



SAN FRANCISCO PLANNING DEPARTMENT

February 11, 2016

Ms. Angela Calvillo, Clerk of the Board of Supervisors
Supervisor Wiener
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:
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415.558.6409

Planning
Information:
415.558.6377

**Re: Transmittal of Planning Department Case Number 2015-01459PCA
Upper Market Street Neighborhood Commercial Transit District; Second Floor
Bars
Planning Commission Recommendation: Approval**

Dear Ms. Calvillo and Supervisor Wiener:

On February 4, 2016 the Planning Commission conducted a duly noticed public hearing at regularly scheduled meetings to consider the proposed Ordinance that would amend Planning Code Sections 733 introduced by Supervisor Wiener. At the hearing the Planning Commission recommended approval.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) (2) and 15378 because they do not result in a physical change in the environment.

Please find attached documents relating to the actions of the Commission. 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 "Aaron D. Starr", written over a horizontal line.

Aaron D. Starr
Manager of Legislative Affairs

cc:

Andres Power, Aide to Supervisor Wiener
Judy Boyajin, Deputy City Attorney
Alisa Somera, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 19556

HEARING DATE FEBRUARY 4, 2016

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CA 94103-2479

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Project Name: Upper Market Street Neighborhood Commercial Transit
District; Second Floor Bars
Case Number: 2015-014590PCA [Board File No. 151084]
Initiated by: Supervisor Wiener/ Introduced June 30, 2015
Staff Contact: Menaka Mohan, Legislative Affairs
menaka.mohan@sfgov.org, 415-575-9141
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: Recommend Approval

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTION 733 TO ALLOW AN EXISTING BAR ON THE GROUND FLOOR IN THE UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT TO EXPAND TO THE SECOND FLOOR UNDER SPECIFIED CIRCUMSTANCES WITH A CONDITIONAL USE AUTHORIZATION; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1.

WHEREAS, on October 20, 2015 Supervisors Wiener introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 151084, which would amend Section 733 of the Planning Code to allow an existing Bar on the ground floor in the Upper Market Street Neighborhood Commercial Transit District to expand to the second floor under specified circumstances with a Conditional Use Authorization;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on February 4, 2015; and,

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

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 proposed Ordinance expands an existing ground floor Bar to the second floor with a Conditional Use Authorization that will serve the public.
2. A proposed project is only eligible for a Conditional Use Authorization if the space to be covered has not been in residential use within the previous five years, an internal staircase connecting the ground floor Bar use and the upper floor already exists, and that there will be no expansion of the building envelope.
3. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.3

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan

The proposed Ordinance will facilitate the expansion of an existing use in the form of a Bar on commercial corridor.

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

The proposed Ordinance allows an expansion of an existing use. This added commercial activity will help maintain a favorable social and cultural climate in San Francisco as it adds space to an existin use.

4. **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 would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

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 would not have a negative effect on housing or neighborhood character.

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

The proposed Ordinance would not have an 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 would 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 would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

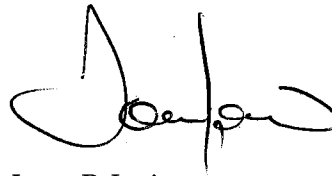
8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

5. **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 described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on February 4, 2016.



Jonas P. Ionin
Commission Secretary

AYES: Fong, Richards, Antonini, Hillis, Moore, Wu

NOES: None

ABSENT: Johnson

ADOPTED: February 4, 2016



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: FEBRUARY 4, 2016

DEADLINE: MARCH 11, 2016

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

Reception:
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Project Name: **Upper Market Street Neighborhood Commercial Transit District; Second Floor Bars**

Case Number: 2015-014590PCA [Board File No. 151084]

Initiated by: Supervisor Wiener/ Introduced June 30, 2015

Staff Contact: Menaka Mohan, Legislative Affairs
menaka.mohan@sfgov.org, 415-575-9141

Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

Recommendation: **Recommend Approval with Modifications**

PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to allow an existing bar on the ground floor in the Upper Market Street Neighborhood Commercial Transit District to expand to the second floor under specified circumstances with a Conditional Use authorization; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

The Way It Is Now:

Currently in the Upper Market Street Neighborhood Commercial Transit (NCT) District Bars require Conditional Use authorization to locate on the ground floor and are not permitted on upper floors of the building.

The Way It Would Be:

The Planning Code would be amended to allow an *existing* Bar on the ground floor in the Upper Market Street NCT District to expand to the second floor with Conditional Use authorization if:

- (a) The space to be converted has not been in residential use within the previous five years,
- (b) An internal staircase connecting the ground floor Bar use and the upper floor already exists, and
- (c) There will be no expansion of the building envelope.

BACKGROUND

This ordinance originated from an application submitted to the Planning Department in November of 2015. The Project Sponsor in the case, Churchill Bar located at 194 Church Street, initially applied for the proposed second story use under the Community Business Priority Processing Program known as CB3P. The CB3P program was adopted by the San Francisco Planning Commission on February 12, 2014 and streamlines the Conditional Use process for certain small and mid-sized business applications.

Projects that qualify for and enroll in the CB3P are guaranteed the following:

- (1) A hearing date within 90 days of filing;
- (2) Placement on the Planning Commission's consent calendar.

Furthermore, analysis of CB3P projects is documented through a two-page Project Summary and Motion rather than the lengthier Executive Summary and Draft Motion documents.

The Project Sponsor initially applied under the CB3P for a change of use from a vacant Medical Cannabis Dispensary (never established as a legal use) to a Large Other Institution-proposed to be used as a community and social event space.

The Planning Department's initial research revealed that there were violations on the property. Violations included operating an event space without proper permits and the second floor was rented as a private event space without a proper permit.

Given the violations and nature of the case, the project was pulled from the CB3P program. Furthermore, the project sponsor decided to abandon the change of use permit and to legally pursue a Bar use on the second floor. This required a legislative action because Bars are not permitted on the second floor in the Upper Market NCT.

ISSUES AND CONSIDERATIONS

Neighborhood Context

The Upper Market Street NCT is located on Market Street from Church to Noe Streets and on side streets off Market. It is a multi-purpose commercial district that provides neighborhood serving services and serves as a destination. The corridor is composed primarily of retail and commercial uses on the ground floor with residential use generally on the second and above stories. Current land use controls encourage moderate-scale development which contributes to the definition of Market Street's design and character. The NCT has a vibrant commercial presence and the vacancy rate for storefronts from Octavia to Castro-a wider range than the NCT-is only 10 percent¹.

Conditional Use Findings

Conditions of approval are based on the determination requirements in Section 303-Conditional Uses. Planners evaluate the proposed use for a variety of criteria including but not limited to the size, intensity of use, how the use will serve the neighborhoods, ensuring that the use or feature will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, will not adversely impact the General Plan and in is conformity with the General Plan. Ultimately projects that require a Conditional Use must be approved by the Planning Commission. These findings in addition to the three findings proposed in the ordinance would be used by Staff and the Commission in evaluating a proposed Bar expansion allowed by this ordinance.

Community Outreach and Support

The project sponsor has worked with the City, the Supervisor, the Duboce Triangle Neighborhood Association (DTNA) (Exhibit B), and the Castro Merchants (Exhibit B) on a legislative approach that legalizes the use and has agreed to additional conditions of approval as part of the Conditional Use Authorization. So far, the three main neighborhood organizations for this neighborhood, including the Castro Merchants, DTNA, and the Castro/Upper Market Community Benefit District, have all sent letters of support for this proposal.

In its letter of support, the Duboce Triangle Neighborhood Association outlined four conditions that they would like to see added to the conditions of approval if and when Churchill moves forward with their proposed expansion. These conditions have also been endorsed by the Castro/Upper Market Community Benefit District. These conditions should *not* be included in the Planning Commission's recommendation to the Board of Supervisors on the proposed ordinance. Their appropriateness should be considered when the Conditional Use application is considered by the Planning Commission, but they do illustrate some of the concerns that the community has surrounding the proposed ordinance and the Bar's expansion.

The conditions include the following:

1. Windows must remain closed during hours of operation when sound amplification is used. Sound must be fully contained within the building, including bass vibration.
2. If five reports of disturbance are made within a month, the Project Sponsor will engage a reputable sound engineering (i.e. firm of Slater & Associates) to address the sound problems. A sound attenuation plan will be determined at that time. If the test results show that sound isolation materials are required, the Project Sponsor will comply. The sound attenuation plan will specifically address bass and generally noise levels audible from the street. Additionally, the Project Sponsor will be responsible for enforcing a "no short circuit" rule, by which employees and For Hire DJs are unable to manipulate the sound system into operating outside the parameters set by the attenuation plan.
3. The Project Sponsor shall at all times keep a copy of these Conditions of Approval on the premises for reference. Management shall review with new employees as part of their training and orientation and periodically (at least at twelve month intervals) review with the other employees, these Conditions and Approval related to operational concerns and quality of life issues with emphasis on noise control, and respectful behavior towards neighbors by patrons. Employees are to be reminded that continued successful operation at 194 Church Street is dependent on compliance with these Conditions of Approval.
4. The Project Sponsor will comply with requests for specification of their sound equipment and sound engineers. The sound levels must always be in compliance with the city requirements.

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. The Department's proposed recommendations are as follows:

1. Amend Upper Market Street NCT District to expand existing ground floor Limited Restaurants, Restaurants, and Bars to the second floor with Conditional Use authorization if the following conditions are met:
 - a. The Limited Restaurant, Restaurant, and Bar must exist on the ground floor;
 - b. The space to be converted has not been in residential use within the previous five years;
 - c. There is no expansion of the building envelope.

BASIS FOR RECOMMENDATION

Named neighborhood commercial districts, such as the Upper Market Street NCT were developed to allow communities to tailor their land use controls based on the community's needs and concerns. There appears to be clear neighborhood support for the proposed change, and the additional findings and CU requirement ensure that this will not have a negative impact on neighborhood livability or the City's housing stock.

The Department understands the intent of the proposed ordinance is to legalize one particular Bar; however there may be other eating and drinking uses, such as Limited Restaurants and Restaurants in the corridor that may be good candidates for expansion. Bars are considered a more intensive use than restaurant uses because of the associated noise and behavioral issues associated with alcohol consumption. If it makes sense from a land use perspective to have a bar on the second floor then allowing a less intensive but similar use on the second floor also makes sense. The Department also proposes removing the requirement that the building have an existing internal staircase. While specific to Churchill, it seems an arbitrary requirement and one that might prohibit another desirable establishment's expansion.

Furthermore, the Planning Department's recommendation does not hinder the ability of the community to provide input to the Planning Commission to make changes to individual Project Sponsors. As part of a Conditional Use authorization the Planning Commission can impose additional criteria for approval. Additionally, the expansion to the second floor would only be available if the space to be converted has not been in residential use within the previous five years and there is no expansion of the building envelope.

ENVIRONMENTAL REVIEW

The proposal is not defined as a project under CEQA Sections 15378 and 15060 (c) (2) because it does not result in a physical change in the environment, as determined on October 27, 2015.

PUBLIC COMMENT

As of the date of this report, the Planning Department has received three letters of support for the proposed ordinance, from the Duboce Triangle Neighbors Association, Castro Merchants, and the Castro/Upper Market Community Benefit District.

RECOMMENDATION: Recommendation of Approval with Modifications

Exhibit A: Draft Planning Commission Resolution

Exhibit B: Public Comment

Exhibit C: Board of Supervisor File No. 151084



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formerly "Merchants of Upper Market & Castro – MUMC"
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www.CastroMerchants.com

December 15, 2015

By Email and USPS hardcopy

Colin Clarke, Staff Planner
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco CA 94103-2479

Re: Planning Application No. 2015-002992PRJ, Conditional Use at 194 Church Street, SF
Churchill Bar, Change of Use (Office to Special Events, Expansion of Downstairs Bar)

Dear Mr. Clarke,

This confirms that the Members of **CASTRO MERCHANTS** (formerly "Merchants of Upper Market & Castro – MUMC") have voted to SUPPORT the Request for Conditional Use Authorization, Case No. 2015-002992PRJ and related requests to your Department by *Churchill Bar* for its proposed Change of Use and Second Floor Expansion at 194 Church Street in San Francisco. The SUPPORT includes that for the proposed S.F. Ordinance File No. 151084 being sponsored by Supervisor Scott Wiener at the Board of Supervisors.

CM's approval is based on information provided by the Project Sponsor (Michael Goebel for *Churchill Bar*) during his presentation at our Members Meeting on April 2, 2015. We have asked the Project Sponsor to notify us if there are any subsequent, substantive changes to their proposal prior to approval, so we can evaluate whether such changes would affect the previous approval. We have received no such notification, to date.

CASTRO MERCHANTS is the merchants' organization serving San Francisco's Castro-Upper Market area, generally along Upper Market Street from Octavia Blvd. to Castro Street; Castro from Market to 19th Street; and cross streets throughout that area. **CASTRO MERCHANTS** has about 300 paid Members for 2015-2016. The property covered by this matter is within our organization's primary service area.

..... continued

CASTRO MERCHANTS

San Francisco Planning Department

December 15, 2015

Re: Planning Application No. 2015-002992PRJ, Conditional Use at 194 Church Street, SF
Churchill Bar, Change of Use (Office to Special Events, Expansion of Downstairs Bar)

In addition to today's email to you and to the individuals cc'd below, hardcopies of this letter are being mailed to you and to Mr. Goebel for *Churchill*.

Please let us know if you have any questions regarding **CASTRO MERCHANTS's** SUPPORT for this Application and related items. Please include this letter in the matter's permanent file, and assure that it is provided to all Planning Staff and Commissioners and to any other hearing panels at the time that this matter is considered by them. Thank you for considering our comments.

Respectfully,



Daniel Bergerac, President

Email and hardcopy cc: Michael Goebel, *Churchill* Bar
email cc: Supervisor Scott Wiener, Staff Andres Power
Capt. Daniel Perea, SFPD Mission Station
Capt. John Sanford, Jr., SFPD Park Station
Capt. Greg McEachern, SFPD Northern Station

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Duboce Triangle Neighborhood Association

December 22, 2015

Attn Rodney Fong, President
San Francisco Planning Commission

Re Planning Code Amendment to allow 2nd floor bar expansion (BOS File #151084)
Conditional Use authorization, Conditions of Approval for 194-198 Church Street

Cc Mike Goebel, Project Sponsor
Scott Wiener, District Supervisor
Colin Clarke, Project Planner

President Fong,

Supervisor Wiener has introduced legislation to allow, in Upper Market, an existing bar on the ground floor to expand to the second floor with a Conditional Use (CU) authorization. The Duboce Triangle Neighborhood Association (DTNA) is in support of this legislation.

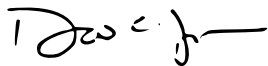
Upon its approval, the legislation will allow for an existing bar in our neighborhood at 194 Church Street (Churchill) to convert its 2nd floor from an existing office to a space for special events/private parties through the CU process. The DTNA has reached an agreement with the Project Sponsor to offer our endorsement if the CU is approved with the below stated conditions. The Planning Commission is kindly requested to include the following "Conditions of Approval" in association with the approval of a CU for this purpose.

- 1) Windows must remain closed during hours of operation when sound amplification is used. Sound must be fully contained within the building, including bass vibration.
- 2) If five reports of disturbance are made within a month, the Project Sponsor will engage a reputable sound engineering (i.e. firm of Slater & Associates) to address the sound problems. A sound attenuation plan will be determined at that time. If the test results show that sound isolation materials are required, the Project Sponsor will comply. The sound attenuation plan will specifically address bass and generally noise levels audible from the street. Additionally, the Project

Sponsor will be responsible for enforcing a "no short circuit" rule, by which employees and For Hire DJs are unable to manipulate the sound system into operating outside the parameters set by the attenuation plan.

- 3) The Project Sponsor shall at all times keep a copy of these Conditions of Approval on the premises for reference. Management shall review with new employees as part of their training and orientation and periodically (at least at twelve month intervals) review with the other employees, these Conditions and Approval related to operational concerns and quality of life issues with emphasis on noise control, and respectful behavior towards neighbors by patrons. Employees are to be reminded that continued successful operation at 194 Church Street is dependent on compliance with these Conditions of Approval.
- 4) The Project Sponsor will comply with requests for specification of their sound equipment and sound engineers. The sound levels must always be in compliance with the city requirements.

Sincerely,



David Troup
DTNA, President

Michael Goebel
194-198 Church St, Building Owner



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December 4, 2015

Rodney Fong, President
San Francisco Planning Commission
1650 Mission St., Suite 400
San Francisco, CA 94103
RE: Support File # 151084

Dear President Fong,

This letter is written to express the Castro/Upper Market Community Benefit District's support of the project at 194 Church St. to build out the second floor, including adding a bar, to allow for a productive activation of the second floor by hosting private and community events.

It is our understanding steps will be taken to minimize noise disturbance for the neighbors of 194 Church St. If, as stated in the letter from the Duboce Triangle Neighborhood Association, if there are more than five noise complaints in a given month, the project sponsor will engage a reputable sound engineering company to address the sound problems.

If you have any questions, please do not hesitate to contact me at 415-500-1181 or at andrea@castrocbd.org.

Sincerely,

Andrea Aiello
Executive Director

cc: Supervisor Scott Wiener
Andres Power, Legislative Aide, Supervisor Wiener
CBD Board of Directors
Michael Goebel