

[Zoning – Conditional use for change in use or demolition of a general grocery store.]

Ordinance amending the Planning Code to add Section 218.2 and to amend Sections 703.2, 803.2, and 803.3 to require conditional use authorization for any project involving the change in use or demolition of a general grocery store; amending Planning Code Section 790.102 to define general grocery store; amending Planning Code Section 303 to require specific findings as part of a conditional use authorization for a change in use or demolition of a general grocery store; making the legislation apply to specified applications and permits filed on or after September 12, 2006; and making environmental findings and findings of consistency with the General Plan and priority policies of the Planning Code Section 101.1.

Note: Additions are single-underline italics Times New Roman;
deletions are ~~strikethrough italics Times New Roman~~.
Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. General Findings.

(a) San Francisco has a proud tradition of neighborhoods and thriving commercial districts that reflect the diverse character of the city.

(b) Accessible general grocery stores serve as important anchors in many of these neighborhood commercial districts and other zoning districts, helping generate pedestrian traffic critical for the economic vitality of surrounding retail stores, restaurants and other small businesses.

(c) Grocery stores also significantly enhance the quality of life of the City's residents and provide significant benefits and shopping convenience for goods to surrounding residential and commercial uses.

1 (d) San Francisco recently has witnessed a sharp decline in the creation of new
2 grocery stores and has experience a loss in existing grocery stores that have been
3 demolished or changed to other uses.

4 (e) Many of the remaining grocery stores are threatened with potential closures,
5 conversion or demolition in the near future.

6 (f) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this
7 ordinance will serve the public necessity, convenience and welfare for the reasons specified in
8 this legislation and in Planning Commission ~~Motion~~ Resolution Nos. 17337 and 17338, ~~a copy~~
9 copies of which ~~is~~ are in Clerk of the Board of Supervisors File No. _____. Said
10 ~~motion is~~ Resolutions are incorporated herein by reference.

11 (g) Pursuant to Planning Code Section 101.1, this Board of Supervisors finds that this
12 ordinance is consistent with the priority policies of Section 101.1(b) of the Planning Code and
13 the General Plan for the reasons set forth in said Planning Commission ~~Motion~~ Resolution
14 Nos. 17337 and 17338.

15 Section 2. Specific Findings. The Board finds that in order to effectuate this
16 legislation, the Planning Department, prior to Planning Commission action on a conditional
17 use application subject to this Ordinance, should consult with other affected city departments,
18 including, but not limited to, the Mayor's Office of Economic Development, the Mayor's Office
19 of Neighborhood & Community Services, and the Small Business Commission to assist in
20 determining the neighborhood impacts of particular changes in use or demolition of a general
21 grocery store.

22 Section 3. Environmental Findings. The Planning Department has determined that the
23 actions contemplated in this Ordinance are in compliance with the California Environmental
24 Quality Act (California Public Resources Code sections 21000 et seq.). Said determination is
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on file with the Clerk of the Board of Supervisors in File No. _____ and is incorporated herein by reference.

Section 4. The San Francisco Planning Code is hereby amended by adding Section 218.2 to read as follows:

SEC. 218.2. LIMITATION ON CHANGE IN USE OR DEMOLITION OF GENERAL GROCERY STORE USE.

Notwithstanding any other provision of this Article, a change in use or demolition of a general grocery store use, a retail sales use as set forth in Section 218(a) or (b) and as further defined in Section 790.102, shall require conditional use authorization pursuant to Section 303. This Section shall not authorize a change in use if the new use or uses are otherwise prohibited.

Section 5. The San Francisco Planning Code is hereby amended by amending Section 703.2 to read as follows:

SEC. 703.2. USES PERMITTED IN NEIGHBORHOOD COMMERCIAL DISTRICTS.

A use is the specific purpose for which a property or building is used, occupied, maintained, or leased. Whether or not a use is permitted in a specific district is set forth or summarized and cross-referenced in Sections 710.1 through 730.95 of this Code for each district class.

(a) Use Categories. The uses, functions, or activities, which are permitted in each Neighborhood Commercial District class include those listed below by zoning control category and number and cross-referenced to the Code Section containing the definition.

No.	Zoning Control Categories for Uses	Section Number of Use Definition
.24	Outdoor Activity Area	§ 790.70
.25	Drive-up Facility	§ 790.30
.26	Walk-up Facility	§ 790.140
.27	Hours of Operation	§ 790.48

1	.38	Residential Conversion	§ 790.84
2	.39	Residential Demolition	§ 790.86
3	.40	Other Retail Sales and Services	§ 790.102
4	.41	Bar	§ 790.22
5	.42	Full-service Restaurant	§ 790.92
6	.43	Large Fast-Food Restaurant	§ 790.90
7	.44	Small Self-Service Restaurant	§ 790.91
8	.45	Liquor Store	§ 790.55
9	.46	Movie Theater	§ 790.64
10	.47	Adult Entertainment	§ 790.36
11	.48	Other Entertainment	§ 790.38
12	.49	Financial Service	§ 790.110
13	.50	Limited Financial Service	§ 790.112
14	.51	Medical Service	§ 790.114
15	.52	Personal Service	§ 790.116
16	.53	Business or Professional Service	§ 790.108
17	.54	Massage Establishment	§ 790.60
18	.55	Tourist Hotel	§ 790.46
19	.56	Automobile Parking	§ 790.8
20	.57	Automotive Gas Station	§ 790.14
21	.58	Automotive Service Station	§ 790.17
22	.59	Automotive Repair	§ 790.15
23	.60	Automotive Wash	§ 790.18
24	.61	Automobile Sale or Rental	§ 790.12
25	.62	Animal Hospital	§ 790.6

1	.63	Ambulance Service	§ 790.2
2	.64	Mortuary	§ 790.62
3	.65	Trade Shop	§ 790.124
4	.66	Storage	§ 790.117
5	.67	Video Store	§ 790.135
6	.70	Administrative Service	§ 790.106
7	.80	Hospital or Medical Center	§ 790.44
8	.81	Other Institutions, Large	§ 790.50
9	.82	Other Institutions, Small	§ 790.51
10	.83	Public Use	§ 790.80
11	.90	Residential Use	§ 790.88
12	.95	Community Residential Parking	§ 790.10

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14 (b) Use Limitations. The uses permitted in Neighborhood Commercial Districts are
15 either principal, conditional, accessory, or temporary uses as stated in this Section, and
16 include those uses set forth or summarized and cross-referenced in the zoning control
17 categories as listed in Paragraph (a) in Sections 710.1 through 729.95 of this Code for each
18 district class.

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

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4	No. Zoning Control Category
5	.56 Automobile Parking
6	.57 Automotive Gas Station
7	.58 Automotive Service Station
8	.60 Automotive Wash
9	.61 Automobile Sale or Rental
10	.81 Other Institutions, Large (selected)
11	.83 Public Use (selected)
12	.95 Community Residential Parking

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

16 (A) Principal Uses. Principal uses are permitted as of right in a Neighborhood
17 Commercial District, when so indicated in Sections 710.1 through 729.95 of this Code for
18 each district class.

19 (B) Conditional Uses. Conditional uses are permitted in a Neighborhood
20 Commercial District when authorized by the Planning Commission; whether a use is
21 conditional in a given district is indicated in Sections 710.10 through 729.95. Conditional uses
22 are subject to the provisions set forth in Sections 178, 179, 303, and 316 through 316.8 of this
23 Code.

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

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

5 (iii) Notwithstanding any other provision of this Article, a change in use or
6 demolition of a general grocery store use, as defined in Section 790.102(a), shall require conditional
7 use authorization. This Subsection shall not authorize a change in use if the new use or uses are
8 otherwise prohibited.

9 (C) Accessory Uses. Except as prohibited in Section 728 and subject to the
10 limitations set forth below and in Sections 204.1 (Accessory Uses for Dwelling Units in R and
11 NC Districts), 204.4 (Dwelling Units Accessory to Other Uses), and 204.5 (Parking and
12 Loading as Accessory Uses) of this Code, a related minor use which is either necessary to the
13 operation or enjoyment of a lawful principal use or conditional use, or is appropriate, incidental
14 and subordinate to any such use, shall be permitted as an accessory use when located on the
15 same lot. Any use which does not qualify as an accessory use shall be classified as a
16 principal or conditional use, unless it qualifies as a temporary use under Sections 205 through
17 205.2 of this Code.

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

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

23 (ii) Any bar, restaurant, other entertainment, or any retail establishment
24 which serves liquor for consumption on-site;

1 (iii) Any take-out food use, as defined in Section 790.122, except for a take-
2 out food use which occupies 100 square feet or less (including the area devoted to food
3 preparation and service and excluding storage and waiting areas) in a general grocery or
4 specialty grocery store;

5 (iv) Any take-out food use, as defined in Section 790.122, except for a take-
6 out food use operating as a minor and incidental use within a full-service restaurant;

7 (v) The wholesaling, manufacturing or processing of foods, goods, or
8 commodities on the premises of an establishment which does not also use or provide for
9 primarily retail sale of such foods, goods or commodities at the same location where such
10 wholesaling, manufacturing or processing takes place.

11 The foregoing rules shall not prohibit take-out food activity which operates in
12 conjunction with a fast-food restaurant or a self-service restaurant. A fast-food restaurant or a
13 self-service restaurant, by definition, includes take-out food as an accessory and necessary
14 part of its operation.

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

17 (2) Not Permitted Uses.

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

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

(C) The establishment of a use that sells alcoholic beverages, other than beer and wine, concurrent with motor vehicle fuel is prohibited, and shall be governed by Section 229.

Section 6. The San Francisco Planning Code is hereby amended by amending Section 803.2 to read as follows:

SEC. 803.2. USES PERMITTED IN CHINATOWN MIXED USE DISTRICTS.

A use is the specific purpose for which a property or building is used, occupied, maintained, or leased. Whether or not a use is permitted in a specific Chinatown Mixed Use District is set forth, summarized or cross-referenced in Sections 810.1 through 812.96 of this Code for each district class.

(a) Use Categories. The uses, functions, or activities, which are permitted in each Chinatown Mixed Use District class include those listed in Table 803.2 below by zoning control category and numbered and cross-referenced to the Code Section containing the definition.

TABLE 803.2 USE CATEGORIES PERMITTED IN THE CHINATOWN MIXED USE DISTRICTS

No.	Zoning Control Categories for Uses	Section Number of Use Definition
803.2.24	Outdoor Activity Area	§890.71
803.2.25	Drive-up Facility	§890.30
803.2.26	Walk-up Facility	§890.140
803.2.27	Hours of Operation	§890.48

1	803.2.38a	Residential Conversion,	§890.84
2		Residential Hotels	
3	803.2.38b	Residential Demolition,	§890.86
4		Residential Hotels	
5	803.2.39a	Residential Conversion,	§890.84
6		Apartments	
7	803.2.39b	Residential Demolition,	§890.86
8		Apartments	
9	803.2.40a	Other Retail Sales and	§890.102
10		Services	
11	803.2.40b	Gift Store—Tourist-oriented	§890.39
12	803.2.40c	Jewelry	§890.51
13	803.2.41	Bar	§890.22
14	803.2.42	Full-service Restaurant	§890.92
15	803.2.43	Fast-food Restaurant—Small	§890.90
16	803.2.44	Fast-food Restaurant—Large	§890.91
17	803.2.45	Take-out Food	§890.122
18	803.2.46	Movie Theater	§890.64
19	803.2.47	Adult Entertainment	§890.36
20	803.2.48	Other Entertainment	§890.37
21	803.2.49	Financial Service	§890.110
22	803.2.50	Limited Financial Service	§890.112
23	803.2.51	Medical Service	§890.114
24	803.2.52	Personal Service	§890.116
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1	803.2.53	Professional Service	§890.108
2	803.2.54	Massage Establishment	§890.60
3	803.2.55	Tourist Hotel	§890.46
4	803.2.56	Automobile Parking Lot,	§890.9
5		Community Commercial	
6	803.2.57	Automobile Parking Garage,	§890.10
7		Community Commercial	
8	803.2.58	Automobile Parking Lot, Public	§890.11
9	803.2.59	Automobile Parking Garage,	§890.12
10		Public	
11	803.2.60	Automotive Gas Station	§890.14
12	803.2.61	Automotive Service Station	§890.18
13	803.2.62	Automotive Repair	§890.15
14	803.2.63	Automotive Wash	§890.20
15	803.2.64	Automobile Sale or Rental	§890.13
16	803.2.65	Animal Hospital	§890.6
17	803.2.66	Ambulance Service	§890.2
18	803.2.67	Mortuary	§890.62
19	803.2.68	Trade Shop	§890.124
20	803.2.70	Administrative Service	§890.106
21	803.2.71	Light Manufacturing, Wholesale	§890.54
22		Sales or Storage	
23	803.2.73	Business Services	§890.111
24	803.2.80	Hospital or Medical Center	§890.44

1	803.2.81	Other Institutions	\$890.50
2	803.2.82	Public Use	\$890.80
3	803.2.90	Residential Use	\$890.88
4	803.2.95	Automobile Parking Lot, Community Residential	\$890.7
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6	803.2.96	Automobile Parking Garage, Community Residential	\$890.8
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9 (b) Use Limitations. Uses in Chinatown Mixed Use Districts are either permitted,
10 conditional, accessory, temporary, or are not permitted.

11 (1) Permitted Uses. All permitted uses in Chinatown Mixed Use Districts shall
12 be conducted within an enclosed building, unless otherwise specifically allowed in this Code.
13 Exceptions from this requirement are: accessory off-street parking and loading; uses which,
14 when located outside of a building, qualify as an outdoor activity area, as defined in Section
15 890.71 of this Code; and uses which by their nature are to be conducted in an open lot or
16 outside a building, as described in Sections 890 through 890.140 of this Code.

17 If there are two or more uses in a structure and none is classified under Section
18 803.2(b)(1)(C) of this Code as accessory, then each of these uses will be considered
19 separately as an independent permitted, conditional, temporary or not permitted use.

20 (A) Principal Uses. Principal uses are permitted as of right in a Chinatown
21 Mixed Use District, when so indicated in Sections 810.1 through 812.96 of this Code for each
22 district class.

23 (B) Conditional Uses.

24 Conditional uses are permitted in a China-town Mixed Use District when authorized by
25 the Planning Commission; whether a use is conditional in a given district is indicated in

1 Sections 810 through 812. Conditional uses are subject to the provisions set forth in Section
2 303 of this Code.

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

5 (ii) Any use or feature which lawfully existed and was permitted as a principal
6 or conditional use on the effective date of these controls which is not otherwise
7 nonconforming or noncomplying as defined in Section 180 of this Code, and which use or
8 feature is not permitted under this Article is deemed to be a permitted conditional use subject
9 to the provisions of this Code.

10 (iii) Notwithstanding any other provision of this Article, a change in use or
11 demolition of a movie theater use, as set forth in Section 890.64, shall require conditional use
12 authorization. This Subsection shall not authorize a change in use if the new use or uses are
13 otherwise prohibited.

14 (iv) Notwithstanding any other provision of this Article, a change in use or
15 demolition of a general grocery store use, as set forth in Section 890.102(a) and as further defined in
16 Section 790.102(a), shall require conditional use authorization. This Subsection shall not authorize a
17 change in use if the new use or uses are otherwise prohibited.

18 (C) Accessory Uses. Subject to the limitations set forth below and in Sections
19 204.1 (Accessory Uses for Dwelling Units in R Districts) and 204.5 (Parking and Loading as
20 Accessory Uses) of this Code, a related minor use which is either necessary to the operation
21 or enjoyment of a lawful principal use or conditional use or is appropriate, incidental and
22 subordinate to any such use, shall be permitted in Chinatown Mixed Use Districts as an
23 accessory use when located on the same lot. Any use not qualified as an accessory use shall
24 only be allowed as a principal or conditional use, unless it qualifies as a temporary use under
25 Sections 205 through 205.2 of this Code.

1 No use in a Chinatown Mixed Use District will be considered accessory to a
2 principal use which involves or requires any of the following:

3 (i) The use of more than 1/3 of the total floor area occupied by both the
4 accessory use and the principal use to which it is accessory, combined, except in the case of
5 accessory off-street parking;

6 (ii) Any bar, restaurant, other entertainment, or any retail establishment
7 which serves liquor for consumption on-site;

8 (iii) Any take-out food use, except for a take-out food use which occupies 100
9 square feet or less (including the area devoted to food preparation and service and excluding
10 storage and waiting areas) in a retail grocery or specialty food store;

11 (iv) The wholesaling, manufacturing or processing of foods, goods, or
12 commodities on the premises of an establishment which does not also provide for primarily
13 retail sale of such foods, goods or commodities at the same location where such wholesaling,
14 manufacturing or processing takes place.

15 The above shall not prohibit take-out food activity which operates in conjunction
16 with a fast-food restaurant. A fast-food restaurant, by definition, includes take-out food as an
17 accessory and necessary part of its operation.

18 (D) Temporary Uses. Uses not otherwise permitted are permitted in
19 Chinatown Mixed Use Districts to the extent authorized by Sections 205, 205.1 or 205.2 of this
20 Code.

21 (2) Not Permitted Uses.

22 (A) Uses which are not listed in this Article are not permitted in a Chinatown
23 Mixed Use District unless determined by the Zoning Administrator to be permitted uses in
24 accordance with Section 307(a) of this Code.

1 (B) No use, even though listed as a permitted use or otherwise allowed, shall
2 be permitted in a Chinatown Mixed Use District which, by reason of its nature or manner of
3 operation, creates conditions that are hazardous, noxious, or offensive through the emission
4 of odor, fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste, or
5 excessive noise.

6 (C) The establishment of a use that sells alcoholic beverages, other than
7 beer and wine, concurrent with motor vehicle fuel is prohibited, and shall be governed by
8 Section 229.

9 Section 7. The San Francisco Planning Code is hereby amended by amending Section
10 803.3 to read as follows:

11 SEC. 803.3. USES PERMITTED IN SOUTH OF MARKET USE DISTRICTS.

12 (a) Use Categories. A use is the specified purpose for which a property or building
13 is used, occupied, maintained, or leased. Whether or not a use is permitted in a specific South
14 of Market district is generally set forth, summarized or cross-referenced in Sections 813.3
15 through 818 of this Code for each district class.

16 (b) Use Limitations. Uses in South of Market districts are either permitted,
17 conditional, accessory, temporary or are not permitted.

18 (1) Permitted Uses. If there are two or more uses in a structure, any use not
19 classified below under Section 803.3(b)(1)(C) of this Code as accessory will be considered
20 separately as an independent permitted, conditional, temporary or not permitted use.

21 (A) Principal Uses. Principal uses are permitted as of right in a South of
22 Market district, when so indicated in Sections 813 through 818 of this Code for the district.
23 Additional requirements and conditions may be placed on particular uses as provided
24 pursuant to Section 803.5 and other applicable provisions of this Code.

1 (B) Conditional Uses. Conditional uses are permitted in a South of Market
2 district, when authorized by the Planning Commission; whether a use is conditional in a given
3 district is generally indicated in Sections 813 through 818 of this Code. Conditional uses are
4 subject to the applicable provisions set forth in Sections 178, 179, 263.11, 303, 316.8, and
5 803.5 of this Code.

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

8 (ii) Notwithstanding any other provision of this Article, a change in use or
9 demolition of a movie theater use, as set forth in Section 890.64, shall require conditional use
10 authorization. This Section shall not authorize a change in use if the new use or uses are
11 otherwise prohibited.

12 (iii) Notwithstanding any other provision of this Article, a change in use or
13 demolition of a general grocery store use, as set forth in Section 890.102(a) and as further defined in
14 Section 790.102(a), shall require conditional use authorization. This Subsection shall not authorize a
15 change in use if the new use or uses are otherwise prohibited.

16 (C) Accessory Uses. Subject to the limitations set forth below and in Sections
17 204.1 (Accessory Uses for Dwelling Units in R and NC Districts), 204.2 (Accessory Uses for
18 Uses Other Than Dwellings in R Districts), 204.4 (Dwelling Units Accessory to Other Uses),
19 and 204.5 (Parking and Loading as Accessory Uses) of this Code, an accessory use is a
20 related minor use which is either necessary to the operation or enjoyment of a lawful principal
21 use or conditional use, or is appropriate, incidental and subordinate to any such use, and shall
22 be permitted as an accessory use in a South of Market district. In order to accommodate a
23 principal use which is carried out by one business in multiple locations within the same
24 general area, such accessory use need not be located in the same structure or lot as its
25 principal use provided that (1) the accessory use is located within 1,000 feet of the principal

1 use; (2) the multiple locations existed on April 6, 1990 (the effective date of this amendment);
2 and (3) the existence of the multiple locations is acknowledged in writing by the Zoning
3 Administrator within 60 days after the effective date of this amendment. Any use which does
4 not qualify as an accessory use shall be classified as a principal use.

5 No use will be considered accessory to a principal use which involves or
6 requires any of the following:

7 (i) The use of more than one-third of the total occupied floor area which is
8 occupied by both the accessory use and principal use to which it is accessory, combined,
9 except in the case of accessory off-street parking or loading which shall be subject to the
10 provisions of Sections 151, 156 and 157 of this Code;

11 (ii) A hotel, motel, inn, hostel, nighttime entertainment, adult entertainment,
12 massage establishment, large fast food restaurant, or movie theater use in a RED, SPD,
13 RSD, SLR, SLI or SSO District;

14 (iii) Any take-out food use, except for a take-out food use which occupies 100
15 square feet or less (including the area devoted to food preparation and service and excluding
16 storage and waiting areas) in a restaurant, bar, catering establishment, bakery, retail grocery
17 or specialty food store.

18 (iv) Any sign not conforming to the limitations of Section 607.2(f)(3).

19 (D) Temporary Uses. Temporary uses not otherwise permitted are permitted
20 in South of Market Districts to the extent authorized by Sections 205 through 205.3 of this
21 Code.

22 Section 8. The San Francisco Planning Code is hereby amended by amending
23 Section 790.102 to read as follows:

24 SEC. 790.102. SALES AND SERVICES, OTHER RETAIL.
25

1 A retail use which provides goods and/or services but is not listed as a separate zoning
2 category in zoning category numbers .41 through .63 listed in Article 7 of this Code, including,
3 but not limited to, sale or provision of the following goods and services:

4 (a) General groceries. As used herein, general groceries means:

5 (1) An individual retail food establishment that:

6 (A) Exceeds 5,000 gross square feet;

7 (B) Offers a diverse variety of unrelated, non-complementary food and non-
8 food commodities, such as non-alcoholic beverages, dairy, dry goods, fresh produce and other
9 perishable items, frozen foods, household products, and paper goods;

10 (C) Prepares minor amounts or no food on-site for immediate consumption;

11 and

12 (D) Markets the majority of its merchandise at retail prices.

13 (b) Specialty groceries such as cheese, confections, coffee, meat, produce;

14 (c) Pharmaceutical drugs and personal toiletries;

15 (d) Personal items such as tobacco and magazines;

16 (e) Self-service laundromats and dry cleaning, where no portion of a building
17 occupied by such use shall have any opening other than fixed windows and exits required by
18 law within 50 feet of any R District;

19 (f) Household goods and service (including paint, fixtures and hardware, but
20 excluding other building materials);

21 (g) Variety merchandise;

22 (h) Florists and plant stores;

23 (i) Apparel and accessories;

24 (j) Antiques, art galleries and framing service;

25 (k) Home furnishings, furniture and appliances;

1 (l) Books, stationery, music and sporting goods;

2 (m) Toys, gifts, and photographic goods and services; and

3 (n) Retail coffee stores. As used herein, retail coffee store means:

4 (1) A retail drinking use which provides ready-to-drink coffee and/or other
5 nonalcoholic beverages for consumption on or off the premises, which may or may not
6 provide seating. Its intended design is not to serve prepared ready-to-eat food for
7 consumption on or off the premises, except where a conditional use is granted for an
8 exception in the West Portal NED pursuant to the "Specific Provisions for the West Portal
9 District." Such use exhibits the following characteristics:

10 (A) Contains no more than 15 seats with no more than 400 square feet
11 of floor area devoted to seating,

12 (B) A limited menu of beverages prepared on the premises and able to
13 be quickly prepared for consumption on or off the premises,

14 (C) Beverages served in disposable or no disposable containers for
15 consumption on or off the premises,

16 (D) Beverages are ordered and served at a customer service counter,

17 (E) Beverages are paid for prior to consumption,

18 (F) Public service area, including queuing areas and service counters,
19 which counters are designed specifically for the sale and distribution of beverages;

20 (G) Beverages are available upon a short waiting time,

21 (H) Equipment to prepare beverages for consumption,

22 (I) Limited amount of no prepackaged food goods may be served,
23 such as pastries or similar goods,

24 (J) No on-site food preparation, and no equipment to cook or reheat
25 food or prepare meals other than that connected to beverage preparation, except where a

1 conditional use is granted for an exception in the West Portal NED pursuant to the “Specific
2 Provisions for the West Portal District.”

3 (K) Coffee beans, tea, syrups, herbs and other beverage-based
4 products and equipment to make and/ or reconstitute beverages or consume coffee, tea and/
5 or other beverages may be sold.

6 It may include any use permitted for specialty grocery, as defined in
7 Section 790.102(b), but if so, such use shall not include accessory take-out food activity, as
8 described in Section 703.2(b)(1)(C) of this Code, except to the extent permitted by this
9 Subsection 790.102(n). It is distinct and separate from a small self-service or large fast-food
10 restaurant, as defined in Section 790.90 and 790.91 of this Code, or a full-service restaurant
11 as defined in Section 790.92 of this Code.

12 (2) It shall be conducted in accordance with the following conditions:

13 (A) All debris boxes shall be kept in enclosed structures,

14 (B) The operator shall be responsible for cleaning the sidewalk in front
15 of or abutting the building to maintain the sidewalk free of paper or other litter during its
16 business hours, in accordance with Article 1, Section 34 of the San Francisco Police Code,

17 (C) Noise and odors shall be contained within the premises so as not
18 to be a nuisance to nearby residents or neighbors.

19 This Section excludes tourist motels, as distinguished from tourist hotels in Section
20 790.46 of this Code, amusement game arcades as defined in Section 790.4 of this Code and
21 household goods self-storage facilities, which are included in storage as defined in Section
22 790.117 of this Code. It also excludes the sale of heating fuel and the sale or rental of
23 commercial equipment (excluding office equipment) and construction materials, other than
24 paint, fixtures and hardware.

1 Section 9. The San Francisco Planning Code is hereby amended by amending Section
2 303 to read as follows:

3 SEC. 303. CONDITIONAL USES.

4 (a) General. The City Planning Commission shall hear and make determinations
5 regarding applications for the authorization of conditional uses in the specific situations in
6 which such authorization is provided for elsewhere in this Code. The procedures for
7 conditional uses shall be as specified in this Section and in Sections 306 through 306.6,
8 except that Planned Unit Developments shall in addition be subject to Section 304, medical
9 institutions and post-secondary educational institutions shall in addition be subject to the
10 institutional master plan requirements of Section 304.5, and conditional use and Planned Unit
11 Development applications filed pursuant to Article 7, or otherwise required by this Code for
12 uses or features in Neighborhood Commercial Districts, and conditional use applications
13 within South of Market Districts, shall be subject to the provisions set forth in Sections 316
14 through 316.8 of this Code, in lieu of those provided for in Sections 306.2 and 306.3 of this
15 Code, with respect to scheduling and notice of hearings, and in addition to those provided for
16 in Sections 306.4 and 306.5 of this Code, with respect to conduct of hearings and
17 reconsideration.

18 (b) Initiation. A conditional use action may be initiated by application of the owner,
19 or authorized agent for the owner, of the property for which the conditional use is sought.

20 (c) Determination. After its hearing on the application, or upon the recommendation
21 of the Director of Planning if the application is filed pursuant to Sections 316 through 316.8 of
22 this Code and no hearing is required, the City Planning Commission shall approve the
23 application and authorize a conditional use if the facts presented are such to establish:
24
25

1 (1) That the proposed use or feature, at the size and intensity contemplated
2 and at the proposed location, will provide a development that is necessary or desirable for,
3 and compatible with, the neighborhood or the community

4 (A) In Neighborhood Commercial Districts, if the proposed use is to be
5 located at a location in which the square footage exceeds the limitations found in Planning
6 Code § 121.2(a) or 121.2(b), the following shall be considered:

7 (i) The intensity of activity in the district is not such that allowing the larger
8 use will be likely to foreclose the location of other needed neighborhood-servicing uses in the
9 area; and

10 (ii) The proposed use will serve the neighborhood, in whole or in significant
11 part, and the nature of the use requires a larger size in order to function; and

12 (iii) The building in which the use is to be located is designed in discrete
13 elements which respect the scale of development in the district; and

14 (2) That such use or feature as proposed will not be detrimental to the health,
15 safety, convenience or general welfare of persons residing or working in the vicinity, or
16 injurious to property, improvements or potential development in the vicinity, with respect to
17 aspects including but not limited to the following:

18 (A) The nature of the proposed site, including its size and shape, and the
19 proposed size, shape and arrangement of structures;

20 (B) The accessibility and traffic patterns for per-sons and vehicles, the type
21 and volume of such traffic, and the adequacy of proposed off-street parking and loading;

22 (C) The safeguards afforded to prevent noxious or offensive emissions such
23 as noise, glare, dust and odor;

24 (D) Treatment given, as appropriate, to such aspects as landscaping,
25 screening, open spaces, parking and loading areas, service areas, lighting and signs; and

1 (3) That such use or feature as proposed will comply with the applicable
2 provisions of this Code and will not adversely affect the Master Plan; and

3 (4) With respect to applications filed pursuant to Article 7 of this Code, that
4 such use or feature as proposed will provide development that is in conformity with the stated
5 purpose of the applicable Neighborhood Commercial District, as set forth in zoning control
6 category .1 of Sections 710 through 729 of this Code; and

7 (5)(A) With respect to applications filed pursuant to Article 7, Section 703.2(a),
8 zoning categories .46, .47, and .48, in addition to the criteria set forth above in Section
9 303(c)(1—4), that such use or feature will:

10 (i) Not be located within 1,000 feet of another such use, if the proposed use
11 or feature is included in zoning category .47, as defined by Section 790.36 of this Code;
12 and/or

13 (ii) Not be open between two a.m. and six a.m.; and

14 (iii) Not use electronic amplification between midnight and six a.m.; and

15 (iv) Be adequately soundproofed or insulated for noise and operated so that
16 incidental noise shall not be audible beyond the premises or in other sections of the building
17 and fixed-source equipment noise shall not exceed the decibel levels specified in the San
18 Francisco Noise Control Ordinance.

19 (B) Notwithstanding the above, the City Planning Commission may authorize
20 a conditional use which does not satisfy the criteria set forth in (5)(A)(ii) and/or (5)(A)(iii)
21 above, if facts presented are such to establish that the use will be operated in such a way as
22 to minimize disruption to residences in and around the district with respect to noise and crowd
23 control.

24 (C) The action of the Planning Commission approving a conditional use does
25 not take effect until the appeal period is over or while the approval is under appeal.

1 (6) With respect to applications for live/work units in RH and RM Districts
2 filed pursuant to Section 209.9(f) or 209.9(h) of this Code, that:

3 (A) Each live/work unit is within a building envelope in existence on the
4 effective date of Ordinance No. 412-88 (effective October 10, 1988) and also within a portion
5 of the building which lawfully contains at the time of application a nonconforming,
6 nonresidential use;

7 (B) There shall be no more than one live/work unit for each 1,000 gross
8 square feet of floor area devoted to live/work units within the subject structure; and

9 (C) The project sponsor will provide any off-street parking, in addition to that
10 otherwise required by this Code, needed to satisfy the reasonably anticipated auto usage by
11 residents of and visitors to the project.

12 Such action of the City Planning Commission, in either approving or
13 disapproving the application, shall be final except upon the filing of a valid appeal to the Board
14 of Supervisors as provided in Section 308.1.

15 (d) Conditions. When considering an application for a conditional use as provided
16 herein with respect to applications for development of "dwellings" as defined in Chapter 87 of
17 the San Francisco Administrative Code, the Commission shall comply with that Chapter which
18 requires, among other things, that the Commission not base any decision regarding the
19 development of "dwellings" in which "protected class" members are likely to reside on
20 information which may be discriminatory to any member of a "protected class" (as all such
21 terms are defined in Chapter 87 of the San Francisco Administrative Code). In addition, when
22 authorizing a conditional use as provided herein, the City Planning Commission, or the Board
23 of Supervisors on appeal, shall prescribe such additional conditions, beyond those specified in
24 this Code, as are in its opinion necessary to secure the objectives of the Code. Once any
25 portion of the conditional use authorization is utilized, all such conditions pertaining to such

1 authorization shall become immediately operative. The violation of any condition so imposed
2 shall constitute a violation of this Code and may constitute grounds for revocation of the
3 conditional use authorization. Such conditions may include time limits for exercise of the
4 conditional use authorization; otherwise, any exercise of such authorization must commence
5 within a reasonable time.

6 (e) Modification of Conditions. Authorization of a change in any condition previously
7 imposed in the authorization of a conditional use shall be subject to the same procedures as a
8 new conditional use. Such procedures shall also apply to applications for modification or
9 waiver of conditions set forth in prior stipulations and covenants relative thereto continued in
10 effect by the provisions of Section 174 of this Code.

11 (f) Conditional Use Abatement. The Planning Commission may consider the
12 possible revocation of a conditional use or the possible modification of or placement of
13 additional conditions on a conditional use when the Planning Commission determines, based
14 upon substantial evidence, that the applicant for the conditional use had submitted false or
15 misleading information in the application process that could have reasonably had a substantial
16 effect upon the decision of the Commission or the conditional use is not in compliance with a
17 condition of approval, is in violation of law if the violation is within the subject matter
18 jurisdiction of the Planning Commission or operates in such a manner as to create hazardous,
19 noxious or offensive conditions enumerated in Section 202(c) if the violation is within the
20 subject matter jurisdiction of the Planning Commission and these circumstances have not
21 been abated through administrative action of the Director, the Zoning Administrator or other
22 City authority. Such consideration shall be the subject of a public hearing before the Planning
23 Commission but no fee shall be required of the applicant or the subject conditional use
24 operator.

1 (1) The Director of Planning or the Planning Commission may seek a public
2 hearing on conditional use abatement when the Director or Commission has substantial
3 evidence submitted within one year of the effective date of the Conditional Use authorization
4 that the applicant for the conditional use had submitted false or misleading information in the
5 application process that could have reasonably had a substantial effect upon the decision of
6 the Commission or substantial evidence of a violation of conditions of approval, a violation of
7 law, or operation which creates hazardous, noxious or offensive conditions enumerated in
8 Section 202(c).

9 (2) The notice for the public hearing on a conditional use abatement shall be
10 subject to the notification procedure as described in Sections 306.3 and 306.8 except that
11 notice to the property owner and the operator of the subject establishment or use shall be
12 mailed by regular and certified mail.

13 (3) In considering a conditional use revocation, the Commission shall
14 consider whether and how the false or misleading information submitted by the applicant
15 could have reasonably had a substantial effect upon the decision of the Commission, or the
16 Board of Supervisors on appeal, to authorize the conditional use, substantial evidence of how
17 any required condition has been violated or not implemented or how the conditional use is in
18 violation of the law if the violation is within the subject matter jurisdiction of the Planning
19 Commission or operates in such a manner as to create hazardous, noxious or offensive
20 conditions enumerated in Section 202(c) if the violation is within the subject matter jurisdiction
21 of the Planning Commission. As an alternative to revocation, the Commission may consider
22 how the use can be required to meet the law or the conditions of approval, how the
23 hazardous, noxious or offensive conditions can be abated, or how the criteria of Section
24 303(c) can be met by modifying existing conditions or by adding new conditions which could
25 remedy a violation.

1 (4) Appeals. A decision by the Planning Commission to revoke a conditional
2 use, to modify conditions or to place additional conditions on a conditional use or a decision
3 by the Planning Commission refusing to revoke or amend a conditional use, may be appealed
4 to the Board of Supervisors within 30 days after the date of action by the Planning
5 Commission pursuant to the provisions of Section 308.1(b) The Board of Supervisors may
6 disapprove the action of the Planning Commission in an abatement matter by the same vote
7 necessary to overturn the Commission's approval or denial of a conditional use. The Planning
8 Commission's action on a conditional use abatement issue shall take effect when the appeal
9 period is over or, upon appeal, when there is final action on the appeal.

10 (5) Reconsideration. The decision by the Planning Commission with regards
11 to a conditional use abatement issue or by the Board of Supervisors on appeal shall be final
12 and not subject to reconsideration within a period of one year from the effective date of final
13 action upon the earlier abatement proceeding, unless the Director of Planning determines
14 that:

15 (A) There is substantial new evidence of a new conditional use abatement
16 issue that is significantly different than the issue previously considered by the Planning
17 Commission; or

18 (B) There is substantial new evidence about the same conditional use
19 abatement issue considered in the earlier abatement proceeding, this new evidence was not
20 or could not be reasonably available at the time of the earlier abatement proceeding, and that
21 new evidence indicates that the Commission's decision in the earlier proceeding ha not been
22 implemented within a reasonable time or raises significant new issues not previously
23 considered by the Planning Commission. The decision of the Director of Planning regarding
24 the sufficiency and adequacy of evidence to allow the reconsideration of a conditional use
25

1 abatement issue within a period of one year from the effective date of final action on the
2 earlier abatement proceeding shall be final.

3 (g) Hotels and Motels.

4 (1) With respect to applications for development of tourist hotels and motels,
5 the Planning Commission shall consider, in addition to the criteria set forth in Subsections (c)
6 and (d) above:

7 (A) The impact of the employees of the hotel or motel on the demand in the
8 City for housing, public transit, childcare, and other social services. To the extent relevant, the
9 Commission shall also consider the seasonal and part-time nature of employment in the hotel
10 or motel;

11 (B) The measures that will be taken by the project sponsor to employ
12 residents of San Francisco in order to minimize increased demand for regional transportation;
13 and

14 (C) The market demand for a hotel or motel of the type proposed.

15 (2) Notwithstanding the provisions of Sub-sections (f)(1) above, the Planning
16 Commission shall not consider the impact of the employees of a proposed hotel or motel
17 project on the demand in the City for housing where:

18 (A) The proposed project would be located on property under the jurisdiction
19 of the San Francisco Port Commission; and

20 (B) The sponsor of the proposed project has been granted exclusive rights to
21 propose the project by the San Francisco Port Commission prior to June 1, 1991.

22 (3) Notwithstanding the provisions of Subsection (f)(1) above, with respect to
23 the conversion of residential units to tourist hotel or motel use pursuant to an application filed
24 on or before June 1, 1990 under the provisions of Chapter 41 of the San Francisco
25 Administrative Code, the Planning Commission shall not consider the criteria contained in

1 Subsection (f)(1) above; provided, however, that the Planning Commission shall consider the
2 criteria contained in Subsection (f)(1)(B) at a separate public hearing if the applicant applies
3 for a permit for new construction or alteration where the cost of such construction or alteration
4 exceeds \$100,000. Furthermore, no change in classification from principal permitted use to
5 conditional use in Section 216(b)(i) of this Code shall apply to hotels or motels that have filed
6 applications on or before June 1, 1990 to convert residential units to tourist units pursuant to
7 Chapter 41 of the San Francisco Administrative Code.

8 (h) Internet Services Exchange.

9 (1) With respect to application for development of Internet Services
10 Exchange as defined in Section 209.6(c), the Planning Commission shall, in addition to the
11 criteria set forth in Subsection (c) above, find that:

12 (A) The intensity of the use at this location and in the surrounding
13 neighborhood is not such that allowing the use will likely foreclose the location of other
14 needed neighborhood-serving uses in the area;

15 (B) The building in which the use is located is designed in discrete elements,
16 which respect the scale of development in adjacent blocks, particularly any existing residential
17 uses;

18 (C) Rooftop equipment on the building in which the use is located is screened
19 appropriately.

20 (D) The back-up power system for the proposed use will comply with all
21 applicable federal state, regional and local air pollution controls.

22 (E) Fixed-source equipment noise does not exceed the decibel levels
23 specified in the San Francisco Noise Control Ordinance.

24 (F) The building is designed to minimize energy consumption, such as
25 through the use of energy-efficient technology, including without limitation, heating, ventilating

1 and air conditioning systems, lighting controls, natural ventilation and recapturing waste heat,
2 and as such commercially available technology evolves;

3 (G) The project sponsor has examined the feasibility of supplying and, to the
4 extent feasible, will supply all or a portion of the building's power needs through on-site power
5 generation, such as through the use of fuel cells or co-generation;

6 (H) The project sponsor shall have submitted design capacity and projected
7 power use of the building as part of the conditional use application; and

8 (2) As a condition of approval, and so long as the use remains an Internet
9 Services Exchange, the project sponsor shall submit to the Planning Department on an
10 annual basis power use statements for the previous twelve-month period as provided by all
11 suppliers of utilities and shall submit a written annual report to the Department of Environment
12 and the Planning Department which shall state: (a) the annual energy consumption and fuel
13 consumption of all tenants and occupants of the Internet Services Exchange; (b) the number
14 of all diesel generators located at the site and the hours of usage, including usage for testing
15 purposes; (c) evidence that diesel generators at the site are in compliance with all applicable
16 local, regional, state and federal permits, regulations and laws; and (d) such other information
17 as the Planning Commission may require.

18 (3) The Planning Department shall have the following responsibilities
19 regarding Internet Services Exchanges:

20 (A) Upon the effective date of the requirement of a conditional use permit for
21 an Internet Services Exchange, the Planning Department shall notify property owners of all
22 existing Internet Services Exchanges that the use has been reclassified as a conditional use;

23 (B) Upon the effective date of the requirement of a conditional use permit for
24 an Internet Services Exchange, the Planning Department shall submit to the Board of
25 Supervisors and to the Director of the Department of Building Inspection a written report

1 covering all existing Internet Services Exchanges and those Internet Services Exchanges
2 seeking to obtain a conditional use permit, which report shall state the address, assessor's
3 block and lot, zoning classification, square footage of the Internet Services Exchange
4 constructed or to be constructed, a list of permits previously issued by the Planning and/or
5 Building Inspection Departments concerning the Internet Services Exchange, the date of
6 issuance of such permits, and the status of any outstanding requests for permits from the
7 Planning and/or Building Inspection Departments concerning Internet Services Exchange; and

8 (C) Within three years from the effective date of the requirement of a
9 conditional use permit for an Internet Services Exchange, the Planning Department, in
10 consultation with the Department of Environment, shall submit to the Board of Supervisors a
11 written report, which report shall contain the Planning Commission's evaluation of the
12 effectiveness of the conditions imposed on Internet Services Exchanges, and whether it
13 recommends additional or modified conditions to reduce energy and fuel consumption, limit air
14 pollutant emissions, and enhance the compatibility of industrial uses, such as Internet
15 Services Exchanges, located near or in residential or commercial districts.

16 (i) Formula Retail Uses.

17 (1) With respect to an application for a formula retail use as defined in
18 Section 703.3, whenever a conditional use permit is required per Section 703.3(f), the
19 Planning Commission shall consider, in addition to the criteria set forth in Subsection (c)
20 above:

21 (A) The existing concentrations of formula retail uses within the neighborhood
22 commercial district.

23 (B) The availability of other similar retail uses within the neighborhood
24 commercial district.

1 (C) The compatibility of the proposed formula retail use with the existing
2 architectural and aesthetic character of the neighborhood commercial district.

3 (D) The existing retail vacancy rates within the neighborhood commercial
4 district.

5 (E) The existing mix of Citywide-serving retail uses and neighborhood-
6 serving retail uses within the neighborhood commercial district.

7 (j) Large-Scale Retail Uses. With respect to applications for the establishment of
8 large-scale retail uses under Section 121.6, in addition to the criteria set forth in Subsections
9 (c) and (d) above, the Commission shall consider the following:

10 (A) The extent to which the retail use's parking is planned in a manner that
11 creates or maintains active street frontage patterns;

12 (B) The extent to which the retail use is a component of a mixed-use project
13 or is designed in a manner that encourages mixed-use building opportunities;

14 (C) The shift in traffic patterns that may result from drawing traffic to the
15 location of the proposed use; and

16 (D) The impact that the employees at the proposed use will have on the
17 demand in the City for housing, public transit, childcare, and other social services.

18 (k) Movie Theater Uses.

19 (1) With respect to a change in use or demolition of a movie theater use as set
20 forth in Sections 221.1, 703.2(b)(1)(B)(ii), 803.2(b)(2)(B)(iii) or 803.3 (b)(1)(B)(ii), in addition to
21 the criteria set forth in Subsections (c) and (d) above, the Commission shall make the
22 following findings:

23 (A) Preservation of a movie theater use is no longer economically viable and
24 cannot effect a reasonable economic return to the property owner;

1 (i) For purposes of defining “reasonable economic return,” the Planning
2 Commission shall be guided by the criteria for “fair return on investment” as set forth in
3 Section 228.4(a).

4 (B) The change in use or demolition of the movie theater use will not
5 undermine the economic diversity and vitality of the surrounding neighborhood commercial
6 district; and

7 (C) The resulting project will preserve the architectural integrity of important
8 historic features of the movie theater use affected.

9 (l) General Grocery Store Uses.

10 (1) With respect to a change in use or demolition of general grocery store use as set
11 forth in Sections 218.2, 703.2(b)(1)(B)(iii), 803.2(b)(2)(B)(iv) or 803.3 (b)(1)(B)(iii), in addition to the
12 criteria set forth in Subsections (c) and (d) above, the Commission shall make the following findings:

13 (A) Preservation of a general grocery store use is no longer economically viable and
14 cannot effect a reasonable economic return to the property owner. The Commission may disregard the
15 above finding if it finds that the change in use or replacement structure in the case of demolition will
16 contain a general grocery store that is of a sufficient size to serve the shopping needs of nearby
17 residents and offers comparable services to the former general grocery store.

18 (i) For purposes of defining “reasonable economic return,” the Planning Commission
19 shall be guided by the criteria for “fair return on investment” as set forth in Section 228.4(a).

20 (B) The change in use or demolition of the general grocery store use will not
21 undermine the economic diversity and vitality of the surrounding neighborhood.

22 Section 10. This Section is uncoded. This Ordinance shall apply to all permits
23 ~~involving a change in use or demolition to a general grocery store that are filed~~ projects that
24 submit their first application, including an environmental evaluation application or any other
25

1 Planning Department, building permit, or demolition permit application on or after September
2 12, 2006, the initial introduction date of this legislation.

3
4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: _____
7 John D. Malamut
8 Deputy City Attorney
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