AMENDING PART II, CHAPTER II, OF THE SAN FRANCISCO MUNICIPAL CODE
("PLANNING CODE") BY AMENDING SECTION 303 THEREOF TO CLARIFY THE
APPEAL DELAY IN THE EFFECTIVE DATE OF A CONDITIONAL USE APPROVAL
AND TO PROVIDE A PROCESS FOR ABATING CONDITIONAL USES WHICH
VIOLATE THEIR CONDITIONS OF APPROVAL OR BECOME A PUBLIC NUISANCE,
WHICH WOULD INVOLVE A PUBLIC HEARING WITH APPEALS TO CONSIDER
REVOKING THE CONDITIONAL USE PERMIT, MODIFYING CONDITIONS OF
APPROVAL OR TAKING OTHER ABATEMENT ACTION.

Note: additions are underlined. Deletions are indicated by
((double parenthesis)).

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

Section 1. (a) General Findings.

The Planning Code, which controls uses that can be
established on property in the City and County of San Francisco,
disallows some uses and allows others, depending upon the zoning
district. Some uses are allowed only at the discretion of the
Planning Commission, which may approve a use subject to
reasonable conditions intended to make the use compatible with
its surroundings. These uses are known as "conditional uses" and
the process authorizing them is delineated in Planning Code
Section 303.

Once some conditional uses are approved, their owners or
operators fail to implement their conditions of approval and some
conditional uses can become a public nuisance. Since conditional
uses are not uses that are allowed "as-of-right" but are allowed
at the discretion of the Planning Commission, the Planning
Commission has the obligation to exert appropriate control over
these uses after they have been approved and established. The
Commission should have appropriate means of mitigating some of
these violations of conditions short of revoking the
authorization if the violation is within the subject matter
jurisdiction of the Planning Commission.

Problems with various uses are normally investigated and
abated by the Zoning Administrator, but if compliance with
conditions is not forthcoming, or if a conditional use becomes a
public nuisance, a public hearing may be the best method of
exploring possible solutions. The proposed amendment to Section
303 of the Planning Code would give the Planning Commission, the
Director of Planning and the Zoning Administrator, as well as
members of the public and the owner and operator of the
conditional use involved a procedure for discussing problems and
would give the Planning Commission the authority to implement
solutions if the violation is within the subject matter
jurisdiction of the Planning Commission. The intent of this
legislation is to create a procedure for abating Conditional Uses
found to be problematic, rather than to create new grounds for
abatement.
(b) **Priority Policy Findings.** Since every conditional use, with its conditions must conform to the Priority Policies of Planning Code Section 101.1, the proposed amendment would conform to these policies in that it would help enforce conditions that support them:

a. The proposed amendment would protect existing neighborhood serving retail uses and the future employment opportunities they offer to residents because the amendment would offer the opportunity to solve problems associated with a conditional use that may hamper the operations of these existing uses.

b. The proposed amendment would protect neighborhood character by offering the opportunity to solve problems associated with a conditional use that may be threatening the character of its neighborhood.

c. The proposed amendment would affect the City's supply of affordable housing if one of the conditions the amendment would help enforce were one requiring the construction of affordable dwelling units or a condition that would protect or enhance an environment conducive to the construction or habitation of affordable housing.

d. The proposed amendment would enhance municipal transit if one of the conditions the amendment would help enforce were one to mitigate potential interference with transit or a condition that would encourage transit use by patrons.
or employees of the conditional use.

e. The proposed amendment would affect the diversity of the
City’s economic base or opportunities for resident
employment if one of the conditions the amendment would
help enforce would encourage or require resident
employment or a form of employment outreach to those who
might not otherwise be employed.

f. The proposed amendment would enhance the community’s
preparation for an earthquake if one of the conditions the
amendment would help enforce were designed to implement a
seismic safety strategy.

g. The proposed amendment would enhance the preservation of
landmarks because specific measures to preserve landmarks
are common conditions that the amendment would help
enforce.

h. The proposed amendment could enhance parks and open spaces
if one of the conditions the amendment would help enforce
were designed to protect or enhance parks and open spaces.

Section 2. Article 3 of the San Francisco Planning Code is
hereby amended by amending Section 303 as follows:

SEC. 303. CONDITIONAL USES. (a) General. The City Planning
Commission shall hear and make determinations regarding
applications for the authorization of conditional uses in the
specific situations in which such authorization is provided for
elsewhere in this Code. The procedures for conditional uses shall
be as specified in this Section and in Sections 306 through
306.6, except that Planned Unit Developments shall in addition be
subject to Section 304, medical institutions and post-secondary
educational institutions shall in addition be subject to the
institutional master plan requirements of Section 304.5, and
conditional use and Planned Unit Development applications filed
pursuant to Article 7, or otherwise required by this Code for
uses or features in Neighborhood Commercial Districts, and
conditional use applications within South of Market Districts,
shall be subject to the provisions set forth in Sections 316
through 316.8 of this Code, in lieu of those provided for in
Sections 306.2 and 306.3 of this Code, with respect to scheduling
and notice of hearings, and in addition to those provided for in
Sections 306.4 and 306.5 of this Code, with respect to conduct of
hearings and reconsideration.

(b) **Initiation.** A conditional use action may be initiated
by application of the owner, or authorized agent for the owner,
of the property for which the conditional use is sought.

(c) **Determination.** After its hearing on the application,
or upon the recommendation of the Director of Planning if the
application is filed pursuant to Sections 316 through 316.8 of
this Code and no hearing is required, the City Planning
Commission shall approve the application and authorize a
conditional use if the facts presented are such to establish:
(1) That the proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community; and

(2) That such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:

(A) The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

(B) 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;

(C) The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

(D) Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs; and

(3) That such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the Master Plan; and

(4) With respect to applications filed pursuant to
Article 7 of this Code, that such use or feature as proposed will provide development that is in conformity with the stated purpose of the applicable Neighborhood Commercial District, as set forth in zoning control category 1 of Sections 710 through 729 of this Code; and

(5) (A) With respect to applications filed pursuant to Article 7, Section 703.2(a), zoning categories .46, .47, and .48, in lieu of the criteria set forth above in Section 303(c)(1-4), that such use or feature will:

(i) Not be located within 1,000 feet of another such use, if the proposed use or feature is included in zoning category .47, as defined by Section 790.36 of this Code; and/or

(ii) Not be open between two a.m. and six a.m.; and

(iii) Not use electronic amplification between midnight and six a.m.; and

(iv) Be adequately soundproofed or insulated for noise and operated 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.

(B) Notwithstanding the above, the City Planning Commission may authorize a conditional use which does not satisfy the criteria set forth in (5)(A)(ii) and/or (5)(A)(iii) above, if facts presented are such to establish that the use will be operated in such a way as to minimize disruption to residences in
and around the district with respect to noise and crowd control.

(6) With respect to applications for live/work units in RH and RM Districts filed pursuant to Section 209.9(f) or 209.9(h) of this Code, that:

(A) Each live/work unit is within a building envelope in existence on the effective date of Ordinance No. 412-88 (effective October 10, 1988) and also within a portion of the building which lawfully contains at the time of application a nonconforming, nonresidential use;

(B) There shall be no more than one live/work unit for each 1,000 gross square feet of floor area devoted to live/work units within the subject structure; and

(C) The project sponsor will provide any off-street parking, in addition to that otherwise required by this Code, needed to satisfy the reasonably anticipated auto usage by residents of and visitors to the project.

Such action of the City Planning Commission, in either approving or disapproving the application, shall be final except upon the filing of a valid appeal to the Board of Supervisors as provided in Section 308.1. The action of the Planning Commission approving a conditional use does not take effect until the appeal period is over or while the approval is under appeal.

(d) Conditions. When authorizing a conditional use as provided herein, the City Planning Commission, or the Board of Supervisors on appeal, shall prescribe such additional
conditions, beyond those specified in this Code, as are in its opinion necessary to secure the objectives of the Code. Once any portion of the conditional use authorization is utilized, all such conditions pertaining to such authorization shall become immediately operative. The violation of any condition so imposed shall constitute a violation of this Code and may constitute grounds for revocation of the conditional use authorization. Such conditions may include time limits for exercise of the conditional use authorization; otherwise, any exercise of such authorization must commence within a reasonable time.

(e) **Modification of Conditions.** Authorization of a change in any condition previously imposed in the authorization of a conditional use shall be subject to the same procedures as a new conditional use. Such procedures shall also apply to applications for modification or waiver of conditions set forth in prior stipulations and covenants relative thereto continued in effect by the provisions of Section 174 of this Code.

(f) **Conditional Use Abatement.** The Planning Commission may consider the possible revocation of a conditional use or the possible modification of or placement of additional conditions on a conditional use when the Planning Commission determines, based upon substantial evidence, that the conditional use is not in compliance with a condition of approval, is in violation of law if the violation is within the subject matter jurisdiction of the Planning Commission or operates in such a manner as to create
hazardous, noxious or offensive conditions enumerated in Section 202(c) if the violation is within the subject matter jurisdiction of the Planning Commission and these circumstances have not been abated through administrative action of the Director, the Zoning Administrator or other City authority. Such consideration shall be the subject of a public hearing before the Planning Commission but no fee shall be required of the applicant or the subject conditional use operator.

(1) The Director of Planning or the Planning Commission may seek a public hearing on conditional use abatement when the Director or Commission has substantial evidence of a violation of conditions of approval, a violation of law, or operation which creates hazardous, noxious or offensive conditions enumerated in Section 202(c).

(2) The notice for the public hearing on a conditional use abatement shall be subject to the notification procedure as described in Sections 306.3 and 306.8 except that notice to the property owner and the operator of the subject establishment or use shall be mailed by regular and certified mail.

(3) In considering a conditional use revocation, the Commission shall consider substantial evidence of how any required condition has been violated or not implemented or how the conditional use is in violation of the law if the violation is within the subject matter jurisdiction of the Planning Commission or operates in such a manner as to create hazardous,
noxious or offensive conditions enumerated in Section 202(c) if
the violation is within the subject matter jurisdiction of the
Planning Commission. As an alternative to revocation, the
Commission may consider how the use can be required to meet the
law or the conditions of approval, how the hazardous, noxious or
offensive conditions can be abated, or how the criteria of
Section 303(c) can be met by modifying existing conditions or by
adding new conditions which could remedy a violation.

(4) Appeals. A decision by the Planning Commission to
revoke a conditional use, to modify conditions or to place
additional conditions on a conditional use or a decision by the
Planning Commission refusing to revoke or amend a conditional
use, may be appealed to the Board of Supervisors within 30 days
after the date of action by the Planning Commission pursuant to
the provisions of Section 308.1(b). The Board of Supervisors may
disapprove the action of the Planning Commission in an abatement
matter by the same vote necessary to overturn the Commission’s
approval or denial of a conditional use. The Planning
Commission’s action on a conditional use abatement issue shall
take effect when the appeal period is over or, upon appeal, when
there is final action on the appeal.
(5) Reconsideration. The decision by the Planning Commission with regards to a conditional use abatement issue or by the Board of Supervisors on appeal shall be final and not subject to reconsideration within a period of one year from the effective date of final action upon the earlier abatement proceeding, unless the Director of Planning determines that:

(A) There is substantial new evidence of a new conditional use abatement issue that is significantly different than the issue previously considered by the Planning Commission; or

(B) There is substantial new evidence about the same conditional use abatement issue considered in the earlier abatement proceeding, this new evidence was not or could not be reasonably available at the time of the earlier abatement proceeding, and that new evidence indicates that the Commission’s decision in the earlier proceeding has not been implemented within a reasonable time or raises significant new issues not previously considered by the Planning Commission.

The decision of the Director of Planning regarding the sufficiency and adequacy of evidence to allow the reconsideration of a conditional use abatement issue within a period of one year from the effective date of final action on the earlier abatement proceeding shall be final.
Hotels and Motels.

With respect to applications for development of tourist hotels and motels, the Planning Commission shall consider, in addition to the criteria set forth in Subsections (c) and (d) above:

(A) The impact of the employees of the hotel or motel on the demand in the City for housing, public transit, child care, and other social services. To the extent relevant, the Commission shall also consider the seasonal and part-time nature of employment in the hotel or motel;

(B) The measures that will be taken by the project sponsor to employ residents of San Francisco in order to minimize increased demand for regional transportation; and

(C) The market demand for a hotel or motel of the type proposed.

Notwithstanding the provisions of Subsections (f)(1) above, the Planning Commission shall not consider the impact of the employees of a proposed hotel or motel project on the demand in the City for housing where:

(A) The proposed project would be located on property under the jurisdiction of the San Francisco Port Commission; and

(B) The sponsor of the proposed project has been granted exclusive rights to propose the project by the San Francisco Port Commission prior to June 1, 1991.

Notwithstanding the provisions of Subsection (f)(1)
above, with respect to the conversion of residential units to tourist hotel or motel use pursuant to an application filed on or before June 1, 1990 under the provisions of Chapter 41 of the San Francisco Administrative Code, the Planning Commission shall not consider the criteria contained in Subsection (f)(1) above; provided, however, that the Planning Commission shall consider the criteria contained in Subsection (f)(1)(B) at a separate public hearing if the applicant applies for a permit for new construction or alteration where the cost of such construction or alteration exceeds $100,000. Furthermore, no change in classification from principal permitted use to conditional use in Section 216(b)(i) of this Code shall apply to hotels or motels that have filed applications on or before June 1, 1990 to convert residential units to tourist units pursuant to Chapter 41 of the San Francisco Administrative Code.

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APPROVED AS TO FORM:

LOUISE H. RENNE, CITY ATTORNEY

By: [Signature]

JUDY BOYAJIAN

Deputy City Attorney
Ordinance amending Part II, Chapter II, of the San Francisco Municipal Code ("Planning Code") by amending Section 303 thereof to clarify the appeal delay in the effective date of a conditional use approval and to provide a process for abating conditional uses which violate their conditions of approval or become a public nuisance, which would involve a public hearing with appeals to consider revoking the conditional use permit, modifying conditions of approval or taking other abatement action.

May 3, 2000  Board of Supervisors — SUBSTITUTED

June 19, 2000  Board of Supervisors — PASSED ON FIRST READING
   Ayes: 10 - Ammiano, Becerril, Bierman, Brown, Katz, Leno, Newsom, Teng,
   Yaki, Yee
   Absent: 1 - Kaufman

June 26, 2000  Board of Supervisors — FINALLY PASSED
   Ayes: 11 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom,
   Teng, Yaki, Yee
I hereby certify that the foregoing Ordinance was FINALLY PASSED on June 26, 2000 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young
Clerk of the Board

Mayor Willie L. Brown Jr.

JUL - 7 2000
Date Approved