



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution 18926

HEARING DATE: JULY 18, 2013

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Project Name: **Amendments to the Mission Alcohol SUD and to the Valencia Street NCT.**

Case Number: 2013.0724T [Board File No. 130459]

Initiated by: Supervisors Campos and Wiener / Introduced May 31, 2013

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Recommendation: **Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTION 249.60, THE MISSION ALCOHOLIC BEVERAGE SPECIAL USE DISTRICT CONTROLS, TO ALLOW THE TRANSFER OF LIQUOR LICENSES AND RELOCATION OF USES UNDER SPECIFIED CIRCUMSTANCES, TO RESTRICT THE SALE OF ALCOHOL FOR OFF-SITE CONSUMPTION, AND TO EXEMPT FROM THE CONTROLS GROCERY STORES AND CERTAIN INSTITUTIONAL, ARTS, AND OTHER USES; ESTABLISHING OPERATING CONDITIONS FOR CERTAIN ESTABLISHMENTS WITH A LIQUOR LICENSE; AMENDING PLANNING CODE SECTION 726.44, THE VALENCIA STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT CONTROLS, TO RESTRICT THE CONVERSION OF EXISTING GROUND FLOOR RETAIL USES TO RESTAURANTS; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302, FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1.

WHEREAS, on May 14, 2013, Supervisors Campos and Wiener introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 13-0459, which would amend Section 249.60 of the Planning Code (the Mission Alcohol Special Use District), and Section 726.44 of the Planning Code (the Valencia Street Neighborhood Commercial Transit District); and,

WHEREAS, on June 25, 2013, substitute legislation was introduced with minor amendments to the draft Ordinance; and,

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on July 18, 2013; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2); and

WHEREAS, the Planning 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 Department staff and other interested parties; and

WHEREAS, 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 Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed ordinance, with the following modifications:

1. Simplify Sections 249.60(b)(2) and (3), which allows certain transfers of licenses within the SUD:

- Explicitly state that there are two uses that are eligible for liquor licenses transferred from establishments located within the SUD: 1) grocery stores (both General Groceries as defined in Section 790.102(a) and Specialty Groceries as defined in Section 790.102(b), and 2) all bar uses, as defined in Section 790.22. Bars include uses where the principal use is “drink-making teaching facility.” Grocery stores are eligible for the transfer of a license from any liquor-serving establishment, while bars must use a transfer from an existing legal bar use.
- Delete the size restrictions for permitted sale of liquor within grocery stores that are eligible for license transfers, and replace the restrictions with a reference to the size limits detailed for accessory retail liquor sales in Planning Code Section 703.2(b)(1)(C)(vi).
- Remove the reference in Section 249.60(b)(2)(B) to retail uses with a principal use as a “cooking [...] teaching facility,” as there is no existing Planning Code definition for a cooking school (Page 5, Line 15). Instead, cooking schools will be treated as “Restaurants,” and are eligible for transfers from within the district or from outside the district.
- Remove the reference in Section 249.60(b)(2)(B) to “drink-making teaching facility,” as there is no existing Planning Code definition of a cocktail- or drink-making school. Instead, cocktail schools will be treated as bars, which are also eligible for liquor licenses transferred from an existing bar in the SUD.
- Remove Section 249.60(b)(3), which details the circumstances in which new bars may open with a license transferred from an existing bar in the SUD, and relocate it to subsection (2).
- With the proposed modifications listed above, Section 249.60(b)(2) would read:

(2) The following uses shall be eligible for liquor licenses transferred from within the district:

*(A) Notwithstanding the provisions of Section 790.55, **General Groceries** as defined in Section 790.102(a) of this Code or **Specialty Groceries**, as defined in Section 790.102(b,) regardless of size, so long as ~~not more than 15 percent of its publically accessible square footage is devoted to the display and/or sale of alcoholic beverages~~ as the percentage of gross square footage devoted to alcohol sales is consistent with the limits set forth in Section 703.2(b)(1)(C)(vi). Such use shall require a Conditional Use authorization and shall be limited to a Type 20 Liquor License, except that such use shall not sell a single beer or malt beverage in a container size of 24 oz. or smaller, or sell any malt beverage with an alcohol content greater than 5.7% by volume; or any wine in a container size less than 375 ml or with an*

alcohol content of greater than 15% by volume, except for "dinner wines" that have been aged two years or more and maintained in a corked bottle.

(B) ~~Any retail use as defined Section 790.104 authorized by Conditional Use where the principal use is a cooking or drink making teaching facility.~~

(3) ~~All Bar Uses.~~ A new or relocated Bar, as defined in Section 790.22, shall be considered pursuant to the underlying zoning, except that such authorization shall be as a Conditional Use. A new Bar shall use a liquor license transferred from another Bar from within the SUD. A relocated Bar shall be from within the SUD.

2. Clarify abandonment, continuation, and expansion of nonconforming alcohol-related uses in Section 249.60(c):

- Insert a line that explicitly states that existing liquor establishments are considered nonconforming uses, subject to Sections 180, 181, and 183, with exceptions for temporary closures, relocation, and expansion as enumerated in the draft Ordinance. Abandonment is the consequence for changes not explicitly allowed in the SUD. With the proposed modifications listed above, Section 249.60(c) would read:

(c) Prohibition of Expansion of Existing Liquor Establishments Selling Alcoholic Beverages. For purposes of this subsection (d) "liquor establishment" shall mean any establishment licensed by the State of California to sell alcoholic beverages except for those uses listed in subsection (b)(1-2) above. Any liquor establishment ~~selling alcoholic beverages~~ lawfully existing prior to the effective date of this resolution Ordinance No. and licensed by the State of California for the retail sale of alcoholic beverages ~~for on-site and off-site consumption~~, so long as otherwise lawful, is considered a nonconforming use pursuant to Section 180, and is subject to the restrictions of Sections 181 and 183 with the following exceptions: and may continue in existence, provided such establishment remains in use, as set forth below. ~~For purposes of this subsection (d) "liquor establishment" shall mean any establishment licensed by the State of California to sell alcoholic beverages except for those uses listed in subsection (c)(1-2) above.~~

(1) Renovation and Repair. Temporary closure of an existing liquor establishment for not more than 120 days for repair, renovation or remodeling is allowed so long as such repair, renovation, or remodeling brings the existing use into closer conformity with the controls of this SUD, with the underlying zoning, or with urban design principles found elsewhere in this Code for active ground floor commercial spaces.

(2) Relocation. Relocation of an existing liquor establishment in this SUD to another location within this SUD may be allowed with Conditional Use authorization from the Planning Commission.

(3) Expansion. An existing liquor establishment may expand its use with Conditional Use authorization from the Planning Commission. In reviewing the application for such expansion, the Commission shall consider the establishment's prior operating conditions.

3. Require that the "Good Neighbor" operating conditions be applicable to all liquor license referrals in Section 249.60(d):

- Amend subsection (d) to apply the "Good Neighbor" operating conditions to establishments with liquor licenses referred to the Planning Department for review by the State of California Department of Alcoholic Beverage Control. With the proposed modification, Section 249.60(d) would read:

(d) Good Neighbor Policies. The operating conditions established in Section 703.5 of this Code shall apply to all liquor establishments in this SUD in order to maintain the safety and

cleanliness of the premises and vicinity. In addition, all new, relocated, or expanded liquor establishments, and any liquor establishment with a license referred for review to the Planning Department by the State of California Department of Alcoholic Beverage Control, shall comply with the requirements set forth below. Liquor establishment shall have the meaning set forth in subsection (d) above.

4. Correct Miscellaneous Typos:

- **Section 249.60(c), Page 5, Line 25:** The reference to “this subsection (d) “liquor establishment”” should refer to subsection (c).
- **Section 249.60(c), Page 6, Line 2:** The reference to “subsection (c)(1-2) above” should be to subsection (b)(1-2).
- **Section 249.60(d), Page 6, Line 17:** The reference to “subsection (d) above,” should be to subsection (c).
- **Section 790.55:** The existing definition of “Liquor Store” exempts large grocery stores that sell alcohol from the restrictions of the SUD. The reference to the Mission Alcohol SUD should be updated from referring to 781.8, to 249.60, which is the Section that now defines the SUD.

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 Mission Alcoholic Beverage Special Use District was created as a way to combat problems within the geographic area that included loitering, littering, drug trafficking, prostitution, public drunkenness, defacement, pedestrian obstructions, and traffic circulation, parking, and noise problems on public streets; and
2. The proposed Ordinance addresses the changing landscape of the area within the boundaries of the SUD, as well as lessons learned through the implementation of alcohol restrictions in other areas of the City; and
3. The addition of new grocery stores – even those that sell limited amounts of alcohol – provide a valuable neighborhood service, and allowing transfers of existing liquor licenses would add operating conditions to ensure that liquor establishments contribute to the order, cleanliness, and vibrancy of the district; and
4. The Mission Alcohol SUD was the first and most restrictive of the six established Alcohol Restricted Use Districts identified in the Planning Code, and is the only Alcohol SUD that neither provides a means to transfer liquor licenses from one location to another within the SUD, nor a means to add conditions of approval to existing establishments that are permitted to sell and serve alcohol; and,

5. The Department is supportive of changes to make the controls both more consistent with other Alcohol SUDs and more effective at monitoring and conditioning existing businesses that sell alcohol within the district; and
6. The proposed amendments would apply to new restaurants in locations that are currently classified as retail space on Valencia Street between 15th Street and 24th Street, a defined geographic area that has seen a striking increase in the number of new restaurants that have opened within the last five years; and,
7. The proposed amendments to the Valencia Street NCT respond to the influx of eating establishments along the Valencia Street corridor in a manner that protects the fine grain, and historically retail-oriented character of the area.
8. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are 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 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.0

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

The proposed Ordinance will modify and update the existing Mission Alcohol SUD, which serves to limit establishments with off-sale liquor licenses. Such establishments may be associated with neighborhood nuisance problems such as litter and graffiti. In addition, the proposed Ordinance will manage the influx of new restaurants within the Valencia Street Neighborhood Commercial Transit District.

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.

POLICY 6.10

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

The proposed Ordinance would preserve existing Mission Alcohol Special Use District, which has served to limit and minimize identified problems such as loitering and litter. The existing Ordinance will provide oversight of new businesses, and may open opportunities for the addition of businesses that are consistent with the neighborhood character and that will not contribute to the deterioration of the neighborhood.

8. Planning Code Section 101 Findings. The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed amendment will preserve the existing Mission Alcohol SUD and the Valencia Street NCT, which exist in order to preserve and enhance the existing neighborhood character.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed amendment will help preserve existing neighborhood character by allowing the existing Mission Alcohol SUD to continue. The amendment will not impact existing housing.

3. That the City's supply of affordable housing be preserved and enhanced;

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

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

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

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed amendment would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed ordinance will not impact the City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

Landmarks and historic buildings would not be negatively impacted by the proposed amendments.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendment.

- 8. Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance as described in this Resolution and in the proposed Ordinance.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on July 18, 2013.

Jonas P. Ionin
Commission Secretary

AYES: Commissioners Antonini, Borden, Fong, Moore, Sugaya, and Wu

NOES:

ABSENT: Commissioner Hillis

ADOPTED: July 18, 2013