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AGENDA PACKET CONTENTS LIST

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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Environmental Review Determination, dtd 01/11/11
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Planning Commission Resolution No. 18251
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Small Business Commission Recommendation, dtd 02/16/11

Date March 9, 2011

571

[Planning Code - Zoning - Upper Fillmore Neighborhood Commercial District]

Ordinance amending the San Francisco Planning Code by amending Sections 703.3 and 718.1 and the Zoning Control Table for the Upper Fillmore NCD to: 1) allow as a conditional use on the first floor a new full-service restaurant, large fast food restaurant, small self-service restaurant or self-service specialty food establishment that is not defined as a formula retail use; and 2) add Specific Provisions to the Zoning Control Table to allow a bar associated with a full-service restaurant as a conditional use and require the Planning Commission to consider daytime usage on the block in conditionally approving a new restaurant; adopting findings, including environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of 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. Findings.

(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. 110070 and is incorporated herein by reference.

(b) These Planning Code amendments will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. 18251 and the

1 Board incorporates those reasons herein by reference. A copy of Planning Commission
2 Resolution No. 18251 is on file with the Clerk of the Board of Supervisors in File No. 110070.

3 (c) These Planning Code amendments are consistent with the General Plan and
4 with the Priority Policies of Planning Code Section 101.1 for the reasons set forth in Planning
5 Commission Resolution No. 18251, and the Board incorporates those reasons herein by
6 reference.

7
8 Section 2. The San Francisco Planning Code is hereby amended by amending
9 Sections 703 and 718.1, to read as follows:

10 **SEC. 703.3. FORMULA RETAIL USES.**

11 (a) **Findings.**

12 (1) San Francisco is a city of diverse and distinct neighborhoods identified in large
13 part by the character of their commercial areas.

14 (2) San Francisco needs to protect its vibrant small business sector and create a
15 supportive environment for new small business innovations. One of the eight Priority Policies
16 of the City's General Plan resolves that "existing neighborhood-serving retail uses be
17 preserved and enhanced and future opportunities for resident employment in and ownership
18 of such businesses enhanced."

19 (3) Retail uses are the land uses most critical to the success of the City's
20 commercial districts.

21 (4) Formula retail businesses are increasing in number in San Francisco, as they
22 are in cities and towns across the country.

23 (5) Money earned by independent businesses is more likely to circulate within the
24 local neighborhood and City economy than the money earned by formula retail businesses
25 which often have corporate offices and vendors located outside of San Francisco.

1 (6) Formula retail businesses can have a competitive advantage over independent
2 operators because they are typically better capitalized and can absorb larger startup costs,
3 pay more for lease space, and commit to longer lease contracts. This can put pressure on
4 existing businesses and potentially price out new startup independent businesses.

5 (7) San Francisco is one of a very few major urban centers in the State in which
6 housing, shops, work places, schools, parks and civic facilities intimately co-exist to create
7 strong identifiable neighborhoods. The neighborhood streets invite walking and bicycling and
8 the City's mix of architecture contributes to a strong sense of neighborhood community within
9 the larger City community.

10 (8) Notwithstanding the marketability of a retailer's goods or services or the visual
11 attractiveness of the storefront, the standardized architecture, color schemes, decor and
12 signage of many formula retail businesses can detract from the distinctive character of certain
13 Neighborhood Commercial Districts.

14 (9) The increase of formula retail businesses in the City's neighborhood commercial
15 areas, if not monitored and regulated, will hamper the City's goal of a diverse retail base with
16 distinct neighborhood retailing personalities comprised of a mix of businesses. Specifically,
17 the unregulated and unmonitored establishment of additional formula retail uses may unduly
18 limit or eliminate business establishment opportunities for smaller or medium-sized
19 businesses, many of which tend to be non-traditional or unique, and unduly skew the mix of
20 businesses towards national retailers in lieu of local or regional retailers, thereby decreasing
21 the diversity of merchandise available to residents and visitors and the diversity of purveyors
22 of merchandise.

23 (10) If, in the future, neighborhoods determine that the needs of their Neighborhood
24 Commercial Districts are better served by eliminating the notice requirements for proposed
25

1 formula retail uses, by converting formula retail uses into conditional uses in their district, or
2 by prohibiting formula retail uses in their district, they can propose legislation to do so.

3 **(b) Formula Retail Use.** Formula retail use is hereby defined as a type of retail
4 sales activity or retail sales establishment which, along with eleven or more other retail sales
5 establishments located in the United States, maintains two or more of the following features: a
6 standardized array of merchandise, a standardized facade, a standardized decor and color
7 scheme, a uniform apparel, standardized signage, a trademark or a servicemark.

8 (1) Standardized array of merchandise shall be defined as 50% or more of in-stock
9 merchandise from a single distributor bearing uniform markings.

10 (2) Trademark shall be defined as a word, phrase, symbol or design, or a
11 combination of words, phrases, symbols or designs that identifies and distinguishes the
12 source of the goods from one party from those of others.

13 (3) Servicemark shall be defined as word, phrase, symbol or design, or a
14 combination of words, phrases, symbols or designs that identifies and distinguishes the
15 source of a service from one party from those of others.

16 (4) Decor shall be defined as the style of interior finishings, which may include but is
17 not limited to, style of furniture, wallcoverings or permanent fixtures.

18 (5) Color Scheme shall be defined as selection of colors used throughout, such as
19 on the furnishings, permanent fixtures, and wallcoverings, or as used on the facade.

20 (6) Facade shall be defined as the face or front of a building, including awnings,
21 looking onto a street or an open space.

22 (7) Uniform Apparel shall be defined as standardized items of clothing including but
23 not limited to standardized aprons, pants, shirts, smocks or dresses, hat, and pins (other than
24 name tags) as well as standardized colors of clothing.

1 (8) Signage shall be defined as business sign pursuant to Section 602.3 of the
2 Planning Code.

3 (c) "Retail sales activity or retail sales establishment" shall include the following
4 uses, as defined in Article 7 of this Code: "bar," "drive-up facility," "eating and drinking use,"
5 "liquor store," "restaurant, large fast-food," "restaurant, small self-service," "restaurant, full-
6 service," "sales and service, other retail," "sales and service, retail," "movie theatre," "video
7 store," "amusement and game arcade," "take-out food," and "specialty food, self-service."

8 (d) **Formula Retail Uses Permitted.** Any use permitted in a Neighborhood
9 Commercial District, which is all a "formula retail use" as defined in this Section, is hereby
10 permitted.

11 (e) **Formula Retail Use Prohibited.** Notwithstanding subsection (d), any use
12 permitted in the Hayes-Gough Neighborhood Commercial District, or the North Beach
13 Neighborhood Commercial District, which is also a "formula retail use" as defined in this
14 Section, is hereby prohibited. Any full-service restaurant, large fast food restaurant, small self-
15 service restaurant or self-service specialty food store permitted in the Upper Fillmore Neighborhood
16 Commercial District which is also a "formula retail use" as defined in this Section is hereby prohibited.

17 (f) **Conditional Uses.** Notwithstanding subsections (d) or (e), any use permitted in
18 the Haight Street Neighborhood Commercial District, the Japantown Special Use District as
19 defined in Section 249.31, or in the Small-Scale Neighborhood Commercial District along
20 Divisadero Street, bounded by Haight Street to the south and Turk Street to the north (Block
21 1128, Lot 20; Block 1129, Lots 93—106, Block 1153, Lots 1—4, 6, and 21—22 Block 1154,
22 Lots 13—17B and 35—40, Block 1155, Lots 16—21, Lots 23, 24, and 36—38, Block 1156,
23 Lots 4—6, 8, 38 and 40—41, Block 1179, Lots 1—1C, 27, and 28, Block 1180, Lots 12—17,
24 Block 1181, Lots 14—9, Block 1182, Lots 2—6, 8, 22—23, 30—60, Block 1201, Lots 1—4,
25 8—10, 39—54 and 57—61, Block 1202, Lots 2A, 2B, 2J and 7, Block 1203, Lots 17—22, 24

1 and 37, Block 1204, Lots 1—11A, Block 1215, Lots 8—16, Block 1216, Lots 5, 1 and 17—18,
2 Block 1217, Lots 20—29, Block 1218, Lots 1—8, 29, 32, and 50, Block 1237, Lots 1—7, Block
3 1238, Lots 21—27, Block 1239, Lot 27, Block 1240, Lot 1); or in the Neighborhood
4 Commercial Cluster Districts located at Cole and Carl Streets (Block 1267, Lot 9, Block 1268,
5 Lots 26, 27, 28 and 29, Block 1271, Lots 24, 24A, 24B, 25 and 26, Block 1272, Lots 1, 2, 3, 4,
6 and 5, Block 1278, Lot 22), and at Parnassus and Stanyan Streets (Block 1276, Lot 21),
7 which is also a "formula retail use" as defined in this Section, is hereby permitted only as a
8 conditional use. Additional criteria to be used by the Planning Commission when considering
9 granting conditional use permits to formula retail uses in these districts are listed in Section
10 303(i).

11 **(g) Neighborhood Commercial Notification and Design Review.** After the
12 effective date of this Ordinance, any building permit application for a use permitted in a
13 Neighborhood Commercial District which is also a "formula retail use" as defined in this
14 section shall be subject to the Neighborhood Commercial Notification and Design Review
15 Procedures of Section 312 of this Code.

16 **(h) Discretionary Review Guidelines.** The Planning Commission shall develop
17 and adopt guidelines which it shall employ when considering any request for discretionary
18 review made pursuant to this Section. These guidelines shall include but are not limited to
19 consideration of the following factors:

20 (1) Existing concentrations of formula retail uses within the Neighborhood
21 Commercial District.

22 (2) Availability of other similar retail uses within the Neighborhood Commercial
23 District.

24 (3) Compatibility of the proposed formula retail use with the existing architectural
25 and aesthetic character of the Neighborhood Commercial District.

1 (4) Existing retail vacancy rates within the Neighborhood Commercial District.

2 (5) Existing mix of Citywide-serving retail uses and neighborhood-serving retail uses
3 within the Neighborhood Commercial District.

4 (i) **Determination of Formula Retail Use.** After the effective date of this
5 Ordinance, in those areas in which "formula retail uses" are prohibited, any building permit
6 application determined by the City to be for a "formula retail use" that does not identify the use
7 as a "formula retail use" is incomplete and cannot be processed until the omission is
8 corrected. Any building permit approved after the effective date of this Ordinance that is
9 determined by the City to have been, at the time of application, for a "formula retail use" that
10 did not identify the use as a "formula retail use" is subject to revocation at any time.

11 After the effective date of this Ordinance, in those areas in which "formula retail uses"
12 are subject to the Neighborhood Commercial Notification and Design Review provisions of
13 subsection (g) ~~(e)~~, any building permit application determined by the City to be for a "formula
14 retail use" that does not identify the use as a "formula retail use" is incomplete and cannot be
15 processed until the omission is corrected. After the effective date of this Ordinance, any
16 building permit approved that is determined by the City to be for a "formula retail use" that
17 does not identify the use as a "formula retail use" must complete the Neighborhood
18 Commercial Notification and Design Review required in subsection (g) ~~(e)~~.

19 If the City determines that a building permit application or building permit subject to this
20 Section of the Code is for a "formula retail use," the building permit applicant or holder bears
21 the burden of proving to the City that the proposed or existing use is not a "formula retail use."
22

23 **SEC. 718.1. UPPER FILLMORE STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

24 The Upper Fillmore Street Neighborhood Commercial District is situated in the south-
25 central portion of Pacific Heights. It runs north-south along Fillmore Street from Jackson to

Bush and extends west one block along California and Pine Streets. This medium-scaled, multi-purpose commercial district provides convenience goods to its immediate neighborhood as well as comparison shopping goods and services on a specialized basis to a wider trade area. Commercial businesses are active during both day and evening and include a number of bars, restaurants, specialty groceries, and specialty clothing stores.

The Upper Fillmore District controls are designed to protect the existing building scale and promote new mixed-use development which is in character with adjacent buildings. Building standards regulate large lot and use development and protect rear yards above the ground story and at residential levels. Most commercial uses are permitted at the first two stories of new buildings. Special controls are designed to preserve the existing equilibrium of neighborhood-serving convenience and specialty commercial uses. In order to maintain convenience stores and protect adjacent livability, additional bars not associated with (unless part of a full-service a restaurant) and formula retail establishments are prohibited, other eating and drinking establishments and self-service specialty foods require conditional use authorization are prohibited and ground-story entertainment and financial service uses are limited. In order to promote continuous retail frontage, drive-up and most automobile uses are prohibited.

Housing development in new buildings is encouraged above the second story. Existing residential units are protected by limitations on demolitions and upper-story conversions.

Section 3. The San Francisco Planning Code is hereby amended by amending the Zoning Control Table, to read as follows:

SEC.718. UPPER FILLMORE STREET NEIGHBORHOOD COMMERCIAL DISTRICT
ZONING CONTROL TABLE.

			Upper Fillmore Street
No.	Zoning Category	§ References	Controls

BUILDING STANDARDS

718.10	Height and Bulk Limit	§§ 102.12, 105, 106, 250—252, 260, 270, 271	40-X
718.11	Lot Size [Per Development]	§§ 790.56, 121.1	P up to 4,999 sq. ft.; C 5,000 sq. ft. & above § 121.1
718.12	Rear Yard	§§ 130, 134, 136	Required at the second story and above and at all residential levels § 134(a) (e)
718.13	Street Frontage		Required § 145.1
718.14	Awning	§ 790.20	P § 136.1(a)
718.15	Canopy	§ 790.26	P § 136.1(b)
718.16	Marquee	§ 790.58	P § 136.1(c)
718.17	Street Trees		Required § 143

COMMERCIAL AND INSTITUTIONAL STANDARDS AND USES

718.20	Floor Area Ratio	§§ 102.9, 102.11, 123	2.5 to 1 § 124(a) (b)
718.21	Use Size [Non-Residential]	§ 790.130	P up to 2,499 sq. ft.; C 2,500 sq. ft. & above § 121.2
718.22	Off-Street Parking, Commercial/Institutional	§§ 150, 153—157, 159— 160, 204.5	Generally, none required if occupied floor area is less than 5,000 sq. ft. §§ 151, 161(g)
718.23	Off-Street Freight Loading	§§ 150, 153—155, 204.5	Generally, none required if gross floor area is less than 10,000 sq. ft. §§ 152, 161(b)
718.24	Outdoor Activity Area	§ 790.70	P if located in front; C if located elsewhere § 145.2(a)
718.25	Drive-Up Facility	§ 790.30	
718.26	Walk-Up Facility	§ 790.140	P if recessed 3 ft.; C if not recessed § 145.2(b)
718.27	Hours of Operation	§ 790.48	P 6 a.m.—2 a.m.; C 2 a.m.—6 a.m.

1	718.30	General Advertising Sign	§§ 262, 602—604, 608, 609	
2	718.31	Business Sign	§§ 262, 602—604, 608, 609	P § 607.1(f) 2
3	718.32	Other Signs	§§ 262, 602—604, 608, 609	P § 607.1(c) (d) (g)

No.	Zoning Category	§ References	Upper Fillmore Street Controls by Story		
			1st	2nd	3rd+
		§ 790.118			
718.38	Residential Conversion	§ 790.84	P	C	
718.39	Residential Demolition	§ 790.86	P	C	C
Retail Sales and Services					
718.40	Other Retail Sales and Services [Not Listed Below]	§ 790.102	P	P	
718.41	Bar	§ 790.22	<u>C#</u>		
718.42	Full-Service Restaurant	§ 790.92	<u>C#</u>		
718.43	Large Fast Food Restaurant	§ 790.90	<u>C#</u>		
718.44	Small Self-Service Restaurant	§ 790.91	<u>C#</u>		
718.45	Liquor Store	§ 790.55	C		
718.46	Movie Theater	§ 790.64	P		
718.47	Adult Entertainment	§ 790.36			
718.48	Other Entertainment	§ 790.38	C		
718.49	Financial Service	§ 790.110	C		
718.50	Limited Financial Service	§ 790.112	C		
718.51	Medical Service	§ 790.114	P	P	
718.52	Personal Service	§ 790.116	P	P	
718.53	Business or Professional Service	§ 790.108	P	P	
718.54	Massage Establishment	§ 790.60, § 1900 Health Code	C		
718.55	Tourist Hotel	§ 790.46	C	C	C
718.56	Automobile Parking	§§ 790.8, 156, 160	C	C	C
718.57	Automotive Gas Station	§ 790.14			
718.58	Automotive Service Station	§ 790.17			
718.59	Automotive Repair	§ 790.15			

1	718.60	Automotive Wash	§ 790.18			
	718.61	Automobile Sale or Rental	§ 790.12			
2	718.62	Animal Hospital	§ 790.6	C		
3	718.63	Ambulance Service	§ 790.2			
	718.64	Mortuary	§ 790.62			
4	718.65	Trade Shop	§ 790.124	P		
5	718.66	Storage	§ 790.117			
	718.67	Video Store	§ 790.135	C	C	
6	718.68	Fringe Financial Service	§ 790.111			
7	718.69	Tobacco Paraphernalia Establishments	§ 790.123	C		
8	718.69A	Self-Service Specialty Food	§ 790.93	C#		
9	718.69B	Amusement Game Arcade (Mechanical Amusement Devices)	§ 790.04			
10	Institutions and Non-Retail Sales and Services					
11	718.70	Administrative Service	§ 790.106			
12	718.80	Hospital or Medical Center	§ 790.44			
13	718.81	Other Institutions, Large	§ 790.50	P	C	C
	718.82	Other Institutions, Small	§ 790.51	P	P	P
14	718.83	Public Use	§ 790.80	C	C	C
15	718.84	Medical Cannabis Dispensary	§ 790.141	P		
16	718.85	Philanthropic Administrative Services	§ 790.107	P	P	P
17	RESIDENTIAL STANDARDS AND USES					
	718.90	Residential Use	§ 790.88	P	P	P
18	718.91	Residential Density, Dwelling Units	§§ 207, 207.1, 790.88(a)	Generally, 1 unit per 600 sq. ft. lot area § 207.4		
19	718.92	Residential Density, Group Housing	§§ 207.1, 790.88(b)	Generally, 1 bedroom per 210 sq. ft. lot area § 208		
20	718.93	Usable Open Space [Per Residential Unit]	§§ 135, 136	Generally, either 80 sq. ft. if private, or 100 sq. ft. if common § 135(d)		
21	718.94	Off-Street Parking, Residential	§§ 150, 153—157, 159—160, 204.5	Generally, 1 space for each dwelling unit §§ 151, 161(a) (g)		
22	718.95	Community Residential Parking	§ 790.10	C	C	C

1 **SPECIFIC PROVISIONS FOR THE UPPER FILLMORE**

2 **NEIGHBORHOOD COMMERCIAL DISTRICT**

3 **Article 7**

Other Code

4 **Code Section**

Section

Zoning Controls

5 § 718.41

§ 790.22

Boundaries: Applicable for the Upper Fillmore NCD.

6 **Controls: A new bar will be allowed with a conditional**
7 **use authorization from the Planning Commission only**
8 **in conjunction with a full-service restaurant use.**

10 §§ 718.42

§ 790.92

In considering a conditional use for a full-service,

11 **718.43 and**

§ 790.90

large fast food, or small self-service restaurant, the

12 **718.44**

§ 790.91

Planning Commission shall consider whether the use
13 **proposes lunch service or other daytime usage in order to**
14 **limit the number of such establishments on the block that**
15 **have no daytime activity.**

17 APPROVED AS TO FORM:
18 DENNIS J. HERRERA, City Attorney

19 By:

Judith A. Boyajian
20 JUDITH A. BOYAJIAN
 Deputy City Attorney

LEGISLATIVE DIGEST

[Planning Code - Zoning - Upper Fillmore Neighborhood Commercial District]

Ordinance amending the San Francisco Planning Code by amending Sections 703.3 and 718.1 and the Zoning Control Table for the Upper Fillmore NCD to (1) allow as a conditional use on the first floor a new full-service restaurant, large fast food restaurant, small self-service restaurant or self-service specialty food establishment that is not defined as a formula retail use, (2) add Specific Provisions to the Zoning Control Table to allow a bar associated with a full-service restaurant as a conditional use and require the Planning Commission to consider daytime usage on the block in conditionally approving a new restaurant; adopting findings, including environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

Existing Law

Planning Code Section 718.1 establishes the Upper Fillmore Neighborhood Commercial District. The Section 718 Zoning Control Table sets forth the building standards and uses that are allowed in the Upper Fillmore NCD. The existing Code prohibits new full-service restaurants, large fast food restaurants, small self-service restaurants, bars, and self-service specialty food uses among others uses.

Amendments to Current Law

The proposed legislation would allow a new full-service restaurant, a large fast food restaurant, a small self-service restaurant, and a self-service specialty food use that is not defined as a formula restail establishment on the first floor with a conditional use authorization. A new bar would be allowed in conjunction with a full-service restaurant use with a conditional use authorization. In approving a conditional use for a new restaurant use, the Planning Commission must consider whether the use proposes lunch service or other daytime usage in order to limit the number of such establishments on the block that have no daytime activity.

Background Information

The restrictions on restaurants and specialty food establishments were put in place more than 20 years ago, before the City enacted the controls on formula retail establishments that are now in the Planning Code. Since the proposed legislation would prohibit formula retail restaurants and specialty food uses in the Upper Fillmore NCD, the proposed amendments would open up the Upper Fillmore NCD street to new food options with a conditional use.

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

February 2, 2011

Linda Avery
Planning Commission
1660 Mission Street, 5th Floor
San Francisco, CA 94103

Dear Commissioners:

On January 25, 2011, Supervisor Farrell introduced the following proposed legislation:

File No. 110070

Ordinance amending the San Francisco Planning Code by amending Sections 703.3 and 718.1 and the Zoning Control Table for the Upper Fillmore NCD to: (1) allow as a conditional use on the first floor a new full-service restaurant, large fast food restaurant, small self-service restaurant or self-service specialty food establishment that is not defined as a formula retail use; and (2) add Specific Provisions to the Zoning Control Table to allow a bar associated with a full-service restaurant as a conditional use and require the Planning Commission to consider daytime usage on the block in conditionally approving a new restaurant; adopting findings, including environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, reading "Alisa Somera".

By: Alisa Somera, Committee Clerk
Land Use & Economic Development Committee

Attachment

- c: John Rahaim, Director of Planning
Scott Sanchez, Zoning Administrator
Bill Wycko, Chief, Major Environmental Analysis
AnMarie Rodgers, Legislative Affairs
Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis
Georgia Powell, Planning Miscellaneous Permits Routing

*Not a project per CEQA
Guidelines, Section
15060(c)(3) and 15378.*

*Nannie Turrell
February 11, 2011*



SAN FRANCISCO PLANNING DEPARTMENT

February 4, 2011

Ms. Angela Calvillo, Clerk
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Re: Transmittal of Planning Case Number 2010.1059T
BF No. 10-1309: Upper Fillmore NCD Restaurant and Eating Uses
Now Superseded by BF 11-0070

Recommendation: Approval of BF 11-0070

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.

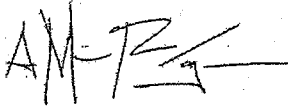
Since the January 13, 2011 Hearing, Supervisor Mark Farrell introduced a revised Ordinance [BF 110070] in response to the Commission recommendation. This new Ordinance would amend the San Francisco Planning Code by amending Sections 703.3 and 718.1 and the Zoning Control Table for the Upper Fillmore NCD to: (1) allow as a conditional use on the first floor a new full-service restaurant, large fast food restaurant, small self-service restaurant or self-service specialty food establishment that is not defined as a formula retail use; and (2) add Specific Provisions to the Zoning Control Table to allow a bar associated with a fullservice restaurant as a conditional use and require the Commission to consider daytime usage on the block in conditionally approving a new restaurant.

As this new Ordinance was introduced in response to the January 13, 2011 hearing, the Commission has already considered these issues. No further Commission action is needed. Additionally, as Supervisor Farrell has accommodated the Commission's previous recommendation on BF 10-1309, the recommendation on BF 11-0070 is now simply for "approval".

www.sfplanning.org

Please find attached resolution and exhibit for more detail about the Commission's previous action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'AM-Rodgers', with a horizontal line extending from the end.

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

January 25, 2011

Ms. Angela Calvillo, Clerk
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

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415.558.6377

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 black 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.

Resolution No. 18251
Hearing Date: January 13, 2011

CASE NO. 2010.1059T
Upper Fillmore NCD: Restaurants & Eating Uses

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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SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
GAVIN NEWSOM, MAYOR

February 16, 2011

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102-4694

Re: File No. 110070 [Planning Code - Zoning - Upper Fillmore Neighborhood Commercial District]

Small Business Commission Legislation and Policy Committee Recommendation:
Approval

Dear Ms. Calvillo:

On February 14, 2011, the Small Business Commission voted to recommend approval of Board of Supervisors File No. 110070.

The Commission commends Supervisor Farrell for working with merchant and resident organizations to include a formula retail prohibition on new food service establishments. This addition to the previously proposed ordinance will allow for the preservation of neighborhood character in this area of Fillmore Street.

The Commission thanks Supervisor Farrell and his aide Catherine Stefani for keeping the Commission informed and updated as this ordinance moved through the legislative process.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

cc. Supervisor Farrell
Starr Terrell, Mayor's Office
AnMarie Rogers, San Francisco Planning Department
Alisa Somera, Clerk of the Land Use and Economic Development Committee