



SAN FRANCISCO PLANNING DEPARTMENT

January 21, 2010

Ms. Angela Calvillo, Clerk
Board of Supervisors
City and County of San Francisco
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**Re: Transmittal of Planning Department Case Number 2009.1066T:
24th Street-Noe Valley NCD: Eating Uses
Board File Number 09-1208
Planning Commission Recommendation: Approval**

Dear Ms. Calvillo,

On January 14th, the San Francisco Planning Commission (hereinafter "Commission") conducted duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance.

The proposed Ordinance would amend would amend the 24th Street-Noe Valley NCD Sections 728.1, 728.42 (full-service restaurants), 728.44 (small self-service restaurants), and 728.69A (specialty food, self-service) to allow new full-service restaurants, small self-service restaurants, and self-service specialty food establishments with a Conditional Use authorization.

The proposed zoning changes have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2).

At the January 14th hearing, the Commission voted to recommend approval of the proposed Ordinance .

Please find attached documents relating to the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John Rahaim".

John Rahaim
Director of Planning

cc: Supervisor Dufty

Attachments (one copy of the following):

Planning Commission Resolution No. 18010

Planning Commission Executive Summary for Case No. 2009.1066T



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18010 HEARING DATE: JANUARY 14, 2009

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Project Name: **Amendments relating to the 24th Street-Noe Valley NCD:
Eating Uses**

Case Number: 2009.1066T [Board File No. 09-1208]

Initiated by: Supervisor Dufty / Introduced October 20, 2009

Staff Contact: Tara Sullivan, Legislative Affairs
tara.sullivan@sfgov.org, 415-558-6257

Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395

Recommendation: **Recommend Approval**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND THE 24TH STREET-NOE VALLEY NCD ("24TH-NOE NCD") PLANNING CODE SECTIONS 728.1 (ZONING CONTROL TABLE), 728.42 (FULL-SERVICE RESTAURANTS), 728.44 (SMALL SELF-SERVICE RESTAURANTS), AND 728.69A (SPECIALTY FOOD, SELF-SERVICE) TO ALLOW NEW FULL-SERVICE RESTAURANTS, SMALL SELF-SERVICE RESTAURANTS, AND SELF-SERVICE SPECIALTY FOOD ESTABLISHMENTS WITH A CONDITIONAL USE AUTHORIZATION.

PREAMBLE

Whereas, on October 20, 2009, Supervisor Dufty introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 09-1208 which would amend the 24th Street-Noe Valley NCD ("24th-Noe NCD") Sections 728.1 (Zoning Control Table), 728.42 (full-service restaurants), 728.44 (small self-service restaurants), and 728.69A (specialty food, self-service) to allow new full-service restaurants, small self-service restaurants, and self-service specialty food establishments with a Conditional Use authorization; and

Whereas, on January 14, 2010, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the proposed zoning changes have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2); and

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties; and

Whereas, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

Whereas, the Commission has reviewed the proposed Ordinance; and

MOVED, that the Commission hereby recommends that the Board of Supervisors recommends *approval of the proposed Ordinance* and adopts the attached Draft Resolution to that effect.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The 24th Street –Noe Valley NCD Controls have not been substantially revised since their adoption in 1987;
2. The 24th Street –Noe Valley NCD prohibits the opening of any new full-service restaurant and small self-service restaurant. Under Section 179(a) of the Planning Code, those full-service restaurants and small self-service restaurants which lawfully existed on the effective date of Ordinance No. 69-87, enacting the 24th Street –Noe Valley NCD, are either nonconforming or conditional uses and permitted to remain in use;
3. A Self-Service Specialty Food establishment is a new use definition that was enacted in December 2008. New self-service specialty food establishments are also prohibited in the 24th Street –Noe Valley NCD;
4. Since the establishment of the 24th Street –Noe Valley NCD in 1987, several restaurants have closed and have not been replaced with neighborhood-servicing businesses. In addition, there has been a shift in recent years more towards food and drink facilities as being integral components of a thriving neighborhood. The result of the prohibition of new restaurants has resulted in an accumulation of demand for these types of establishments;
5. In December 2009, there are approximately 15 vacant storefronts along 24th Street;
6. The proposed Ordinance would allow a proposed full-service restaurant, small self-service restaurant, or a specialty food, self-service establishment to apply for a Conditional Use Authorization in the 24th-Noe NCD;

7. Such new full-service restaurants, small self-service restaurants and/or Self-service specialty food establishments will attract patrons who would support existing and future local businesses within the 24th-Noe NCD.
8. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

I. COMMERCE & INDUSTRY ELEMENT

THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN SETS FORTH OBJECTIVES AND POLICIES THAT ADDRESS THE BROAD RANGE OF ECONOMIC ACTIVITIES, FACILITIES, AND SUPPORT SYSTEMS THAT CONSTITUTE SAN FRANCISCO'S EMPLOYMENT AND SERVICE BASE.

GOALS

THE THREE GOALS OF THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN RELATE TO CONTINUED ECONOMIC VITALITY, SOCIAL EQUITY, AND ENVIRONMENTAL QUALITY.

OBJECTIVE 6

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

POLICY 6.2

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

The proposed Ordinance promotes small business enterprises by fostering the growth of full-service restaurants, small self-service restaurants, and specialty food, self-service establishments in the 24th-Noe NCD.

POLICY 6.3

Preserve and promote the mixed commercial-residential character in neighborhood commercial districts. Strike a balance between the preservation of existing affordable housing and needed expansion of commercial activity.

The proposed Ordinance promotes the mixed commercial-residential character in the 24th-Noe NCD by allowing a limited number of new full-service restaurants, small self-service restaurants, and specialty food, self-service establishment uses via a Conditional Use Authorization that will serve the residents in the neighborhood and contribute to the mix of businesses in the 24th-Noe NCD.

POLICY 6.10

Promote neighborhood commercial revitalization, including community-based and other economic development efforts where feasible.

The character of the 24th-Noe NCD has changed over the past 20 years. There are approximately 15 vacant storefronts along 24th Street and permitting a limited number of new full-service restaurants, small self-service restaurants, and specialty food, self-service establishment uses through the conditional use authorization process, should help address the vacancy issue along the 24th-Noe NCD. The proposed Ordinance seeks to remedy the existing conditions while also accommodating the demand for full-service restaurants, small self-service restaurants, and specialty food, self-service establishment uses for residents in the 24th-Noe NCD.

9. The proposed replacement project is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed Ordinance will encourage neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses in the 24th-Noe NCD by allowing new eating and drinking uses through the Conditional Use Authorization process.

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed legislation contains requires the Planning Commission to use the conditional use criteria when evaluating each proposed full-service restaurants, small self-service restaurants and/or self-service specialty food establishments. The conditional use process will allow for the continued presence and economic viability of existing neighborhood establishments while not negatively affecting existing residential development, housing or neighborhood character.

- C) The City's supply of affordable housing will be preserved and enhanced:

The proposed Ordinance will have no adverse effect on the City's supply of affordable housing.

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

Preparedness against injury and loss of life in an earthquake is unaffected by the proposed amendments. Any new construction or alteration associated with a use would be executed in compliance with all applicable construction and safety measures.

- G) That landmark and historic buildings will be preserved:

Landmarks and historic buildings would be unaffected by the proposed amendments. Should a proposed use be located within a landmark or historic building, such site would be evaluated under typical Planning Code provisions and comprehensive Planning Department policies.

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments. It is not anticipated that permits would be such that sunlight access, to public or private property, would be adversely impacted.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on January 14, 2010.



Linda Avery
Commission Secretary

AYES: Miguel, Olague, Moore, Sugaya, Lee, Antonini, Borden

NAYS:

ABSENT:

ADOPTED: January 14, 2010



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: JANUARY 14, 2010

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Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395

Recommendation: **Recommend Approval**

PLANNING CODE AMENDMENT

The proposed Ordinance would amend the 24th Street-Noe Valley NCD ("24th-Noe NCD") Sections 728.1 (Zoning Control Table), 728.42 (full-service restaurants), 728.44 (small self-service restaurants), and 728.69A (specialty food, self-service) to allow new full-service restaurants, small self-service restaurants, and self-service specialty food establishments with a Conditional Use Authorization.

It should be noted that the limitations placed on new liquor licenses for full-service restaurants will remain in effect.

Please note that the Planning Commission ("Commission") heard BOS File No. 05-1676 on December 8, 2005, which allowed up to (3) new full-service restaurants by Conditional Use Authorization, which was sponsored by Supervisor Dufty. This legislation became effective on March 8, 2006, and the three Conditional Use Authorizations have been granted. This legislation sunset in 3 years from the effective date on March 8, 2009.

The Way It Is Now:

With the exception of the three full-service restaurants mentioned above, the 24th-Noe NCD prohibits new restaurants of any type.¹ Under Section 179(a) of the Planning Code, those restaurants and bar uses which lawfully existed on the effective date of Ordinance No. 69-87, enacting the 24th-Noe NCD, are either nonconforming and permitted to remain in use.

A full-service restaurant may seek a Type 47 liquor license (full bar, on site) if they meet the requirements on Section 728.1.

¹ San Francisco Planning Code Sections 728.41 (Bar), 728.42 (Full-Service Restaurant), 728.44 (Small Self-Service Restaurant), and 728.69A (specialty food, self-service) → all are currently not permitted in the 24th-Noe NCD.

The Way It Would Be:

The proposed ordinance would allow a proposed full-service restaurant, small self-service restaurant, or a specialty food, self-service establishment to apply for a Conditional Use Authorization in the 24th-Noe NCD. There would be no numerical cap nor a sunset clause; rather it would permit these uses to be approved by the Planning Commission on a case-by-case basis.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend *approval* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

The citywide Neighborhood Commercial Controls were enacted in 1987 in response to land use issues identified by neighborhood groups, planners, and elected officials. Along 24th-Noe Streets and elsewhere in the City, restaurants and bars were identified as volatile uses which could multiply and upset the commercial equilibrium by forcing out critical neighborhood services. This concern led to prohibitions such as those in the 24th-Noe Street NCD, which nearly 20 years later continue disallow new restaurants and bars or the reestablishment of restaurant and bar uses which had converted for a period of time to another use.

The character of the 24th-Noe NCD has changed over the past 20 years. This is evident in the desire to allow 3 new full-service restaurants to open in the NCD 4 years ago. The community wanted more restaurants then and continue to do so today.

Surveys from 1984-1987 show that there were 29 restaurants along 24th Street (please note that the survey does not distinguish between full-service and small self-service restaurants). There was only 1 vacancy, 5 bars, and 4 take-out establishments. Today, there are 22 restaurants, 15 vacancies, and 13 take-out establishments.

While the number of restaurants has decreased from 29 to 22 in the past 20+ years, the number of vacancies has increased dramatically. Permitting new full service restaurants, small self-service restaurants, and specialty food, self-service establishments through the Conditional Use Authorization process should help these uses spread out more evenly throughout the 24th-Noe NCD and reduce vacancies.

Further, opening up these uses to a Conditional Use Authorization will allow the Commission to analyze each application on a case-by-case basis. When the number of restaurants exceeds the needs of the community, the Commission can deny the application. Placing a numerical cap on restaurants appears to be short-sighted; there may arise the need to amend the number if the community needs more eating establishments. With the proposed legislation, the Code will not have to be amended in the future because each application will be judged on the merits of its application, the needs of the community, and the criteria in the Planning Code.

In sum, the Department supports the proposed Ordinance to permit new full-service restaurants, small self-service restaurants, and specialty foods, self-service establishments on 24th-Noe NCD via a Conditional Use Authorization.

ENVIRONMENTAL REVIEW

The proposal to amend Planning Code Sections 728.1 (Zoning Control Table), 728.42 (full-service restaurants), 728.44 (small self-service restaurants), and 728.69A (specialty food, self-service) in the 24th Street-Noe Valley NCD would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any comments in with regard to the proposed Ordinance.

RECOMMENDATION:	Recommendation of Approval
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Attachments:

Exhibit A: Draft Planning Commission Resolution
Exhibit B: Board of Supervisors File No. 09-1208