



SAN FRANCISCO PLANNING DEPARTMENT

October 11, 2018

Ms. Angela Calvillo, Clerk
Honorable Supervisor Peskin
Board of Supervisors
City and County of San Francisco
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**Re: Transmittal of Planning Department Case Number 2018-012268PCA:
Fire-Damaged Liquor Stores in North Beach Neighborhood Commercial
District
Board File No. 180861
Planning Commission Recommendation: Approval with Modification**

Dear Ms. Calvillo and Supervisor Peskin,

On October 4, 2018, the Planning Commission conducted duly noticed public hearings at regularly scheduled meetings to consider the proposed Ordinance, introduced by Supervisor Peskin that would amend the Planning Code to provide that temporary closure of a liquor store in the North Beach Neighborhood Commercial District (NCD) as a result of a fire is not an abandonment of such use, and that relocation of such use to another location in the North Beach NCD does not require a new Conditional Use permit.

The Commission's proposed modifications were as follows:

- Clarify the entitlement process to: (a) Exempt a temporarily relocated Liquor Store from neighborhood notification pursuant to Planning Code Sections 311 or 312 and any Development Impact fees associated with the temporary relocation into a new retail tenant space in the North Beach NCD; (b) Require the temporarily relocated Liquor Store to obtain all required site or building permits to occupy the temporary location; and (c) Note that the temporary relocation into the new retail tenant space in the North Beach NCD does not terminate any pre-existing authorized Conditional Uses or result in the change of use in that new retail tenant space.
- Add language to clarify that a temporarily located Liquor Store not returning to its March 17, 2018 location by November 1, 2021 will be immediately required to secure Conditional Use authorization, conduct notification pursuant to Planning Code Sections 311 or 312, and be subject to any applicable Development Impact Fees

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

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

www.sfplanning.org

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 Starr", with a long horizontal line extending to the right.

Aaron D. Starr
Manager of Legislative Affairs

cc:

Andrea Ruiz-Esquide, Deputy City Attorney
Sunny Angulo, Aide to Supervisor Peskin
Erica Major, Office of the Clerk of the Board

Attachments:

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 20300 HEARING DATE OCTOBER 4, 2018

Project Name: Fire-Damaged Liquor Stores in North Beach Neighborhood
Commercial District

Case Number: 2018-012268PCA [Board File No. 180861]

Initiated by: Supervisor Peskin / Introduced September 4, 2018

Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082

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

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RESOLUTION APPROVING A PROPOSED ORDINANCE WITH MODIFICATIONS THAT WOULD AMEND THE PLANNING CODE TO PROVIDE THAT TEMPORARY CLOSURE OF A LIQUOR STORE IN THE NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT AS A RESULT OF A FIRE IS NOT AN ABANDONMENT OF SUCH USE, AND THAT RELOCATION OF SUCH USE TO ANOTHER LOCATION IN THE NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT DOES NOT REQUIRE A NEW CONDITIONAL USE PERMIT; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on September 4, 2018 Supervisor Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 180861, which would amend the Planning Code to provide that temporary closure of a liquor store in the North Beach Neighborhood Commercial District (NCD) as a result of a fire is not an abandonment of such use, and that relocation of such use to another location in the North Beach NCD does not require a new Conditional Use permit;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on October 4, 2018; 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 15378; 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

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance;

Those modifications include the following:

- 1 Clarify the entitlement process to: (a) Exempt a temporarily relocated Liquor Store from neighborhood notification pursuant to Planning Code Sections 311 or 312 and any Development Impact fees associated with the temporary relocation into a new retail tenant space in the North Beach NCD; (b) Require the temporarily relocated Liquor Store to obtain all required site or building permits to occupy the temporary location; and (c) Note that the temporary relocation into the new retail tenant space in the North Beach NCD does not terminate any pre-existing authorized Conditional Uses or result in the change of use in that new retail tenant space.
- 2 Add language to clarify that a temporarily located Liquor Store not returning to its March 17, 2018 location by November 1, 2021 will be immediately required to secure Conditional Use authorization, conduct notification pursuant to Planning Code Sections 311 or 312, and be subject to any applicable Development Impact Fees.

(12) Temporary closures of up to three years of existing liquor stores located in the North Beach Neighborhood Commercial District, for reconstruction or repair after a fire, shall not be considered an abandonment or discontinuation of such use pursuant to Sections 178 and 183 of this Code, unless the original liquor store elects to relocate somewhere else permanently fails to return its March 17, 2018 location, and notify the Planning Department in writing of its return, by November 1, 2021.

Temporary relocation of liquor stores in the North Beach Neighborhood Commercial District that have been closed as a result of a fire to another location in the North Beach Neighborhood Commercial District shall not require a new Conditional Use Permit, shall obtain all required site or building permits necessary to occupy the relocation site but shall not require notification pursuant to Planning Code Sections 311 or 312, shall not constitute a change of use, abandonment, or discontinuation of use at the new relocation site pursuant to Planning Code Sections 178 or 183, and shall be exempt from Development Impact Fees pursuant to Planning Code Article 4 for the duration of up to three years of interim relocation. Should the temporarily relocated Liquor Store not return to its March 1, 2018 location by March 17, 2021 then the Liquor Store will be immediately required to obtain all required permits and authorizations to operate permanently at the relocation site.

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. Allowing long standing retail uses displaced by fire to continue operation in the North Beach Neighborhood Commercial District is important to the City's social fabric.
2. Amending entitlement and abandonment regulations is one way to facilitate the continued operation of a displaced long standing retail use.
3. Clearly setting parameters and requirements for temporary relocation and return to the original location is required to assure smooth implementation, especially in the coming years.
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:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 1

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

Policy 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

The proposed Ordinance would conveniently allow a long standing retail use to remain in the North Beach neighborhood. This has net benefits to the neighborhood as the retail use is a source of fiscal and employment benefits.

OBJECTIVE 2

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

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

The proposed amendments to the Planning Code help retain a long standing retail use in the City's North Beach neighborhood by easing regulations on relocation in the North Beach Neighborhood Commercial District.

OBJECTIVE 3

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED

Policy 3.1

Promote the attraction, retention, and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

The Ordinance proposes modifications to the North Beach Neighborhood Commercial District land use controls that would help retain a long standing retail use in the City. The retail use, by its nature, provides employment opportunities for unskilled and semi-skilled workers.

OBJECTIVE 6

PROVIDE 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 Planning Code amendments in the proposed Ordinance help to retain a retail use that provides neighborhood-serving goods to the North Beach community

5. **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 preserve a long standing retail use within the North Beach Neighborhood Commercial District.

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 help conserve neighborhood character by allowing a long standing retail use to continue in operation within the North Beach Neighborhood Commercial District, thereby preserving the economic diversity of the City's neighborhoods.

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 because the Ordinance concerns the entitlement and abandonment regulations for fire-displaced retail uses.

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 because the Ordinance is concerned with regulations on relocated fire-displaced retail uses.

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 because the Ordinance concerns retail uses.

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 because the Ordinance concerns the entitlement and abandonment regulations for fire-displaced retail uses.

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 because the Ordinance does not amend existing regulations on landmarks or historic buildings.

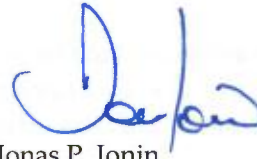
8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas because the Ordinance concerns the entitlement and abandonment regulations for fire-displaced retail uses.

6. **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 APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on October 4, 2018.



Jonas P. Ionin
Commission Secretary

AYES: Hillis, Johnson, Koppel, Melgar, Moore, Richards

NOES: None

ABSENT: Fong

ADOPTED: October 4, 2018



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: OCTOBER 4, 2018
90-DAY DEADLINE: DECEMBER 9, 2018

Project Name: **Fire-Damaged Liquor Stores in North Beach Neighborhood Commercial District**

Case Number: **2018-012268PCA [Board File No. 180861]**

Initiated by: **Supervisor Peskin / Introduced September 4, 2018**

Staff Contact: **Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082**

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

Recommendation: **Approval with Modifications**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to provide that temporary closure of a liquor store in the North Beach Neighborhood Commercial District (NCD) as a result of a fire is not an abandonment of such use, and that relocation of such use to another location in the North Beach NCD does not require a new Conditional Use permit.

The Way It Is Now:

1. Restoring a Liquor Store that has not been in use for more than 18 months, and therefore considered abandoned, requires Conditional Use authorization within the North Beach Neighborhood Commercial District.
2. Establishing a Liquor Store requires Conditional Use authorization in the North Beach Neighborhood Commercial District.

The Way It Would Be:

1. Temporary closure of up to three years of a Liquor Store in the North Beach Neighborhood Commercial District for reconstruction or repair after a fire would not be considered an abandonment of the use. Restoring the Liquor Store within three years in that location would not require Conditional Use authorization.
2. Establishing a Liquor Store that is temporarily relocating in the North Beach Neighborhood Commercial District, and that has been closed as a result of a fire, to another location in the North Beach Neighborhood Commercial District would not require Conditional Use authorization.

BACKGROUND

On March 17, 2018 a four alarm fire engulfed the building at 659 Union Street (APN 0117/016).¹ The building contained residential units above street level retail tenants. These retail tenants included three restaurants, a brewpub and a liquor store. Coit Liquor, the displaced liquor store, has been in North Beach for over 50 years. Owing to its unique selection of spirits, wines and beers, it is destination for neighborhood residents and patrons from outside North Beach.

The fire damage was so extensive that the San Francisco Department of Building Inspection red-tagged the building. This indicates that the building is in a hazardous condition and unfit for habitation or use. Renovations to buildings in this state often take years to complete. Investigations into the cause of the fire, the processing of insurance claims, the preparation and review of building plans, and actual construction all lend to a protracted timeline for reoccupying the building.

ISSUES AND CONSIDERATIONS

Locational and Operational Conditions on Liquor Stores

The Planning Code treats conditionally authorized uses much differently than principally permitted uses. While principally permitted uses are considered routine and appropriate for a neighborhood, this is not the case for conditionally authorized uses. They must be found necessary or desirable, and compatible with a neighborhood. Planning Department Staff must notice adjacent property owners of the proposal and the Planning Commission must grant authorization in a public hearing.²

Given the special treatment of conditionally authorized uses, their operation and continuity are often limited or conditioned. For example, conditionally authorized uses cannot be discontinued for more than three years without the City ceasing to recognize the right to operate at that location. In the North Beach Neighborhood Commercial District the Planning Code limits this nonuse period to 18 months.³ These limits are a way to incentivize principally permitted uses over potentially less desirable conditionally authorized ones. Part of the reason for this is that some conditionally authorized uses have the potential to adversely affect the safety, convenience, or general welfare of persons residing or working in the vicinity. To this end, the Planning Code has standard conditions of approval outlining allowed operating practices for specific uses requiring Conditional Use authorization. Uses with these conditions of approval include massage establishments and nighttime entertainment uses.⁴

In this vein, the Planning Code also applies locational and operating conditions to certain uses, many of which often require Conditional Use authorization.⁵ Eating and Drinking uses, Cannabis uses and Motel uses, among others, all have additional operating constraints or requirements. These are in place to assure that adjacent property or residents are not inconvenienced or harmed by the use of concern.

¹ St. Patrick's Day Fire Displaces North Beach Businesses, Residents. Caleb Pershan. 18 March 2018. Accessed September 12, 2018 <https://sf.eater.com/2018/3/18/17136414/north-beach-fire-businesses-residents-displaced-four-alarm-st-patricks-day>

² Planning Code Section 303

³ Planning Code Section 178(d)

⁴ Planning Code Section 303

⁵ Planning Code Section 202.2

Liquor Stores, however, are not subject to standard locational or operational conditions or standard conditions of approval like other conditionally authorized uses. And while the City has multiple Special Use Districts (SUD) regulating Liquor Stores, the North Beach SUD does not restrict Liquor Stores in any special manner. Similarly, beyond requiring Conditional Use authorization the North Beach NCD has no special operating conditions for Liquor Stores. Further, the liquor store at the fire damaged property does not have a history of Planning Department operating complaints or Department of Building Inspection building complaints. In this context relaxing Liquor Store regulations around abandonment periods and relocation entitlements in the North Beach NCD for temporary relocations may make sense. This is especially true if the relaxation is temporary, is being driven by a calamity not of the liquor store owner's doing, and does not increase the number of Liquor Stores in the neighborhood.

Amendments to Ease Implementation

When amending the Planning Code to temporarily relax entitlement and abandonment regulations it is important to set clear parameters, including an ending date. For example, for temporarily relocating uses it is important to specify the suspended entitlement processes. This includes not only any required Conditional Use authorization but also any other notification processes. It is also important to specify if the temporary relocation will change or terminate any previous uses at the relocation site or if the relocated use will be subject to any development impact fees. Last, amendments should clearly indicate an ending date for the temporary relaxation and reiterate that permanent entitlement processes will return. These steps assure a smooth implementation, set expectations for current and future uses, and avoid confusion or the need for further Planning Code amendments.

General Plan Compliance

Commerce and Industry Element

Objective 1: Manage Economic Growth and Change to Ensure Enhancement of the Total City Living and Working Environment

Policy 1.1: Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

The proposed Ordinance would conveniently allow a long standing retail use to remain in the North Beach neighborhood. This has net benefits to the neighborhood as the retail use is a source of fiscal and employment benefits.

Objective 2: Maintain and Enhance a Sound and Diverse Economic Base and Fiscal Structure for the City

Policy 2.1: Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

The proposed amendments to the Planning Code help retain a long standing retail use in the City's North Beach neighborhood by easing regulations on relocation in the North Beach Neighborhood Commercial District.

Objective 3: Provide Expanded Employment Opportunities for City Residents, Particularly the Unemployed and Economically Disadvantaged

Policy 3.1: Promote the attraction, retention, and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers

The Ordinance proposes modifications to the North Beach Neighborhood Commercial District land use controls that would help retain a long standing retail use in the City. The retail use, by its nature, provides employment opportunities for unskilled and semi-skilled workers.

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 Planning Code amendments in the proposed Ordinance help to retain a retail use that provides neighborhood-serving goods to the North Beach community.

Implementation

The Department has determined that this Ordinance will impact our current implementation procedures; however the proposed changes can be implemented without increasing permit costs or review time.

RECOMMENDATION

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Clarify the entitlement process to: (a) Exempt a temporarily relocated Liquor Store from neighborhood notification pursuant to Planning Code Sections 311 or 312 and any Development Impact fees associated with the temporary relocation into a new retail tenant space in the North Beach NCD; (b) Require the temporarily relocated Liquor Store to obtain all required site or building permits to occupy the temporary location; and (c) Note that the temporary relocation into the new retail tenant space in the North Beach NCD does not terminate any pre-existing authorized Conditional Uses or result in the change of use in that new retail tenant space.
2. Add language to clarify that a temporarily located Liquor Store not returning to its March 17, 2018 location by November 1, 2021 will be immediately required to secure Conditional Use authorization, conduct notification pursuant to Planning Code Sections 311 or 312, and be subject to any applicable Development Impact Fees.

BASIS FOR RECOMMENDATION

The Department supports the goal of allowing a long standing retail use displaced by fire to continue operation in the North Beach NCD. Amending entitlement and abandonment regulations on a temporary basis is one way to facilitate this. However, it is important that any relaxed controls also contain clear parameters as to the limits and expectations upon beneficiaries. To this end the Department is recommending the following modifications:

Recommendation 1: Clarify the Entitlement process to: (a) Exempt a temporarily relocated Liquor Store from neighborhood notification pursuant to Planning Code Sections 311 or 312 and any Development Impact fees associated with the temporary relocation into a new retail tenant space in the North Beach NCD; (b) Require the temporarily relocated Liquor Store to obtain all required site or

building permits to occupy the temporary location; and (c) Note that the temporary relocation into the new retail tenant space in the North Beach NCD does not terminate any pre-existing authorized Conditional Uses or result in the change of use in that new retail tenant space.

Explicitly listing the entitlement and permitting processes required for temporarily relocating a liquor Store will help Staff facilitate that relocation in a timely manner. It is also important to clarify that pre-existing uses at the site are not changed or terminated as a result of the temporary relocation. This will help Staff expeditiously process entitlements or permits for future permanent tenants at the relocation site.

Recommendation 2: Add language to clarify that a temporarily located Liquor Store not returning to its March 17, 2018 location by March 17, 2021 will be immediately required to secure Conditional Use authorization, conduct notification pursuant to Planning Code Sections 311 or 312, and be subject to any applicable Development Impact Fees.

It is important to set a clear deadline for ending the temporary relocation and returning to the original tenant space. It is also important to clearly state the required entitlement processes should the temporary relocation become permanent. Adding such language to the proposed Ordinance will inform the property owner and Liquor Store owner of expectations and requirements in the future and may help avoid further Planning Code amendments.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

ENVIRONMENTAL REVIEW

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

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 180861