

1 [Health, Planning, and Police Codes - Small Business Permit Streamlining]

2

3 **Ordinance to streamline small business permitting by, among other things, amending**

4 **the Health Code to align regulation of restaurant enclosures for outdoor food service**

5 **and restroom requirements with state standards; amending the Planning Code to**

6 **clarify that a Type 2 (winegrower) and Type 23 (small beer manufacturer) liquor**

7 **licenses may be used in conjunction with a Bar or Restaurant use, to amend the**

8 **definition of a Bar to provide for consistent treatment of Type 64 liquor licenses, to**

9 **modify Nighttime Entertainment use food service requirements, to reduce the distance**

10 **measured for Retail Sales and Services uses in Neighborhood Commercial zoning**

11 **districts to anycertain neighborhood commercial districts, to reduce the distance**

12 **measured amend the use limitation provisions for nonconforming uses in RH**

13 **(Residential, House), RM (Residential Mixed), and RTO (Residential, Transit-Oriented)**

14 **districts to anycertain neighborhood commercial districts, to amend the definition of**

15 **General Entertainment to include Amusement Game Arcade, ~~to allow as a permitted~~**

16 **~~use an Outdoor Activity Area operated between 6 a.m. to 10 p.m.,~~to allow mechanical**

17 **amusement games as a principally permitted use on the first story in the Haight Street**

18 **Neighborhood Commercial District, to allow General Entertainment uses on higher**

19 **floors in the Japantown Neighborhood Commercial District, and to allow Limited**

20 **Restaurant use as an Accessory Use, and to revise the Upper Market Neighborhood**

21 **Commercial Transit (NCT) District to allow General Entertainment as a principal use on**

22 **the first and second stories; amending the Police Code to eliminate certain duplicative**

23 **inspections and signoffs in connection with Place of Entertainment permits, and**

24 **amending the definition of Limited Live Performance Locale to remove the requirement**

25 **for food and beverage service; affirming the Planning Department's determination**

1 under the California Environmental Quality Act; and making findings of consistency
2 with the General Plan, and the eight priority policies of Planning Code, Section 101.1,
3 and public necessity, convenience, and welfare findings pursuant to Planning Code,
4 Section 302.

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

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

13 Section 1. Environmental and Land Use Findings.

14 (a) The Planning Department has determined that the actions contemplated in this
15 ordinance comply with the California Environmental Quality Act (California Public Resources
16 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
17 Supervisors in File No. 181211 and is incorporated herein by reference. The Board affirms
18 this determination.

19 (b) On March 7, 2019, the Planning Commission, in Resolution No. 20401, adopted
20 findings that the actions contemplated in this ordinance are consistent, on balance, with the
21 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board
22 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
23 Board of Supervisors in File No. 181211, and is incorporated herein by reference.

24 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
25 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
in Planning Commission Resolution No. 20401, and the Board incorporates such reasons

1 herein by reference. A copy of Planning Commission Resolution No. 20401 is on file with the
2 Clerk of the Board of Supervisors in File No. 181211.

3
4 Section 2. Background, Purpose, and General Findings.

5 (a) In February 2018, the Office of Economic and Workforce Development
6 published “State of the Retail Sector: Challenges and Opportunities for San Francisco’s
7 Neighborhood Commercial Districts” (the “Retail Study”). Prepared by Strategic Economics,
8 the Retail Study included briefs studying: the national restructuring of the retail, restaurant,
9 and personal services industries; the factors required to support successful San Francisco
10 retail districts; and opportunities, costs, and challenges for retail, restaurant, and personal
11 services businesses in San Francisco, and the adaptations that businesses are making in
12 response to changing conditions.

13 (b) The Retail Study identified a national trend in retail stores seeking to experiment
14 with new strategies to capitalize on increasing consumer demand for experiences, as
15 opposed to objects. The Retail Study observed that, to remain competitive with e-commerce
16 businesses, retailers are increasingly seeking to incorporate food and drink sales, events, and
17 classes into their businesses, and noted a number of San Francisco businesses
18 experimenting with diverse offerings.

19 (c) While San Francisco possesses many competitive advantages that benefit local
20 retailers and restaurants, the Retail Study observed that a significant number of neighborhood
21 commercial districts are experiencing an increase in vacancy rates. The Retail Study also
22 found that San Francisco businesses face challenges connected to the City’s land use
23 regulations and permitting requirements, which can add significant cost and time to the
24 process of opening a new business and may limit retailers’ flexibility to adapt to changing
25 economic conditions.

1 (d) San Francisco's nightlife and entertainment sector is an integral part of the City's
2 vibrant commercial corridors. Nightlife and entertainment businesses attract tourists and
3 residents to the City's diverse neighborhoods. The Retail Study found that nightlife and
4 entertainment uses complement neighborhood retail sales and services by providing
5 destinations and gathering spaces for potential retail customers.

6 (e) According to the U.S. Bureau of Labor Statistics, the nightlife and entertainment
7 sector in San Francisco in 2017 was comprised of 3,715 restaurants, bars, live music venues,
8 nightclubs, and other performance spaces with 63,695 employees citywide.

9 (f) A 2016 analysis by the Controller's Office found that nightlife generated \$6
10 billion in consumer spending in 2015. The nightlife sector paid approximately \$80 million in
11 local taxes in 2015, including \$60 million in sales tax and \$20 million in payroll and gross
12 receipts taxes.

13 (g) Despite these significant contributions to the local economy, nightlife and
14 entertainment businesses often face zoning barriers, burdensome permitting requirements,
15 and duplicative inspections. Legislation to address these challenges will reduce storefront
16 vacancies, improve the permitting process for small businesses, enable retailers to engage in
17 creative strategies to attract customers and diversify revenues, and support the health of San
18 Francisco's commercial corridors.

19
20 Section 3. Article 8 of the Health Code is hereby amended by revising Sections 412
21 and 440.5, to read as follows:

22 **SEC. 412. WIRE SCREENS, ETC., IN PLACES WHERE FOOD IS SOLD.**

23 It shall be unlawful for any person, firm, association, or corporation engaged in
24 maintaining, conducting, carrying on, or managing a restaurant place, kitchen, meat market,
25 fruit store, vegetable store, delicatessen store, bakery store, street vendor's store, or any

1 other place in which or where food is prepared, sold, or disposed of for human consumption,
2 to maintain, conduct, carry on, or manage said place or store, except in the manner provided
3 for in this Section 412.

4 It shall be unlawful for any person, firm, association, or corporation to maintain,
5 conduct, carry on, or manage a restaurant place or kitchen where foodstuffs are cooked, or
6 prepared, ~~sold or disposed of~~ for human consumption, unless the doors, windows, apertures, or
7 other openings to the ~~premises or~~ place where ~~said restaurant or kitchen is conducted, maintained,~~
8 ~~carried on or managed~~ food preparation occurs are effectively enclosed with finely woven wire
9 mesh screens. Dining areas and bars are not required to be enclosed, provided that no food
10 preparation occurs there other than adding ingredients to a beverage or dispensing into a serving
11 container when the beverage is prepared for immediate service in response to an individual consumer
12 order.

13 * * * *

14
15 **SEC. 440.5. TOILET AND HANDWASHING FACILITIES TO BE PROVIDED.**

16 (a) Every ~~food establishment~~ permanent food facility, as defined in Section ~~27520113849~~ of
17 the California Health and Safety Code, must provide toilet and handwashing facilities for use
18 by employees. ~~Every such establishment as to which construction or substantial reconstruction or~~
19 ~~rehabilitation is commenced on or after September 1, 1986, selling food for the purpose of immediate~~
20 ~~consumption without the reasonable expectation of further preparation or addition to other foods, shall~~
21 ~~make such toilet and handwashing facilities available for use by patrons without charge and.~~ Every
22 permanent food facility shall provide clean toilet facilities in good repair for consumers, guests, or
23 invitees if there is onsite consumption of food or if the permanent food facility was constructed after
24 July 1, 1984, and has more than 20,000 square feet of floor space. In addition, such toilet facilities
25 shall comply with the Plumbing Code of the City and County of San Francisco.

1 ~~—(b) Provisions of this Section shall not apply to roadside stands, food establishments which~~
2 ~~are open to outside air or businesses which primarily sell at retail, meat, poultry and their by products.~~

3 **(b)** For purposes of this Section 440.5, “onsite consumption of food” means the
4 consumption of food, provided by a permanent food facility to patrons or guests, at or within the facility
5 or within an area operated or controlled by the facility. A permanent food facility that does not offer
6 onsite consumption of food may not have on its premises any dining tables, dining chairs, dining
7 counters, or dining standing-tables.

8
9 Section 4. The Planning Code is hereby amended by revising Sections 102, 445.2,
10 145.4, 186, 303.1, 703, 710, ~~744~~, 712, 713, 714, 719, 721, 728, 754, ~~757, 758~~, 759, 760, 764,
11 780.3, and 781.9, to read as follows:

12 **SEC. 102. DEFINITIONS.**

13 * * * *

14 ~~**Amusement Game Arcade.** A Retail Entertainment Arts and Recreation Use that provides eleven or~~
15 ~~more amusement game devices such as video games, pinball machines, or other such similar~~
16 ~~mechanical and electronic amusement devices, in a quantity which exceeds that specified in Section~~
17 ~~1036.23 of the Police Code as an Ancillary Use. Mechanical amusement devices are further regulated~~
18 ~~in Sections 1036 through 1036.24 of the Police Code.~~

19 * * * *

20 **Arts Activities.** A retail Entertainment, Arts and Recreation Use that includes performance,
21 exhibition (except exhibition of films), rehearsal, production, post-production and some
22 schools of any of the following: Dance, music, dramatic art, film, video, graphic art, painting,
23 drawing, sculpture, small-scale glassworks, ceramics, textiles, woodworking, photography,
24 custom-made jewelry or apparel, and other visual, performance, and sound arts and craft. It
25 shall exclude accredited Schools and Post-Secondary Educational Institutions. It shall include

1 commercial arts and art-related business service uses including, but not limited to, recording
2 and editing services, small-scale film and video developing and printing; titling; video and film
3 libraries; special effects production; fashion and photo stylists; production, sale, and rental of
4 theatrical wardrobes; and studio property production and rental companies. Arts spaces shall
5 include studios, workshops, archives, and theaters, and other similar spaces customarily used
6 principally for arts activities, exclusive of a Movie Theater, ~~Amusement Game Arcade~~ arcades that
7 provide eleven or more amusement game devices, Adult Business, and any other establishment
8 where liquor is customarily served during performances.

9 * * * *

10 **Bar.** A Retail Sales and Service Use that provides on-site alcoholic beverage sales for
11 drinking on the premises, including bars serving beer, wine, and/or liquor to the customer
12 where no person under 21 years of age is admitted (with Alcoholic Beverage Control [ABC]
13 license types ~~02, 23, 42, 48, or 61~~) ~~and~~ drinking establishments serving beer where minors
14 are present (with ABC license types 40 or 60) in conjunction with other uses such as Movie
15 Theaters and General Entertainment, and bars serving wine operated by licensed
16 winegrowers (with ABC license type 02). Such businesses shall operate with the specified
17 conditions in Section 202.2(a). A non-profit theater that provides on-site alcoholic beverage sales
18 only for consumption by ticket-holding patrons on the premises, with ABC license type 64, shall not be
19 considered a Bar use.

20 * * * *

21 **Bona Fide Eating Place.** A place that is regularly and in a bona fide manner used and kept
22 open for the service of meals to guests for compensation and that has suitable kitchen
23 facilities connected therewith, containing conveniences for cooking of an assortment of foods
24 that may be required for ordinary meals.

25

1 (a) "Meals" shall mean an assortment of foods commonly ordered at various hours of the
2 day for breakfast, lunch, or dinner. Incidental food service, comprised only of appetizers to
3 accompany drinks, is not considered a meal. Incidental, sporadic, or infrequent sales of meals
4 or a mere offering of meals without actual sales is not compliance.

5 (b) "Guests" shall mean persons who, during the hours when meals are regularly served
6 therein, come to a bona fide public eating place for the purpose of obtaining, and actually
7 order and obtain at such time, in good faith, a meal therein. Nothing in this section, however,
8 shall be construed to require that any food be sold or purchased with any beverage.

9 (c) Actual and substantial sales of meals are required, during the normal days and meal
10 hours that a bona fide public eating place is open, provided that "normal days of operation"
11 shall mean a minimum of five days a week and "normal hours" of operation for meal service
12 shall mean approximately 7:00 a.m. to 11:00 a.m. if open for breakfast; 11:00 a.m. to 2:00
13 p.m. if open for lunch; or 5:00 p.m. to 10:00 p.m. if open for dinner.

14 (d) The premises must be equipped and maintained in good faith. This means the
15 premises must possess working refrigeration and cooking devices, pots, pans, utensils, table
16 service, condiment dispensers, menus, signs, and enough goods to make substantial meals.
17 The premises must comply with all regulations of the Department of Public Health.

18 (e) A minimum of 51 percent of the restaurant's gross receipts shall be from food sales
19 prepared and sold to guests on the premises. Records of the restaurant's gross receipts shall
20 be provided to the Department upon request.

21 (f) A "bona fide eating place" does not include an Adult Business as defined in this Section
22 of the Code.

23 (g) Paragraphs (c) and (e) above do not apply to For a place that has also established a
24 Nighttime Entertainment Use and that only provides on-site alcoholic beverage sales for
25 consumption by ticket-holding patrons on the premises during the normal hours of operation

1 of entertainment activities, paragraphs (c) and (e) do not apply, but actual and
2 substantial sales of meals are required during the normal hours of operation. For
3 purposes of this paragraph, the “normal hours of operation” shall include two hours prior to,
4 and one hour after, entertainment activities, but may not exceed eight total hours in a calendar
5 day. This paragraph (g) does not apply to a place located in the Broadway
6 Neighborhood Commercial District, North Beach Neighborhood Commercial District,
7 Pacific Avenue Neighborhood Commercial District, or Polk Street Neighborhood
8 Commercial District.

9 * * * *

10 **Entertainment, General.** A Retail Entertainment, Arts and Recreation Use that provides
11 entertainment or leisure pursuits to the general public including dramatic and musical
12 performances where alcohol is not served during performances, arcades that provide eleven or
13 more amusement game devices (such as video games, pinball machines, or other such similar
14 mechanical and electronic amusement devices), billiard halls, bowling alleys, skating rinks, and
15 mini-golf, when conducted within a completely enclosed building, and which is adequately
16 soundproofed or insulated so as to confine incidental noise to the premises. Mechanical
17 amusement devices are further regulated in Sections 1036 through 1036.24 of the Police Code.

18 * * * *

19 **Entertainment, Arts and Recreation Use.** A Use Category that includes ~~Amusement Game~~
20 ~~Arcade,~~ Arts Activities, General Entertainment, Livery Stables, Movie Theater, Nighttime
21 Entertainment, Open Recreation Area, Outdoor Entertainment, Passive Outdoor Recreation
22 and Sports Stadiums. Adult Business is not included in this definition, except for the purposes
23 of Development Impact Fee Calculation as described in Article 4.

24 * * * *

25 ///

1 **Restaurant.** A Retail Sales and Service use that serves prepared, ready-to-eat cooked foods
 2 to customers for consumption on the premises and which has seating. As a minor and
 3 incidental use, it may serve such foods to customers for off-site consumption. It may provide
 4 on-site beer, wine, and/or liquor sales for drinking on the premises (with ABC license types 02,
 5 23, 41, 47, 49, 59, ~~or 75,~~ or 87); however, if it does so, it shall be required to operate as a
 6 Bona Fide Eating Place. It is distinct and separate from a Limited-Restaurant. Such
 7 businesses shall operate with the specified conditions in Section 202.2(a)(1). It shall not be
 8 required to operate within an enclosed building so long as it is also a Mobile Food Facility. A
 9 business that is both a Restaurant use and a Nighttime Entertainment use shall not be
 10 required to operate as a Bona Fide Eating Place. Any associated outdoor seating and/or
 11 dining area is subject to regulation as an Outdoor Activity Area as set forth elsewhere in this
 12 Code.

13 * * * *

14
 15 **SEC. 145.4. REQUIRED GROUND FLOOR COMMERCIAL USES.**

16 * * * *

17 **Table 145.4**

Reference for Commercial, Neighborhood Commercial, and Residential- Commercial Districts	Reference for Mixed Use Districts	Use
102-N/A	890.4	Amusement Game Arcade
* * * *		

25 * * * *

1 **SEC. 186. EXEMPTION OF LIMITED COMMERCIAL AND INDUSTRIAL**
2 **NONCONFORMING USES IN RH, RM, RTO, AND RED DISTRICTS.**

3 The purpose of this Section 186 is to provide for the further continuance in RH, RM,
4 RTO, and RED Districts of nonconforming uses of a limited commercial and industrial
5 character, as herein described, which are beneficial to, or can be accommodated within, the
6 residential areas in which they are located. It is hereby found and declared that, despite the
7 general incompatibility of nonconforming uses with the purposes of this Code, and with other
8 nearby uses, these limited commercial uses may be tolerated in residential areas, and tend to
9 provide convenience goods and services on a retail basis to meet the frequent and recurring
10 needs of neighborhood residents within a short distance of their homes or, within the South of
11 Market RED Districts, tend to provide jobs and continuation of small scale service and light
12 industrial activities. These uses tend to be small in scale, to serve primarily a walk-in trade,
13 and cause a minimum of interference with nearby streets and properties. Accordingly, this
14 Section recognizes the public advantages of these uses and establishes conditions for their
15 continued operation.

16 (a) **Exemption from Termination Provisions.** The following nonconforming uses in R
17 Districts shall be exempt from the termination provisions of Section 185, provided such uses
18 comply with all the conditions specified in subsection (b) below:

19 (1) Any nonconforming use at any Story in an RTO, RH₁ or RM District which is located
20 more than one-quarter of one mile~~300 feet one-fourth mile~~ from the nearest Named
21 Neighborhood Commercial District ~~or Restricted Use Subdistrict~~ described in Article 7 of this
22 Code **or any of the Restricted Use Subdistricts specified in subsection (3) below**, and
23 which complies with the use limitations specified for the First Story and below of an NC-1
24 District, as set forth in Section 710 of this Code.

25 ///

1 (2) Any nonconforming use in an RTO, RH₁ or RM District which is located within one-
2 quarter of one mile~~300 feet one-fourth mile~~ from any Individual Area Neighborhood
3 Commercial District ~~or restricted use subdistrict~~ **or any of the Restricted Use Subdistricts**
4 **specified in subsection (3) below** and which complies with the most restrictive use
5 limitations specified for the First Story and below of:

6 (A) an NC-1 District, as set forth in Section 710 of this Code; or

7 (B) ~~any~~ the nearest Named Neighborhood Commercial District within one-quarter of
8 one mile~~300 feet one-fourth mile~~ of the use, as set forth in Sections 714 through 748 and 753
9 through 764 of this Code; ~~or~~ or

10 ~~— (C) Any Restricted Use Subdistrict within one-fourth mile of the use, as set forth in Sections 781~~
11 ~~through 781.7 of this Code.~~

12 **(C) Any of the specified Restricted Use Subdistricts specified in subsection (3)**
13 **below.**

14 **(3) Subsections (a)(1) and (a)(2) above apply to the following Restricted Use**
15 **Subdistricts: the Geary Boulevard Formula Retail Pet Supply Store and Formula Retail**
16 **Eating and Drinking Subdistrict set forth in Section 781.4 of this Code; the North Beach**
17 **Financial Service, Limited Financial Service, and Business or Professional Service**
18 **Subdistrict set forth in Section 781.6 of this Code; the Lower Polk Street Alcohol**
19 **Restricted Use District set forth in Section 788 of this Code; and the Third Street**
20 **Formula Retail Restricted Use District set forth in Section 786 of this Code; and the**
21 **Mission Street Formula Retail Restaurant Subdistrict as set forth in Section 781.5 of**
22 **this Code.**

23 **(34)** In the RE81.5 Districts, any nonconforming use which is a personal service use
24 falling within zoning category 816.31; home and business service use falling within zoning
25 categories 816.42 through 816.47; live/work unit falling within zoning category 816.55;

1 wholesale sales, storage, or light manufacturing uses falling within zoning categories 816.64
2 through 816.67.

3 (b) **Conditions on Limited Nonconforming Uses.** The limited nonconforming uses
4 described above shall meet the following conditions:

5 (1) The building shall be maintained in a sound and attractive condition, consistent with
6 the general appearance of the neighborhood;

7 (2) Any signs on the property shall be made to comply with the requirements of Section
8 606(c) of this Code for Limited Commercial uses;

9 (3) The hours during which the use is open to the public shall be limited to the period
10 between 6:00 a.m. and 10:00 p.m.;

11 (4) Public sidewalk space may be occupied in connection with the use provided that it is
12 ~~only~~ occupied only with tables and chairs as permitted by this Municipal Code;

13 (5) Truck loading shall be limited in such a way as to avoid undue interference with
14 sidewalks, or with crosswalks, bus stops, hydrants, and other public features;

15 (6) Noise, odors, and other nuisance factors shall be adequately controlled; and

16 (7) All other applicable provisions of this Code shall be complied with.

17 (c) **Formula Retail Uses.** All uses meeting the definition of "formula retail" use per Section
18 303.1 shall not be permitted except by conditional use authorization under the procedures of
19 Section 303 of this Code.

20 (d) **Street Frontage.** In addition to the requirements of Section 144 of this Code, the
21 requirements of Section 145.1(c)(6) and (7) shall apply.

22 (e) **Awnings.** Awnings are permitted, subject to the standards in Section 136.1(a) of this
23 Code. Canopies and marquees are not permitted.

24 (f) **Termination.** Any use affected by this Section 186 which does not comply with all of the
25 conditions herein specified shall be subject to termination in accordance with Section 185 at

1 the expiration of the period specified in that Section, but shall be qualified for consideration as
2 a conditional use under Section 185(e). Any such use which is in compliance with such
3 conditions at the expiration of such period but fails to comply therewith at any later date shall
4 be subject to termination when it ceases to comply with any of such conditions.

5 (g) **Reactivation.** Limited commercial uses in RH, RM, RTO, and RED Districts that have
6 been discontinued or abandoned, as defined in Section 183, may be reactivated with
7 conditional use authorization under Section 303. In approving such a use and in addition to
8 the findings required by Section 303, the Planning Commission shall find that:

9 (1) the subject space is located on or below the ground floor and was in commercial or
10 industrial use prior to January 1, 1960; and

11 (2) the proposed commercial use meets all the requirements of this ~~s~~Section 186 and
12 other applicable sections of this Code.

13 (h) **Other Applicable Provisions.** The provisions for nonconforming uses contained in
14 Sections 180 through 183 shall continue to apply to all uses affected by this Section 186,
15 except that the cost limit for structural alterations contained in Section 181(b)(4) shall not be
16 applicable thereto.

17

18 **SEC. 303.1. FORMULA RETAIL USES.**

19 * * * *

20 (c) **"Retail Sales or Service Activity or Retail Sales or Service Establishment."** For the
21 purposes of this Section 303.1, a retail sales or service activity or retail sales or service
22 establishment shall include the following uses whether functioning as a Principal or Accessory
23 Use, as defined in Articles 1, 2, 7, and 8 of this Code:

24 * * * *

- 25 - Amusement Game Arcade ~~§§ 102,~~ 890.4;

1 * * * *

2
3 **SEC. 703. NEIGHBORHOOD COMMERCIAL DISTRICT REQUIREMENTS.**

4 * * * *

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

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

13 (1) The use of more than one-third of the total floor area occupied by such use and the
14 Principal or Conditional use to which it is accessory, except in the case of accessory off-street
15 parking and loading and as specified in subsection (d)(3) below as accessory wholesaling,
16 manufacturing, or processing of foods, goods, or commodities;

17 (2) Any Bar or Restaurant, or any other retail establishment which serves liquor for
18 consumption on-site; however, this shall not prohibit take-out food activity which operates in
19 conjunction with a Limited Restaurant, Restaurant, General Grocery, and Specialty Grocery;

20 *This shall also not prohibit a Limited Restaurant as an Accessory Use to a permitted Principal or*
21 *Conditional Use except as specified in subsection (d)(7) below;*

22 (3) The wholesaling, manufacturing, or processing of foods, goods, or commodities on
23 the premises of an establishment that does not also use or provide for retail sale of such
24 foods, goods, or commodities at the same location where such wholesaling, manufacturing, or
25 processing takes place, with the following exceptions:

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

(B) Notwithstanding the floor area limitation in subsection (d)(1), a Catering Use limited to food and beverage Catering shall be permitted as an Accessory Use to Limited Restaurants if the following requirements are met:

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

(ii) The Catering Use does not distribute or deliver individual meals to customers directly from the subject lot, either by its own means, or through a third-party delivery service.

(4) Any retail Liquor Store.

(5) Medical Cannabis Dispensaries.

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

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

* * * *

SEC.710. NC-1—NEIGHBORHOOD COMMERCIAL CLUSTER DISTRICT.

* * * *

**Table 710. NEIGHBORHOOD COMMERCIAL CLUSTER DISTRICT NC-1
ZONING CONTROL TABLE**

		Neighborhood Commercial Cluster NCT-1
Zoning Category	§ References	Controls
* * * *		
NON-RESIDENTIAL USES		Controls by Story

		1st	2nd	3rd
1	***			
2				
3	Liquor Store	§ 102	P(6)(9)	NP
4	***			

* Not listed below

(1) Additional 5 feet for NC-1 parcels with a Commercial use on the ground floor within the following areas:

(a) Within the boundaries of Sargent Street to Orizaba Avenue to Lobos Street to Plymouth Avenue to Farellones Street to San Jose Avenue to Alemany Boulevard to 19th Avenue to Randolph Street to Monticello Street and back to Sargent Street.

(b) On Noriega, Irving, Taraval, and Judah Streets west of 19th Avenue.

(2) **P if located more than one quarter of one mile from the Inner Clement Street Commercial District, the Outer Clement Street Commercial District, the Geary Boulevard Formula Retail Pet Supply Store and Formula Retail Eating and Drinking Subdistrict, the Noriega Street Neighborhood Commercial District, the Irving Street Neighborhood Commercial District, the Judah Street Neighborhood Commercial District, the Taraval Street Neighborhood Commercial District, the Broadway Neighborhood Commercial District, the North Beach Neighborhood Commercial District, the Pacific Avenue Neighborhood Commercial District, the Polk Street Neighborhood Commercial District, the North Beach Financial Service, Limited Financial Service, and Business or Professional Service Subdistrict, the Lower Polk Street Alcohol Restricted Use District, the 24th Street – Noe Valley Neighborhood Commercial District, the Third Street Formula Retail Restricted Use District, and Mission Street Neighborhood**

1 **Commercial Transit District, and the Mission Street Formula Retail Restaurant**
2 **Subdistrict; otherwise, same as more restrictive control within that Named**
3 **Neighborhood Commercial District or Restricted Use Subdistrict.** P if located more
4 than *¼ mile 300 feet* from any **other** NC District *or Restricted Use Subdistrict* with more
5 restrictive controls; otherwise, same as more restrictive control.

6 (3) TARAVAL STREET RESTAURANT SUBDISTRICT. Applicable only for the Taraval
7 Street NC-1 District between 40th and 41st Avenues and between 45th and 47th Avenues
8 as mapped on Sectional Maps 5 SU and 6 SU. **Within the Taraval Street Restaurant**
9 **Subdistrict, R**estaurants and Limited Restaurants are C; Formula Retail Restaurants
10 and **Formula Retail Limited**Restaurants are NP; **Formula Retail Restaurants**
11 **and Formula Retail Limited Restaurants are NP if located within one quarter of one**
12 **mile from the Taraval Street Restaurant Subdistrict.**

13 * * * *

14 **(9) C within that portion of the City and County bounded as follows: commencing at the**
15 **intersection of Arguello Boulevard and Frederick Street, then proceeding southerly along**
16 **Arguello Boulevard to Carl Street, then proceeding easterly along Carl Street to Hillway**
17 **Avenue, then proceeding southerly along Hillway Avenue to Parnassus Avenue, then**
18 **proceeding easterly along Parnassus Avenue to Clayton Street, then proceeding northerly**
19 **along Clayton Street to Frederick Street, then proceeding easterly along Frederick Street**
20 **to Buena Vista Avenue West, then proceeding generally northerly along Buena Vista**
21 **Avenue West to Haight Street, then proceeding easterly along Haight Street to Baker**
22 **Street, then proceeding northerly along Baker Street to Oak Street, then proceeding**
23 **westerly along Oak Street to Stanyan Street, then proceeding southerly along Stanyan**
24 **Street to Frederick Street, then proceeding westerly along Frederick Street to the point of**
25 **commencement.**

1 * * *

2
3 **SEC. 712. NC-3 – MODERATE-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT.**

4 * * * *

5 **Table 712. MODERATE-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT NC-3**
6 **ZONING CONTROL TABLE**

7 * * * *

Zoning Category	§ References	Controls		
* * * *				
NON-RESIDENTIAL STANDARDS				
* * * *				
NON-RESIDENTIAL USES		Controls by Story		
		1st	2nd	3rd
* * * *				
<i>Amusement Game Arcade</i>	§ 102	€	NP	NP
Entertainment, General	§ 102	P	P	NP
* * * *				

20
21 **SEC. 713. NC-S – NEIGHBORHOOD COMMERCIAL SHOPPING CENTER DISTRICT.**

22 * * * *

23 **Table 713. NEIGHBORHOOD COMMERCIAL SHOPPING CENTER DISTRICT NC-S**
24 **ZONING CONTROL TABLE**

25 * * * *

	Zoning Category	§ References	Controls		
1					
2	* * * *				
3	NON-RESIDENTIAL STANDARDS				
4					
5	* * * *				
6	NON-RESIDENTIAL USES		Controls by Story		
7			1st	2nd	3rd
8	* * * *				
9	<i>Amusement Game Arcade</i>	§ 102	€	NP	NP
10	Entertainment, General	§ 102	P(1)	P(1)	NP
11	* * * *				

SEC. 714. BROADWAY NEIGHBORHOOD COMMERCIAL DISTRICT.

* * * *

**Table 714. BROADWAY NEIGHBORHOOD COMMERCIAL DISTRICT
ZONING CONTROL TABLE**

* * * *

	Zoning Category	§ References	Controls		
18					
19	* * * *				
20					
21	NON-RESIDENTIAL STANDARDS AND USES				
22					
23	* * * *				
24			Controls by Story		
25			1st	2nd	3rd
	* * * *				

1	<i>Amusement Game Arcade</i>	§ 102	€	NP	NP
2	Entertainment, General	§ 102	P	P	NP
3	* * * *				

5 **SEC. 719. HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

6 * * * *

7 **Table 719. HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT**
8 **ZONING CONTROL TABLE**

9 * * * *

Zoning Category	§ References	Controls		
* * * *				
NON-RESIDENTIAL STANDARDS AND USES				
* * * *				
Controls by Story				
		1st	2nd	3rd
Entertainment, Arts, and Recreation Use Category				
* * * *				
<i>Amusement Game Arcade</i>	§ 102	<i>P</i>	<i>P</i>	<i>NP</i>
Entertainment, General	§ 102	<u>C(8)</u>	NP	NP
* * * *				

22 * * * *

23 *(8) Within the Haight Street Neighborhood Commercial District, that portion of an General*
24 *Entertainment use comprised of mechanical amusement game devices will be considered an*
25 *Amusement Game Arcade Use, for the purposes of the Planning Code.*

1 (8) Within the Haight Street Neighborhood Commercial District, a General Entertainment use
 2 comprised of mechanical amusement game devices is principally permitted on the first story.

3 * * * *

4 **SEC. 721. JAPANTOWN NEIGHBORHOOD COMMERCIAL DISTRICT.**

5 * * * *

6 **Table 721. JAPANTOWN NEIGHBORHOOD COMMERCIAL DISTRICT**
 7 **ZONING CONTROL TABLE**

8 * * * *

Zoning Category	§ References	Controls		
NON-RESIDENTIAL STANDARDS AND USES				
* * * *				
<i>Amusement Game Arcade</i>	§ 102	<i>P</i>	<i>P</i>	<i>P</i>
Entertainment, General	§ 102	P(2)	P(2)	<u>PG</u> (2)
* * * *				

18 **SEC. 728. 24TH STREET-NOE VALLEY NEIGHBORHOOD COMMERCIAL DISTRICT.**

19 * * * *

20 **Table 728. 24TH STREET-NOE VALLEY NEIGHBORHOOD COMMERCIAL DISTRICT**
 21 **ZONING CONTROL TABLE**

		24TH STREET-NOE VALLEY NEIGHBORHOOD COMMERCIAL DISTRICT NCT
Zoning Category	§ References	Controls
* * * *		

1 * * * *

2 (4) 24TH STREET – NOE VALLEY SPECIALTY RETAIL USES

3 **Boundaries:** Only the area within the 24th Street – Noe Valley Neighborhood Commercial
4 District. The controls shall not apply to NC-1 Districts within 300 feet or nonconforming uses
5 within ~~1/4 mile~~ 300 feet one quarter of one mile of this District as set forth in Code §§ 710-10
6 and 186.

7 **Controls:** Formula Retail Limited-Restaurants are NP.

8 * * * *

9 **SEC. 754. MISSION STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.**

10 * * * *

11 **Table 754. MISSION STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT**
12 **ZONING CONTROL TABLE**

13 * * * *

Zoning Category	§ References	Controls		
NON-RESIDENTIAL STANDARDS AND USES				
* * * *				
Entertainment, Arts, and Recreation Use Category				
* * * *				
<i>Amusement Game Arcade</i>	§ 102	€	<i>NP</i>	<i>NP</i>
Arts Activities	§ 102	P(4)	P	C
* * * *				

23 **SEC. 759. DIVISADERO STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.**

24 * * * *

1 **Table 759. DIVISADERO STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT**
 2 **ZONING CONTROL TABLE**

3 * * * *

Zoning Category	§ References	Controls		
NON-RESIDENTIAL STANDARDS AND USES				
* * * *				
<i>Amusement Game Arcade</i>	§ 102	€	NP	NP
Entertainment, General	§ 102	P	P(2)	NP
* * * *				

11 **SEC. 760. FILLMORE STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.**

12 * * * *

13 **Table 760. FILLMORE STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT**
 14 **ZONING CONTROL TABLE**

15 * * * *

Zoning Category	§ References	Controls		
NON-RESIDENTIAL STANDARDS AND USES				
* * * *				
<i>Amusement Game Arcade</i>	§ 102	€	NP	NP
Entertainment, General	§ 102	P	P	NP
* * * *				

1 **SEC. 764. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT**
 2 **DISTRICT.**

3 * * * *

4 **Table 764. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT**
 5 **DISTRICT**
 6 **ZONING CONTROL TABLE**

7 * * * *

Zoning Category	§ References	Controls		
NON-RESIDENTIAL STANDARDS AND USES				
* * * *				
<i>Amusement Game Arcade</i>	§ 102	C	P	NP
Entertainment, General	§ 102	C (8) <u>P</u>	<u>NPP</u>	NP
* * * *				

15 * * * *

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

20 **SEC. 780.3. NORTH BEACH SPECIAL USE DISTRICT.**

21 * * * *

- 22 (c) **Controls.** The following provisions shall apply within such District:
- 23 (1) **Restaurants, Limited Restaurants, and Bars.** Restaurant, Limited Restaurant, and
 24 Bar uses may be permitted as a Conditional Use on the First Story through the procedures set
 25 forth in Section 303 only if the Zoning Administrator first determines that the proposed new

1 Restaurant, Limited Restaurant, or Bar would occupy a space that is currently or was last
2 legally occupied by one of the uses described below; provided that its last use has not been
3 discontinued or abandoned pursuant to Sections 186.1(d) or 178(d) of this Code and that the
4 proposed new use will not enlarge the space; and provided further that no Conditional Use
5 shall be required if the use remains the same as the prior authorized use, with no enlargement
6 or intensification of use that the following shall apply;²

7 (A) A Bar may occupy a space that is currently or last legally occupied by a Bar;

8 (B) A Restaurant may occupy a space that is currently or was last legally occupied by a
9 Restaurant or Bar; and

10 (C) A Limited Restaurant may occupy a space that is currently or was last legally
11 occupied by a Limited Restaurant, Restaurant or Bar.

12 (D) Except as provided herein, no other use shall be allowed to convert to a Limited
13 Restaurant, Restaurant or Bar.

14 (2) **Alcohol Licenses.** A Restaurant may provide on-site beer, wine, and/or liquor sales
15 for drinking on the premises (with ABC license types 02, 23, 41, 47, 49, 59 or 75) as a
16 Conditional Use on the First Story if, in addition to the criteria set forth in Section 303, the
17 Planning Commission finds, based on information submitted to the Department by the
18 applicant, that the Restaurant is and will continue to operate as a Bona-Fide Eating Place as
19 defined in Section 102. Should a Restaurant fail to operate as a Bona-Fide Eating Place for
20 any length of time, the Conditional Use authorization shall be subject to immediate revocation
21 per Planning Code Section 303(f). To verify that the Restaurant is continuing to operate as a
22 Bona-Fide Eating Place, records of the Restaurant's gross receipts, showing that a minimum
23 of 51% of its gross receipts within the last year preceding the Department's request is from
24 food sales prepared and sold to guests on the premises, shall be provided to the Department
25 upon request. All records and information shall be submitted to the Department under penalty

1 of perjury.

2 * * * *

3

4 **SEC. 781.9. HAIGHT STREET ALCOHOL RESTRICTED USE SUBDISTRICT.**

5 * * * *

6 (b) **Boundaries.** The Haight Street Alcohol Restricted Use Subdistrict (Haight Street Alcohol
7 RUSD) is coterminous with the Haight Street Neighborhood Commercial District as
8 designated on Sectional Maps ZN06 and ZN07-7. The Haight Street Alcohol RUSD is
9 designated on Sectional Maps SU06 and SU07. *These controls shall also apply within 1/4 mile of*
10 *the Haight Street Alcohol RUSD to nonconforming Commercial Uses in R Districts pursuant to Section*
11 *186 and in NC-1 Districts pursuant to Section 710 of this Code.*

12 * * * *

13

14 ~~Section 5. Amendment of Specific Zoning Control Tables. Zoning Control Tables 712,~~
15 ~~713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 725, 726, 729, 730, 731, 732, 733,~~
16 ~~734, 750, 751, 752, 753, 754, 755, 756, 759, 760, 761, 762, 763, and 764 are hereby~~
17 ~~amended identically to the amendment of Zoning Control Table 711 in Section 4 of this~~
18 ~~ordinance, to provide in the "Controls" column that an Outdoor Activity Area is P if located in~~
19 ~~front of building or if operated between 6 a.m. and 10 p.m.; C if located elsewhere and if~~
20 ~~operated between 10 p.m. and 6 a.m.~~

21 Section 56. Article 15.1 of the Police Code is hereby amended by revising Sections
22 1060 and 1060.2 to read as follows:

23 **SEC. 1060. DEFINITIONS.**

24 For the purposes of this Article 15.1, unless otherwise provided in this Article, the
25 following words and phrases shall mean:

1 * * * *

2 Limited Live Performance Locale.” A locale with all the following features:

3 (a) The presentation of Live Performances is a secondary purpose of the locale
4 rather than its primary purpose.

5 (b) The locale is indoors, or consists of an outdoor plaza, courtyard, or similar
6 space, enclosed by surrounding buildings, with or without open means of public ingress and
7 egress, with an area in which Live Performances are presented that is no greater than 200
8 square feet. For purposes of this provision, “outdoor plaza, courtyard, or similar space” also
9 shall include, regardless of the square footage of the Live Performance area, (1) any Plaza as
10 identified in Administrative Code Chapter 94 or (2) any People Place as identified in
11 Administrative Code Chapter 94A.

12 (c) Live Performances presented at the locale conclude by 10 p.m., except as
13 otherwise provided in Section 1060.38.1.

14 (d) The locale is not a Private Residence.

15 (e) Patrons or members are admitted to the locale, ~~which serves food, beverages,~~
16 ~~or food and beverages, including but not limited to alcoholic beverages, for consumption on the~~
17 ~~premises,~~ except this requirement shall not apply to a Plaza as identified in Administrative
18 Code Chapter 94 or a People Place as identified in Administrative Code Chapter 94A.

19 * * * *

20
21 **SEC. 1060.2. FILING APPLICATION AND NOTICE TO OTHER CITY DEPARTMENTS FOR**
22 **PLACE OF ENTERTAINMENT PERMIT.**

23 (a) Every Person seeking a Place of Entertainment permit or an amendment to a
24 permit shall file an application with the Entertainment Commission upon a form provided by
25 the Entertainment Commission and shall pay a filing fee as provided in Section 2.26 of this

1 Code.

2 (b) The Director shall send the application to the *following departments, which San*
3 *Francisco Police Department, Fire Department, Department of Building Inspection, Department of*
4 *Public Health, and Planning Department. Those departments* shall complete all necessary
5 inspections *or approvals* and *shall endeavor to* report their determinations to the Entertainment
6 Commission within 20 City business days of receiving the application:

7 (1) *The Police Department;*

8 (2) *The Planning Department;*

9 (3) *The Department of Building Inspection, except that this subsection (b)(3) shall not*
10 *apply if the Person provides evidence of the completion of a final inspection for an issued building*
11 *permit for the premises, as required by Chapter 1A of the San Francisco Building Code, if the*
12 *inspection was completed in the 12 months before the date of the Person's application for a Place of*
13 *Entertainment Permit;*

14 (4) *The Department of Public Health, except that this subsection (b)(4) shall not apply*
15 *if the Person provides evidence of a permit to operate a food preparation and service establishment on*
16 *the premises, as required by Article 8 of the Health Code, current as of the date of the Person's*
17 *application for a Place of Entertainment Permit; and*

18 (5) *The Fire Department, except that this subsection (b)(5) shall not apply if the Person*
19 *provides evidence of a place of assembly permit for the premises, as required by Chapter 1 of the San*
20 *Francisco Fire Code, current as of the date of the Person's application for a Place of Entertainment*
21 *Permit.*

22 Section 6. Changes to Ordinance. When originally introduced, this ordinance
23 included proposed changes to Planning Code Section 145.2 to modify when a Commercial
24 Use of an Outdoor Activity Area would be principally permitted, and also included proposed
25 changes to the zoning control tables in Planning Code Sections 710, 711, 728, 757, and 758.

1 to correspond to the proposed change to Section 145.2. At its meeting on June 24, 2019, the
2 Land Use and Transportation Committee amended the ordinance to remove the proposed
3 changes to Planning Code Section 145.2, and also to remove the corresponding proposed
4 changes to the zoning control tables in Sections 710, 711, 728, 757, and 758. Accordingly,
5 this ordinance no longer contains any amendment of Section 145.2, or any amendment of the
6 zoning control tables in Sections 711, 757, and 758, and the amendments of the zoning
7 control tables in Sections 710 and 728 contain no reference relating to Outdoor Activity Areas.

8
9 Section 7. Effective Date. This ordinance shall become effective 30 days after
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
12 of Supervisors overrides the Mayor’s veto of the ordinance.

13
14 Section 8. Scope of Ordinance. With the exception of the amendments to Zoning
15 Control Tables in Section 5 of this ordinance, in enacting this ordinance, the Board of
16 Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections,
17 articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the
18 Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board
19 amendment additions, and Board amendment deletions in accordance with the “Note” that
20 appears under the official title of the ordinance.

21 Section 9. Undertaking for the General Welfare. In enacting and implementing this
22 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
23 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is
24 liable in money damages to any person who claims that such breach proximately caused injury.

25 ///

1 Section 10. Severability. If any section, subsection, sentence, clause, phrase, or word of
2 this ordinance, or any application thereof to any person or circumstance, is held to be invalid or
3 unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect
4 the validity of the remaining portions or applications of the ordinance. The Board of Supervisors
5 hereby declares that it would have passed this ordinance and each and every section, subsection,
6 sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to
7 whether any other portion of this ordinance or application thereof would be subsequently declared
8 invalid or unconstitutional.

9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12
13 By: _____
14 EILEEN K. CHAUVET
15 Deputy City Attorney
16 n:\legana\as2019\1800687\01380640.docx