



SAN FRANCISCO PLANNING DEPARTMENT

January 25, 2011

Ms. Angela Calvillo, Clerk
Board of Supervisors
City and County of San Francisco
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Re: Transmittal of Planning Case Number 2010.1059T
BF No. 10-1309: Upper Fillmore NCD Restaurant and Eating Uses

Recommendation: Approval with Modifications

Dear Ms. Calvillo,

On January 13, 2011, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance.

At the January 13th Hearing, the Commission voted 7-0 to recommend approval with modifications of a proposed ordinance that will amend the Upper Fillmore Neighborhood Commercial District Planning Code Sections 718.1 (zoning control table), 718.41 (bars), 718.42 (full-service restaurants), 718.44 (small self-service restaurants), 718.69a (specialty food, self-service) to allow new bars associated with full-service restaurants, full-service restaurants, small self-service restaurants and specialty food, self-service uses with conditional use authorization. The Commission also respectfully requests that the sponsoring Supervisor conduct additional public outreach on the proposed legislation. Please find attached resolution and exhibit for more detail about the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "AM-Rodgers", with a horizontal line extending to the right.

AnMarie Rodgers
Manager of Legislative Affairs

Cc:

Supervisor Mark Farrell

Attachments (one copy of the following):

Planning Commission Resolution No. 18251
Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18251

HEARING DATE: JANUARY 13, 2011

Project Name: Amendments relating to the Upper Fillmore NCD:
Restaurant and Eating Uses
Case Number: 2010.1059T [Board File No. 10-1309]
Initiated by: Alioto-Pier / Introduced October 19, 2010
Staff Contact: Aaron Starr, Neighborhood Planning
aaron.starr@sfgov.org, 415-558-6362
Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation: Recommend Approval with Modifications

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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS A PROPOSED ORDINANCE THAT WOULD AMEND THE UPPER FILLMORE NEIGHBORHOOD COMMERCIAL DISTRICT PLANNING CODE SECTIONS 718.1 (ZONING CONTROL TABLE), 718.41 (BARS), 718.42 (FULL-SERVICE RESTAURANTS), 718.44 (SMALL SELF-SERVICE RESTAURANTS), 718.69A (SPECIALTY FOOD, SELF-SERVICE) TO ALLOW NEW BARS ASSOCIATED WITH FULL-SERVICE RESTAURANTS, FULL-SERVICE RESTAURANTS, SMALL SELF-SERVICE RESTAURANTS AND SPECIALTY FOOD, SELF-SERVICE USES WITH CONDITIONAL USE AUTHORIZATION IN THE UPPER FILLMORE NCD.

PREAMBLE

Whereas, on October 19, 2010, Supervisor Alioto-Pier introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 10-1309 which would amend the Upper Fillmore NCD 718.1 (Zoning Control Table), 718.41 (bar), 718.42 (full-service restaurants), 718.44 (small self-service restaurant), 718.69A (self-service, specialty food) to allow new bars in conjunction with a full-service restaurant, new full-service restaurants, small self-service restaurants, and self-service, specialty food uses with Conditional Use Authorization; and

Whereas, on January 13, 2011, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the proposed zoning changes have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2); and

Whereas, the 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 the applicant, Department staff, and other interested parties; and

Whereas, the 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 Commission has reviewed the proposed Ordinance; and

MOVED, that the Commission hereby recommends that the Board of Supervisors recommends *approval of the proposed Ordinance with modifications* and adopts the attached Draft Resolution to that effect with the following modifications and considerations:

1. To modify Planning Code Section 718.43 (Large Fast-Food Restaurants) to allow Large Fast-Food Restaurants in the Upper Fillmore NCD with Conditional Use Approval.
2. The Commission respectfully requests that the sponsoring Supervisor conduct sufficient public outreach on the proposed legislation.

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. The Upper Fillmore NCD Controls have not been substantially revised since their adoption in 1987;
2. The Upper Fillmore NCD prohibits new restaurants and bar uses of any type;
3. Under Section 179(a) of the Planning Code, those restaurants and bar uses which lawfully existed on the effective date of Ordinance No. 69-87, enacting the Upper Fillmore NCD in 1987, are nonconforming and permitted to remain in use.
4. Any nonconforming use is considered to be 'abandoned' pursuant to Section 183 after three years.
5. A Self-Service, Specialty Food establishment is a new use definition that was enacted in December 2008. New Self-Service Specialty Food Establishments are currently prohibited in the Upper Fillmore NCD;
6. Over the past several years, the Commission has received requests to look at particular NCDs and the controls for eating and drinking uses in those NCDs. The intent of the prohibition on eating and drinking uses was to slowly decrease the number of these uses over time; however, the Planning Department found that in particular NCDs, this prohibition often created a stagnant restaurant scene, with the few remaining restaurants not catering to the needs of the community. While the number and quality of restaurants decreased, the role of food, particular restaurants, in San Francisco grew;

7. In addition, there has been a shift in recent years towards food and drink facilities being considered integral components of a thriving neighborhood. The result of the prohibition of new restaurants has often resulted in an accumulation of demand for these types of establishments;
8. The distinction between Large Fast-Food Restaurants and Small Self-Service Restaurants and full-service restaurants often stifles new or emerging restaurant types and can be overly prescriptive on how businesses operate. Allowing all types of restaurant categories to be approved with Conditional Use Authorization will help encourage competition and creativity, providing a more vibrant and responsive restaurant environment for residents and visitors to the Upper Fillmore NCD.
9. The Commission believes that opening up the Full-Service Restaurant, Large Fast-Food Restaurant, Small Self-Service Restaurants, Bars associated with Full-Service Restaurants and Self-Service, Specialty Food Establishments to a Conditional Use Authorization process will allow the Commission to analyze each application on a case-by-case basis;
10. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

I. COMMERCE & INDUSTRY ELEMENT

THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN SETS FORTH OBJECTIVES AND POLICIES THAT ADDRESS THE BROAD RANGE OF ECONOMIC ACTIVITIES, FACILITIES, AND SUPPORT SYSTEMS THAT CONSTITUTE SAN FRANCISCO'S EMPLOYMENT AND SERVICE BASE.

GOALS

THE THREE GOALS OF THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN RELATE TO CONTINUED ECONOMIC VITALITY, SOCIAL EQUITY, AND ENVIRONMENTAL QUALITY.

OBJECTIVE 6

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

POLICY 6.2

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

POLICY 6.3

Preserve and promote the mixed commercial-residential character in neighborhood commercial districts. Strike a balance between the preservation of existing affordable housing and needed expansion of commercial activity.

POLICY 6.10

Promote neighborhood commercial revitalization, including community-based and other economic development efforts where feasible.

The character of the Upper Fillmore NCD has changed over the past 20 years. Permitting new Full-Service Restaurants, Large Fast-Food Restaurants, Small Self-Service Restaurant Uses, Specialty Food, Self-Service Establishment uses and Bars associated with Full-Service Restaurants through the Conditional Use Authorization process will help to bring these important uses back to the NCD, while allowing community involvement in the approval process.

The proposed Ordinance with modification seeks to remedy the existing conditions while also accommodating the demand for all Restaurant uses, Specialty Food, Self-Service Establishment uses and Bars associated with Full-Service Restaurants for residents in the Upper Fillmore NCD. The proposed Ordinance promotes small business enterprises by fostering the growth of various Restaurant models, Specialty Food, Self-Service Establishments and Bars associated with Full-Service Restaurants in the Upper Fillmore NCD.

The proposed Ordinance promotes the mixed commercial-residential character in the Upper Fillmore NCD by allowing new Restaurants, Bars associated with Full-Service Restaurants, and Specialty Food, Self-Service establishments on a case-by-case basis, which will serve the residents in the neighborhood and contribute to the existing mix of businesses in the Upper Fillmore NCD.

11. The proposed replacement project is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed Ordinance will encourage neighborhood-serving retail uses and opportunities for employment in or ownership of such businesses in the Upper Fillmore NCD by allowing new eating and drinking uses through the Conditional Use Authorization process.

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed legislation requires the Planning Commission to use the Conditional Use criteria when evaluating each proposed Restaurant use, Specialty Food, Self-Service Establishment and a Bar associated with Full-Service Restaurant. The Conditional Use process will allow for the continued presence and economic viability of existing neighborhood establishments while not negatively affecting existing residential development, housing or neighborhood character.

- C) The City's supply of affordable housing will be preserved and enhanced:

The proposed Ordinance will have no adverse effect on the City's supply of affordable housing.

- D) The commuter traffic will 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.

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

Preparedness against injury and loss of life in an earthquake is unaffected by the proposed amendments. Any new construction or alteration associated with a use would be executed in compliance with all applicable construction and safety measures.

- G) That landmark and historic buildings will be preserved:

Landmarks and historic buildings would be unaffected by the proposed amendments. Should a proposed use be located within a landmark or historic building, such site would be evaluated under Planning Code provisions and comprehensive Planning Department policies.

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments. It is not anticipated that permits would be such that sunlight access, to public or private property, would be adversely impacted.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on June 17, 2010.

Linda Avery
Commission Secretary

AYES: Commissioners Moore, Sugaya, Miguel, Antonini, Borden and Olague

NAYS: None

ABSENT: None

ADOPTED: January 13, 2011



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: JANUARY 13, 2010

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Project Name: **Amendments relating to the Upper Fillmore Neighborhood
Commercial District (NCD):
Restaurant and Eating Uses**

Case Number: 2010.1059T [Board File No. 10-1309]

Initiated by: Supervisor Alioto-Pier/ Introduced October 19, 2010

Staff Contact: Aaron Starr, Neighborhood Planning
aaron.starr@sfgov.org, 415-558-6362

Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395

Recommendation: **Recommend Approval with Modifications**

PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Upper Fillmore Neighborhood Commercial District 718.1 (Zoning Control Table), 718.41 (bar), 718.42 (full-service restaurants), 718.44 (small self-service restaurant), 718.69A (self-service, specialty food) to allow new bars in conjunction with a full-service restaurant, new full-service restaurants, small self-service restaurants, and self-service, specialty food uses with a Conditional Use Authorization.

The Way It Is Now:

The Upper Fillmore NCD prohibits new Full-Service Restaurants, Small Self-Service Restaurants, Large Fast-Food Restaurants, Self-Service Specialty Food Service uses and Bar uses. Under Section 179(a) of the Planning Code, those restaurants and bar uses which lawfully existed on the effective date of Ordinance No. 69-87, enacting the Upper Fillmore NCD in 1987, are nonconforming and permitted to remain in use. Any nonconforming use is considered to be 'abandoned' pursuant to Section 183 after three years.

The Way It Would Be:

The proposed ordinance would allow new Full-Service Restaurants, Small Self-Service Restaurants, Self-Service Specialty Food Service uses and Bars associated with Full-Service Restaurants to apply for a Conditional Use Authorization in the Upper Fillmore NCD. There would be no numerical cap or sunset clause; rather the ordinance would permit these uses to be approved by the Planning Commission on a case-by-case basis.

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 *with modifications* to include allowing Large Fast-Food Restaurants with Conditional Use Approval and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

The citywide Neighborhood Commercial Controls were enacted in 1987 in response to land use issues identified by neighborhood groups, planners, and elected officials. Along upper Fillmore Street and elsewhere in the City, restaurants and bars were identified as volatile uses which could multiply and upset the commercial equilibrium by forcing out critical neighborhood services. This concern led to prohibitions such as those in the Upper Fillmore NCD, which more than 20 years later continue disallow new restaurants and bars or the reestablishment of restaurant and bar uses which had converted for a period of time to another use.

Use Type Comparison

	1987	2011
Take Out Establishments	2	5
Self-Service Restaurants	10	5
Full-Service Restaurants	22	19
Bar*	4	7
Specialty Grocery/Supermarket	8	2
Liquor Store	2	1
Vacancies	2	3

*All bars are currently associated with a Full-Service Restaurants.

Over the past several years, the Planning Department has received requests to look at particular NCDs and the controls for eating and drinking uses. The intent of the prohibition on eating and drinking uses was to slowly decrease the number of these uses over time; however, the Department found that in particular NCDs, this prohibition often created a stagnant restaurant scene, with the few remaining restaurants not catering to the needs of the community. While the number and quality of restaurants decreased, the role of food, particular restaurants, in San Francisco grew. The prohibition of new restaurants has often resulted in an accumulation of demand for these types of establishments.

Starting with Noe-24th Street NCD in 2005, the Department began to recommend the re-introduction of eating and drinking controls in particular NCDs. Since 2005, there have been 8 Ordinances that have dealt with this issue.

The Department believes that opening up restaurant, specialty food and bar uses to a Conditional Use Authorization process in the Upper Fillmore NCD will allow the Commission to analyze each application on a case-by-case basis. When the number of restaurants exceeds the needs of the neighborhood, the Commission can deny the application. Under the proposed legislation each application will be judged on the merits of its application, the needs of the community, and the criteria in the Planning Code.

The distinction between Large Fast-Food Restaurants, Small Self-Service Restaurants and Full-Service Restaurants is in some ways obsolete. Partially intended to prohibit or limit the number of “chain” fast-food restaurants in Neighborhood Commercial Districts, the distinction often stifles new or emerging restaurant types and can be overly prescriptive on how businesses operate. Formula Retail controls provide adequate procedures to ensure that Formula Retail chains don’t take over neighborhoods. While further evaluation needs to be done into whether or not use size and restaurant type distinctions should be rethought or abandoned, allowing all types of restaurant categories to be approved with Conditional Use Authorization will help encourage competition and creativity, providing a more vibrant and responsive restaurant environment for residents and visitors to the Upper Fillmore NCD. With this in mind, the Department proposes that the legislation should be amended to also allow Large Fast-Food Restaurants with Conditional Use Authorization, so that each proposal can be evaluated on its merits and how well it meets the current needs of the neighborhood.

In sum, the Department supports the proposed Ordinance to permit new Full-Service Restaurants, Bars associated with Full-Service Restaurants, Small Self-Service Restaurants and Specialty Foods, Self-Service establishments with Conditional Use Authorization in the Upper Fillmore NCD. In addition, the Department proposes that the ordinance should also allow new Large Fast-Food Restaurants with Conditional Use Authorization.

ENVIRONMENTAL REVIEW

The proposal to amend Planning Code Sections 718.1 (Zoning Control Table), 718.41 (Bars) 718.42 (Full-Service Restaurants), 718.43 (Large Fast-Food Restaurants), 718.44 (Small Self-Service Restaurants), and 718.69A (Specialty Food, Self-Service) in the Upper Fillmore NCD would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any comments with regard to the proposed Ordinance.

RECOMMENDATION:	Recommendation of Approval with Modifications
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