

1 [Planning Code - Prohibit the Use of Customer Operated Checkout-Systems - Off-Site Alcohol
2 Sales]

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5 **Ordinance amending the San Francisco Planning Code Sections 703.2 and 790.55 to: 1)**
6 **prohibit the use of Customer Operated Check-Out Systems, as defined, in retail stores**
7 **where alcoholic beverages are sold for off-site consumption; and 2) making findings,**
8 **including environmental findings and findings of consistency with the General Plan**
9 **and with the Priority Policies of Planning Code Section 101.1.**

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NOTE: Additions are *single-underline italics Times New Roman*;
deletions are ~~*strike-through italics Times New Roman*~~.
Board amendment additions are double-underlined;
Board amendment deletions are ~~strike through normal~~.

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

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

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(a) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
16 ordinance will serve the public necessity, convenience and welfare, for the reasons set forth in
17 Planning Commission Resolution No. _____, and incorporates such reasons by this
18 reference thereto. A copy of said resolution is on file with the Clerk of the Board of
19 Supervisors in File No. _____.

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(b) Pursuant to Planning Code Section 101.1, the Board of Supervisors finds that the
21 ordinance is consistent with the Priority Policies of Section 101.1(b) of the Planning Code and
22 with the General Plan and hereby incorporates a report containing those findings as if fully set
23 forth herein. A copy of said report is on file with the Clerk of the Board of Supervisors in File
24 No. _____.

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1 (c) The Planning Department concluded environmental review of this ordinance
2 pursuant to the California Environmental Quality Act, Public Resources Code Section 2100 et
3 seq. Documentation of that review is on file with the Clerk of the Board of Supervisors in File
4 No. _____.

5 Section 1. Specific Findings. The Board of Supervisors of the City and County of San
6 Francisco hereby finds and determines that:

7 (a) Studies have shown that the purchase of alcoholic beverages through customer-
8 operated check-out systems, that is, point of sale where the sale occurs without the
9 assistance or the oversight of an store agent or employee ("Customer-Operated Checkout
10 Systems") can have detrimental impacts on public health, safety, and welfare, such as, (a)
11 result in the failure to review identification of minors and the sale of alcohol to minors; (b)
12 permit customers who are in an advanced state of intoxication to purchase additional alcoholic
13 beverages, in violation of state law; and (c) allow for greater theft of alcoholic beverages.

14 (b) According to the National Highway Traffic Safety Administration, "motor vehicle
15 crashes are the number one killer of youth between 15-20 years of age" and "alcohol is
16 involved in over 35% of these crashes."

17 (c) A study in the 2006 Archives of Pediatrics & Adolescent Medicine found that teens
18 who begin drinking before age 14 have a lifetime risk of alcohol dependence of 47%,
19 compared with only 9% for people who begin drinking at 21.

20 (d) The Substance Abuse and Mental Health Services Administration (SAMHSA) 2006
21 National Survey on Drug Use and Health concluded that about 10.8 million young people
22 aged 12 to 20 (28.3 %) reported drinking alcohol in the past month. Approximately 7.2 million
23 (19.0 %) were binge drinkers and 2.4 million (6.2%) were heavy drinkers. These numbers
24 have essentially stayed the same since 2002.

1 (e) According to National Institute on Alcohol Abuse and Alcoholism, alcohol is the
2 number one youth drug problem in America and more young people die from alcohol related
3 incidents than from all other illicit drugs combined.

4 (f) The Community Economic Development Clinic at the University of California, Los
5 Angeles and the Los Angeles Alliance for a New Economy issued a study on June 17, 2009,
6 entitled *Self Check Out: Is it Reliable for Selling Alcohol?* The study points to the enhanced
7 risk of illegal alcohol purchases from Customer-Operated Check-Out Systems, and the lack of
8 reliability of such systems in monitoring alcohol sales. The study demonstrates that
9 Customer-Operated Check-Out Systems create serious risks that underage customers can
10 bypass the normal checks to purchase alcohol illegally.

11 (g) The City and County of San Francisco ("the City") has invested resources to
12 correct or eliminate alcohol-related problems at the point of sale, including the reduction of
13 chronic inebriation through the use of several Alcohol Restricted Districts, and views such
14 efforts as an integral part of a program to reduce teen usage of alcohol and alcohol related
15 criminal activity.

16 (h) The City is home to the San Francisco Unified School District with over 55,000
17 students in grades K-12.

18 (i) The City is home to the City College of San Francisco, San Francisco State
19 University, two University of California campuses, and a many private colleges and
20 universities, all of which struggle with the challenge of controlling underage drinking and the
21 resulting dangers and misconduct.

22 (j) Section 26.1 of the Administrative Code, adopted by the City and County of San
23 Francisco in 2006, recognizes that "San Francisco has the highest ratio of off-sale alcohol
24 uses per capita in California, the great majority of which are liquor stores;" that "poorly
25 regulated off-sale alcohol uses increase the availability of alcohol in the communities in which

1 they are located, and studies have demonstrated a link between the availability of alcohol and
2 numerous negative consequences, including violence, fatal traffic crashes, and nuisance law
3 violation;" that "25 to 40 percent of all patients in U.S. general hospital beds (not in maternity
4 or intensive care) are being treated for complications of alcohol-related problems;" and that
5 "the three leading causes of death for teenagers are associated with alcohol use: car crashes,
6 homicides, and suicides."

7 (k) Poorly regulated off-sale alcohol uses appear to contribute directly to numerous
8 peace, health, safety, and general welfare problems, including public inebriation and other
9 crimes associated with public inebriation such as loitering and littering, as well as traffic
10 circulation, parking, and noise problems on public streets and neighborhoods.

11 (l) Such problems pose particular concerns in densely developed urban areas such as
12 the City, adversely impacting the health, safety, and welfare of residents of nearby areas,
13 including fear for the safety of children, elderly and disabled residents, and visitors to the City.

14 (m) Such problems also contribute to the deterioration of the surrounding
15 neighborhoods, discourage desirable and needed uses, and lead to concomitant devaluation
16 of real property.

17 Section 3. The San Francisco Planning Code is hereby amended by amending
18 Sections 703.2 and 790.55, to read as follows:

19 **SEC. 703.2. USES PERMITTED IN NEIGHBORHOOD COMMERCIAL DISTRICTS.**

20 (b)(1)(C). Accessory Uses. Except as prohibited in Section 728 and subject to the
21 limitations set forth below and in Sections 204.1 (Accessory Uses for Dwelling Units in R and
22 NC Districts), 204.4 (Dwelling Units Accessory to Other Uses), and 204.5 (Parking and
23 Loading as Accessory Uses) of this Code, a related minor use which is either necessary to the
24 operation or enjoyment of a lawful principal use or conditional use, or is appropriate, incidental
25 and subordinate to any such use, shall be permitted as an accessory use when located on the

1 same lot. Any use which does not qualify as an accessory use shall be classified as a
2 principal or conditional use, unless it qualifies as a temporary use under Sections 205 through
3 205.2 of this Code.

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

6 (i) The use of more than 1/3 of the total floor area occupied by such use and the
7 principal or conditional use to which it is accessory, except in the case of accessory off-street
8 parking and loading;

9 (ii) Any bar, restaurant, other entertainment, or any retail establishment which serves
10 liquor for consumption on-site;

11 (iii) Any take-out food use, as defined in Section 790.122, except for a take-out food
12 use which occupies 1/3 of the total floor area or up to 500 s/f whichever is more restrictive in a
13 general grocery or specialty grocery store, 2 This take-out food use includes the area devoted
14 to food preparation and service and excludes storage and waiting areas;

15 (iv) Any take-out food use, as defined in Section 790.122, except for a take-out food
16 use operating as a minor and incidental use within a full-service restaurant;

17 (v) The wholesaling, manufacturing or processing of foods, goods, or commodities
18 on the premises of an establishment which does not also use or provide for primarily retail
19 sale of such foods, goods or commodities at the same location where such wholesaling,
20 manufacturing or processing takes place.

21 (vi) Any retail liquor sales, as defined in Section 790.55, except for beer, wine,
22 and/or liquor sales for the consumption off the premises with a State of California
23 Alcoholic Beverage Control ("ABC") Board License type (off-sale beer and wine) or
24 type 21 (off-sale general) which occupy less than 15% of the gross square footage of
25 the establishment (including all areas devoted to the display and sale of alcoholic

1 beverages) in a general grocery store, specialty grocery store, or self-service specialty
2 food use; provided that no off-sale of any alcoholic beverage shall take place through a
3 Consumer-Operated Check-Out System. For purpose of this subsection, "Consumer-Operated
4 Checkout System" means a point-of-sale system where the sale occurs without the assistance or
5 the oversight of an store agent or employee. This subsection shall not apply to Consumer-
6 Operated Checkout Systems that were in operation at the effective date of this Ordinance.

7 (vii) Medical Cannabis Dispensaries as defined in 790.141.

8 The foregoing rules shall not prohibit take-out food activity which operates in
9 conjunction with a fast-food restaurant or a self-service restaurant. A fast-food restaurant or a
10 self-service restaurant, by definition, includes take-out food as an accessory and necessary
11 part of its operation.

12 **SEC. 790.55. LIQUOR STORE.**

13 A retail use which sells beer, wine, or distilled spirits to a customer in an open or closed
14 container for consumption off the premises and which needs a State of California Alcoholic
15 Beverage Control Board License type 20 (off-sale beer and wine) or type 21 (off-sale general)
16 This classification shall not include retail uses that (1) are both (a) classified as a general
17 grocery store use as set forth in Section 790.102(a), a specialty grocery store use as set forth
18 in Section 790.102(b), or a self-service specialty food use as set forth in Section 790.93, and
19 (b) have a gross floor area devoted to alcoholic beverages that is within the accessory use
20 limits set forth in Section 703.2(b)(1)(C)(vi); or (2) have both a) a use size as defined in
21 Section 790.130 of this Code of greater than 10,000 gross square feet and (b) a gross floor
22 area devoted to alcoholic beverages that is within accessory use limits as set forth in Section
23 204.2 or 703.2(b)(1)(c) of this Code, depending on the zoning district in which the use is
24 located. For purposes of Planning Code Sections 249.5, 781.8, 781.9, 782, 783, and 784, the
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1 retail uses explicitly exempted from this definition as set forth above shall only apply to
2 general grocery and specialty grocery stores that exceed 5,000s/f in size, shall not:

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

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

9 (c) sell single servings of beer in container sizes 24 oz. or smaller.

10 Liquor stores as defined in this Section shall not use any Customer-Operated Checkout Systems.

11 For purpose of this subsection, "Consumer-Operated Checkout System" means a point-of-sale system
12 where the sale occurs without the assistance or the oversight of an store agent or employee. This
13 subsection shall not apply to Consumer-Operated Checkout Systems that were in operation at the
14 effective date of this Ordinance.

15 Section 4. Effective Date. This ordinance shall become effective 30 days from the
16 date of passage.

17 Section 5. In enacting this Ordinance, the Board intends to amend only those words,
18 phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams,
19 or any other constituent parts of the Planning Code that are explicitly shown in this legislation
20 as additions, deletions, Board amendment additions, and Board amendment deletions in
21 accordance to the "Note" that appears under the official title of this legislation. This Ordinance
22 shall not be construed to effectuate any unintended amendments. Any additions or deletions
23 not explicitly shown as described above, omissions, or other technical and non-substantive
24 differences between this Ordinance and the Planning Code that are contained in this
25 legislation are purely accidental and shall not effectuate an amendment to the Planning Code.

1 The Board hereby authorizes the City Attorney, in consultation with the Clerk and other
2 affected City departments, to make those necessary adjustments to the published Planning
3 Code, including non-substantive changes such as renumbering or relettering, to ensure that
4 the published version of the Planning Code is consistent with the laws that this Board enacts.

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

8 By: _____
9 ANDREA RUIZ-ESQUIDE
10 Deputy City Attorney

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