conversions and limitations on
 6 demolitions.

7
 8 Section 4. The San Francisco Planning Code is hereby amended by amending Section
 9 719.1 of the Haight Street NCD Zoning Control Table to read as follows:

10 **SEC. 719 HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING**
 11 **CONTROL TABLE**

			UNION STREET		
			CONTROLS BY STORY		
No.	A. Zoning Category	§ References	1 st	2 nd	3 rd +
719.42	Full-Service Restaurant	§790.92	<u>C</u> #	#	#

16
 17 Section 5. The San Francisco Planning Code is hereby amended by amending the table
 18 entitled "Specific Provisions for the Haight Street Neighborhood Commercial District" under
 19 Section 719 to read as follows:

20 **SPECIFIC PROVISIONS FOR THE HAIGHT STREET DISTRICT**

Article 7 Code Section	Other Code Section	Zoning Controls
§ 719.40	§781.9	Boundaries: The entire Haight Street Neighborhood Commercial District.
§ 719.41		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<p>§ 719.42 § 719.43 § 719.44</p>		<p>Controls: Retail establishments selling off-sale or on-sale alcoholic beverages are not permitted pursuant to Section 781.9.</p>
<p><u>§719.42</u></p>	<p><u>§781.9</u> <u>§790.22</u> <u>§790.92</u></p>	<p><u>HAIGHT STREET LIQUOR LICENSES FOR FULL-SERVICE RESTAURANTS</u> <u>Boundaries: Applicable to the Haight Street Neighborhood Commercial District and Haight Street Alcohol Restricted Use Subdistrict.</u> <u>Controls: (a) In order to allow certain restaurants to seek an ABC license type 47 so that liquor may be served for drinking on the premises, a bar use, as defined in §790.22, may be permitted as a conditional use on the ground level if, in addition to the criteria set forth in Section 303, the Planning Commission finds that:</u> <u>(1) The bar function is operated as an integral element of an establishment which is classified both as: (A) a full-service restaurant as defined in §790.92 and (B) a bona-fide restaurant as defined in §781.8(c); and</u> <u>(2) The establishment maintains only an ABC license type 47. Other ABC license types, except those that are included within the definition of a full-service restaurant pursuant to §790.22, are not permitted for those uses subject to this Section.</u> <u>(b) Subsequent to the granting of a conditional use</u></p>

		<p><i>authorization under this Section, the Commission may consider immediate revocation of the previous conditional use authorization should an establishment no longer comply with any of the above criteria for any length of time.</i></p>
<p><u>§725.42</u></p>	<p><u>§790.92</u> <u>§790.22</u></p>	<p><u>HAIGHT STREET FULL-SERVICE RESTAURANTS</u> <u>Boundaries: Applicable to the Haight Street Neighborhood Commercial District and Haight Street Alcohol Restricted Use Subdistrict.</u> <u>Controls: A full-service restaurant may be permitted as a conditional use on the ground level if, in addition to the criteria set forth in Section 303, the Planning Commission has approved no more than a total of 3 full-service restaurants in accordance with this Section. Should a full-service restaurant permitted under this Section cease operation and complete a lawful change of use to another principally or conditionally permitted use, the Commission may consider a new full-service restaurant in accordance with the terms of this Section.</u></p>

Section 6. The San Francisco Planning Code is hereby amended by amending Section 781.9 to read as follows:

SEC. 781.9 HAIGHT STREET ALCOHOL RESTRICTED USE SUBDISTRICT

There is an unusually large number of establishments dispensing alcoholic beverages, including beer and wine, for both on-site and off-site consumption in the Haight-Ashbury

1 neighborhood. A concentration of alcoholic beverage establishments in a neighborhood
2 disrupts the desired mix of land uses that contribute to a livable neighborhood and
3 discourages more desirable and needed commercial uses in the area. A concentration of
4 establishments selling alcoholic beverages in an area may therefore contribute to the
5 deterioration of the neighborhood and to the concomitant devaluation of property and
6 destruction of community values and quality of life. These effects contribute to peace, health,
7 safety and general welfare problems in these areas, including loitering, littering, public
8 drunkenness, driving while intoxicated, defacement and damaging of structures, pedestrian
9 obstructions, as well as traffic circulation, parking and noise problems on public streets and
10 neighborhood lots, and other nuisance activities. The existence of such problems creates
11 serious impacts on the health, safety and welfare of residents of nearby single- and multiple-
12 family areas. These impacts include fear for the safety of children, elderly residents and
13 visitors to the area.

14 (a) Haight Street Alcohol Restricted Use Subdistrict Established. In order to preserve the
15 residential character and the neighborhood-serving commercial uses of the Haight-Ashbury
16 neighborhood, the Haight Street Alcohol Restricted Use Subdistrict (Haight Street Alcohol
17 RUSD) is hereby established with boundaries coterminous with the Haight Street
18 Neighborhood Commercial District as designated on Sectional Map numbers 6 and 7. The
19 Haight Street Alcohol RUSD is designated on Section Map Numbers 6SU and 7SU.

20 (1) No new on-sale or off-sale liquor establishment shall be permitted in the Haight
21 Street RUSD except for up to 4 additional full-service restaurants in accordance with the zoning
22 controls set forth in Section 719.

23 (2) These controls also shall apply within 1/4-mile of the Haight Street Alcohol RUSD
24 to nonconforming uses in R districts pursuant to Planning Code Section 186, and in NC-1
25

1 Districts, pursuant to the Special Provisions for NC-1 Districts which follows the Control Table
2 constituting Sections 710.10 through 710.95.

3 (3) The prohibition on Liquor Establishments shall not be interpreted to prohibit the
4 following:

5 (A) Temporary uses, as described in Planning Code Section 205.1 or 205.3; or

6 (B) Establishment of a Liquor Establishment if application for such Liquor
7 Establishment is on file with the California Department of Alcoholic Beverage Control prior to
8 the effective date of legislation establishing the Haight Street Alcohol RUSD.

9 (C) Establishment of a Liquor Establishment if: (1) such use is an eligible movie
10 theater, (2) only beer and wine are offered for consumption, and (3) such beer and wine are:
11 (i) only consumed on the premises and primarily in the main theater auditorium, (ii) only sold
12 to and consumed by ticketholders and only immediately before and during performances, and
13 (iii) only offered in conjunction with the screening of films and not as an independent element
14 of the establishment that is unrelated to the viewing of films. For purposes of this Section, an
15 "eligible movie theater" shall be a movie theater as defined in Code Section 790.64 that
16 contains only a single screen and auditorium, has seating for 150 or fewer persons, and is not
17 a formula retail use as defined in Code Section 703.3(b).

18 (4) Continuation of existing Prohibited Liquor Establishments. In the Haight Street
19 Alcohol RUSD, any Prohibited Liquor Establishment may continue in accordance with
20 Planning Code Section 180 through 186.2, subject to the following provisions. For purposes of
21 this Section, the Haight Street Alcohol RUSD shall be considered to include, pursuant to
22 Section 186 of this Code and to the Special Provisions for NC-1 Districts, the area within 1/4-
23 mile of the Haight Street Alcohol RUSD as mapped.

24
25

1 (A) A Prohibited Liquor Establishment lawfully existing and selling alcoholic beverages
2 as licensed by the State of California prior to the effective date of this legislation, or
3 subsequent legislation prohibiting that type of Liquor Establishment, so long as otherwise
4 lawful, may continue to operate only under the following conditions, as provided by California
5 Business and Professions Code Section 23790:

6 (1) Except as provided by Subsection (B) below, the premises shall retain the
7 same type of retail liquor license within a license classification; and

8 (2) Except as provided by Subsection (B) below, the licensed premises shall be
9 operated continuously, without substantial change in mode or character of operation.

10 (B) A break in continuous operation shall not be interpreted to include the following,
11 provided that the location of the establishment does not change, the square footage used for
12 the sale of alcoholic beverages does not increase, and the type of California Department of
13 Alcoholic Beverage Control Liquor License ("ABC License") does not change except as
14 indicated:

15 (1) A change in ownership of a Prohibited Liquor Establishment or an owner-to-
16 owner transfer of an ABC License; or

17 (2) Re-establishment, restoration or repair of an existing Prohibited Liquor
18 Establishment on the same lot after total or partial destruction or damage due to fire, riot,
19 insurrection, toxic accident or act of God; or

20 (3) Temporary closure of an existing Prohibited Liquor Establishment for not
21 more than ninety (90) days for repair, renovation or remodeling;

22 (4) Re-location of an existing Prohibited Liquor Establishment in the Haight
23 Street Alcohol RUSD to another location within the same Haight Street Alcohol RUSD with
24 conditional use authorization from the City Planning Commission, provided that the original
25

1 premises shall not be occupied by a Prohibited Liquor Establishment, unless by another
2 Prohibited Liquor Establishment that is also relocating from within the Haight Street Alcohol
3 RUSD.

4 (5) A change from a Type 21 (off-sale general) to a Type 20 (off-sale beer and
5 wine) license.

6 (b) Definitions:

7 (1) A "liquor establishment" shall mean any enterprise selling alcoholic beverages, as
8 defined by California Business and Professions Code Section 23004 and 23025, pursuant to a
9 California Alcoholic Beverage Control Board license.

10 (2) An "on-sale liquor establishment" shall mean any liquor establishment which has
11 obtained Alcoholic Beverage Control Board License type 40 (on-sale beer), type 41 (on-sale
12 beer and wine eating place), type 42 (on-sale beer and wine public premises), type 47 (on-
13 sale general eating place), type 48 (on-sale general-public premises) or type 57 (special on-
14 sale general) selling alcoholic beverages for consumption on the premises. Typical on-sale
15 establishments may include but are not limited to bars and restaurants serving alcoholic
16 beverages. It shall not include types 51, 52, 59, 60, 61, 67, 70 or 75.

17 (3) An "off-sale liquor establishment" shall mean any liquor establishment which has
18 obtained Alcoholic Beverage Control Board License type 20 (off-sale beer and wine) or type
19 21 (off-sale general) selling alcoholic beverages in an open or a closed container for
20 consumption off the premises. Typical off-sale liquor establishments may include but are not
21 limited to the following uses licensed to sell off-sale alcoholic beverages: food markets,
22 supermarkets, drugstores, liquor stores, bars and convenience markets. It shall not include
23 producers and distributor's licenses for offices or establishments not open to the general
24 public.

25

1 (4) A "prohibited liquor establishment" shall mean any establishment selling alcoholic
2 beverages lawfully existing prior to the effective date of the establishment of the Haight Street
3 Alcohol RUSD and licensed by the State of California for the retail sale of alcoholic beverages
4 for on or off-site consumption, so long as otherwise lawful.

5

6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8 By: _____
9 Andrew W. Garth
Deputy City Attorney

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25