

1 [Planning Code—Use of Public Sidewalk Space by Nonconforming Uses.]

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3 **Ordinance amending the San Francisco Planning Code by amending Sections 186 and**
4 **186.1 to allow certain nonconforming uses to occupy public sidewalk space with tables**
5 **and chairs, when otherwise permitted; and making findings, including environmental**
6 **findings and findings of consistency with the priority policies of Planning Code Section**
7 **101.1 and the General Plan.**

8 Note: Additions are single-underline italics Times New Roman;
9 deletions are ~~strikethrough italics Times New Roman~~.
10 Board amendment additions are double underlined.
11 Board amendment deletions are ~~strikethrough normal~~.

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

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

15 A. On 8-3-06 at a duly noticed public hearing, the Planning Commission
16 in Resolution No. 17289 found that the proposed Planning Code amendments
17 contained in this ordinance were consistent with the City's General Plan and with Planning
18 Code Section 101.1(b). In addition, the Planning Commission recommended that the Board
19 of Supervisors adopt the proposed Planning Code amendments. A copy of said Resolution is
20 on file with the Clerk of the Board of Supervisors in File No. 061069 and is
21 incorporated herein by reference. The Board finds that the proposed Planning Code
22 amendments contained in this ordinance are consistent with the City's General Plan and with
23 Planning Code Section 101.1(b) for the reasons set forth in said Resolution.

24 B. Pursuant to Planning Code Section 302, the Board finds that the proposed
25 ordinance will serve the public necessity, convenience and welfare for the reasons set forth in

1 Planning Commission Resolution No. 17289, which reasons are incorporated
2 herein by reference as though fully set forth.

3 C. The Planning Department has determined that the actions contemplated in this
4 Ordinance are in compliance with the California Environmental Quality Act (California Public
5 Resources Code section 21000 et seq.). Said determination is on file with the Clerk of the
6 Board of Supervisors in File No. 061069 and is incorporated herein by reference.

7 Section 2. The San Francisco Planning Code is hereby amended by amending
8 Section 186, to read as follows:

9 SEC. 186. EXEMPTION OF LIMITED COMMERCIAL AND INDUSTRIAL
10 NONCONFORMING USES.

11 The purpose of this Section is to provide for the further continuance in R Districts of
12 nonconforming uses of a limited commercial and industrial character, as herein described,
13 which are beneficial to, or can be accommodated within, the residential areas in which they
14 are located. It is hereby found and declared that, despite the general incompatibility of
15 nonconforming uses with the purposes of this Code, and with other nearby uses, these limited
16 commercial uses may be tolerated in residential areas, and tend to provide convenience
17 goods and services on a retail basis to meet the frequent and recurring needs of
18 neighborhood residents within a short distance of their homes or, within the South of Market
19 RED Districts, tend to provide jobs and continuation of small scale service and light industrial
20 activities. These uses tend to be small in scale, to serve primarily a walk-in trade, and cause a
21 minimum of interference with nearby streets and properties. Accordingly, this Section
22 recognizes the public advantages of these uses and establishes conditions for their continued
23 operation.

1 (a) The following nonconforming uses in R Districts shall be exempt from the
2 termination provisions of Section 185, provided such uses comply with all the conditions
3 specified in Subsection (b) below:

4 (1) Any nonconforming use at any story in an RH or RM District which is located
5 more than ¼ mile from the nearest Individual Area Neighborhood Commercial District or
6 Restricted Use Subdistrict described in Article 7 of this Code, and which complies with the use
7 limitations specified for the first story and below of an NC-1 District, as set forth in Sections
8 710.10 through 710.95 of this Code.

9 (2) Any nonconforming use in an RH or RM District which is located within ¼ mile
10 from any Individual Area Neighborhood Commercial District or restricted use subdistrict and
11 which complies with the most restrictive use limitations specified for the first story and below
12 of:

13 (A) NC-1 District, as set forth in Sections 710.10 through 710.95 of this Code; and

14 (B) Any Individual Area Neighborhood Commercial District within ¼ mile of the use,
15 as set forth in Sections 714.10 through 729.95 of this Code;

16 (C) Any Restricted Use Subdistrict within ¼ mile of the use, as set forth in Sections
17 781 through 781.7 of this Code.

18 (3) In the RED Districts, any nonconforming use which is a personal service use
19 falling within zoning category 816.31; home and business service use falling within zoning
20 categories 816.42 through 816.47; live/work unit falling within zoning category 816.55;
21 wholesale sales, storage or light manufacturing uses falling within zoning categories 816.64
22 through 816.67.

23 (b) The limited nonconforming uses described above shall meet the following
24 conditions:

1 (1) The building shall be maintained in a sound and attractive condition, consistent
2 with the general appearance of the neighborhood;

3 (2) Any signs on the property shall be made to comply with the requirements of
4 Article 6 of this Code applying to nonconforming uses;

5 (3) The hours during which the use is open to the public shall be limited to the
6 period between 6:00 a.m. and 10:00 p.m.;

7 (4) ~~No public~~Public sidewalk space ~~shall~~may be occupied in connection with the use
8 provided that it is only occupied with tables and chairs as permitted by this Municipal Code;

9 (5) Truck loading shall be limited in such a way as to avoid undue interference with
10 sidewalks, or with crosswalks, bus stops, hydrants and other public features;

11 (6) Noise, odors and other nuisance factors shall be adequately controlled; and

12 (7) All other applicable provisions of this Code shall be complied with.

13 (c) Any use affected by this Section which does not comply with all of the conditions
14 herein specified shall be subject to termination in accordance with Section 185 at the
15 expiration of the period specified in that Section, but shall be qualified for consideration as a
16 conditional use under Section 185(e). Any such use which is in compliance with such
17 conditions at the expiration of such period but fails to comply therewith at any later date shall
18 be subject to termination when it ceases to comply with any of such conditions.

19 (d) The provisions for nonconforming uses contained in Sections 180 through 183
20 shall continue to apply to all uses affected by this Section 186, except that the cost limit for
21 structural alterations contained in Section 181(b)(4) shall not be applicable thereto.

22 Section 3. The San Francisco Planning Code is hereby amended by amending
23 Section 186.1, to read as follows:
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1 SEC. 186.1. EXEMPTION OF NONCONFORMING USES IN NEIGHBORHOOD
2 COMMERCIAL DISTRICTS.

3 The purpose of this Section is to provide for the further continuance in NC Districts of
4 nonconforming uses created by adoption of Ordinance No. 69-87, as herein described, and
5 subsequent ordinances that change the uses allowed in NC Districts, which are beneficial to,
6 or can be accommodated within the neighborhood commercial areas in which they are
7 located.

8 It is hereby found and declared that certain uses which traditionally have been
9 permitted to locate in neighborhood commercial areas can be beneficial to a neighborhood
10 commercial area in small or limited numbers, but which if allowed to proliferate, can disrupt
11 the balanced mix of neighborhood-serving retail stores and services. It is further found and
12 declared that in order to prevent undesirable over concentrations of such uses, the
13 establishment of additional such uses shall be prohibited pursuant to controls governing uses
14 in NC Districts. At the same time, however, it is desirable to provide for the further
15 continuance, expansion, enlargement, alteration, changes, discontinuance, and relocation of
16 such existing uses, which are nonconforming as a result of zoning controls governing uses in
17 NC Districts.

18 The following provisions shall govern with respect to nonconforming uses and features
19 located in Neighborhood Commercial Districts to the extent that there is a conflict between the
20 provisions of this Section and other Sections contained in this Article 1.7.

21 (a) Expansion. A nonconforming use may expand: (1) in floor area as provided in
22 Subsection (b) below, but may not expand beyond the lot which it occupies, nor may the
23 boundaries of such lot be expanded for purposes of expanding the use; nor may the use
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1 expand upward above the story or stories which it lawfully occupies, except as provided in
2 Section 186.2 below.

3 (b) Enlargements or Alteration.

4 (1) A nonconforming use may not be significantly altered, enlarged or intensified,
5 except upon approval of a conditional use application pursuant to the provisions of Article 3 of
6 this Code, provided that the use not have or result in a greater height, bulk or floor area ratio,
7 less required rear yard or open space, or less required off-street parking space or loading
8 space than permissible under the limitations set forth in this Code for the district or districts in
9 which such use is located.

10 (2) A nonconforming use may expand to include public sidewalk space provided that such
11 space is only occupied with tables and chairs as permitted by this Municipal Code.

12 (3) No existing use or structure which fails to meet the requirements of this Code in
13 any manner as described above in this Subsection (b) shall be constructed, reconstructed,
14 enlarged, altered or relocated so as to increase the discrepancy, or to create a new
15 discrepancy, at any level of the structure, between existing conditions on the lot and the
16 required standards for new construction set forth in this Code.

17 (c) Changes in Use. A nonconforming use may be changed to another use or
18 feature as described below.

19 (1) A nonconforming use may be changed to a use listed in Article 7 of this Code as
20 a principal use for the district in which the property is located, and the new use may thereafter
21 be continued as a permitted principal use.

22 (2) A nonconforming use may be changed to a use listed in Article 7 of this Code as
23 a conditional use for the district in which the use is located, subject to the provisions of Article
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1 3 of this Code, and the new use may thereafter be continued as a permitted conditional use,
2 subject to the provisions of Section 178 of this Code.

3 (3) A nonconforming use may be changed to a use which is not permitted in that
4 Neighborhood Commercial District as described below, only upon approval of a conditional
5 use application, pursuant to the provisions of Article 3 of this Code:

6 (A) Any use described in zoning categories .41, .42, .43 or .44, as defined in
7 Sections 790.22, 790.92, 790.90 and 790.91, respectively, may change to another use
8 described in zoning categories .41, .42, or .44, even though such other use is not permitted in
9 that Neighborhood Commercial District, unless such other use is located in an Alcohol
10 Restricted Use Subdistrict and is prohibited by the provisions governing that Alcohol
11 Restricted Use Subdistrict.

12 (B) Any use described in zoning categories .51, .52 or .53, as defined in Sections
13 790.114, 790.116 and 790.108 respectively, may change to another use described in zoning
14 categories .51, .52 or .53, even though such other use is not permitted in that Neighborhood
15 Commercial District.

16 (C) Any use described in zoning categories .57, .58 or .59, as defined in Sections
17 790.14, 790.17 and 790.15 respectively, may be demolished and reconstructed as the same
18 use or may change to another use described in zoning categories .57, .58 or .59, even though
19 such other use is not permitted in that Neighborhood Commercial District.

20 The new use shall still be classified as a nonconforming use.

21 The changes in use described in this Paragraph 3 shall include remodeling activities
22 involving the demolition and replacement of structures which result in a change of use.

23 (4) In the North Beach Neighborhood Commercial District, any use that exceeds the
24 use size provisions of Section 121.2(a) or 121.2(b) may be changed to a new use only upon
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1 the approval of a new conditional use application. The Commission's approval of such
2 conditional use application shall explicitly address the use size findings of Section 303(c).

3 (5) In the Castro Street Neighborhood Commercial District, any use in this district
4 that exceeds the maximum use size limit of Section 121.2(b), may be not changed to a new
5 use. The only method for changing a nonconforming use identified in this Subsection is to
6 reduce the nonconforming use:

7 (A) to a conforming use size or

8 (B) to a size specified in Subsection 121.2(a) pursuant to conditional use
9 authorization.

10 Notwithstanding the above, any use in this District that exceeds the maximum use size
11 limit of Section 121.2(b) and is categorized in the Other Retail Sales and Services zoning
12 classification, as defined in Section 790.102, may change to another use category
13 enumerated in Section 790.102 as long as the use size is not increased and the Commission
14 approves a conditional use application for such change. The Commission's approval of such
15 conditional use application shall explicitly address the use size findings of Section 303(c).

16 (d) Discontinuance. A nonconforming use which is discontinued for a period of
17 three years, or otherwise abandoned or changed to another use which is listed in Article 7 of
18 this Code as a principal or conditional use for the district in which the use is located shall not
19 be reestablished. For purposes of this Subsection, the period of nonuse for a nonconforming
20 use to be deemed discontinued in the North Beach and Castro Street Neighborhood
21 Commercial Districts shall be eighteen (18) months.

22 (e) Relocation. A nonconforming use in a Neighborhood Commercial District may
23 be reestablished at another location within that Neighborhood Commercial District only upon
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1 approval of a new conditional use application pursuant to the provisions of Article 3 of this
2 Code, provided that the following conditions are met:


3 (1) The original premises shall not be occupied by an establishment of the same
4 type of use as the relocating use unless by another establishment that is relocating from
5 within the district; and

6 (2) No final permits to operate the relocated use at the new premises are granted
7 prior to the issuance of a certificate of final completion of any work to the original premises
8 which is required as conditions attached to the approval of the conditional use application; and

9 (3) Deed restrictions are recorded for the original premises in the Official Records of
10 the City and County of San Francisco, which restrictions prohibit for the duration of the Code
11 sections prohibiting the use for the district in which the use is located, the establishment and
12 operation of a new use of the same type of use as the relocated use, unless such new use is
13 relocating from within the district.

14
15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By:


18 Marlena G. Byrne
19 Deputy City Attorney



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 061069

Date Passed:

Ordinance amending the San Francisco Planning Code by amending Sections 186 and 186.1 to allow certain nonconforming uses to occupy public sidewalk space with tables and chairs, when otherwise permitted; and making findings, including environmental findings and findings of consistency with the priority policies of Planning Code Section 101.1 and the General Plan.

September 26, 2006 Board of Supervisors — PASSED ON FIRST READING

Ayes: 10 - Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick,
Mirkarimi, Peskin, Sandoval
Excused: 1 - Alioto-Pier

October 3, 2006 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell,
McGoldrick, Mirkarimi, Peskin, Sandoval

File No. 061069

I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on October 3, 2006
by the Board of Supervisors of the City and
County of San Francisco.

10/11/2006

Date Approved

Kay Lullengas

for Gloria L. Young
Clerk of the Board

[Signature]

Mayor Gavin Newsom