

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

July 2, 2020

File No. 200673

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

Dear Ms. Gibson:

On June 23, 2020, Supervisor Peskin submitted the following legislation:

File No. 200673

Ordinance amending the Planning Code to allow certain Limited Restaurants in the North Beach Neighborhood Commercial District to convert to Restaurants that may apply for liquor licenses; and affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

1 [Planning Code - Conversion of Certain Limited Restaurants to Restaurants - North Beach
2 Neighborhood Commercial District]

3 **Ordinance amending the Planning Code to allow certain Limited Restaurants in the**
4 **North Beach Neighborhood Commercial District to convert to Restaurants that may**
5 **apply for liquor licenses; and affirming the Planning Department’s determination under**
6 **the California Environmental Quality Act; and making findings of consistency with the**
7 **General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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

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

16 Section 1. Findings. The Board of Supervisors of the City and County of San
17 Francisco hereby finds and determines that:

18 (a) The Planning Department has determined that the actions contemplated in this
19 ordinance comply with the California Environmental Quality Act (California Public Resources
20 Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of
21 Supervisors in File No. _____, and is incorporated herein by reference. The Board affirms
22 this determination.

23 (b) On _____, the Planning Commission, in Resolution No. _____, adopted
24 findings that the actions contemplated in this ordinance are consistent, on balance, with the
25 City’s General Plan and eight priority policies of Planning Code Section 101.1. The Board

1 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
2 Board of Supervisors in File No. _____, and is incorporated herein by reference.

3 (c) On _____, the Planning Commission, in Resolution No. _____,
4 approved this legislation, recommended it for adoption by the Board of Supervisors, and
5 adopted findings that it will serve the public necessity, convenience and welfare. Pursuant to
6 Planning Code Section 302, the Board adopts these findings as its own. A copy of said
7 Resolution is on file with the Clerk of the Board of Supervisors in File No. _____, and is
8 incorporated herein by reference herein.

9

10 Section 2. The Planning Code is hereby amended by revising Sections 722 and 780.3,
11 to read as follows:

12

13 **SEC. 722. NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT.**

14 * * * *

15 (6) NORTH BEACH LIQUOR LICENSES FOR RESTAURANTS (Section 780.3): A
16 Restaurant Use may only add ABC license types 02, 23, 41, 47, 49, 59 or 75 as a Conditional
17 Use on the First Story if, in addition to the criteria set forth in Section 303, the Planning
18 Commission finds that the Restaurant is operating as a Bona Fide Eating Place as defined in
19 Section 102. Should a Restaurant fail to operate as a Bona Fide Eating Place for any length of
20 time, the Conditional Use authorization shall be subject to immediate revocation. To verify that
21 the Restaurant is continuing to operate as a Bona Fide Eating Place, records of the
22 Restaurant's gross receipts, showing that a minimum of 51% of its gross receipts within the
23 last year is from food sales prepared and sold to guests on the premises, shall be provided to
24 the Department upon request. All records and information shall be submitted to the
25 Department under penalty of perjury.

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

2 * * * *

3 (c) Controls. The following provisions shall apply within such District:

4 * * * *

5 (2) Alcohol Licenses.

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

19 (B) Subject to the requirements set forth in this subsection (B), a Limited
20 Restaurant that existed as of March 1, 2020, may apply for a permit to convert to Restaurant use within
21 three months after the effective date of the ordinance in Board File No. _____ . The application to
22 convert to Restaurant Use shall include records submitted under penalty of perjury showing that the
23 Limited Restaurant has operated as a Bona Fide Eating Place for at least four full calendar months
24 between March 1, 2019 and February 29, 2020. The Department shall reject the application if the
25 records do not support the application for such conversion; otherwise, it shall approve it. If the

1 application to convert is approved, Restaurant Use shall be principally permitted, including for
2 purposes of being eligible to apply for a Conditional Use Authorization to permit the sale of alcohol on
3 the premises under Section 780.3(c)(2)(A). This subsection 780.3(c)(2)(B) shall expire three months
4 after the effective date of the ordinance in Board File No. _____, and the City Attorney shall
5 thereafter cause this subsection to be removed from the Planning Code and the remaining subsections
6 of this Section 780.3 to be renumbered accordingly.

7 * * * *

8
9 Section 3. 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 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
18 additions, and Board amendment deletions in accordance with the "Note" that appears under
19 the official title of the ordinance.

20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By: /s/ Andrea Ruiz-Esquide
23 ANDREA RUIZ-ESQUIDE
24 Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning Code - Conversion of Certain Limited Restaurants to Restaurants - North Beach Neighborhood Commercial District]

Ordinance amending the Planning Code to allow certain Limited Restaurants in the North Beach Neighborhood Commercial District to convert to Restaurants that may apply for liquor licenses; and affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Existing Law

The Planning Code defines a Restaurant as “[a] Retail Sales and Service use that serves prepared, ready-to-eat cooked foods to customers for consumption on the premises and which has seating. (...) It may provide on-site beer, wine, and/or liquor sales for drinking on the premises (with ABC [California Alcoholic Beverage Control Board] license types 02, 23, 41, 47, 49, 59, 75, or 87) (...).” It specifically states that a restaurant is “distinct and separate from a Limited-Restaurant. A Limited Restaurant, in turn, is “[a] Retail Sales and Service Use that serves ready-to-eat foods and/or drinks to customers for consumption on or off the premises, that may or may not have seating. (...) It includes, but is not limited to, foods provided by sandwich shops, coffee houses, pizzerias, ice cream shops, bakeries, delicatessens, and confectioneries (...). It shall not provide on-site beer and/or wine sales for consumption on the premises, but may sell beer and/or wine for consumption off the premises,” with an ABC license.

In the North Beach Neighborhood Commercial District, Restaurants may add a liquor license from the ABC to provide on-site beer, wine and/or liquor by applying for a Conditional Use permit from the Planning Commission, subject to some the requirement that the Restaurant show that it is a Bona Fide Eating Place as defined in the Planning Code. Under the Code, a “Bona Fide Eating Place” is “[a] place that is regularly and in a bona fide manner used and kept open for the service of meals to guests for compensation and that has suitable kitchen facilities connected therewith, containing conveniences for cooking of an assortment of foods that may be required for ordinary meals.” Limited Restaurants, on the other hand, currently cannot request a Conditional Use permit to add a liquor license.

Amendments to Current Law

This ordinance would amend the controls for the North Beach Neighborhood Commercial District to allow Limited Restaurants in that district that existed as of March 1, 2020, to apply for a permit to convert to Restaurant use within three months after the effective date of the ordinance. If the application to convert is approved, the Restaurant use shall be principally permitted, including for purposes of being eligible to apply for a Conditional Use Authorization

FILE NO. 200673

to permit the sale of alcohol on the premises, in the same manner Restaurants are currently allowed to do it. The ordinance expires three months after its effective date.

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