

1 [Planning Code - Upper Market Zoning]

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3 **Ordinance amending Planning Code, Sections 721.1 and 733.1, to modify the**
4 **explanation of the boundaries of the Upper Market Street Neighborhood Commercial**
5 **District and the Upper Market Street Neighborhood Commercial Transit District;**
6 **Section 703.2(b), to permit in a limited area food processing as an accessory use to a**
7 **nearby off-site non-residential use; Section 733, making clerical corrections in tables;**
8 **and making environmental findings, Planning Code, Section 302, findings, and findings**
9 **of consistency with the General Plan and the priority policies of Planning Code,**
10 **Section 101.1.**

11 NOTE: Additions are *single-underline italics Times New Roman*;
12 deletions are *strike-through italics Times New Roman*.
13 Board amendment additions are double-underlined;
14 Board amendment deletions are ~~strike-through normal~~.

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

16 Section 1. Findings.

17 (a) The Planning Department has determined that the actions contemplated in this
18 ordinance comply with the California Environmental Quality Act (California Public Resources
19 Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of
20 Supervisors in File No. 120901 and is incorporated herein by reference.

21 (b) Pursuant to Planning Code Section 302, the Board finds that the proposed
22 ordinance will serve the public necessity, convenience and welfare for the reasons set forth in
23 Planning Commission Resolution No. 18812, which reasons are incorporated herein by
24 reference as though fully set forth. A copy of Planning Commission Resolution No. 18812 is
25 on file with the Clerk of the Board of Supervisors in File No. 120901.

1 (c) At a duly noticed public hearing held on February 21, 2013, the Planning
2 Commission in Resolution No. 18812 found that the proposed Planning Code amendments
3 contained in this ordinance are consistent with the City's General Plan and with the Priority
4 Policies of Planning Code Section 101.1. The Commission recommended that the Board of
5 Supervisors adopt the proposed Planning Code amendments. The Board finds that the
6 proposed Planning Code amendments contained in this ordinance are consistent with the
7 City's General Plan and with the Priority Policies of Planning Code Section 101.1 for the
8 reasons set forth in said Resolution.

9 Section 2. The Planning Code is hereby amended by amending Sections 721.1 and
10 733.1, to read as follows:

11 **SEC. 721.1. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL**
12 **DISTRICT.**

13 The Upper Market Street Neighborhood Commercial District, on Market Street *from*
14 *Church to at* Castro, ~~and on side streets off Market,~~ is situated at the border of the Eureka Valley,
15 Buena Vista, and Duboce Triangle neighborhoods. Upper Market Street is a multi-purpose
16 commercial district that provides limited convenience goods to adjacent neighborhoods, but
17 also serves as a shopping street for a broader trade area. A large number of offices are
18 located on Market Street within easy transit access to downtown. The width of Market Street
19 and its use as a major arterial diminish the perception of the Upper Market Street District as a
20 single commercial district. The street appears as a collection of dispersed centers of
21 commercial activity, concentrated at the intersections of Market Street with secondary streets.

22 This district is well served by transit and is anchored by the Castro Street Station of the
23 Market Street subway and the F-Market historic streetcar line. The F, K, L, and M streetcar
24 lines traverse the district, and the Castro Station serves as a transfer point between light rail
25 and crosstown and neighborhood bus lines. Additionally, Market Street is a primary bicycle

1 corridor. Residential parking is not required and generally limited. Commercial establishments
2 are discouraged or prohibited from building accessory off-street parking in order to preserve
3 the pedestrian-oriented character of the district and prevent attracting auto traffic. There are
4 prohibitions on access (i.e. driveways, garage entries) to off-street parking and loading on
5 Market Street to preserve and enhance the pedestrian-oriented character and transit function.

6 The Upper Market Street district controls are designed to promote moderate-scale
7 development which contributes to the definition of Market Street's design and character. They
8 are also intended to preserve the existing mix of commercial uses and maintain the livability of
9 the district and its surrounding residential areas. Large-lot and use development is reviewed
10 for consistency with existing development patterns. Rear yards are protected at residential
11 levels. To promote mixed-use buildings, most commercial uses are permitted with some
12 limitations above the second story. In order to maintain continuous retail frontage and
13 preserve a balanced mix of commercial uses, ground-story neighborhood-serving uses are
14 encouraged, and eating and drinking, entertainment, and financial service uses are limited.
15 Continuous frontage is promoted by prohibitions of most automobile and drive-up uses.

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

19 **SEC. 733.1. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT**
20 **DISTRICT.**

21 The Upper Market Street Neighborhood Commercial Transit District is located on
22 Market Street from Church to *NoeCastro* Streets, and on side streets off Market. Upper Market
23 Street is a multi-purpose commercial district that provides limited convenience goods to
24 adjacent neighborhoods, but also serves as a shopping street for a broader trade area. A
25 large number of offices are located on Market Street within easy transit access to downtown.

1 The width of Market Street and its use as a major arterial diminish the perception of the Upper
2 Market Street Transit District as a single commercial district. The street appears as a
3 collection of dispersed centers of commercial activity, concentrated at the intersections of
4 Market Street with secondary streets.

5 This district is well served by transit and is anchored by the Market Street subway (with
6 stations at Church Street and Castro Street) and the F-Market historic streetcar line. All light-
7 rail lines in the City traverse the district, including the F, J, K, L, M, and N, and additional key
8 cross-town transit service crosses Market Street at Fillmore and Castro Streets. Additionally,
9 Market Street is a primary bicycle corridor. Housing density is limited not by lot area, but by
10 the regulations on the built envelope of buildings, including height, bulk, setbacks, and lot
11 coverage, and standards for residential uses, including open space and exposure, and urban
12 design guidelines. Residential parking is not required and generally limited. Commercial
13 establishments are discouraged or prohibited from building accessory off-street parking in
14 order to preserve the pedestrian-oriented character of the district and prevent attracting auto
15 traffic. There are prohibitions on access (i.e. driveways, garage entries) to off-street parking
16 and loading on Market and Church Streets to preserve and enhance the pedestrian-oriented
17 character and transit function.

18 The Upper Market Street district controls are designed to promote moderate-scale
19 development which contributes to the definition of Market Street's design and character. They
20 are also intended to preserve the existing mix of commercial uses and maintain the livability of
21 the district and its surrounding residential areas. Large-lot and use development is reviewed
22 for consistency with existing development patterns. Rear yards are protected at all levels. To
23 promote mixed-use buildings, most commercial uses are permitted with some limitations
24 above the second story. In order to maintain continuous retail frontage and preserve a
25 balanced mix of commercial uses, ground-story neighborhood-serving uses are encouraged,

1 and eating and drinking, entertainment, and financial service uses are limited. Ground floor-
2 commercial space is required along Market and Church Streets. Most automobile and drive-
3 up uses are prohibited or conditional.

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

7 Section 3. The Planning Code is hereby amended by amending Section 703.2(b) to
8 read as follows:

9 (b) **Use Limitations.** The uses permitted in Neighborhood Commercial Districts are
10 either principal, conditional, accessory, or temporary uses as stated in this Section, and
11 include those uses set forth or summarized and cross-referenced in the zoning control
12 categories as listed in Paragraph (a) in Sections 710.1 through 737.1 of this Code for each
13 district class.

14 (1) **Permitted Uses.** All permitted uses shall be conducted within an enclosed
15 building in Neighborhood Commercial Districts, unless otherwise specifically allowed in this
16 Code. Exceptions from this requirement are: uses which, when located outside of a building,
17 qualify as an outdoor activity area, as defined in Section 790.70 of this Code; accessory off-
18 street parking and loading and other uses listed below which function primarily as open-air
19 uses, or which may be appropriate if located on an open lot, outside a building, or within a
20 partially enclosed building, subject to other limitations of this Article 7 and other sections of
21 this Code.

No.	Zoning Control Category
.56	Automobile Parking
.57	Automotive Gas Station

.58	Automotive Service Station
.60	Automotive Wash
.61	Automobile Sale or Rental
.81	Other Institutions, Large (selected)
.83	Public Use (selected)
.95	Community Residential Parking

If there are two or more uses in a structure and none is classified below under Section 703.2(b)(1)(C) of this Code as accessory, then each of these uses will be considered separately as independent principal, conditional or temporary uses.

(A) **Principal Uses.** Principal uses are permitted as of right in a Neighborhood Commercial District, when so indicated in Sections 710.1 through 737.1 of this Code for each district class.

(B) **Conditional Uses.** Conditional uses are permitted in a Neighborhood Commercial District when authorized by the Planning Commission; whether a use is conditional in a given district is indicated in Sections 710.10 through 737.1. Conditional uses are subject to the provisions set forth in Sections 178, 179, 303 and 316 through 316.6 of this Code.

(i) An establishment which sells beer or wine with motor vehicle fuel is a conditional use, and shall be governed by Section 229.

(ii) Notwithstanding any other provision of this Article, a change in use or demolition of a movie theater use, as set forth in Section 790.64, shall require conditional use authorization. This Subsection shall not authorize a change in use if the new use or uses are otherwise prohibited.

1 (iii) Notwithstanding any other provision of this Article, a change in
2 use or demolition of a general grocery store use, as defined in Section 790.102(a), which use
3 exceeds 5,000 gross square feet shall require conditional use authorization. This Subsection
4 shall not authorize a change in use if the new use or uses are otherwise prohibited.

5 (iv) Large-Scale Urban Agriculture, as defined in Section
6 102.35(b), shall require conditional use authorization.

7 (C) **Accessory Uses.** Except as prohibited in Section 728 and subject to
8 the limitations set forth below and in Sections 204.1 (Accessory Uses for Dwelling Units in R
9 and NC Districts), 204.4 (Dwelling Units Accessory to Other Uses), and 204.5 (Parking and
10 Loading as Accessory Uses) of this Code, a related minor use which is either necessary to the
11 operation or enjoyment of a lawful principal use or conditional use, or is appropriate, incidental
12 and subordinate to any such use, shall be permitted as an accessory use when located on the
13 same lot. Any use which does not qualify as an accessory use shall be classified as a
14 principal or conditional use, unless it qualifies as a temporary use under Sections 205 through
15 205.4 of this Code.

16 No use will be considered accessory to a permitted principal or conditional use which
17 involves or requires any of the following:

18 (i) The use of more than 1/3 of the total floor area occupied by
19 such use and the principal or conditional use to which it is accessory, except in the case of
20 accessory off-street parking and loading and accessory wholesaling, manufacturing or
21 processing of foods, goods, or commodities;

22 (ii) Any Bar or Restaurant, or any other retail establishment which
23 serves liquor for consumption on-site;

24 (iii) Any Take-Out Food use, as defined in Section 790.122, except
25 for a Take-Out Food use which occupies 1/3 of the total floor area or up to 500 s/f whichever

1 is more restrictive in a general grocery or specialty grocery store. This Take-Out Food use
2 includes the area devoted to food preparation and service and excludes storage and waiting
3 areas;

4 (iv) Any Take-Out Food use, as defined in Section 790.122, except
5 for a Take-Out Food use operating as a minor and incidental use within a Restaurant or
6 Limited-Restaurant use;

7 (v) The wholesaling, manufacturing or processing of foods, goods,
8 or commodities on the premises of an establishment which does not also use or provide for
9 retail sale of such foods, goods or commodities at the same location where such wholesaling,
10 manufacturing or processing takes place. Notwithstanding this or any other limitation in this
11 Section 703.2(b)(1)(C) relating to accessory uses, a food processing use as defined in Section
12 790.54(a)(1) located on the west side of Noe Street between 16th Street and Beaver Street may be
13 allowed on the ground floor as an accessory use to a non-residential establishment located within 300
14 feet of the food processing use so long as such food processing use is set back from the front property
15 line by no less than 15 feet; provided further that authorization for such accessory use shall be subject
16 to the notice requirements of Sections 312(d) and (e). This provision authorizing an off-site accessory
17 food processing use shall be repealed one year after its initial effective date, unless the Board of
18 Supervisors, on or before that date, extends or re-enacts this provision.

19 (vi) Any retail liquor sales, as defined in Section 790.55, except for
20 beer, wine, and/or liquor sales for the consumption off the premises with a State of California
21 Alcoholic Beverage Control ("ABC") Board License type (off-sale beer and wine) or type 21
22 (off-sale general) which occupy less than 15% of the gross square footage of the
23 establishment (including all areas devoted to the display and sale of alcoholic beverages) in a
24 general grocery store or specialty grocery store, or Limited-Restaurant use (ABC license type
25 20 only).

1 (vii) Medical Cannabis Dispensaries as defined in 790.141.

2 The foregoing rules shall not prohibit take-out food activity which operates in conjunction with
3 a Limited-Restaurant or a Restaurant. A Limited-Restaurant or a Restaurant, by definition,
4 includes take-out food as an accessory and necessary part of its operation.

5 (viii) Any other entertainment use, as defined in Section 790.38,
6 except for one that involves a Limited Live Performance Permit as set forth in Police Code
7 Section 1060 *et seq.*

8 (D) **Temporary Uses.** Temporary uses are permitted uses, subject to the
9 provisions set forth in Section 205 of this Code.

10 (2) **Not Permitted Uses.**

11 (A) Uses which are not specifically listed in this Article are not permitted
12 unless they qualify as a nonconforming use pursuant to Sections 180 through 186.1 of this
13 Code or are determined by the Zoning Administrator to be permitted uses in accordance with
14 Section 307(a) of this Code.

15 (B) No use, even though listed as a permitted use, shall be permitted in a
16 Neighborhood Commercial District which, by reason of its nature or manner of operation,
17 creates conditions that are hazardous, noxious, or offensive through the emission of odor,
18 fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste, or excessive
19 noise.

20 (C) The establishment of a use that sells alcoholic beverages, other than
21 beer and wine, concurrent with motor vehicle fuel is prohibited, and shall be governed by
22 Section 229. Except in the SoMa NCT, where these uses are permitted accessory uses.

23 Section 4. The Planning Code is hereby amended by amending Sections
24 733.10, 733.17, 733.48 and 733.69 to read as follows:

1 **SEC. 733. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT**

2 **DISTRICT ZONING CONTROL TABLE**

			Upper Market Street
No.	Zoning Category	§ References	Controls
BUILDING STANDARDS			
733.10	Height and Bulk Limit	§§ 102.12 , 105 , 106 , 250 - 252 , 260 , 261.1 , 263.18 263.20 , 270 , 271	Varies See Zoning Map : Height Sculpting on Alleys; § 261.1 Additional 5' Height Allowed for Ground Floor Active Uses in 40-X and 50-X; § 263.18 263.20

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733.17	Street Trees	-	Required § 443 138.1
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			Upper Market Street		
No.	Zoning Category	§ References	Controls by Story		
		§ 790.118	1st	2nd	3rd+

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Retail Sales and Services					
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733.48	Other Entertainment	§ 790.38	<u>C#C</u>	-	-
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733.69	<u>Tobacco Paraphernalia Establishments</u>	§ 790.123	<u>C</u>		
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1 **SPECIFIC PROVISIONS FOR THE UPPER MARKET STREET NEIGHBORHOOD**
 2 **COMMERCIAL TRANSIT DISTRICT**

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<p>4 § 733.48</p>	<p>5 -</p>	<p>6 Boundaries: Applicable for the Upper Market Street NCT. Controls: Existing bars in the Upper Market Street Neighborhood Commercial Transit District will be allowed to apply for and receive a place of entertainment permit from the Entertainment Commission without obtaining conditional use authorization from the Planning Commission if they can demonstrate to the satisfaction of the Entertainment Commission that they have been in regular operation as an entertainment use prior to January 1, 2004; provided, however, that a conditional use is required (1) if an application for a conditional use for the entertainment use was filed with the Planning Department prior to the date this ordinance was introduced or (2) if a conditional use was denied within 12 months prior to the effective date of this ordinance.</p>
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16 Section 5. Effective Date. This ordinance shall become effective 30 days from the
 17 date of passage.

18 Section 6. This section is uncodified. In enacting this Ordinance, the Board intends to
 19 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
 20 punctuation, charts, diagrams, or any other constituent part of the Planning Code that are
 21 explicitly shown in this legislation as additions, deletions, Board amendment additions, and
 22 Board amendment deletions in accordance with the "Note" that appears under the official title
 23 of the legislation.
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APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Elaine C. Warren
Deputy City Attorney

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