

1 [Planning Code - Notice Requirement for "Other Entertainment Uses" in the Van Ness Avenue  
2 Special Use District]

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4 **Ordinance amending the San Francisco Planning Code by amending Section 243 to**  
5 **require notice for "Other Entertainment Uses" in the Van Ness Avenue Special Use**  
6 **District; adopting findings, including findings under Section 302 of the Planning Code,**  
7 **environmental findings and findings of consistency with the General Plan and the**  
8 **Priority Policies of Planning Code Section 101.1.**

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

14 A. On December 2, 2010 at a duly noticed public hearing, the Planning  
15 Commission in Resolution No. R-18232 found that the proposed Planning Code amendments  
16 were consistent with the City's General Plan and with Planning Code Section 101.1(b). In  
17 addition, the Planning Commission, in Resolution No. R-18232, recommended that the Board  
18 of Supervisors adopt the amendments. Copies of said Resolution are on file with the Clerk of  
19 the Board of Supervisors in File No. 101091 and are incorporated herein by reference. The  
20 Board finds that the proposed Planning Code amendments are consistent with the City's  
21 General Plan and with Planning Code Section 101.1(b) for the reasons set forth in said  
22 Motion.

23 B. Pursuant to Planning Code Section 302, the Board finds that the proposed  
24 Planning Code Amendments will serve the public necessity, convenience and welfare for the  
25

1 reasons set forth in Planning Commission Resolution No. R-18232, which reasons are  
2 incorporated herein by reference as though fully set forth.

3 C. Environmental Findings. The Planning Department has determined that the  
4 actions contemplated in this Ordinance are in compliance with the California Environmental  
5 Quality Act (California Public Resources Code section 21000 et seq.). Said determination is  
6 on file with the Clerk of the Board of Supervisors in File No. 101091 and is incorporated herein  
7 by reference.

8  
9 Section 2. The San Francisco Planning Code is hereby amended by amending  
10 Section 243, to read as follows:

11  
12 **SEC. 243. VAN NESS SPECIAL USE DISTRICT.**

13 (a) General. A Special Use District entitled the Van Ness Special Use District, the  
14 boundaries of which are shown on Sectional Map No. 2SU of the Zoning Map, is hereby  
15 established for the purposes set forth below.

16 (b) Purposes. In order to implement the objectives and policies of the Van Ness  
17 Avenue Plan, a part of the Master Plan, which includes (i) creation of a mix of residential and  
18 commercial uses on the boulevard, (ii) preservation and enhancement of the pedestrian  
19 environment, (iii) encouragement of the retention and appropriate alteration of architecturally  
20 and historically significant and contributory buildings, (iv) conservation of the existing housing  
21 stock, and (v) enhancement of the visual and urban design quality of the street, the following  
22 controls are imposed in the Van Ness Special Use District.

23 (c) Controls. All provisions of the City Planning Code applicable to an RC-4 District  
24 shall apply except as otherwise provided in this Section.

1           (1)    Basic Floor Area Ratio. The basic floor area ratio limit shall be 7.0 to 1 in the  
2 130-foot height district and 4.5:1 in the 80-foot height district. These limits shall apply to  
3 dwellings notwithstanding Section 124(b) of this Code, but shall not apply to floor space used  
4 for nonaccessory off-street parking and driveways and maneuvering areas incidental thereto  
5 provided such parking is located entirely below curb level at the centerline of the building  
6 containing such parking and replaces parking spaces displaced by the building or buildings.  
7 For definitions of floor area ratio and gross floor area, see Sections 102.11 and 102.9,  
8 respectively. The provisions allowing a floor area premium set forth in Section 125(a) shall not  
9 apply in the Van Ness Special Use District.

10           (2)    Housing Density. The restrictions on density set forth in Sections 207, 207.1,  
11 208, 209.1 and 209.2 of this Code shall not apply.

12           (3)    Height and Bulk Restrictions. See Height and Bulk Map No. 2H. See Section  
13 270 of this Code for bulk limits.

14           (4)    Awnings, canopies and marquees, as defined in Sections 790.20, 790.26 and  
15 790.58 of this Code, and further regulated by the Building Code and Sections 243(c)(5), 136.2  
16 and 607.3 of this Code, are permitted.

17           (5)    Signs.

18           (A)    Signs located within the Van Ness Special Use District, with the exception of the  
19 Civic Center Special Sign District as described in Section 608.3 of this Code and as shown in  
20 Sectional Map SSD, shall be regulated as provided in Article 6, including Section 607.3 which  
21 governs signs located in the Van Ness Special Sign District.

22           (B)    Signs on structures designated as landmarks under the provisions of Section  
23 1004 shall be regulated as provided in Section 607.3(d).

1 (6) Rear Yards. The requirements of this Code applicable to rear yards may be  
2 modified or waived by the Zoning Administrator pursuant to Section 307(g) if all of the  
3 following conditions are met:

4 (A) The interior block open space formed by the rear yards of abutting properties will  
5 not be adversely affected; and

6 (B) A comparable amount of usable open space is provided elsewhere on the lot or  
7 within the development where it is more accessible to residents; and

8 (C) The access of light and air to abutting properties will not be significantly  
9 impeded.

10 This provision shall be administered pursuant to the procedures which are applicable to  
11 variances, as set forth in Sections 306.1 through 306.5 and 308.2 of this Code.

12 (7) Required Setbacks. Setbacks for buildings exceeding a height of 40 feet shall be  
13 regulated as provided in Section 253.2 of this Code.

14 (8) Limitation of Nonresidential Uses.

15 (A) Residential Uses; Ratio Established. In newly constructed structures,  
16 nonresidential uses shall only be permitted if the ratio between the amount of net additional  
17 occupied floor area for residential uses, as defined in this paragraph below, to the amount of  
18 occupied floor area for nonresidential uses in excess of the occupied floor area of structures  
19 existing on the site at the time the project is approved is 3 to 1 or greater. In additions to  
20 existing structures which exceed 20 percent of the gross floor area of the existing structure,  
21 nonresidential uses shall be permitted in the addition in excess of 20 percent only if the ratio  
22 between the amount of occupied floor area for residential use, as defined in this paragraph  
23 below, to the area of occupied floor area for nonresidential use is 3 to 1 or greater. This  
24 residential use ratio shall not apply to development sites in the Van Ness Special Use District  
25 which have less than 60 feet of street frontage on Van Ness Avenue and have no street

1 frontage other than the Van Ness Avenue frontage. For purposes of this Section,  
 2 "nonresidential uses" shall mean those uses described in Sections 209.2(d) and (e) (hotel,  
 3 inn, hostel), 209.3(a) (hospital, medical center or other medical institution with in-patient care  
 4 facilities), 209.4 (community facilities), 209.6 (public facilities and utilities), 209.7 (vehicle  
 5 storage and access) and 209.8 (commercial establishments); in the Automotive Special Use  
 6 District nonresidential uses include automotive uses as described in Section 237; "residential  
 7 use" shall mean those uses described in Sections 209.1 and 209.2(a), (b) and (c) (dwelling  
 8 units and group housing).

9 (B) Reduction of Ratio of Residential Uses for Affordable Housing. The City  
 10 Planning Commission may modify the Van Ness Special Use District residential to  
 11 nonresidential use ratio between Golden Gate Avenue and California Street as a conditional  
 12 use in one of the following ways:

13 (i) In-Lieu Fee. By conditional use, the developer may elect to fulfill the obligation to  
 14 build housing by paying an in-lieu fee to the Affordable Housing Fund as provided in Section  
 15 313 of this Code. No more than a 50 percent reduction of the required housing for a specific  
 16 project can be fulfilled by paying an in-lieu fee. Use of these funds shall provide affordable  
 17 housing within 2,000 feet of the Van Ness Special Use District. The in-lieu fee shall be  
 18 determined by the following formula:

19 (1)

$$\begin{array}{r}
 \text{Residential} \\
 ((\text{Lot Area} \times \text{FAR}) / 4) \times 3 = \text{SQ. FT.} \\
 \text{Requirement}
 \end{array}$$

20  
21  
22

23 (2)

$$\begin{array}{r}
 \text{Residential} \quad \quad \quad \text{Residential} \\
 \text{SQ. FT.} \quad \quad \quad \text{SQ. FT.} = \text{LOSS}
 \end{array}$$

24  
25

1            *Requirement*                      *Developed*

2            (3)

3            *LOSS X \$15 = In-Lieu Fee*

4            (ii)    Providing Affordable Housing. By conditional use, the developer may reduce up  
5 to 50 percent of the required amount of on-site housing by maintaining a portion of that  
6 housing as permanently affordable for the life of the project. Affordable units shall be  
7 managed by a nonprofit housing agency through a duly executed agreement between the  
8 project sponsor, the nonprofit agency and the Planning Department. The mix of affordable  
9 units retained in the project shall conform to the overall dwelling unit size mix of the project.  
10 The portion of retained residential which shall be affordable will be determined by calculating  
11 the number of market rate units which could be subsidized by the amount of "in-lieu fee"  
12 calculated in Paragraph (i) above. The number of square feet of affordable housing shall be  
13 calculated in the following manner:

14            (1)

$$\begin{array}{rcl} 15 & \textit{In-Lieu Fee} & \\ 16 & \hline 17 & \textit{\$30/square foot subsidy} & \textit{Square Feet of} \\ & & \textit{Affordable Housing} \\ & & \textit{Retained in the Project} \end{array}$$

18  
19            (iii)    Annual Reporting, Evaluation and Adjustments to Affordability and Fee  
20 Calculations. The Department shall report annually to the Planning Commission on the activity  
21 and utilization of Section 243(c)(8)(B). Based on an evaluation of this report, the Planning  
22 Commission may initiate a modification or deletion of Section 243(c)(8)(B).

23            The dollar amounts used in the calculation for Paragraphs (i) and (ii) of this Subsection  
24 shall be subject to annual adjustments in accord with Section 313.6(1) of this Code.

1 Affordability shall be defined by rents or sale prices affordable by households with no more  
2 than 80 percent of median income standards developed by HUD.

3 (iv) If the Commission finds that taking into consideration projects constructed since  
4 the effective date of the Van Ness Special Use District and the housing development potential  
5 remaining in the District the overall objective of adding a substantial increment of new housing  
6 on Van Ness Avenue will not be significantly compromised, the Commission may by  
7 conditional use modify the 3:1 housing ratio or may modify the rules regarding the timing and  
8 location of linked projects if in addition to Section 303(c) standards of this Code it finds that:

9 (1) The project is to provide space for expansion of an established business from an  
10 adjacent site (for this purpose two sites separated by an alley shall be deemed to be adjacent)  
11 or,

12 (2) The project is to provide space for an institutional, hotel, medical, cultural or  
13 social service use meeting an important public need which cannot reasonably be met  
14 elsewhere in the area, and

15 (3) Housing cannot reasonably be included in the project referred to in (1) and (2)  
16 above.

17 The Commission shall consider the feasibility of requiring the project to be constructed  
18 in such a manner that it can support the addition of housing at some later time.

19 (C) Off-Site Provision of Required Residential Space. For the purpose of calculating  
20 the 3 to 1 ratio between residential and nonresidential use, two or more projects for new  
21 construction within the Van Ness Special Use District may be considered and approved  
22 together as linked projects. The requirements of Paragraph (A) above may be satisfied if the  
23 aggregate amount of occupied floor area for residential use in two or more linked projects is at  
24 least three times greater than the aggregate amount of occupied floor area for nonresidential  
25 use.

1 (i) Those building permit applicants who wish to link two or more projects for the  
2 purpose of meeting the 3 to 1 residential to nonresidential ratio shall file with the Department  
3 of City Planning a statement of intent identifying the applications covering the projects that are  
4 to be considered and approved together;

5 (ii) When the Department of City Planning approves an application for a project  
6 containing only nonresidential use and the project is linked to one or more other projects  
7 pursuant to the statement of intent filed with the Department, it shall include as a condition of  
8 approval a requirement prohibiting the project sponsor from commencing any work on the site  
9 until the Zoning Administrator issues a written determination that such work may proceed. The  
10 Zoning Administrator shall not issue such a determination until those permits authorizing the  
11 projects containing residential use have been issued and foundations have been completed at  
12 each such site;

13 (iii) If a permit for a project containing nonresidential use expires because of delays  
14 in the completion of foundations for linked projects containing residential uses, new permits  
15 may be approved for the nonresidential project within three years of such expiration without  
16 regard to the 3 to 1 residential ratio requirement if a Temporary Certificate of Occupancy or a  
17 Permit of Occupancy has been issued for each project containing residential use;

18 (iv) No building or portion of a building approved as a linked project that contains  
19 residential use required to meet the 3 to 1 residential to nonresidential ratio requirement shall  
20 be used for any nonresidential purposes; provided, however, that this restriction shall no  
21 longer apply if 50 percent or more of the non-residential occupied floor area in the linked  
22 projects has been converted to residential use, or has been demolished, or has been  
23 destroyed by fire or other act of God;

24 (v) The Zoning Administrator shall impose as a condition of approval of a permit  
25 authorizing the residential uses of linked projects the requirement that the owner record in the



1 land records of the property a notice of restrictions, approved as to form by the Zoning  
2 Administrator, placed on the use of the property by this Section.

3 (D) Nonconforming Uses. A use which existed lawfully at the effective date of this  
4 Section and which fails to conform to the use limitation of Section 243(c)(8)(A) above, shall be  
5 considered a nonconforming use and subject to the provisions of Sections 180 through 188 of  
6 this Code, including the provisions of Section 182 regarding change of use, except as follows:

7 (i) In calculating the cost of structural alterations pursuant to Section 181(b)(4), the  
8 cost of reinforcing the building to meet the standards for seismic loads and forces of the 1975  
9 Building Code shall not be included; and

10 (ii) Notwithstanding the provisions of Section 181(b), the structure occupied by the  
11 nonconforming use may be enlarged by an amount equal to 20 percent of the gross floor area  
12 of the existing structure.

13 (E) Street Frontages. Street frontages and parking setbacks shall conform to  
14 Section 145.1 of this Code. Ground floor non-residential uses shall have a minimum floor-to-  
15 floor height of 14 feet.

16 (F) Fast Food Uses. A large fast food restaurant as defined in Section 790.90 of this  
17 Code shall be permitted only as a conditional use.

18 A small self-service restaurant, as defined in Section 790.91 of this Code, shall be permitted  
19 only as a conditional use unless such restaurant is a related minor use which is either  
20 necessary to the operation or enjoyment of a lawful principal use or conditional use, or is  
21 appropriate, incidental and subordinate to any such use, in which case it shall be permitted as  
22 an accessory use.

23 (G) Drive-Up Facilities. Drive-up facilities are not permitted. For the purposes of this  
24 Section, "drive-up facilities" shall be defined as structures designed primarily for drive-to or  
25 drive-through trade which provides service to patrons while in private motor vehicles.

1 (H) Demolitions. All demolitions of buildings containing residential use and all  
2 conversions from residential uses to nonresidential uses above the ground floor shall be  
3 permitted only if authorized as a conditional use under Section 303 of this Code, unless the  
4 Superintendent of the Bureau of Building Inspection or the Chief of the Bureau of Fire  
5 Prevention and Public Safety determines that the building is unsafe or dangerous and that  
6 demolition is the only feasible means to secure the public safety. When considering whether  
7 to grant a conditional use permit for the demolition or conversion, in lieu of the criteria set forth  
8 in Planning Code Section 303, consideration shall be given to the adverse impact on the  
9 public health, safety and general welfare of the loss of housing stock in the district and to any  
10 unreasonable hardship to the applicant if the permit is denied. The definition of residential use  
11 shall be as set forth in Section 243(c)(8)(A), but shall not include any guest room in a building  
12 classified as a residential hotel subject to the Residential Hotel Unit Conversion and  
13 Demolition Ordinance.

14 A conditional use permit shall not be required if the demolition permit is sought in order  
15 to comply with a court order directing or permitting the owner to demolish a building because it  
16 is unsafe. No person shall be permitted to construct anything on the site of a demolished  
17 building subject to such an order for a period of two years unless (a) the proposal is for at  
18 least the same number and size of dwelling units and guest rooms and the same amount of  
19 nonresidential floor area as that which was demolished or (b) the applicant requests and is  
20 granted an exemption from this requirement on the ground that the applicant has  
21 demonstrated that (1) the need for demolition did not arise because of the deliberate or  
22 unreasonable neglect of the maintenance of the building, or that (2) the restrictions would  
23 cause undue hardship to the property owner or that (3) the restrictions would leave the  
24 property without any substantial remaining market value or reasonable use.

1 (I) Parking. Pursuant to Table 151 in Article 1.5 of this Code, the residential parking  
2 requirement shall be one space for each dwelling unit; provided, however, that the parking  
3 requirement may be reduced to not less than one space for each four dwelling units, if the  
4 Zoning Administrator determines that the reduced parking requirement is sufficient to serve  
5 the reasonably anticipated auto usage by residents and visitors to the project. The procedures  
6 and fee for such review shall be the same as those which are applicable to variances, as set  
7 forth in Sections 306.1 through 306.5 and 308.2.

8 (J) Adult Entertainment Enterprises. The uses described in Section 221(k) of this  
9 Code are not permitted.

10 (K) Other Entertainment Uses. Other Entertainment Uses as defined in Section 790.38 of  
11 this Code shall be permitted only as a conditional use under Section 303 of this Code require  
12 notification as set forth in Section 312 of this Code.

13 (9) Reduction of Ground Level Wind Currents.

14 (A) New buildings and additions to existing buildings shall be shaped, or other wind  
15 baffling measures shall be adopted, so that the development will not cause year-round ground  
16 level wind currents to exceed, more than 10 percent of the time, between 7:00 a.m. and 6:00  
17 p.m., the comfort level of 11 m.p.h. equivalent wind speed in areas of pedestrian use and  
18 seven m.p.h. equivalent wind speed in public seating areas. When pre-existing ambient wind  
19 speeds exceed the comfort levels specified above, the building shall be designed to reduce  
20 the ambient wind speeds in efforts to meet the goals of this requirement.

21 (B) An exception to this requirement may be permitted but only if and to the extent  
22 that the project sponsor demonstrates that the building or addition cannot be shaped or wind  
23 baffling measures cannot be adopted without unduly restricting the development potential of  
24 the building site in question.

1 (i) The exception may permit the building or addition to increase the time that the  
2 comfort level is exceeded, but only to the extent necessary to avoid undue restriction of the  
3 development potential of the site.

4 (ii) Notwithstanding the above, no exception shall be allowed and no building or  
5 addition shall be permitted that causes equivalent wind speeds to reach or exceed the hazard  
6 level of 26 m.p.h. for a single hour of the year.

7 (C) For the purposes of this Section, the term "equivalent wind speed" shall mean  
8 an hourly wind speed adjusted to incorporate the effects of gustiness or turbulence on  
9 pedestrians.

10  
11 APPROVED AS TO FORM:  
12 DENNIS J. HERRERA, City Attorney

13  
14 By:



15 Marlena G. Byrne  
16 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:** 101091

**Date Passed:** January 04, 2011

Ordinance amending the San Francisco Planning Code by amending Section 243 to require notice for "Other Entertainment Uses" in the Van Ness Avenue Special Use District; adopting findings, including findings under Section 302 of the Planning Code, environmental findings and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

December 06, 2010 Land Use and Economic Development Committee - DIVIDED

December 06, 2010 Land Use and Economic Development Committee - RECOMMENDED AS AMENDED AND DIVIDED

December 06, 2010 Land Use and Economic Development Committee - AMENDED

December 14, 2010 Board of Supervisors - PASSED, ON FIRST READING

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

January 04, 2011 Board of Supervisors - FINALLY PASSED

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

File No. 101091

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 1/4/2011 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo  
Clerk of the Board

Mayor Gavin Newsom

January 7, 2011  
Date Approved