

REVISED LEGISLATIVE DIGEST
(Amended in Committee, 7/8/2019)

[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 and Public Facilities as a principal use on all stories and provide that in this District Arts Activities are considered to be active uses; revise the Upper Market Neighborhood Commercial Transit (NCT) District controls to allow Arts Activities as a principal use on all stories, allow Institutional Uses as a principal use on the first and second stories and as a conditional use on the third story and above, allow General Entertainment as a principal use on the first and second stories, delete the note for an existing ground-floor bar, and require a health service use on the first story that is not a licensed community or free clinic to comply with formula retail controls; 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; delete Philanthropic Administrative Services from the Code as a separately-defined Institutional Use; 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.
- Article 7 establishes San Francisco's Neighborhood Commercial and Neighborhood Commercial Transit Districts with Zoning Control Tables listing specified standards and uses, including Section 752 for the NCT-3 (Moderate-Scale Neighborhood Transit District) and Section 764 for the Upper Market Street Neighborhood Commercial Transit District.

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 and to delete Philanthropic Administrative Services as a separately-defined Institutional Use.
- 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, and Public Facilities as Principal Uses on all Stories and a Liquor Store as a Conditional Use on the First Story. If a Liquor Store is selling only beer and wine, it is exempt from the Conditional Use authorization requirement. Arts Activities in this District are considered to be “active uses,” as defined in Planning Code Section 145.1.
- The Upper Market Street Neighborhood Commercial Transit District Zoning Control Table is revised to 1) allow Arts Activities as a Principal Use on all Stories, 2) allow Institutional Uses as a Principal Use on the First and Second Stories and a Conditional Use on the Third Story and above, 3) allow General Entertainment as a Principal Use on the First and Second Stories, 4) not require a Conditional Use authorization for a Liquor Store on the First Story if it only sells beer and wine, 5) delete the note for an existing ground floor Bar and add a note that requires a Health Service use on the first story that is not a licensed community or free clinic to comply with the controls for Formula Retail.
- Philanthropic Administrative Service has been deleted as a separately-defined Institutional Use from all the Article 7 Zoning Control Tables. In the Upper Fillmore Street Neighborhood Commercial District (Section 718), a use that meets the former definition of Philanthropic Administrative Service is included within the General Office use category and is allowed if it meets specific requirements.

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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