

[Planning Code - Zoning - Temporary Uses and Mobile Food Facilities]

Ordinance amending the San Francisco Planning Code by adding Section 102.31 to define a Mobile Food Facility, amending Section 205 and adding Section 205.4 to establish a new category of temporary uses, and amending Sections 212, 790.91, 790.93 and 890.90 to clarify that Mobile Food Facilities need not be conducted within enclosed buildings; adopting findings, including environmental findings and findings of consistency with the General Plan and Planning Code Section 101.1.

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 ~~strikethrough-normal~~.

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

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

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 101351 and is incorporated herein by reference.

(b) Pursuant to Planning Code Section 302, this Board finds that these Planning Code amendments will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. 18217 and the Board incorporates such reasons herein by reference. A copy of Planning Commission Resolution No. 18217 is on file with the Board of Supervisors in File No. 101351.

(c) This Board finds that these Planning Code amendments are consistent with the General Plan and with the priority policies of Planning Code Section 101.1 for the reasons set

1 forth in Planning Commission Resolution No. 18217, and the Board hereby
2 incorporates such reasons herein by reference.

3 (d) Mobile Food Facilities are defined in Section 113831 of the California Health and
4 Safety Code as "any vehicle used in conjunction with a commissary or other permanent food
5 facility upon which food is sold or distributed at retail." When such uses are located outside of
6 San Francisco's public rights-of-way, permitting authority rests with the Department of Public
7 Health which consults the Planning Department to ensure that all such applications are
8 consistent with the Planning Code. Examples of Mobile Food Facilities include pushcart
9 vendors, trailer-based vendors, and catering trucks which sell a range of ready-to-eat food.

10 (e) Often termed "street-food," the wide range of fare provided by Mobile Food
11 Facilities is typically offered at low or moderate prices and in many cases represents novel or
12 innovative cuisine. When located and operated appropriately, Mobile Food Facilities add
13 vitality to the street, contribute to the richness of San Francisco's culinary and cultural
14 offerings, and provide economic opportunities especially for small business-persons.

15 (f) The Planning Code addresses land uses which are either discrete temporary uses
16 or fixed, non-mobile, permanent uses. No regulations yet exist for uses such as Mobile Food
17 Facilities which, while occasional, occur in an ongoing fashion with some routine or regularity.

18 (g) These 'intermittent activities' include outdoor uses such as Mobile Food Facilities,
19 farmers markets, and open-air craft markets which are neither permanent nor entirely
20 temporary. ~~The 60-day or 24-hour limits contemplated as part of the Planning Code's~~
21 ~~temporary use provisions in Section 205 et. seq. do not acknowledge the enduring presence~~
22 ~~of these intermittent uses.~~

23 (h) In most Commercial, Industrial, and Production, Distribution, and Repair Districts,
24 such uses can typically be permitted as permanent uses without extensive, lengthy, or
25 burdensome permitting requirements. However, within Neighborhood Commercial and certain

1 Mixed Use Districts, such uses – despite their limited nature – are considered permanent land
2 uses and are subject to detailed and complex permit review. This review is of the same scope
3 as that which apply to larger, permanent, “bricks-and-mortar” establishments.

4 (i) The nature of some Mobile Food Facilities – particularly those with an extended
5 presence at a given location - is such that they would continue to be considered permanent
6 uses. It has been suggested that portions of the Planning Code that require certain uses to be
7 conducted within enclosed buildings are ambiguous with respect to Mobile Food Facilities.

8 Section 2. The San Francisco Planning Code is hereby amended by adding Section
9 102.31 to read as follows:

10 **SEC. 102.31. MOBILE FOOD FACILITY.** *A Mobile Food Facility shall be as defined in*
11 *Public Works Code Section 184.80. Mobile Food Facilities shall comply with the good neighbor*
12 *policies set forth in Public Works Code Section 184.94.*

13 Section 3. The San Francisco Planning Code is hereby amended by amending
14 Sections 205 and 212 and adding Section 205.4 to read as follows:

15 **SEC. 205. - TEMPORARY USES, GENERAL.**

16 (a) The temporary uses listed in Sections 205.1 through ~~205.3~~ 205.4, where not
17 otherwise permitted in the district, may be authorized as provided herein, up to the time limits
18 indicated. Further time for such uses may be authorized only by action upon a new
19 application, subject to all the requirements for the original application, unless otherwise
20 indicated in Sections 205.1 through ~~205.3~~ 205.4.

21 (b) Action upon such uses shall be by the Planning Commission, subject to all the
22 requirements for conditional uses in Sections 303 and 306 through 306.5 of this Code; except
23 that uses listed in Section 205.1, uses listed in Section 205.2 if located in a PDR, C, or M
24 District, ~~and~~ uses listed in Section 205.3 within the South of Market Mixed Use Districts and
25

1 Eastern Neighborhoods Mixed Use Districts, and uses listed in Section 205.4 may be authorized
2 by the Zoning Administrator without a public hearing.

3 (c) Wherever a use exists at the effective date of this Code or of an amendment
4 thereto under which such use is classified as a temporary use, or wherever a use is being
5 conducted under a temporary use authorization given prior to such a date, such use may be
6 continued for the maximum term specified therefore, calculated from said effective date or
7 date of authorization. No such use shall continue thereafter unless a temporary use
8 authorization shall have been sought and obtained under a new application. Continuance of a
9 temporary use beyond the date of expiration of the period authorized therefore, or failure to
10 remove a structure for such temporary use within 10 days thereafter, shall constitute a
11 violation of this Code.

12 **SEC. 205.4. - TEMPORARY USES: INTERMITTENT ACTIVITIES.**

13 An intermittent activity is an outdoor use which, while occasional, occurs with some routine or
14 regularity. Intermittent activities include, but are not limited to, the following uses: mobile food
15 facilities, farmers markets, and open-air craft markets. Such uses typically require additional
16 authorization(s) from other City Departments. An intermittent activity may be authorized as a
17 temporary use for a period not to exceed one year within all Districts, except for RH, RM, RED and
18 RTO Districts, so long as all of the following conditions are met:

19 (a) It shall not be located within a building as defined in Section 102.3 of this Code.

20 (b) It shall not be located on the property for more than either: (i) six (6) calendar days for
21 longer than 12 hours per day in any seven-day period; or (ii) three (3) calendar days for longer than 24
22 hours per day in any seven-day period. At the time of application, the applicant shall designate in
23 writing which of the foregoing options shall apply to the activity. No changes shall be made during the
24 authorization period without first filing a new application.

1 (1) The time periods referenced in Subsection (b) each constitute complete calendar days and
2 apply without regard to whether the activity is open to the public or whether the activity is located on
3 the subject property for consecutive days.

4 (2) Days of unused authorization cannot be stored or credited, and any portion of a day that
5 the intermittent activity is located at the subject property shall count toward the 12-hour or the 24-hour
6 limit of Subsection (b). \

7 (3) This Subsection (b) shall not apply to any mobile food facility located within a Public
8 (P) District that together with any directly adjoining P District(s) contains more than one (1)
9 acre.

10 (c) It shall be open for business only during the hours of operation permitted as a principal use
11 for the District in which it is located, if any such hourly limits exist.

12 (d) If located in a District that is subject to any of the neighborhood notification
13 requirements as set forth in Section 312, notification pursuant to Section 312 shall be required as
14 follows:

15 (1) Notification shall be required if the vending space, as defined below, would exceed 225
16 300 square feet.

17 (2) Notification shall be required if any portion of the vending space would be located within
18 50 feet of an RH, RM, RED or RTO District. Distances to RH, RM, RED and RTO Districts shall be
19 measured from the extreme perimeter of any vending space to the nearest property line of any parcel
20 which is partially or wholly so zoned.

21 (3) For purposes of this Section "Vending Space" shall be defined as the entire area within a
22 single rectangular perimeter formed by extending lines around the extreme limits of all carts, vehicles,
23 tables, chairs, or other equipment associated with all intermittent activities located on the parcel.

24 (4) Notwithstanding Subsections (d)(1) and (2) above, and in order to eliminate redundant
25 notification, notification shall not be required for the resumption of an intermittent activity or the

1 extension of time for an intermittent activity when all of the following criteria are met: (A) an
2 intermittent activity is currently authorized on the property or has been authorized on the property
3 within the 12 months immediately preceding the filing of an application for resumption or extension;
4 (B) the existing or recent intermittent activity lawfully exceeds or exceeded the thresholds of
5 Subsections (d)(1) and/or (2), above, and was the subject of neighborhood notice under Section 312 at
6 the time of its establishment; and (C) the intermittent activity would not further exceed the thresholds of
7 Subsections (d)(1) and/or (2), above.

8 **SEC. 212. - ADDITIONAL REQUIREMENTS FOR USES IN CERTAIN C AND M**
9 **DISTRICTS.**

10 In the following C and M Districts, the permitted uses indicated in Sections 215 through
11 227 shall be subject to the additional requirements contained in this Section 212.

12 (a) In C-1 and C-2 Districts, all permitted uses, and all storage, servicing, fabricating,
13 processing or repair uses accessory thereto, shall be conducted within enclosed buildings,
14 with the exceptions of:

15 (1) ~~Those~~ uses indicated by an asterisk (*) in the column for the district, ~~and with the~~
16 ~~exception, also, of the following accessory uses where permitted;~~

17 (~~2~~) Accessory off-street parking and loading ~~area~~ areas where permitted;

18 (~~3~~) Accessory outdoor dining areas where permitted;

19 (~~4~~) Accessory recreation areas where permitted; and,

20 (5) Mobile Food Facilities as defined in Section 102.31.

21 (b) In C-1, C-3-O, C-3-R and C-3-G Districts, no permitted use shall include an
22 establishment of the "drive-in" type, serving customers waiting in parked motor vehicles, with
23 the exception of automobile service stations and automobile washes where permitted.

24 (c) In the C-3-R District, along any block frontage that is entirely within such district or
25 partly in such district and partly in the C-3-O District, where such block frontage faces a street

1 40 feet or more in width, the following requirements shall apply to assure continuity of retail
2 and consumer service uses:

3 (1) Only those permitted uses listed in Sections 218 and 227 shall be located facing
4 such street in the ground story of any building. At least $\frac{1}{2}$ the total width of any new or
5 reconstructed building, parallel to and facing such street, shall be devoted at the ground story
6 to entrances, show windows or other displays of such uses.

7 (2) All other permitted uses shall be located either on stories above or below the
8 ground story or at a distance of not less than 20 feet behind the front of the building at the
9 ground story. No more than $\frac{1}{3}$ the width of any lot, parallel to and facing such street, shall be
10 devoted to entrances to such other permitted uses.

11 (d) No use listed as permitted in any C District or M-1 District shall include any use that
12 is hazardous, noxious or offensive for reasons described in Section 202(c) of this Code.

13 (e) In C-3 Districts, all demolitions of residential buildings and all conversions to
14 nonresidential use of residential uses above the ground floor shall be permitted only if
15 authorized as a conditional use under Section 303 of this Code, unless the Superintendent of
16 the Bureau of Building Inspection or the Chief of the Bureau of Fire Prevention and Public
17 Safety determines that the building is unsafe or dangerous and that demolition is the only
18 feasible means to secure the public safety. When considering whether to grant a conditional
19 use permit for the demolition or conversion, in lieu of the criteria set forth in Planning Code
20 Section 303, consideration shall be given to the adverse impact on the public health, safety
21 and general welfare of the loss of housing stock in the district and to any unreasonable
22 hardship to the applicant if the permit is denied.

23 Section 4. The San Francisco Planning Code is hereby amended by amending Section
24 790.91 and 790.93 to read as follows:

25 **SEC. 790.91. - RESTAURANT, SMALL SELF-SERVICE.**

1 (a) A retail eating or eating and drinking use which provides ready-to-eat food for
2 consumption on and off the premises and which may or may not provide seating. Such use
3 exhibits the following characteristics:

- 4 (1) Contains fewer than 50 seats and less than 1,000 square feet of gross floor area;
5 (2) A limited menu of ready-to-eat food prepared in advance of customer orders, or
6 food which is able to be quickly prepared for consumption on or off the premises;
7 (3) Food served in disposable wrappers or containers;
8 (4) Food is ordered and served at customer service counter;
9 (5) Food is paid for prior to consumption;
10 (6) Public food service area, including queuing areas and service counters without
11 fixed seats, which counters are designed specifically for the sale and distribution of food and
12 beverages;
13 (7) Food available upon a short waiting time.

14 It does not include retail grocery stores with accessory take-out food activity, as
15 described in Section 703.2(b)(1)(C) of this Code, self-service specialty food use, as described
16 in Section 790.93 of this Code, or retail uses which sell prepackaged or bulk ready-to-eat
17 foods with no-site food preparation area, such as confectionery or produce stores. When a
18 fast-food restaurant operates within and in conjunction with another retail use, such as a retail
19 grocery store, the area of the fast-food restaurant use shall be measured to include the area
20 devoted to food preparation and service, seating and separate public food service counters,
21 excluding fish, poultry and meat counters.

22 (b) It may provide off-site beer, wine and/or liquor sales for consumption off the
23 premises (with ABC licenses 20 or 21) or on-site beer and/or wine sales for drinking on the
24 premises (with ABC licenses 40, 41 or 60). If it serves liquor for drinking on the premises (with
25

1 ABC licenses 47 or 48) or does not admit minors (with ABC licenses 42 or 61), then it shall
2 also be considered a bar, as defined in Section 790.22 of this Code.

3 (c) It shall be conducted in accordance with the following conditions:

4 (1) All debris boxes shall be kept in enclosed structures.

5 (2) The operator shall be responsible for cleaning the sidewalk within a one-block
6 radius daily to maintain the sidewalk free of paper or other litter during its business hours, in
7 accordance with Article 1, Section 34 of the San Francisco Police Code.

8 (3) Noise and odors shall be contained within the premises so as not to be a nuisance
9 to nearby residents or neighbors.

10 (d) It shall not be required to operate within an enclosed building pursuant to Section
11 703.2(b)(1) so long as it is also a Mobile Food Facility as defined in Section 102.31. Any associated
12 outdoor seating and/or dining area is subject to regulation as an Outdoor Activity Area as set forth
13 elsewhere in this Code.

14 **SEC. 790.93. - SPECIALTY FOOD, SELF-SERVICE.**

15 (a) A retail use whose primary function is to prepare and provide ready-to-eat specialty
16 foods to a high volume of customers who carry out the food for off-premises consumption.
17 Such use exhibits each of the following characteristics: (1) Contains a service counter
18 designed specifically for the sale and distribution of food that has been prepared on site; (2)
19 Food is paid for prior to consumption; (3) Typically open for retail sales on weekdays during
20 daytime hours; and (4) May contain no more than 10 seats including sidewalk seating. It often
21 includes wholesaling, manufacturing, or processing of foods, goods, or commodities on the
22 premises as an accessory use as set forth in Section 703.2(b)(1)(C)(v).

23 (b) It includes, but is not limited to, specialty foods provided by bakeries,
24 delicatessens, and confectioneries meeting each of the above characteristics, but it is distinct
25 from small a self-service restaurant use as defined in Section 790.91, a large fast-food

1 restaurant use as defined in Section 790.90 or a retail coffee store as defined in 790.102(n). It
2 does not include general or specialty grocery stores with accessory take-out food activity as
3 described in Section 703.2(b)(1)(C) or retail uses which sell prepackaged or bulk ready-to-eat-
4 foods with no on-site food preparation area.

5 (c) It shall not provide on-site beer and/or wine sales for consumption on the premises,
6 but may provide beer and/or wine sales for consumption off the premises with a California
7 Alcoholic Beverage Control Board License type 20 (off-sale beer and wine) within the
8 accessory use limits as set forth in Section 703.2(b)(1)(C)(vi).

9 (d) It shall not be required to operate within an enclosed building pursuant to Section
10 703.2(b)(1) so long as it is also a Mobile Food Facility as defined in Section 102.31. Any associated
11 outdoor seating and/or dining area is subject to regulation as an Outdoor Activity Area as set forth
12 elsewhere in this Code.

13 Section 5. The San Francisco Planning Code is hereby amended by amending Section
14 890.90 to read as follows:

15 **SEC. 890.90. - RESTAURANT, FAST-FOOD (SMALL).**

16 (a) A retail eating or eating and drinking use which provides quick food service for
17 consumption on and off the premises and which exhibits the following characteristics:

- 18 (1) Contains fewer than 50 seats and less than 1,500 square feet of gross floor area;
19 (2) A limited menu of ready-to-eat food prepared in advance of customer orders, or
20 food which is able to be quickly prepared for consumption on or off the premises;
21 (3) Food served in disposable wrappers or containers;
22 (4) Food is ordered and served at customer service counter;
23 (5) Food is paid for prior to consumption;
24 (6) Food available upon a short waiting time.
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1 It includes but is not limited to delicatessens, ice cream and cookie stores, sandwich
2 shops, and bakeries. It does not apply to retail general or specialty grocery or confectionery
3 stores. When a fast-food restaurant operates within and in conjunction with another retail use,
4 such as a retail grocery store, the area of the fast-food restaurant shall be measured to
5 include the area devoted to food preparation and service, seating and separate public food
6 service counters excluding fish, poultry and meat counters.

7 (b) It may provide on-site beer and/or wine sales for drinking on the premises (with
8 ABC licenses 40 or 60). If it serves liquor for drinking on the premises (with ABC licenses 47
9 or 48), or does not admit minors (with ABC licenses 42 or 61), then it shall also be considered
10 a bar, as defined in Section 890.22 of this Code.

11 (c) It shall not be required to operate within an enclosed building pursuant to Section
12 803.2(b)(1) so long as it is also a Mobile Food Facility as defined in Section 102.31. Any associated
13 outdoor seating and/or dining area is subject to regulation as an Outdoor Activity Area as set forth
14 elsewhere in this Code.

15 (ed) It shall be conducted in accordance with the following conditions:

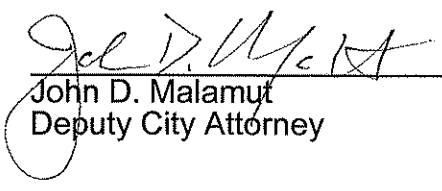
16 (1) All debris boxes shall be kept in enclosed structures.

17 (2) The operator shall be responsible for cleaning the sidewalk within a one-block
18 radius daily to maintain the sidewalk free of paper or other litter during its business hours, in
19 accordance with Article 1, Section 34 of the San Francisco Police Code.

20 (3) Noise and odors shall be contained within the premises so as not to be a nuisance
21 to nearby residents or neighbors.

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2 APPROVED AS TO FORM:
3 DENNIS J. HERRERA, City Attorney

4 By:

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6 John D. Malamut
7 Deputy City Attorney
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City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 101351

Date Passed: November 23, 2010

Ordinance amending the San Francisco Planning Code by adding Section 102.31 to define a Mobile Food Facility, amending Section 205 and adding Section 205.4 to establish a new category of temporary uses, and amending Sections 212, 790.91, 790.93 and 890.90 to clarify that Mobile Food Facilities need not be conducted within enclosed buildings; adopting findings, including environmental findings and findings of consistency with the General Plan and Planning Code Section 101.1.

November 08, 2010 City Operations and Neighborhood Services Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

November 08, 2010 City Operations and Neighborhood Services Committee - RECOMMENDED AS AMENDED

November 16, 2010 Board of Supervisors - PASSED, ON FIRST READING

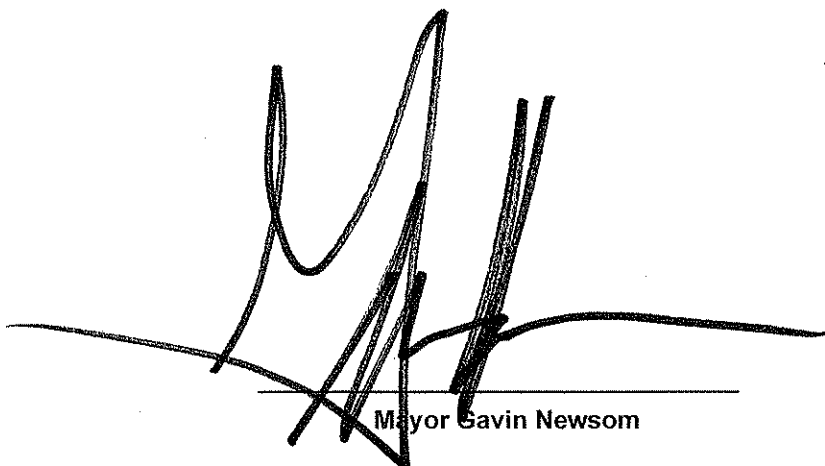
Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

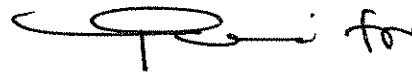
November 23, 2010 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

File No. 101351

I hereby certify that the foregoing
Ordinance was FINALLY PASSED on
11/23/2010 by the Board of Supervisors of
the City and County of San Francisco.



Mayor Gavin Newsom

Angela Calvillo
Clerk of the Board

December 3, 2010
Date Approved