



# SAN FRANCISCO PLANNING DEPARTMENT

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## New Planning Code Change Summary:

### Article 7 Eating & Drinking Definitions & North Beach NCD Controls

**Case Number:** Board File No. 08-0696  
**Initiated By:** Supervisor Peskin, June 17, 2008  
**Effective Date:** December 1, 2008

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#### The Way It Was:

Section 790 of Article 7 contains definitions of uses in Neighborhood Commercial Districts.<sup>1</sup> There are 9 separate definitions that contain references to food and drink-related uses.<sup>2</sup> Many of these definitions share similar descriptions and it was difficult to place an eating or drinking use into one category.

Example #1: There is no separate use category for bakeries, delicatessens, confectioneries, and other specialty retailers which prepare food on the premises for consumption off the premises. These uses must fit into the definition of a Restaurant, Small Self-Service, or Restaurant, Large Fast-Food, or Take Out Food.

Example #2: A General Grocery Store (located in the definition of Sales and Services, Other Retail<sup>3</sup>) is defined as a retail store that is larger than 5,000 s/f. This definition does not match the reality of most 'grocery' stores in San Francisco, which tend to be in much smaller spaces.

With regard to the North Beach NCD, the previous controls did not protect certain neighborhood services from conversion into restaurants and bars, and did not prevent restaurants from conversion into bars.

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<sup>1</sup> Section 790. *Definitions for Neighborhood Commercial Districts.* See 790.2 – 790.141 for specific definitions.

<sup>2</sup> 790.22: Bar. 790.34: Eating and Drinking Use. 790.55: Liquor Store. 790.68: Neighborhood-Serving Business. 790.90: Restaurant, Large Fast Food. 790.91: Restaurant, Small Self-Service. 790.92: Restaurant, Full-Service. 790.102: Sales and Service, Other Retail. 790.122: Take-Out Food.

<sup>3</sup> See 790.102 (a). *Sales and Services, Other Retail.*

## The Way It Is Now:

### 1. Amendments to Section 790.102. Sales and Services, Other Retail.

#### What it does:

- Corrects a problem inadvertently created by prior Code amendment that defines General Grocery Stores as *only* those that exceed 5,000 gross square feet. Now, a grocery store does not have a square footage limitation.
- A conditional use authorization will still be required to eliminate any grocery store use that exceeds 5,000 gross square feet.<sup>4</sup>
- Expands the definition of Specialty Grocery Stores.
- Adds provision to clarify that off-sale beer, wine and liquor sales (with ABC license types 20 and 21) are allowed as an accessory use (within accessory use limits) in both General and Specialty Grocery stores. (See item 3)
- Requires conforming amendments to Sections:
  1. 303(m) General Grocery Store Uses;
  2. 218.2 (Limitation on change in use or demolition of General Grocery Store Use);
  3. 703.2(b)(1)(B)(iii) (Uses Permitted in Neighborhood Commercial Districts);
  4. 803.2(b)(1)(B)(iv) (Uses Permitted in Chinatown Mixed Use Districts); and
  5. 803.3(b)(1)(B)(iii) (Uses Permitted in South of Market Use Districts).

### 2. Amendment to Section 790.55. Liquor Store.

#### What it does:

- General grocery stores are exempt from being classified as liquor stores and can have an off-site liquor license (type 20 or 21);
- Adds a provision to provide that a Specialty Grocery Store and a Self-Service Specialty Food (See item 4) use may sell off-sale beer, wine and liquor (with ABC license types 20 and 21) as an accessory use (within accessory use limits) without having to get a Conditional Use Authorization to operate as a Liquor Store.

### 3. Addition of new Section 703.2(b)(1)(C)(vi). Accessory Uses.

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<sup>4</sup> See Section 303(m): General Grocery Store Uses.

What it does:

- Adds a provision to Accessory Use definition to clarify that off-sale beer, wine and liquor sales (with ABC license types 20 and 21) are allowed as accessory uses *only if* they occupy less than 15% of the gross square footage in a general grocery store, specialty grocery store, or self-service specialty food use (including all areas devoted to the display and sale of alcoholic beverages).

4. **Addition of new Section 790.93 Specialty Food, Self-Service.**

What it does:

- Divides up the uses currently included under the definitions of Small Self-Service and Large Fast-Food Restaurant uses by creating a new category of food use (Specialty Food, Self-Service) for bakeries, delicatessens, and confectioneries, and other specialty retailers whose primary function is to prepare and provide ready-to-eat specialty foods to a high volume of customers who carry out the food for off-premises consumption. It may not include more than 10 seats and may not provide on-site beer and/or wine sales for consumption on the premises.
- Amendments were necessary to the existing definitions of Small Self-Service and Large Fast-Food Restaurants to delete the uses (delicatessens, bakeries, etc.) that will fall under the new category of Self-Service Specialty Food Use.
- All Neighborhood Commercial District Use Tables were amended to add a new row for “Self-Service Specialty Food” with the same controls that each has for Small Self-Service Restaurant.
- Makes other changes necessary to include the new definition in other Code Sections:
  1. 312(c) (Neighborhood Notification);
  2. 790.91 (Restaurant, Small Self-Service);
  3. 790.90 (Restaurant, Large Fast-Food); and
  4. 790.34 (Eating And Drinking Use).

5. **Addition of new Section 790.142. Bona Fide Eating Place.**

What it does:

- Adds a new definition to the Planning Code for “Bona Fide Eating Place”<sup>5</sup> that corresponds closely to the definition of “Bona Fide Public Eating Place” contained in California Business and Professions Code Section 23038 (and used by the California Alcohol Beverage Control Agency), so that the Planning Code definition will conform more closely to state requirements for obtaining ABC license types 41 and 47.
- NOTE: this definition only applies to the North Beach NCD (discussed below).

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<sup>5</sup> Section 790.142. BONA FIDE EATING PLACE.

A place which is regularly and in a bona fide manner used and kept open for the service of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking of an assortment of foods which may be required for ordinary meals.

(a) “Meals” shall mean an assortment of foods commonly ordered at various hours of the day for breakfast, lunch or dinner. Incidental food service, comprised only of appetizers to accompany drinks is not considered a meal. Incidental, sporadic or infrequent sales of meals or a mere offering of meals without actual sales is not compliance.

(b) “Guests” shall mean persons who, during the hours when meals are regularly served therein, come to a bona fide public eating place for the purpose of obtaining, and actually order and obtain at such time, in good faith, a meal therein. Nothing in this section, however, shall be construed to require that any food be sold or purchased with any beverage.

(c) Actual and substantial sales of meals are required, during the normal days and meal hours that a bona fide public eating place is open; provided that “normal days of operation” shall mean a minimum of five days a week and “normal hours” of operation for meal service shall mean approximately 7:00 a.m. to 11:00 a.m. if open for breakfast; 11:00 a.m. to 2:00 p.m. if open for lunch; or 5:00 p.m. to 10:00 p.m. if open for dinner.

(d) The premises must be equipped and maintained in good faith. This means the premises must possess working refrigeration and cooking devices, pots, pans, utensils, table service, condiment dispensers, menus, signs and enough goods to make substantial meals. The premises must comply with all regulations of the Department of Public Health.

(e) A minimum of 51 percent of the restaurant's gross receipts shall be from food sales prepared and sold to guests on the premises. Records of the restaurant’s gross receipts shall be provided to the Department upon request.

(f) A "bona fide eating place" does not include an adult entertainment business as defined in Planning Code Section 790.36.

6. **Amendment to Section 186.1(1)(c)(2). Nonconforming Uses in NCDs/Use Changes.**

What it does:

- Clarifies that a nonconforming use may be changed to a use listed in Article 7 of the Planning Code as a conditional use for an NCD in which the use is located, *only upon approval of a conditional use application.*

7. **Changes to Planning Code for North Beach Neighborhood Commercial District:**

a. **Section 780.3. North Beach Special Use District.**

What it does:

1. Creates a new special use district for the North Beach NCD that limits the establishment of new bars and restaurants in locations that are or were last occupied by “Basic Neighborhood Sales or Services” which are those providing goods and/or services needed by residents and workers in North Beach and surrounding neighborhoods (ie, retail uses).
2. It does not limit new restaurants and bars in locations previously occupied by restaurants and bars or in other spaces previously occupied by non-neighborhood sales or services, unless such uses were discontinued or abandoned.
3. The *abandonment clause* for eating and drinking uses has been expanded to 36 months (from 18 months, which still applies to all other uses in North Beach).

b. **Amendment to Section 722.42 and 722.44. North Beach Liquor Licenses for Full-Service and Small Self-Service Restaurants.**

What it does:

1. Allows full-service and small self-service restaurants to obtain ABC type 41 licenses to provide on-site beer and/or wine sales for drinking on the premises, only if the restaurant operates as a “bona-fide eating place” as newly defined in 790.142, consistent with ABC requirements. (see above definition)
2. To allow full service restaurants to a obtain ABC type 47 licenses, so that liquor may be served for drinking on the premises, a bar use, as defined in § 790.22, may be permitted as a conditional use if the bar function is operated as an integral element of an establishment that is both a full-service restaurant and a “bona-fide eating place.” Small self-service restaurants may not obtain ABC type 47 licenses.

c. **Amendment to Section 722.26. North Beach Walk Up Facilities.**

What it does:

1. Provides that new walk-up automated bank teller machines (ATMs) are not permitted.

d. **Amendment to Section 781.6. North Beach Financial Service Subdistrict.**

What it does:

1. Expands the boundaries of the existing Subdistrict to Greenwich Street;
2. Adds limited financial services and business or professional services to uses that are not permitted in the SUD.

8. **North Beach “Clean Up” Amendments:**

a. **Amendment to Section 186.1(1)(c)(4). Nonconforming Uses in North Beach/Use Changes.**

What it does:

1. Adds a provision governing changes to nonconforming uses in North Beach to provide that a nonconforming use cannot be changed to a use that is not a permitted principal use under the North Beach controls.

b. **Amendment to Section 121.2(b). Use Size Limits.**

What it does:

1. Deletes a special exemption from the use size limits in North Beach that was enacted for one specific project that was never approved or built.

c. **Amendment to Section 722.42. Special Exception for Full Service Restaurant on 2nd story.**

What it does:

1. Deletes special exemption enacted for one specific project that was never approved or built, which allowed for a full service restaurant and other entertainment to be located on the second floor if they were operated in combination with a lawfully existing nonconforming second-floor movie theater.