



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: MARCH 21, 2013

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
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415.558.6377

Project Name: **Deleting the Sunset Provision of the Excelsior Alcohol Restricted Use District**

Case Number: 2013.0044T [Board File No. 13-0018]

Initiated by: Supervisor Avalos / Introduced January 8, 2013

Staff Contact: Sophie Hayward, Legislative Affairs
sophie.hayward@sfgov.org, 415-558-6327

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 Planning Code Section 785 to delete the sunset provision of the Excelsior Alcoholic Restricted Use District.

The Way It Is Now:

The Excelsior Alcohol Restricted Use District (hereinafter the "Excelsior Alcohol RUD") includes the parcels on both sides of Mission Street from Silver Avenue to the Daly City border (Exhibit C). Within the Excelsior Alcohol RUD, no new off-sale liquor establishments are permitted. Transfers within the Excelsior Alcohol RUD are permitted with Conditional Use authorization by the Planning Commission. Establishments with liquor licenses that allow for on-site consumption are not subject to the prohibitions outlined in the Excelsior Alcohol RUD.

The existing Excelsior Alcohol RUD will sunset on April 17, 2013.

The Way It Would Be:

The sunset provision of the Excelsior Alcohol RUD would be removed, and the prohibitions would not expire.

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 Excelsior Alcohol Restricted Use District was created in 2008 as a way to address problems within the geographic area that included loitering, littering, and graffiti on public streets. At the time of the establishment of the district, neighborhood stakeholders and the San Francisco Police Department indicated a correlation between liquor stores and nuisance issues associated with numerous off-sale establishments in the neighborhood. Within the existing Excelsior Alcohol RUD, there are approximately 13 establishments holding off-sale liquor licenses.¹ In 2008, the Department recommended approval to the Planning Commission of the proposed new Excelsior Alcohol RUD. As noted above, if no action is taken, the existing Excelsior Alcohol RUD will expire on April 15, 2013.

On January 29, 2013, Supervisor Avalos also introduced a proposed Ordinance that would create the Outer Mission Neighborhood Commercial District (NCD) for the area which would both sides of Mission Street from Alemany Boulevard to the Daly City Boulevard, an area slightly larger than the existing Excelsior Alcohol RUD. As proposed, this second Ordinance would replace the existing Excelsior Alcohol RUD as it would – among other controls – include an identical restriction on new off-sale liquor establishments.²

The Department believes that the deletion of the sunset provision of the existing Excelsior Alcohol RUD will provide continued oversight and protection of a use (off-sale liquor establishments) that may contribute to previously identified neighborhood nuisance problems. The existing restrictions appear to be supported by community members, and serve to effectively monitor and condition existing businesses that sell alcohol within the district.

In sum, the Department supports the proposed Ordinance to delete the sunset provision included in the existing Excelsior Alcohol RUD.

ENVIRONMENTAL REVIEW

The proposal to amend Planning Code Section 785 to delete the sunset provision of the Excelsior Alcohol RUD 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 received one emailed comment in support of the proposed Ordinance.

RECOMMENDATION:	Recommendation of Approval
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¹ As noted by Department staff from the California Department of Alcoholic Beverage Control website.

² The proposed Outer Mission NCD Ordinance is currently under review by the Planning Department, and will likely be considered by the Planning Commission in April of this year. The proposed Outer Mission NCD Ordinance is available online at: <http://sfgov.legistar.com/LegislationDetail.aspx?ID=1281083&GUID=38390422-B086-45A1-831A-5979576C617A&Options=ID|Text|&Search=130084> (March 11, 2013).

Attachments:

Exhibit A: Draft Planning Commission Resolution

Exhibit B: Board of Supervisors File No. 13-0018

Exhibit C: Map of Excelsior Alcohol RUD



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Resolution

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Recommendation: **Recommend Approval**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTION 785 TO DELETE THE SUNSET PROVISION OF THE EXCELSIOR ALCOHOL RESTRICTED USE DISTRICT; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on January 8, 2013, Supervisor Avalos introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 13-0018, which would amend Section 785 of the Planning Code regarding the Excelsior Alcohol Restricted Use District (hereinafter "Excelsior Alcohol RUD);

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on March 21, 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** the proposed ordinance.

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 Planning Code currently restricts off-sale liquor establishments within the Excelsior Alcohol RUD, which includes parcels on both sides of Mission Street and extends from Silver Avenue to the Daly City border; and
2. Transfers of existing off-sale liquor licenses within the Excelsior Alcohol RUD are permitted with Conditional Use authorization by the Planning Commission; and
3. The provisions of the existing Excelsior Alcohol RUD will expire on April 17, 2013; and
4. The Excelsior Alcohol Restricted Use District was created in 2008 as a way to address problems within the geographic area that included loitering, littering, and graffiti on public streets; and .
5. The deletion of the sunset provision of the existing Excelsior Alcohol RUD will provide continued oversight and protection of a use (off-sale liquor establishments) that may contribute to previously identified neighborhood nuisance problems; and
6. The existing restrictions serve to effectively monitor and condition existing businesses that sell alcohol within the district.
7. **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 preserve the existing Excelsior Alcohol RUD, which serves to discourage development of establishments with off-sale liquor licenses. Such establishments may be associated with neighborhood nuisance problems such as litter and graffiti.

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 Excelsior Alcohol Restricted 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 Excelsior Alcohol RUD, which exists 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 Excelsior Alcohol RUD 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 March 21, 2013.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED:

BOARD of SUPERVISORS



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

January 15, 2013

Planning Commission
Attn: Linda Avery
1660 Mission Street, 5th Floor
San Francisco, CA 94103

Dear Commissioners:

On January 8, 2013, Supervisor Avalos introduced the following proposed legislation:

File No. 130018

Ordinance amending the San Francisco Planning Code, Section 785, to delete the sunset provision of the Excelsior Alcohol Restricted Use District; and making findings, including environmental findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code, Section 101.1.

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script that reads "Alisa Miller".

By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

- c: John Rahaim, Director of Planning
Scott Sanchez, Zoning Administrator
Bill Wycko, Chief, Major Environmental Analysis
AnMarie Rodgers, Legislative Affairs
Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning

[Planning Code - Deleting the Sunset Provision of the Excelsior Alcohol Restricted Use District]

Ordinance amending the San Francisco Planning Code, Section 785, to delete the sunset provision of the Excelsior Alcohol Restricted Use District; and making findings, including environmental findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code, Section 101.1.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are *strike through italics Times New Roman*. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. Findings.

(a) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this Ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. _____, and incorporates those reasons herein by reference. A copy of said Planning Commission Resolution is on file with the Clerk of the Board of Supervisors in File No. _____.

(b) The Board of Supervisors finds that this Ordinance is, on balance, consistent with the General Plan and the Priority Policies of Planning Code Section 101.1(b) for the reasons set forth in Planning Commission Resolution No. _____, and incorporates those reasons herein by reference.

(c) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources

1 Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of
2 Supervisors in File No. _____ and is incorporated herein by reference.

3
4 Section 2. The San Francisco Planning Code is hereby amended by amending Section
5 748, to read as follows:

6 **SEC. 785. EXCELSIOR ALCOHOL RESTRICTED USE DISTRICT.**

7 (a) **Findings.** There are an unusually large number of establishments dispensing
8 alcoholic beverages, including beer and wine, for off-site consumption in the area located
9 generally on Mission Street from Silver Avenue to the Daly City border. The existence of this
10 many off-sale alcoholic beverage establishments appears to contribute directly to numerous
11 peace, health, safety, and general welfare problems in the area, including loitering, littering,
12 public drunkenness, defacement and damaging of structures, pedestrian obstructions, as well
13 as traffic circulation, parking and noise problems on public streets and neighborhood lots. The
14 existence of these problems creates serious impacts on the health, safety, and welfare of
15 residents of nearby single- and multiple-family areas, including fear for the safety of children,
16 elderly residents, and visitors to the area. The problems also contribute to the deterioration of
17 the neighborhood and concomitant devaluation of property and destruction of community
18 values and quality of life. The number of establishments selling alcoholic beverages for off-site
19 consumption and the associated problems discourage more desirable and needed
20 commercial uses in the area.

21 (b) **Establishment of the Excelsior Alcohol Restricted Use District.** In order to
22 preserve the residential character and the neighborhood-serving commercial uses of the area,
23 the Excelsior Alcohol Restricted Use District (Excelsior Alcohol RUD) is hereby established for
24 the blocks and lots fronting both sides of Mission Street from Silver Avenue to the Daly City
25

1 border, as set forth on Sectional Maps SU 11 and SU 12 of the Zoning Maps of the City and
2 County of San Francisco.

3 **(c) Definitions.** The following definitions shall apply to this Section 785:

4 (1) "ABC License" shall mean a liquor license issued by the California
5 Department of Alcoholic Beverage Control.

6 (2) "Liquor establishment" shall mean any enterprise selling alcoholic
7 beverages, as defined in California Business and Professions Code Sections 23004 and
8 23025, pursuant to an ABC License.

9 (3) "Prohibited liquor establishment" shall mean any establishment selling
10 alcoholic beverages lawfully existing prior to the effective date of this ordinance and licensed
11 by the State of California for the sale of alcoholic beverages for off-site consumption ("off-
12 sale"), so long as otherwise lawful. It shall include an establishment that is defined in Section
13 790.55 of this Code.

14 **(d) Controls.**

15 (1) No new liquor establishments selling alcoholic beverages for off-site
16 consumption shall be permitted in the Excelsior Alcohol RUD.

17 (2) The prohibition of off-sale liquor establishments shall not be interpreted to
18 prohibit the following:

19 (A) Temporary uses, as described in Planning Code Section 205.1 or
20 205.3; or

21 (B) Establishment of an off-sale liquor establishment if an application
22 for such liquor establishment is on file with the California Department of Alcoholic Beverage
23 Control prior to the effective date of this ordinance establishing the Excelsior Alcohol RUD; or
24
25

1 (3) Continuation of Existing Prohibited Liquor Establishments. In the Excelsior
2 Alcohol RUD, any prohibited liquor establishment may continue in accordance with Planning
3 Code Section through 186.2. subject to the following provisions:

4 (A) A prohibited liquor establishment lawfully existing and selling
5 alcoholic beverages as licensed by the State of California prior to the effective date of this
6 legislation, or subsequent legislation prohibiting that type of liquor establishment, so long as
7 otherwise lawful may continue to operate only under the following conditions, as provided by
8 California Business and Professions Code Section 23790:

9 (i) Except as provided in Subsection (B) below, the premises
10 shall retain the same type of retail liquor license within a license classification; and

11 (ii) Except as provided in Subsection (B) below, the liquor
12 establishment shall be operated continuously, without substantial changes in mode or
13 character of operation.

14 (B) A break in continuous service shall not be interpreted to include the
15 following, provided that, except as indicated below, the location of the establishment does not
16 change, the square footage used for the sale of alcoholic beverages does not increase, and
17 the type of ABC License does not change:

18 (i) a change in ownership of a prohibited liquor establishment or
19 an owner-to-owner transfer of an ABC License:

20 (ii) a temporary closure for restoration or repair of an existing
21 prohibited liquor establishment on the same lot after total or partial destruction or damage due
22 to fire, riot, insurrection, toxic accident, or act of God;

23 (iii) temporary closure of an existing prohibited liquor
24 establishment for reasons other than total or partial destruction or damage due to fire, riot,
25

1 insurrection, toxic accident, or act of God for not more than thirty days for repair, renovation,
2 or remodeling; or

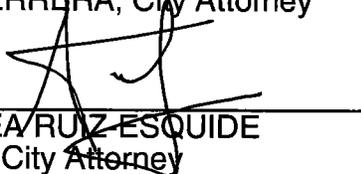
3 (iv) relocation of an existing prohibited liquor establishment in
4 the Excelsior Alcohol RUD to another location within the same Excelsior Alcohol RUD with
5 conditional use authorization from the Planning Commission, provided that the original
6 premises shall not be occupied by a prohibited liquor establishment unless by another
7 prohibited liquor establishment that is also relocating from within the Excelsior Alcohol RUD.

8 ~~(e) Sunset Provision. This Section 785 shall be repealed five years after its initial effective~~
9 ~~date unless the Board of Supervisors, on or before that date, extends or re-enacts it.~~

10
11 Section 3. Effective Date. This ordinance shall become effective 30 days from the
12 date of passage.

13
14 Section 4. This section is uncodified. In enacting this Ordinance, the Board intends to
15 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
16 punctuation, charts, diagrams, or any other constituent part of the Planning Code that are
17 explicitly shown in this legislation as additions, deletions, Board amendment additions, and
18 Board amendment deletions in accordance with the "Note" that appears under the official title
19 of the legislation.

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

22
23 By: 
ANDREA RUIZ ESQUIDE
24 Deputy City Attorney

25
Supervisor Avalos
BOARD OF SUPERVISORS

LEGISLATIVE DIGEST

[Planning Code - Deleting the Sunset Provision of the Excelsior Alcohol Restricted Use District.]

Ordinance amending the San Francisco Planning Code Section 785 to delete the sunset provision of the Excelsior Alcohol Restricted Use District; and making findings, including environmental findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

Existing Law

The Planning Code establishes several alcohol restricted use districts (RUDs) in the City. RUDs are areas where there is an unusually large number of establishments selling alcohol, contributing to numerous peace, health, safety and general welfare problems. No new liquor stores are allowed in RUDs. One such district is the Excelsior Alcohol Restricted Use District, which is located on Mission Street, from Silver Avenue to the Daly City border. This RUD was established in 2008, and it contains a sunset provision that mandates that it shall be repealed five years after its initial effective date, unless the Board of Supervisors extends or reenacts it.

Amendments to Current Law

This Ordinance amends the Excelsior Alcohol RUD, to delete the sunset provision.

Excelsior Alcohol Restricted Use District



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