



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Inclusionary Housing (Sec. 315)
- Jobs Housing Linkage Program (Sec. 313)
- Downtown Park Fee (Sec. 139)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 314)
- Other

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Planning Commission Motion No. 18939

HEARING DATE: AUGUST 1ST, 2013

Date: July 25th, 2013
Case No.: **2013.0290C**
Project Address: **531 CASTRO STREET**
Zoning: Castro Street Neighborhood Commercial District
 40-X Height and Bulk District
Block/Lot: 3583/093
Project Sponsor: John Kevlin
 Reuben, Junius & Rose LLP
 One Bush Street, Suite 600
 San Francisco, CA 94104
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ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 179, 186.1 AND 303 OF THE PLANNING CODE TO ALLOW A NONCONFORMING USE (D.B.A. "THE PATIO RESTAURANT AND CAFÉ") FOR THE EXPANSION INTO THREE VACANT RETAIL SPACES WITHIN THE SAME BUILDING THE RESTAURANT IS LOCATED, IN THE CASTRO STREET NEIGHBORHOOD COMMERCIAL DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

PREAMBLE

On March 15th, 2013, John Kevlin, Reuben, Junius & Rose LLC (hereinafter "Project Sponsor") filed an application with the San Francisco Planning Department (hereinafter "Department") for a Conditional Use Authorization under Sections 179, 186.1 and 303 of the Planning Code to allow a nonconforming use (d.b.a. "The Patio Restaurant and Café") for the legalization of the previously completed and currently proposed work to expand into three vacant retail spaces within the same building the restaurant is located (hereinafter "Project"), at 531 Castro Street (hereinafter "Project Site"), in The Castro Street Neighborhood Commercial District and a 40-X Height and Bulk District.

On August 1st, 2013, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2013.0290C (hereinafter "Application").

The Project was determined by the Department to be categorically exempt from the California Environmental Quality Act ("CEQA") as a Class 1 Categorical Exemption under CEQA. The Commission has reviewed and concurs with said determination.

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.

MOVED, that the Commission hereby authorizes the Conditional Use requested in Application No. 2013.0290C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

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 above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The Project Site, at 531 Castro Street, is on the east side of Castro Street between 18th and 19th streets, Lot 093 in Assessor's Block 3583 in The Castro Street Neighborhood Commercial District and a 40-X height and Bulk District. The Subject Lot measures 74 feet wide and averaging 112 feet 6 inches deep and was originally developed with two buildings circa 1900.

Currently, there are two buildings on the Subject Property. The northerly building (Project Site), 527-531 Castro Street, is three stories, with the Patio Restaurant and Café and a vacant retail space on the ground floor and one residential unit on each of the two upper floors. The southerly building, 533-541 Castro Street, is two stories, with a retail store on the ground floor and a commercial office on the second floor. The Project Site is well served by public transportation, including Muni Bus Lines 24 and 35 operating on Castro Street and nearby Muni Bus Line 33 operating on 18th Street.

3. **Surrounding Properties and Neighborhood.** To the north and south of the Subject Property are mixed-use buildings, with ground floor commercial businesses, including Bars, Restaurants, Limited-Restaurants, Financial Services, Personal Services and Business and Professional Services. The surrounding residential district is the RH-3 Zoning District.

The Castro Street District is situated in Eureka Valley, close to the geographic center of San Francisco between the Mission District, Twin Peaks, and Upper Market Street. The physical form of the District is a crossing at Castro and 18th streets, the arms of which contain many small but

intensely active commercial businesses. The multi-purpose commercial district provides convenience goods to its immediate neighborhood as well as comparison shopping goods and services on a specialized basis to a wider trade area. Commercial businesses are active both in the daytime and late into the evening and include a number of gay-oriented bars and restaurants, as well as several specialty clothing and gift stores. The district also supports a number of offices in converted residential buildings.

The Castro Street District controls are designed to maintain existing small-scale development and promote a balanced mix of uses. Building standards permit small-scale buildings and uses and protect rear yards above the ground story and at residential levels. In new buildings, most commercial uses are permitted at the ground and second stories. Special controls are necessary to preserve the existing equilibrium of neighborhood-serving convenience and specialty commercial uses. In order to maintain convenience stores and protect adjacent residential livability, controls prohibit additional eating and drinking establishments and permit with certain limitations new late-night uses, adult and other entertainment, and financial service uses. The continuous retail frontage is maintained by prohibiting most automobile and drive-up uses.

Housing development in new buildings is encouraged above the second story. Existing housing units are protected by limitations on demolitions and upper-story conversions.

4. **Project Description.** The Project Sponsor seeks a Conditional Use Authorization, pursuant to Planning Code Sections 179, 186.1 and 303 to allow The Patio Restaurant and Café, a nonconforming use, for the legalization of the previously completed and currently proposed work to expand into three vacant retail spaces within the same building the restaurant is located. The three vacant retail spaces are located behind the building entrance, lining two sides of a common walkway that leads to the restaurant. The Patio Restaurant and Café previously expanded into part of the three vacant retail spaces under a 2005 Building Permit and currently proposes to expand into the remaining area of the three vacant retail spaces. As a result of the expansion entirely into the three vacant retail spaces, containing a total floor area of 775 square feet, the floor area of The Patio Restaurant and Café will be increased from 5,149 square feet to 5,844 square feet* and the rear outdoor seating area will remain at 160 seats, complying with the 1992 Notice of Special Restrictions

**As part of the Project, the floor area of the restaurant's restrooms will be decreased by 80 square feet, which will be distributed to the ground floor retail space in the adjacent building, 533-541 Castro Street, also on the Subject Lot. Therefore, proposed floor area of the Patio Restaurant and Café will be 5,149 sq. ft. + 775 sq. ft. - 80 sq. ft. = 5,844 sq. ft.*

The Patio Restaurant and Café is not a Formula Retail use but rather an independent, locally owned business. It will mainly serve residents from the local neighborhood and will create approximately 30 jobs for local residents. The Patio Restaurant and Café's proposed hours of operation for the front area of the restaurant, including bar No. 1, will be from 11 a.m. to 2 a.m. seven day a week; the rear outdoor seating area, including bar No. 2, will be from 11 a.m. to 12 o'clock midnight seven days a week and the retractable skylight roof above the rear outdoor

seating area will be closed by 9 p.m. seven days a week. Approximately 10% of the restaurant operation will be devoted to take-out dining.

5. **Project History.** Based upon the Project Sponsor's statement, The Patio Restaurant and Café was established in the 1960s. The restaurant and three retail spaces were within the subject building when it was acquired by the current owner in 1989.

In 1992, the current property owner filed a Building Permit Application No. 9221678S (hereinafter "1992 Building Permit"). Plans filed with the 1992 Building Permit indicated three retail uses and one full-service restaurant were on the ground floor of the Subject Property. The proposal under the 1992 Building Permit included the legalization of a rear outdoor seating area, associated with the restaurant, as well as an enclosure of this seating area with a "retractable skylight" roof. Pursuant to Planning Code Section 179, the Department approved the 1992 Building Permit with an attached Notice of Special Restrictions (hereinafter "1992 NSR"). The restrictions and conditions of which notice are (1) The said outdoor seating area proposed for legalization, expansion and enclosure shall be restricted in size to approximately 2,100 square feet and shall be restricted in seating to approximately 160 seats. (2) That any further expansion of this area or any other area of the restaurant shall require Conditional Use Authorization under Planning Code Section 186.1 because any such expansion, considered in conjunction with the expansion being authorized by the 1992 Building Permit, shall constitute a significant expansion as explained in Section 186.1, subsection (b).

In 2005, the current property owner filed a Building Permit Application No. 2005.05.03.1487 (hereinafter "2005 Building Permit"), proposing to renovate the restaurant, including the addition of a bar and seating area that occupied part of the three retail spaces. The 2005 Building Permit was approved by the Department and subsequently issued by the Department of Building Inspection (hereinafter "DBI") on April 10th, 2006. All work authorized under the 2005 Building Permit has been completed and received a Final Certificate of Completion from DBI on June 6th, 2012. The current property owner then filed for an application with the Department of Public Health to operate the restaurant and upon a Health Permit Referral, the Department indicated that the 2005 Building Permit was approved in error and that a Conditional Use Authorization would be required to legalize the expansion of the restaurant into previously dedicated retail spaces, pursuant to the 1992 NSR and Planning Code Section 186.1.

On March 5th, 2013, the Project Sponsor filed an application for Conditional Use Authorization, proposing to allow The Patio Restaurant and Café, a nonconforming use, for the legalization of the expansion into part of the three vacant retail spaces under the 2005 Building Permit and an expansion into the remaining area of the three vacant retail spaces. The rear outdoor seating area would remain at 160 seats, complying with the 1992 NSR.

6. **Public Comment.** The Department received three opposition letters sent by surrounding neighbors, whose concerns included the size of the Patio Restaurant and Café being too large and the noise being too loud from the restaurant's rear outdoor seating area with the retractable skylight roof.

The Department received e-mails and telephone calls from Merchants of Upper Market & Castro, Castro/Eureka Valley Neighborhood Associations and The Castro Community Benefit District that all expressed support for the Project.

7. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

A. **(1) Uses Located in Neighborhood Commercial Districts.** Planning Code Section 179(a)(3) provides that any use or feature in a Neighborhood Commercial District which lawfully existed on the effective date of Ordinance No. 69-87 and which use or feature is not permitted by the enactment of Ordinance No. 69-87 is hereby deemed to be a nonconforming use.

(2) Use Size [Non-Residential] Standard in Castro Street Neighborhood Commercial District. Planning Code Section 715.21 provides that Use Size [Non-Residential] at a gross floor area of 4,000 square feet and above is not permitted in the Castro Street Neighborhood Commercial District.

The 1992 NSR attached to the 1992 Building Permit clarified that The Patio Restaurant and Café, containing a floor area of 5,149 square feet, lawfully existed when Planning Code Section 715.1 Castro Street Neighborhood Commercial District became effective on March 13th, 1987. The Patio Restaurant and Café, containing a nonresidential floor area more than 4,000 square feet, is not permitted in the Castro Street NCD, pursuant to Planning Code Section 715.21 and is deemed to be a nonconforming use, pursuant to Planning Code Sections 179(a)(3).

B. **(1) Nonconforming Uses: Enlargements, Alterations and Reconstruction.** Planning Code Section 181(a) provides that a nonconforming use shall not be extended to occupy additional space in a structure, or additional land outside a structure, or space in another structure, or to displace any other use, except as provided in Sections 186.1 of this Code.

(2) Exemption of Nonconforming Uses in Neighborhood Commercial Districts: Enlargements or Alteration. Planning Code Section 186.1(b)(1) provides that a nonconforming use may not be significantly altered; enlarged or intensified, except upon approval of a conditional use application pursuant to the provisions of Article 3 of this Code, provided that the use not have or result in a greater height, bulk or floor area ratio, less required rear yard or open space, or less required off-street parking space or loading space than permissible under the limitations set forth in this Code for the district or districts in which such use is located.

The 1992 NSR provides that any further expansion of the Patio Restaurant and Café as a nonconforming use in The Castro Street NCD shall require Conditional Use Authorization because such expansion in conjunction with the expansion authorized by the 1992 Building Permit shall constitute a significant expansion, pursuant to Planning Code Section 186.1(b)(1).

The Project Sponsor proposes to expand The Patio Restaurant and Café into three vacant retail spaces, located behind the entrance to the Subject Property, lining two sides of a common walkway that led to the restaurant in the middle and rear of the Subject Property. With the three vacant retail spaces containing a total floor area of 775 square feet, The Patio Restaurant and Café's floor area will be increased from 5,149 square feet to 5844 square feet, including 3,744 square feet at the front area of the restaurant and 2,100 square feet at a rear outdoor seating area associated with the restaurant which constitutes a significant expansion of a nonconforming use, pursuant to Planning Code Section 186.1(b)(1).*

**The floor area of the restaurant's restrooms will be decreased by 80 square feet, which will be distributed to the ground floor retail space in the adjacent building, 533-541 Castro Street, also on the Subject Property.*

The Project will not result in an increase in a greater height, bulk or floor area ratio, less required rear yard or open space, or less required off-street parking space or loading space than permissible under the limitations set forth in the Planning Code for The Castro Street NCD.

- C. Restaurant.** Planning Code Section 715.44 provides that a restaurant is permitted as a Conditional Use on the first story. Planning Code Section 790.91 provides that a restaurant is a retail eating or eating and drinking use which serves foods to customers for consumption on or off the premises and which has seating. It may have a Take-Out Food use as defined by Planning Code Section 790.122 as a minor and incidental use. It may provide on-site beer, wine, and/or liquor sales for drinking on the premises (with ABC license types 41, 47, 49, 59, or 75); however, if it does so it shall be required to operate as a Bona Fide Eating Place as defined in Section 790.142. It is distinct and separate from a Limited-Restaurant as defined in Planning Code Section 790.90.

Within part of the three retail spaces, the Project Sponsor proposes to establish a bar, providing on-site beer, wine, and liquor sales for drinking on the premises with an ABC license type 47 issued by The California Department of Alcoholic Beverage Control in 1989, as an integral element of a Bona Fide Eating Place, which is permitted pursuant to Planning Code Section 790.91 within The Castro Street NCD.

- A. Outdoor Activity Areas.** Planning Code Section 790.70 defines outdoor activity area as an area, not including primary circulation space or any public street, located outside of a building or in a courtyard which is provided for the use or convenience of patrons of a commercial establishment including, but not limited to, sitting, eating, drinking, dancing, and food-service.
- (i) Planning Code Sections 715.24 provides that an outdoor activity area operated by a commercial use is permitted if it complies with provisions governing outdoor activity areas in NC Districts under Planning Code Section 145.2(a)(1) in that an outdoor activity area operated by a commercial use is permitted as a principal use if located outside a building and contiguous to the front property line of the lot on which the commercial use is located.

- (ii) Planning Code Sections 715.24 provides that an outdoor activity area operated by a commercial use, which does not comply with provisions governing outdoor activity areas in NC Districts under Planning Code Section 145.2(a)(1) is permitted as a conditional use.

The rear outdoor seating area, associated with the Patio Restaurant and Café, has already been legalized and allowed to be enclosed with a “retractable skylight” roof under the 1992 Building Permit approved by the Department.

- B. Hours of Operation.** Planning Code Section 728.27 permits hours of operation, as defined by Planning Code Section 790.48, from 6 a.m. to 2 a.m. and from 2 a.m. to 6 a.m. by conditional use authorization.

The proposed hours of operation for the front area of The Patio Restaurant and Café, including bar No. 1, will be from 11 a.m. to 2 a.m. seven day a week; and the rear outdoor seating area, including bar No. 2, will be from 11 a.m. to 12 o'clock midnight seven days a week. The proposed hours of operation are within those hours principally permitted by Planning Code Section 715.27.

- C. Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code provides that no more than 1/3 of the width of new or altered structures, parallel to and facing a street, shall be devoted to ingress/egress to parking.

The subject ground floor commercial storefront does not devote any area to the ingress/egress to off-street parking.

- D. Parking.** Planning Code Section 151 provides that for restaurant or bar use, one off street parking space is required for each 200 square feet of occupied floor area, where the occupied floor area exceed 5,000 square feet.

With the proposed expansion of The Patio Restaurant and Café into the three vacant retail spaces, it will contain a gross floor area of 5,844 square feet, including 3,744 square feet at the front area of the restaurant within the Subject Property and 2,100 square feet at a rear outdoor seating area associated with the restaurant. The rear outdoor seating area was legalized as an expansion of the restaurant and allowed to be enclosed with a “retractable skylight” roof under the 1992 Building Permit approved by the Department.

Based upon the Zoning Administrator’s interpretation, the occupied floor area of The Patio Restaurant and Café is 3,744 square feet and the 2,100 square feet rear outdoor seating area with a retractable skylight roof, provided for the use or convenience of restaurant patrons, will not be considered as part of the restaurant’s occupied floor area therefore, no off-street parking is required.

- E. Signage.** Any proposed signage will be subject to the review and approval of the Planning Department.

Any application for proposed signage at the Subject Property shall be subject to the review of the Planning Department and required to meet all provisions set forth in Article 6 of the Planning Code.

- F. Neighborhood Commercial Permit Review.** Planning Code Section 312 requires neighborhood notification of an expansion or enlargement of an existing use for lots within Neighborhood Commercial Districts.

The Project Sponsor proposes to allow a nonconforming use, The Patio Restaurant and Café, for the legalization of the previously completed and currently proposed work to expand into three vacant retail spaces within the same building the restaurant is located. Section 312 notification was conducted in conjunction with the conditional use authorization notification.

8. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

- A. The proposed new uses, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The Project will provide a development that is necessary and desirable, and compatible with the neighborhood for the following reasons:

Having been a local favorite since the 1960's, the Project will allow The Patio Restaurant and Café, including a rear outdoor seating area with a retractable skylight roof, to reopen, after having been closed for a number of years during an extended renovation. The three irregularly shaped vacant retail spaces, located behind the entrance to The Patio Restaurant and Café, have never been viable for retail uses because they are not easily noticeable from the sidewalk without individual storefronts and are not compatible with the restaurant use in the same building. With the proposed expansion entirely into the three vacant retail spaces, The Patio Restaurant and Café will be allowed for a more functional floor layout and will provide the patrons with an enhanced eating and drinking service, including an additional bar and seating area. The Project will contribute to the lively and vibrant street-level characteristics and economic vitality in the Castro Street NCD by reopening a closed storefront. The patio Restaurant and Café complements the mix of goods and services currently available in the neighborhood. It has existed since the 1960's with no apparent impact on the neighborhood. Although there is a number of other restaurants in the district, to reopen The Patio Restaurant and Café will generate no significant impact on traffic or on-street parking in the district because it is not a destination restaurant and the Project Site and the surrounding area are well served by public transit. Before and after the expansion into the three vacant retail spaces, the maximum capacity of persons at The Patio Restaurant and Café allowed by the City's Building Code is 184 persons and 196 persons, respectively. Therefore, the intensity of use does not vary significantly.

The proposed bar use, occupying part of the three vacant retail spaces, is intended to serve patrons dining in the front area of The Patio Restaurant and Café while the existing bar in the rear outdoor seating area will serve patrons having outdoor dining. The proposed bar, providing on-site beer, wine, and liquor sales for drinking on the premises, will only be allowed as an integral element of The Patio

Restaurant and Café, meant to compliment the meal service and not intended to function as a separate and independent bar.

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The height and bulk of the existing building will remain without change. The Project will not alter the existing appearance or character of the vicinity. The Project will only involve interior work and will not affect the existing building envelope.

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The Planning Code does not require off-street parking or loading after the expansion of the patio Restaurant and Café, containing an occupied floor area of proposed 3,744 square feet. The Project is designed to mainly meet the needs of the residents in the immediate neighborhood and the Project Site is well served by public transit, including Muni Bus Lines 24 and 35 operating on Castro Street and nearby Muni Bus Line 33 operating on 18th Street Castro Street, minimizing the amount of vehicular traffic from the immediate neighborhood or citywide.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

The Project is subject to the standard conditions of approval for eating and drinking establishments as outlined in Exhibit A that obligate the Project Sponsor to mitigate noxious or offensive noise and odor generated by the eating and drinking use.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

Parking and loading areas are not required for the Project. The Department shall review all proposed signs for The Patio Restaurant and Café.

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The Project is consistent with the stated purpose of the Castro Street Neighborhood Commercial District in that the intended eating and drinking use is located at the ground floor, will maintain the retail frontage by not including automobile drive up uses, will contribute to a mixture of convenience and comparison shopping goods and services to a predominantly local market.

- E. That the existing concentration of eating and drinking uses in the area should not exceed 25% of the total commercial frontage as measured in linear feet within the immediate area of the Subject Site. For the purposes of Section 303(p)(1)(A) of the Planning Code, the immediate area shall be defined as all properties located within 300 feet of the Subject Property and also located within the same zoning district.

Based upon a site survey performed by staff, the existing total commercial frontage within 300 feet of the Project Site is 2,148 linear feet, and the existing concentration of eating and drinking uses within 300 feet, including The Patio Restaurant and Café, is 553 linear feet, or 25.74%. Although the existing concentration of eating and drinking uses within 300 feet is slightly over the 25% threshold, the Project, which would reopen an existing restaurant, would not result in any increase of the current concentration of eating and drinking uses within 300 feet of the Project Site.

9. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

NEIGHBORHOOD COMMERCE

Objectives and Policies

OBJECTIVE 1:

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

Policy 1.1:

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

Policy 1.2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

Policy 1.3:

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The Project will reopen an existing restaurant on the ground floor commercial space and will maintain its contribution to the neighborhood, including enhanced goods and service and employment opportunities. The Project is consistent with the activities within The Castro Street Neighborhood Commercial District and the commercial land use plan.

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1:

Seek to retain existing commercial and industrial activity and to attract new such activity to the City.

The Project will enhance the City's economic base by retaining a current restaurant within the Castro Street NCD.

OBJECTIVE 3:

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

Policy 3.1:

Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

Policy 3.2:

Promote measures designed to increase the number of San Francisco jobs held by San Francisco residents.

The Project Site is currently occupied by The Patio Restaurant and Café; therefore, no commercial tenant will be displaced by the Project. The Project proposes to reopen The Patio Restaurant and Café that has been renovated to better serve the residents of the neighborhood and will not prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood.

OBJECTIVE 6:

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

Policy 6.1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

The Project Site is currently occupied by The Patio Restaurant and Café; therefore, no commercial tenant will be displaced by the Project. The Project will not prevent the district from achieving optimal diversity

in the types of goods and services available in the neighborhood because it will not result in an additional eating and drinking use in the Castro Street NCD.

Policy 6.2:

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

An independent entrepreneur is sponsoring the Project. The Project is a neighborhood serving use and is not a Formula Retail use.

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the Project does comply with said policies in that:

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

The Project proposes to reopen The Patio Restaurant and Café at the same site; therefore, it will not result in an additional eating and drinking establishment in the District and will not result in an increase to the current concentration of the total Neighborhood Commercial District frontage devoted to eating and drinking establishments. The Project will create approximately 30 job openings for local residents.

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

The scale and use proposed by the Project is within the existing character of the Castro Street Neighborhood Commercial District. The existing two residential units on the two upper floors of the Subject Property will remain and not be affected by the Project.

C. That the City's supply of affordable housing be preserved and enhanced,

No current housing at the Project Site will be removed as a result of the Project

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

The Project Site is well served by public transit, including Muni Bus Lines 24 and 35 operating on Castro Street and nearby Muni Bus Line 33 operating on 18th Street.

E. 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 Project will not displace any service or industry establishment. The Project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this Project.

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

The Project is designed and will be constructed to conform to the structural and seismic safety requirements of the City's Building Code.

- G. That landmarks and historic buildings be preserved.

The Project will involve no proposed alteration to the existing building envelope or the front façade. The Project was determined by the Department to be categorically exempt from the California Environmental Quality Act ("CEQA") as a Class 1 Categorical Exemption under CEQA as described in the determination contained in the Department files for the Project.

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

The Project will have no negative impact on existing parks and their access to sunlight and vistas.

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
12. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2013.0290C** subject to the following conditions attached hereto as "EXHIBIT A" which is incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18939. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on August 1st, 2013.

Jonas Ionin
Acting Commission Secretary

AYES: Antonini; Fong; Hillis; Moore; Sugaya; Wu

NAYS: Borden

ABSENT: None

ADOPTED: August 1st, 2013

Exhibit A

AUTHORIZATION

This authorization is for a Conditional Use to allow The Patio Restaurant and Café, a nonconforming use, for the expansion entirely into three vacant retail spaces within the same building the restaurant is located, 531 Castro Street, Assessor's Block 3583, Lot 093, pursuant to Planning Code Sections 179, 186.1 and 303, in The Castro Street Neighborhood Commercial District and a 40-X Height and Bulk District; in general conformance with plans dated July 18th, 2013 and labeled "EXHIBIT B" included in the docket for Case No. 2013.0290C and subject to Conditions of Approval reviewed and approved by the Commission on August 1st, 2013 under Motion No. 18939. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the Project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on August 1st, 2013 under Motion No. 18939.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18939 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building Permit Application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting

PERFORMANCE

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three years from the effective date of the Motion. A building permit from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed project and conveys no

independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a site or building permit has not been obtained within three (3) years of the date of the Motion approving the Project. Once a site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. The Commission may also consider revoking the approvals if a permit for the Project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

2. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

DESIGN

3. **Signage.** Any signs on the property shall be made to comply with the requirements of Article 6 of the Planning Code.

MONITORING

4. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

5. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

OPERATION

6. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>

7. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>

8. **Noise Control.** The premises shall be adequately soundproofed or insulated for noise and predated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org

For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, www.sfdbi.org

For information about compliance with the amplified sound including music and television contact the Police Department at 415-553-0123, www.sf-police.org

9. **Odor Control.** While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed to prevent any significant noxious or offensive odors from escaping the premises.

For information about compliance with odor or other chemical air pollutants standards, contact the Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

10. **Community Liaison.** Prior to the implementation of the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

11. **Hours of Operation.** (1) The front dining area and bar No. 1 of The Patio Restaurant and Café shall be closed by 2 a.m. seven day a week; (2) The rear dining area and bar No. 2 of The Patio Restaurant and Café that are under the retractable skylight roof shall be closed by 12 o'clock midnight seven days a week; (3) Two rear outdoor dining areas of The Patio Restaurant and Café that are not under the retractable skylight roof shall be closed by 9 p.m. seven days a week; and (4) The retractable skylight roof of The Patio Restaurant and Café shall be closed by 9 p.m. seven days a week.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org