

BOARD of SUPERVISORS



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March 12, 2019

File No. 190248

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

Dear Ms. Gibson:

On March 5, 2019, Supervisor Mandelman introduced the following proposed legislation:

File No. 190248

Ordinance amending the Planning Code to revise the NCT-3 (Moderate-Scale Neighborhood Commercial Transit) District controls to allow Arts Activities, Philanthropic Administrative Services, and Public Facilities as a principal use on all stories, revise the Upper Market Neighborhood Commercial Transit (NCT) District controls to allow Arts Activities and Institutional Uses as a principal use on the first and second stories and as a conditional use on the third story and above and to allow General Entertainment as a principal use on the first and second stories, modify the requirements for liquor stores and bars in the NCT-3 and Upper Market Street NCT Districts, add additional conditional use criteria for liquor stores and require liquor stores to comply with standard location and operating conditions, and add additional uses to the definition of Open Air Sales; 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 adopting findings of public necessity, convenience, and general welfare under 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

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

1 [Planning Code - Uses in the Upper Market NCT and NCT-3 Zoning Districts]

2
3 **Ordinance amending the Planning Code to revise the NCT-3 (Moderate-Scale**
4 **Neighborhood Commercial Transit) District controls to allow Arts Activities,**
5 **Philanthropic Administrative Services, and Public Facilities as a principal use on all**
6 **stories, revise the Upper Market Neighborhood Commercial Transit (NCT) District**
7 **controls to allow Arts Activities and Institutional Uses as a principal use on the first**
8 **and second stories and as a conditional use on the third story and above and to allow**
9 **General Entertainment as a principal use on the first and second stories, modify the**
10 **requirements for liquor stores and bars in the NCT-3 and Upper Market Street NCT**
11 **Districts, add additional conditional use criteria for liquor stores and require liquor**
12 **stores to comply with standard location and operating conditions, and add additional**
13 **uses to the definition of Open Air Sales; affirming the Planning Department's**
14 **determination under the California Environmental Quality Act; making findings of**
15 **consistency with the General Plan, and the eight priority policies of Planning Code,**
16 **Section 101.1; and adopting findings of public necessity, convenience, and general**
17 **welfare under Planning Code, Section 302.**

18 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
19 **Additions to Codes** are in *single-underline italics Times New Roman font*.
20 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
21 **Board amendment additions** are in double-underlined Arial font.
22 **Board amendment deletions** are in ~~strikethrough Arial font~~.
23 **Asterisks (* * * *)** indicate the omission of unchanged Code
24 subsections or parts of tables.

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

Section 1. Findings.

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

6 (b) On _____, the Planning Commission, in Resolution No. _____,
7 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
8 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
9 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
10 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

11 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that
12 these Planning Code amendments will serve the public necessity, convenience, and general
13 welfare for the reasons set forth in Planning Commission Resolution No. _____.

14
15 Section 2. The Planning Code is hereby amended by revising Sections 102, 202.2,
16 303, 752, and 764, to read as follows:

17 **SEC. 102. DEFINITIONS.**

18 * * * *

19 **Liquor Store.** A Retail Sales and Service Use that sells beer, wine, or distilled spirits to a
20 customer in an open or closed container for consumption off the premises and that needs a
21 State of California Alcoholic Beverage Control Board License type 20 (off-sale beer and wine)
22 or type 21 (off-sale general). This classification shall not include retail uses that:

23 * * * *

24 (c) For purposes of Planning Code Sections 249.5, 781.8, 781.9, 782, and 784, the
25 retail uses explicitly exempted from this definition as set forth above shall only apply to

1 General Grocery and Specialty Grocery stores that exceed 5,000 square feet in size and shall
2 not:

3 * * * *

4 (3) sell single servings of beer in container sizes 24 ounces or smaller.

5 Liquor Store uses are subject to the operating conditions of Section 202.2(a)(6). Where conditionally
6 permitted, the Conditional Use authorization shall also satisfy the conditions of Section 303(z).

7 * * * *

8 **Open Air Sales.** A Commercial Use Characteristic generally categorized as a Retail
9 Sales and Service Use that involves open air sale of new and/or used merchandise, except
10 vehicles, but including agricultural products, plants and gardening supplies, building materials,
11 crafts, and/or art work.

12 * * * *

13 **SEC. 202.2. LOCATION AND OPERATING CONDITIONS.**

14 (a) **Retail Sales and Service Uses.** The Retail Sales and Service Uses listed
15 below shall be subject to the corresponding conditions:

16 * * * *

17 (6) Liquor Stores. Liquor Stores, as defined in Section 102, shall comply with the
18 following requirements:

19 (A) The business operator shall maintain the main entrance to the building
20 and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the
21 Department of Public Works Streets and Sidewalk Maintenance Standards, maintained by the
22 Department's Bureau of Street Use and Mapping. In addition, the business operator shall be
23 responsible for daily monitoring of the sidewalk within a one-block radius of the subject business to
24 maintain the sidewalk free of litter associated with the business during business hours in accordance
25 with Article 1, Section 34 of the Police Code.

1
2 (B) The business operator shall provide outside lighting sufficient to
3 illuminate street and sidewalk areas and adjacent parking as appropriate to maintain security, without
4 disturbing area residents.

5 (C) The store frontage shall comply with the visibility requirements of Section
6 145.1(c)(6) and the signage requirements of Article 6 of this Code. In addition, all advertising and
7 signage shall be placed and maintained in a manner that ensures that law enforcement personnel have
8 a clear and unobstructed view of the interior of the premises, including the area in which the cash
9 registers are maintained, from the exterior public sidewalk or entrance to the premises.

10 * * * *

11 **SEC. 303. CONDITIONAL USES.**

12 * * * *

13 (z) Liquor Stores. With regard to the Conditional Use application for a Liquor Store use,
14 the Planning Commission shall consider, in addition to the criteria set forth in subsection (c) above:

15 (A) the existing concentration of Liquor Store uses within 300 feet of the proposed
16 location; and

17 (B) the availability of General Grocery or Specialty Grocery stores in the area
18 selling alcoholic beverages as well as a range of foods.

19 **SEC. 752. NCT-3 – MODERATE-SCALE NEIGHBORHOOD COMMERCIAL TRANSIT**
20 **DISTRICT.**

21 (a) NCT-3 Districts are walkable and transit-oriented moderate- to high-density
22 mixed-use neighborhoods of varying scale concentrated near transit services. The NCT-3
23 Districts are mixed use districts that support neighborhood-serving eCommercial #Uses on
24 lower floors and housing above. These districts are well-served by public transit and aim to
25 maximize residential and commercial opportunities on or near major transit services. The

1 district's form can be either linear along transit-priority corridors, concentric around transit
2 stations, or broader areas where transit services criss-cross the neighborhood. Housing
3 density is limited not by lot area, but by the regulations on the built envelope of buildings,
4 including height, bulk, setbacks, and lot coverage, and standards for Residential Uses,
5 including open space and exposure, and urban design guidelines. Residential parking is not
6 required and generally limited. Commercial establishments are discouraged or prohibited from
7 building accessory off-street parking in order to preserve the pedestrian-oriented character of
8 the district and prevent attracting auto traffic. There are prohibitions on access (i.e. driveways,
9 garage entries) to off-street parking and loading on critical stretches of NC and transit streets
10 to preserve and enhance the pedestrian-oriented character and transit function.

11 (b) NCT-3 Districts are intended in most cases to offer a wide variety of comparison
12 and specialty goods and services to a population greater than the immediate neighborhood,
13 additionally providing convenience goods and services to the surrounding neighborhoods.
14 NCT-3 Districts include some of the longest linear commercial streets in the City, some of
15 which have continuous retail development for many blocks. Large-scale lots and buildings and
16 wide streets distinguish the districts from smaller-scaled commercial streets, although the
17 districts may include small as well as moderately scaled lots. Buildings may range in height,
18 with height limits varying from four to eight stories.

19 (c) NCT-3 building standards permit moderately large eCommercial #Uses and
20 buildings. Rear yards are protected at residential levels.

21 (d) A diversified commercial environment is encouraged for the NCT-3 District, and
22 a wide variety of uses are permitted with special emphasis on neighborhood-serving
23 businesses. Eating and dDrinking, eEntertainment, and financial service uses generally are
24 permitted with certain limitations at the first and second stories. Auto-oriented uses are
25 somewhat restricted. Other retail businesses, personal services and offices are permitted at

all stories of new buildings. Limited storage and administrative service activities are permitted with some restrictions.

(e) Housing development in new buildings is encouraged above the second story. Existing ~~R~~Residential ~~U~~Units are protected by limitations on demolitions and upper-story conversions. Accessory Dwelling Units are permitted within the district pursuant to subsections 207(c)(4) and 207(c)(6) of this Code.

**Table 752. MODERATE-SCALE NEIGHBORHOOD COMMERCIAL TRANSIT
DISTRICT NCT-3
ZONING CONTROL TABLE**

		NCT-3		
Zoning Category	§ References	Controls		
* * * *				
NON-RESIDENTIAL STANDARDS AND USES				
* * * *				
		Controls by Story		
		1st	2nd	3rd+
* * * *				
Entertainment, Arts and Recreation Use Category				
Entertainment, Arts and Recreation Uses*	§ 102	NP	NP	NP
* * * *	* * * *	* * * *	* * * *	* * * *
Arts Activities	§ 102	<u>P NP(5)</u>	<u>P NP(6)</u>	<u>P NP(6)</u>
* * * *	* * * *	* * * *	* * * *	* * * *

Institutional Use Category				
Institutional Uses*	§ 102	P	P	P
Hospital	§ 102	C	C	C
Medical Cannabis Dispensary**	§§ 102, 202.2(e)	DR	DR	NP
<i>Philanthropic Admin. Services</i>	§ 102	NP	NP	NP
<i>Public Facilities</i>	§ 102	C	C	C
* * * *				
Sales and Service Use Category				
Retail Sales and Service Uses*	§§ 102, 202.2(a)	P	P	P
Liquor Store	§ 102	C NP	NP	NP
* * * *	* * * *	* * * *	* * * *	* * * *

* Not listed below

* * * *

~~(5) P in the geographic area described as Flexible Retail Zones in Section 202.9.~~

~~(6) C in the geographic area described as Flexible Retail Zones in Section 202.9.~~

SEC. 764. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.

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

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

* * * *

The Upper Market Street *Transit* *District* controls are designed to promote moderate-scale development which contributes to the definition of Market Street’s design and character. They are also intended to preserve the existing mix of *e*Commercial *#*Uses and maintain the livability of the district and its surrounding residential areas. Large-lot and use development is reviewed for consistency with existing development patterns. Rear yards are protected at all levels. To promote mixed-use buildings, most *e*Commercial *#*Uses are permitted with some limitations above the second story. In order to maintain continuous retail frontage and preserve a balanced mix of *e*Commercial *#*Uses, ground-story neighborhood-serving uses are encouraged, and *e*Eating and *d*Drinking, *e*Entertainment, and financial service uses are limited. Ground floor-commercial space is required along Market and Church Streets. Most *automobile* *Automotive Service* and *d*Drive-*#*Up *Facility* uses are prohibited or conditional.

Housing development in new buildings is encouraged above the *s*Second *s*Story. Existing upper-story *#*Residential *#*Units are protected by limitations on demolitions and upper-story conversions. Accessory Dwelling Units are permitted within the district pursuant to subsections *s* 207(c)(4) *and* 207(c)(6) of this Code.

Table 764. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT ZONING CONTROL TABLE

Upper Market Street NCT		
Zoning Category	§ References	Controls

NON-RESIDENTIAL STANDARDS AND USES				

		Controls by Story		
		1st	2nd	3rd+
Entertainment, Arts and Recreation Use Category				
Entertainment, Arts and Recreation Uses*	§ 102	NP	NP	NP
<i>Amusement Game Arcade</i>	§ 102	C	P	NP
<i>Arts Activities</i>	<u>§ 102</u>	<u>P</u>	<u>P</u>	<u>C</u>
*****	*****	*****	*****	*****
Entertainment, General	§ 102	<u>P</u> C(8)	<u>P</u> NP	NP
*****	*****	*****	*****	*****
Institutional Use Category				
Institutional Uses	§ 102	P	<u>P</u> C	C
*****	*****	*****	*****	*****
<i>Philanthropic Admin. Services</i>	§ 102	NP	NP	NP
<i>Public Facilities</i>	<u>§ 102</u>	<u>C</u>	<u>C</u>	<u>C</u>
*****	*****	*****	*****	*****
Sales and Service Use Category				
Retail Sales and Service Uses*	§§ 102, 202.2(a)	P	P	NP
****	****	****	****	****
Bar	§§ 102, 202.2(a)	C(7)	<u>C</u> NP(7)	NP
****	****	****	****	
Liquor Store	§ 102	<u>C(2)</u>	NP	NP
****	****	****	****	****
Restaurant	§§ 102, 202.2(a)	<u>P</u> C(4)	<u>C(4)</u> NP	NP

1	Restaurant, Limited	§§ 102, 202.2(a)	P	<u>C</u> NP	NP
2	****	****	****	****	****
3	Services, Health	§ 102	<u>C</u> P	P	C
4	****				

5 Not listed below

6 ****

7 (2) ~~[Note deleted.]~~ C not required if selling only beer and wine and not distilled spirits.

8 ****

9 (4) UPPER MARKET STREET LIQUOR LICENSES FOR RESTAURANTS

10 **Boundaries:** Applicable to the Upper Market Street Neighborhood Commercial Transit District.

11 **Controls:** A Restaurant Use may only add a Bar use (ABC license types 47, 49 or 75) as a eConditional #Use on the ground level if, in addition to the criteria set forth in Section 303, the Planning Commission finds that the Restaurant is operating as a Bona Fide Eating Place. Should a Restaurant fail to operate as a Bona Fide Eating Place for any length of time, the eConditional #Use authorization for the Bar use shall be subject to immediate revocation.

12 ****

13 (8) ~~Within the Upper Market Neighborhood Commercial Transit District, up to four mechanical amusement devices are considered an accessory use and up to ten mechanical amusement devices will be considered an Amusement Game Arcade use.~~

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

22 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
 23 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
 24

1 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
2 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
3 additions, and Board amendment deletions in accordance with the "Note" that appears under
4 the official title of the ordinance.

5
6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8 By:


9 JUDITH A. BOYAJIAN
Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Uses in the Upper Market NCT and NCT-3 Zoning Districts]

Ordinance amending the Planning Code to revise the NCT-3 (Moderate-Scale Neighborhood Commercial Transit) District controls to allow Arts Activities, Philanthropic Administrative Services, and Public Facilities as a principal use on all stories, revise the Upper Market Neighborhood Commercial Transit (NCT) District controls to allow Arts Activities and Institutional Uses as a principal use on the first and second stories and as a conditional use on the third story and above and to allow General Entertainment as a principal use on the first and second stories, modify the requirements for liquor stores and bars in the NCT-3 and Upper Market Street NCT Districts, add additional conditional use criteria for liquor stores and require liquor stores to comply with standard location and operating conditions, and add additional uses to the definition of Open Air Sales; 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 adopting findings of public necessity, convenience, and general welfare under Planning Code, Section 302.

Existing Law

- Planning Code Section 102 defines terms used throughout the Code.
- Section 202.2 establishes location and operating conditions for specified uses.
- Section 303 establishes a procedure for considering requests for a Conditional Use authorization and requires the Planning Commission to make specific findings for certain uses.
- Section 752 establishes the NCT-3 (Moderate-Scale Neighborhood Transit District) and contains a Zoning Control Table for specified standards and uses.
- Section 764 establishes the Upper Market Street Neighborhood Commercial Transit District and contains a Zoning Control Table for specified standards and uses.

Amendments to Current Law

- Section 102 is revised to add a requirement that Liquor Store uses are subject to the operating conditions of Section 202.2(a)(6) and the Conditional Use criteria of Section 303(y). It is also revised to add plants and gardening supplies and building materials to the definition of Open Air Sales.
- Section 202.2 is revised to add operating conditions for Liquor Stores.
- Section 303 is revised to add specific Conditional Use criteria for Liquor Stores.
- The NCT-3 Zoning Control Table is revised to allow Arts Activities, Philanthropic Administrative Services, and Public Facilities as Principal Uses on all Stories and a Liquor Store as a Conditional Use on the First Story.

- The Upper Market Street Neighborhood Commercial Transit District Zoning Control Table is revised to allow Arts Activities, Philanthropic Administrative Services, and Public Facilities as a Principal Use on the First and Second Stories and a Conditional Use on the Third Story and above and to not require a Conditional Use authorization for a Liquor Store on the First Story if it only sells beer and wine.

Background Information

Both the City and private sources report increases in commercial storefront vacancies in the Upper Market/Castro District between 2015 and 2017. The City's Office of Economic and Workforce Development (OEWD) reports an increase from 7.2 to 10.2% and the Upper Market/Castro Community Benefit District and neighborhood blog Hoodline report an increase from 8.5 to 12.9% during that period. Most of the reported vacancies by Hoodline for 2017 were on Market Street between Dolores and Castro Streets.

In a Policy Analysis Report issued on March 5, 2019 by the Board of Supervisors Budget and Legislative Analyst, it is reported that Planning Department records show Conditional Use authorization – the most common type of discretionary approval issued in the Upper Market/Castro commercial district between 2015 and 2017 – took an average of 332 days, or nearly one year, to be approved. When combined with obtaining a building permit and approval for construction work performed, the entire process can take over one and a half years for projects requiring both approvals. The associated commercial storefronts are often vacant during this application review and construction time.

The Upper Market/Castro commercial district is subject to more restrictive Conditional Use authorization requirements for commercial development projects than two other comparable commercial areas: Valencia Street and Hayes Valley. Additionally, as the Budget and Legislative Analyst's Report states, it takes 56 days longer for a Conditional Use approval in the Upper Market/Castro district than it does in the Valencia Street and Hayes Valley districts and businesses in the Valencia Street and Hayes Valley districts can open larger spaces without a Conditional Use authorization.

The Budget and Legislative Analyst's Report suggested that the Board of Supervisors propose legislation to reduce the number of projects that require Conditional Use authorizations in the Upper Market/Castro District through Planning Code amendments to make the requirements more like those in other similar commercial corridors such as Hayes Valley and Valencia Street.

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