



SAN FRANCISCO PLANNING DEPARTMENT

September 13, 2012

Ms. Angela Calvillo, Clerk
Honorable Supervisor Mark Farrell
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 Department Case Number 2012.0947T:
Reinstate Union Street Liquor License Controls
Board File No. 12-0773
Planning Commission Recommendation: Approval with Modifications**

Dear Ms. Calvillo and Supervisor Farrell,

On September 9, 2012, the San Francisco Planning Commission conducted a duly noticed public hearing at regularly scheduled meetings to consider the proposed amendments to Planning Code Section 725.1 to reinstate liquor license controls and to require Conditional Use authorization for Limited-Restaurants in the Union Street Neighborhood Commercial District introduced by Supervisor Mark Farrell. At the hearing, the Planning Commission recommended approval with modifications.

The modifications proposed by the Planning Commission are as follows (underlined text is language proposed in the Ordinance, strike through text is proposed for removal by the Planning Commission):

No new alcoholic beverage license type 47 or 49 shall be permitted in the Union Street NCD. Transfer of an existing license type 47 or 49 from an existing Restaurant ~~or Limited-Restaurant~~ located within the Union Street NCD to another Restaurant ~~or Limited-Restaurant~~, new or existing, located within the Union Street NCD is permitted with Conditional Use authorization, consistent with the requirements of Planning Code Section 303.

The proposed amendments have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2).

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commissions.

Please find attached documents relating to the actions of both Commissions. 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 "AnMarie Rodgers". The signature is fluid and cursive, with a horizontal line extending to the right from the end of the name.

AnMarie Rodgers
Manager of Legislative Affairs

cc:

Supervisor Mark Farrell
Kate Stacy, City Attorney

Attachments (one copy of the following):

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: SEPTEMBER 6, 2012

Project Name: **Reinstate Union Street Liquor License Controls**
Case Number: 2012.0947T [Board File No. 12-0773]
Initiated by: Supervisor Farrell
Introduced on: July 17, 2012
Staff Contact: Aaron Starr, Legislative Affairs
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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PLANNING CODE AMENDMENT

The proposed Ordinance would amend the San Francisco Planning Code by amending Planning Code Section 725.1 to reinstate controls to prohibit liquor license types 47 and 49 in the Union Street Neighborhood Commercial District and by requiring Conditional Use authorization for Limited-Restaurants.

The Way It Is Now:

A Restaurant, as defined by the Planning Code, is permitted to obtain a license type 47¹ or 49² so long as it operates as a bona fide eating establishment (at least 51% of their gross receipts come from the sale of food). Limited-Restaurants, as defined by the Planning Code, are permitted as of right in the Union Street NCD and by definition are not permitted to have onsite alcohol consumption.

The Way It Would Be:

No new license type 47 or 49 would be permitted in the Union Street NCD but existing licenses could be transferred within the District and Limited-Restaurants would require Conditional Use authorization.

¹ **ABC License Type 47: On-Sale General for Bona Fide Public Eating Place (Restaurant)** - Authorizes the sale of beer, wine and distilled spirits for consumption on the licenses premises. Authorizes the sale of beer and wine for consumption off the licenses premises. Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.

² **ABC License Type 49: On-Sale General for Seasonal Businesses** - Authorizes the same privileges and restrictions as provided for a Type 47 license except it is issued for a specific season. Inclusive dates of operation are listed on the license certificate.

ISSUES AND CONSIDERATIONS

Alcohol Controls

Prior to the adoption of the Restaurant Ordinance³, the Planning Department categorized a restaurant with a license type 47 or 49 as both a restaurant and a bar. Therefore, if bars were prohibited in a particular Neighborhood Commercial District (NCD), a restaurant could not obtain new ABC license type 47 or 49. With the adoption of the Restaurant Ordinance, Restaurants can now have a full liquor license without being considered a bar as long as they operated as a bona fide eating establishment (at least 51% of gross receipts come from food service).

The Union Street neighborhood crafted their eating and drinking controls with the intention of prohibiting any new license type 47 and 49 in the Union Street NCD simply by prohibiting new bars. This worked prior to the adoption of the Restaurant Ordinance, but not under the new rules.

Limited Restaurant Controls

When the Planning Department proposed the new restaurant controls it provided two options for how the new uses would be entitled. The option that the Planning Commission adopted made all Limited-Restaurants principally permitted in each Neighborhood Commercial District. This was the Department's preferred option because it allowed the least impactful use as of right, and it removed additional process. However, we also realized that some NCDs would want Limited-Restaurants to require Conditional Use or prohibit them outright if there was an over concentration. We anticipated that these changes would be made by individual Supervisors either when the legislation went to the Board, or in trailing legislation once there was a consensus in the neighborhood that such a change was desired, as is the case with this legislation.

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 and adopt the attached Draft Resolution to that effect.

Modify the proposed ordinance in the following manner (underlined text is language proposed in the Ordinance, strike through text is proposed for removal by the Planning Department):

No new alcoholic beverage license type 47 or 49 shall be permitted in the Union Street NCD. Transfer of an existing license type 47 or 49 from an existing Restaurant or Limited Restaurant located within the Union Street NCD to another Restaurant or Limited Restaurant, new or existing, located within the Union Street NCD is permitted with Conditional Use authorization, consistent with the requirements of Planning Code Section 303.

³ BF 120084, Ord. [0075-12](#) passed by the Planning Commission on November 17, 2011 and effective on May 24, 2012.

BASIS FOR RECOMMENDATION

- Planning Department intended to preserve as many existing tailored controls for NCDs in the Restaurant Ordinance as possible.
- While the Department believes that Limited-Restaurants are a less impactful use and do not warrant Conditional Use authorization in most NCDs, we recognize that some neighborhoods may have an overconcentration and there appears to be neighborhood consensus on Union Street for requiring Conditional Use authorization for Limited-Restaurants.
- By definition, Limited-Restaurants cannot have a License Type 47 or 49; the language that the Department is recommending be deleted from the Ordinance is unnecessary and contradicts the definition of a Limited-Restaurant.

ENVIRONMENTAL REVIEW

The Department determined that the proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

PUBLIC COMMENT

The Department has received no public comment on this proposal.

RECOMMENDATION: Recommendation of Approval with Modifications

Attachments:

- Exhibit A: Draft Planning Commission Resolution
Exhibit B: Draft Board of Supervisors Ordinance [Board File No. 12-0773]



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18695

HEARING DATE SEPTEMBER 6, 2012

Project Name: **Reinstate Union Street Liquor License Controls**
Case Number: 2012.0947T [Board File No. 12-0773]
Initiated by: Supervisor Farrell
Introduced on: July 17, 2012
Staff Contact: Aaron Starr, Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
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Recommendation: **Recommend Approval with Modifications**

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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND THE SAN FRANCISCO PLANNING CODE BY AMENDING PLANNING CODE SECTION 725.1 TO REINSTATE CONTROLS TO PROHIBIT LIQUOR LICENSE TYPES 47 AND 49 IN THE UNION STREET NEIGHBORHOOD COMMERCIAL DISTRICT AND BY REQUIRING CONDITIONAL USE AUTHORIZATION FOR LIMITED RESTAURANTS.

WHEREAS, on July 17, 2012, Supervisors Farrell introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 12-0773, which would amend the San Francisco Planning Code by amending Planning Code section 725.1 to reinstate controls to prohibit liquor license types 47 and 49 in the Union Street Neighborhood Commercial District and by requiring Conditional Use authorization for Limited Restaurants; and

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on September 6, 2012; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2); and

WHEREAS, the Planning 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 Department staff and other interested parties; and

WHEREAS, 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 Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed Ordinance. Specifically, the Commission recommends the following modifications:

Modify the proposed Ordinance in the following manner (underlined text is language proposed in the Ordinance, strike through text is proposed for removal by the Planning Department):

No new alcoholic beverage license type 47 or 49 shall be permitted in the Union Street NCD. Transfer of an existing license type 47 or 49 from an existing Restaurant ~~or Limited Restaurant~~ located within the Union Street NCD to another Restaurant ~~or Limited Restaurant~~, new or existing, located within the Union Street NCD is permitted with Conditional Use authorization, consistent with the requirements of Planning Code Section 303.

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. Planning Department and Commission intended to preserve as many existing tailored controls for neighborhood commercial districts in the Restaurant Ordinance as possible.
2. While the Commission finds that Limited-Restaurants are a less impactful use and do not warrant Conditional Use authorization in most neighborhoods, the Commission recognizes that some neighborhoods may have an overconcentration and there appears to be neighborhood consensus on Union Street for requiring Conditional Use authorization for Limited-Restaurants.
3. By definition, Limited-Restaurants cannot have a License Type 47 or 49; the language that the Commission is recommending be deleted from the Ordinance is unnecessary and contradicts the definition of a Limited-Restaurant.
4. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

I. COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 6 MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

The proposed Ordinance seeks to limit the number of eating and drinking establishments within the Union Street Neighborhood Commercial District to help preserve a diversity of uses including neighborhood serving businesses.

8. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance seeks to limit the number of eating and drinking establishments within the Union Street Neighborhood Commercial District to help preserve a diversity of uses including neighborhood serving businesses.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance will help preserve existing neighborhood character by ensuring that one type of use, mainly eating and drinking uses, do not over saturate the district.

3. That the City's supply of affordable housing be preserved and enhanced;

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

4. That commuter traffic 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.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance will have no impact on the City's ability to achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

Landmarks and historic buildings would not be negatively impacted by the proposed Ordinance.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed Ordinance.

- 8. Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance as described in this Resolution and in the proposed Ordinance with the modification outlined above.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on September 6, 2012.

Linda D. Avery
Commission Secretary

AYES: Commissioners Moore, Antonini, Fong, Wu, Hillis and Borden

NOES: Commissioner Sugaya

ABSENT: None

ADOPTED: September 6, 2012