

BOARD of SUPERVISORS



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April 11, 2018

File No. 180320

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On April 3, 2018, Supervisor Safai introduced the following proposed legislation:

File No. 180320

Ordinance amending the Planning Code to allow Catering as an Accessory Use to Limited Restaurants in Neighborhood Commercial Districts under certain conditions; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

c: Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

1 [Planning Code - Catering as an Accessory Use in Neighborhood Commercial Districts]

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3 **Ordinance amending the Planning Code to allow Catering as an Accessory Use to**
4 **Limited Restaurants in Neighborhood Commercial Districts under certain conditions;**
5 **affirming the Planning Department's determination under the California Environmental**
6 **Quality Act; making findings of consistency with the General Plan, and the eight**
7 **priority policies of Planning Code, Section 101.1; and making findings of public**
8 **necessity, convenience, and welfare pursuant to Planning Code, Section 302.**

9 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
10 **Additions to Codes** are in *single-underline italics Times New Roman font*.
11 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
12 **Board amendment additions** are in double-underlined Arial font.
13 **Board amendment deletions** are in ~~strikethrough Arial font~~.
14 **Asterisks (* * * *)** indicate the omission of unchanged Code
15 subsections or parts of tables.

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

17 Section 1. Environmental and Land Use Findings.

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

23 (b) On _____, the Planning Commission, in Resolution No. _____, adopted
24 findings that the actions contemplated in this ordinance are consistent, on balance, with the
25 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board

1 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
2 Board of Supervisors in File No. _____, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code Section 302, the Board finds that this Planning Code
4 amendment will serve the public necessity, convenience, and welfare for the reasons set forth
5 in Planning Commission Resolution No. _____, and the Board incorporates such reasons
6 herein by reference.

7 Section 2. The Planning Code is hereby amended by revising Section 703, to read as
8 follows:

9 **SEC. 703. NEIGHBORHOOD COMMERCIAL DISTRICT REQUIREMENTS.**

10 (a) **Zoning Control Tables.** Each Zoning District in Article 7 has a corresponding
11 Zoning Control Table that details the basic development standards and Use controls for the
12 respective district. Zoning Control Tables are explained in Section 202.1 of this Code.
13 Permitted or Conditionally permitted ~~u~~Uses and Uses that are not permitted in the zoning
14 districts described in this Section 703 are detailed in the corresponding Zoning Control Tables.

15 (b) **Uses in Enclosed Buildings.** All permitted uses shall be conducted within an
16 enclosed building in Neighborhood Commercial Districts, unless otherwise specifically allowed
17 in this Code. Exceptions from this requirement are: uses which, when located outside of a
18 building, qualify as an Outdoor Activity Area or Open Air Sales, accessory off-street parking
19 and loading, and other uses listed below which function primarily as open-air uses, or which
20 may be appropriate if located on an open lot, outside a building, or within a partially enclosed
21 building, subject to other limitations of this Article 7 and other sections of this Code.

22 33A. Wireless Telecommunications Services Facility

23 Public and Private Parking Lots

24 Gas Station

25 Automotive Service Station

- 1 Automotive Wash
- 2 Automobile Sale or Rental
- 3 Institutional Uses (selected)
- 4 Public Facilities (selected)
- 5 Open Recreation Area
- 6 Outdoor Recreation Area
- 7 Neighborhood and Large Scale Urban Agriculture
- 8 Utility and Infrastructure Uses (selected)

9 (c) **Multiple Uses in One Structure.** If there are two or more uses in a structure and
10 none is classified under Section 703(d) below as an Accessory Use, then each of these uses
11 will be considered separately as independent Principal, Conditional or temporary uses.

12 (d) **Accessory Uses.** Subject to the limitations set forth below and in Sections 204.1
13 (Accessory Uses for Dwelling Units in R and NC Districts), 204.4 (Dwelling Units Accessory to
14 Other Uses), and 204.5 (Parking and Loading as Accessory Uses) of this Code, Accessory
15 Uses as defined in Section 102 shall be permitted when located on the same lot. Any use that
16 does not qualify as an Accessory Use shall be classified as a Principal or Conditional Use
17 unless it qualifies as a temporary use under Sections 205 through 205.4 of this Code.

18 No Use will be considered accessory to a permitted Principal or Conditional Use that
19 involves or requires any of the following:

20 (1) The use of more than ~~one-third~~^{1/3} of the total floor area occupied by such
21 use and the Principal or Conditional use to which it is accessory, except in the case of
22 accessory off-street parking and loading and as specified in subsection (d)(3) below as
23 accessory wholesaling, manufacturing, or processing of foods, goods, or commodities.

24 (2) Any Bar or Restaurant, or any other retail establishment which serves liquor
25 for consumption on-site; however, this shall not prohibit take-out food activity which operates

1 in conjunction with a Limited Restaurant, Restaurant, General Grocery, and Specialty
2 Grocery.

3 (3) The wholesaling, manufacturing, or processing of foods, goods, or
4 commodities on the premises of an establishment that does not also use or provide for retail
5 sale of such foods, goods, or commodities at the same location where such wholesaling,
6 manufacturing, or processing takes place; ~~except, however in,~~ with the following exceptions:

7 (A) In the North Beach Special Use District where such activities are
8 limited to 15% of the total floor area occupied by the Principal or Conditional Use to which it is
9 accessory unless the Principal or Conditional Use is Specialty Foods Manufacturing as
10 defined in Section 780.3 of this Code; and

11 (B) A Catering Use limited to food and beverage Catering shall be permitted as
12 an Accessory Use to Limited Restaurants if the following requirements are met:

13 (i) The Catering Use does not operate more than 75% of the total time
14 within the Limited Restaurant's permitted Hours of Operation on any given day; and

15 (ii) The Catering Use does not distribute or deliver to customers directly
16 from the subject lot unless the Catering Use also provides for the Retail Sale of its products directly on
17 the premises.

18 (4) Any retail Liquor Store.

19 (5) Medical Cannabis Dispensaries.

20 (6) Any General Entertainment or Nighttime Entertainment use, except for one
21 that involves a Limited Live Performance Permit as set forth in Police Code Section 1060 et
22 seq.

23 (7) Within the North Beach SUD and NCD, a Limited Restaurant.

1 (8) A Health Service use as an Accessory Use in the Sacramento Street
2 Neighborhood Commercial District requires a Conditional Use authorization on the ground
3 story and is permitted above the ground story pursuant to Section 724 of this Code.

4 (9) Cannabis Retail that does not meet the limitations set forth in Section
5 204.3(a)(3) *of this Code*.

6 (e) **Uses Not Permitted.**

7 (1) No use, even though listed as a Permitted Use, shall be permitted in a
8 Neighborhood Commercial District which, by reason of its nature or manner of operation,
9 creates conditions that are hazardous, noxious, or offensive through the emission of odor,
10 fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste, or excessive
11 noise.

12 (2) The establishment of a use that sells alcoholic beverages, other than beer
13 and wine, concurrent with motor vehicle fuel is prohibited, and shall be governed by Section
14 202.2(b). ~~with the exception that~~ *Except* in the SoMa NCT, ~~where~~ these uses are permitted
15 Accessory Uses.

16 (f) **Conflicting Controls.** All uses, buildings, and features in Neighborhood
17 Commercial Districts shall comply with all controls set forth for the district in which they are
18 located. Where different controls conflict or overlap within the same District, the use, building,
19 or feature shall abide by the most restrictive of all controls. For example, in an NC-2 District, a
20 Dwelling Unit on the second story is proposed for conversion to a Personal Service use.
21 Residential Conversions at the Second Story in an NC-2 District require Conditional Use
22 authorization under Table 711, while Personal Services at the Second Story in an NC-2
23 District are permitted as Principal Uses under Table 711. Following the most restrictive
24 control, the applicant must obtain Conditional Use authorization and all other necessary
25 permits in order to legally convert the Dwelling Unit to a Personal Service use.

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Section 3. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

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

By: 
AUSTIN M. YANG
Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Catering as an Accessory Use in Neighborhood Commercial Districts]

Ordinance amending the Planning Code to allow Catering as an Accessory Use to Limited Restaurants in Neighborhood Commercial Districts under certain conditions; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302.

Existing Law

Planning Code Section 102 defines Accessory Use as a related minor Use that is either necessary to the operation or enjoyment of a lawful Principal or Conditional Use or appropriate, incidental, and subordinate to any such use, and is located on the same lot. Catering is defined as a Non-retail Sales and Service Use that involves the preparation and delivery of goods. A Limited Restaurant Use is defined as a Retail Sales and Service Use that serves ready-to-eat foods and/or drinks to customers for consumption on or off the premises, that may or may not have seating. A Limited Restaurant Use may include wholesaling, manufacturing, or processing of foods, goods, or commodities on the premises.

Planning Code Section 703 sets forth the permissible Accessory Uses in Neighborhood Commercial Districts and does not include Catering as a permissible Accessory Use.

Amendments to Current Law

This amendment would permit Catering as an Accessory Use to Limited Restaurants in Neighborhood Commercial Districts where: the Catering Use does not operate more than 75% of the total time permitted for the Limited Restaurant; and the Catering Use does not serve customers directly from the lot, unless it also provides retail sales of its products on the premises.

Background Information

Planning Code Section 703(d) governs Accessory Uses in Neighborhood Commercial Districts. Generally, this section does not permit the wholesaling, manufacturing, or processing of foods, goods, or commodities unless those same foods, goods, and commodities are sold on-site. This would create an exception for Catering Use under specific conditions and would allow catering companies to prepare foods on the premises of Limited Restaurants under specific conditions.