

1 [Zoning - Castro Street NCD]
 2 AMENDING PART II, CHAPTER II OF THE SAN FRANCISCO MUNICIPAL CODE
 3 (PLANNING CODE) BY AMENDING SECTIONS 178 AND 186.1 TO REQUIRE USES THAT
 4 EXCEED SPECIFIED USE SIZE PROVISIONS IN THE CASTRO STREET
 5 NEIGHBORHOOD COMMERCIAL DISTRICT TO BE PRESERVED OR OBTAIN
 6 CONDITIONAL USE AUTHORIZATION PRIOR TO A CHANGE IN USE AND TO REDUCE
 7 THE PERIOD OF ABANDONMENT FOR CONDITIONAL AND NONCONFORMING USES IN
 8 THIS DISTRICT FROM THREE (3) YEARS TO 18 (EIGHTEEN) MONTHS; BY AMENDING
 9 SECTION 121.2 TO REDUCE THE SIZE LIMIT OF NONRESIDENTIAL USES LOCATED IN
 10 THIS DISTRICT TO TWO THOUSAND (2,000) SQUARE FEET FOR CONDITIONAL USE
 11 AUTHORIZATION AND FOUR THOUSAND (4,000) SQUARE FEET FOR THE MAXIMUM
 12 SIZE; AND BY AMENDING SECTION 715.21 IN THE CASTRO STREET NEIGHBORHOOD
 13 COMMERCIAL DISTRICT ZONING CONTROL TABLE TO REFLECT THE USE SIZE
 14 MODIFICATIONS.

15 Note: Additions are underlined; deletions are in ((double parentheses)).

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

17 Section 1. (a) **General Findings.** (1) In response to San Francisco residents' and
 18 merchants' concerns, including increased traffic congestion, proliferation of food service uses,
 19 the loss of neighborhood-oriented businesses and changes in the local neighborhood
 20 character, the City and County of San Francisco created Neighborhood Commercial Individual
 21 Area Districts (NCDs) in 1987. These NCDs were established in many San Francisco
 22 neighborhoods, including Castro Street. Descriptions of these NCDs and the zoning that
 23 applies within their boundaries are set forth in Article 7 of the San Francisco Municipal Code,
 24 Part II, Chapter II (Planning Code).

25

1 (2) The Castro Street Neighborhood Commercial District (Castro Street
2 NCD), as defined in Planning Code Section 715, is a multi-purpose commercial district that
3 provides both convenience goods to its immediate neighborhood as well as comparison
4 shopping goods and services on a specialized basis to a wider trade area. This District is
5 situated in Eureka Valley, close to the geographic center of San Francisco between the
6 Mission District, Twin Peaks, and Upper Market Street. The Castro Street NCD also acts as
7 the focus and cultural center of the worldwide lesbian, gay, bisexual, and transgender
8 community.

9 (3) The Castro Street NCD has traditionally fostered small, intensely
10 active, and locally-owned business enterprises and entrepreneurship providing local
11 employment opportunities and revenue expansion. The Castro Street NCD also is identified
12 by the Castro Theater, a historical landmark, and commercial businesses, including a number
13 of gay-oriented bars and restaurants, as well as several specialty clothing and gift stores, that
14 are active both in the daytime and late into the evening. The Castro Street NCD zoning
15 controls were designed to maintain existing small-scale development and promote a balanced
16 mix of uses in addition to preserving the existing equilibrium of neighborhood-serving
17 convenience and special commercial uses.

18 (4) Since the adoption of the Castro Street NCD, the consolidation of
19 many of the traditional small-scale storefronts has detracted from the visual character of the
20 District. Currently, the unique character of this District is further threatened by proposed large
21 scale uses that are incompatible in size and scale with the neighborhood and would
22 irreversibly alter the character of the District. These proposed uses also would adversely
23 impact the existing small-scale businesses located in the District.

24 (5) Residents, merchants, and neighborhood associations have
25 expressed concern that the current zoning controls in the Castro Street NCD are inadequate

1 to: (i) control the size and scale of commercial uses; (ii) prevent further interior use size
2 expansions and storefront consolidations; (iii) encourage the restoration of the original small
3 scale storefronts that previously had been consolidated; (iv) preserve existing large-scale
4 uses; and (v) protect against adverse changes to the unique physical characteristics of the
5 neighborhood.

6 (6) In order to encourage and promote a return to conforming uses and
7 use sizes, and thereby enhance the likelihood that original small-scale storefronts will be
8 restored, the Planning Commission should undertake a conditional use authorization process
9 as set forth in Article 3 when there is a proposed change of use to a use that exceeds the
10 square footage thresholds and limitations proposed for the Castro Street NCD. In addition, to
11 fulfill these goals, the period of abandonment for conditional and nonconforming uses requires
12 a reduction in the circumscribed time period. Further, existing nonresidential uses in excess
13 of 4,000 square feet are large-scale uses that contribute to and help define the character of
14 the District, and therefore, such uses should be preserved in their existing zoning designation
15 without the ability to change to a new use.

16 (7) In order to address the concerns stated above, preserve the
17 neighborhood character of the Castro Street NCD, and maintain the livability of this District
18 and its adjacent residential areas, the commercial use sizes in the Castro Street NCD require
19 additional regulation.

20 (b) **Priority Policy Findings.** Pursuant to Section 101.1 of the Planning Code,
21 the Board of Supervisors makes the following findings:

22 (1) The proposed legislation is consistent with Priority Policy 1 in that it
23 will create greater regulatory control over the size of nonresidential uses within the Castro
24 Street NCD, and therefore, preserve and enhance the existing neighborhood-serving uses
25

1 and enhance future opportunities for resident employment and the ownership of other
2 neighborhood-serving business.

3 (2) The proposed legislation is consistent with Priority Policy 2 in that it
4 has no adverse effect on existing housing and will help to preserve the character of the
5 neighborhood.

6 (3) The proposed legislation is consistent with Priority Policy 3 in that it
7 has no negative effect on the City's current or future supply of affordable housing.

8 (4) The proposed legislation is consistent with Priority Policy 4 in that it
9 has no negative impact on commuter traffic or neighborhood parking.

10 (5) The proposed legislation is consistent with Priority Policy 5 in that it
11 does not involve commercial office development, which may displace any industrial or service
12 sector employment, and will enhance the viability of existing neighborhood-serving
13 establishments, thereby enhancing future opportunities for resident employment and
14 ownership.

15 (6) The proposed legislation is consistent with Priority Policy 6 in that it
16 will not adversely affect the City's ability to achieve earthquake preparedness to protect
17 against injury and loss of life in an earthquake.

18 (7) The proposed legislation is consistent with Priority Policy 7 in that it
19 will not adversely affect any landmarks or historic buildings.

20 (8) The proposed legislation is consistent with Priority Policy 8 in that it
21 has no negative effect on parks and open space and their access to sunlight and vistas.

22 Section 2. Part II, Chapter II of the San Francisco Municipal Code (Planning Code) is
23 hereby amended by amending Section 178, to read as follows:

24 **SEC. 178. CONDITIONAL USES.** The following provisions shall apply to conditional
25 uses:

1 (a) **Definition.** For the purposes of this Section, a permitted conditional use shall
2 refer to:

3 (1) Any use or feature authorized as a conditional use pursuant to Article 3 of
4 this Code, provided that such use or feature was established within the time limits specified as
5 a condition of authorization or, if no time limit was specified, within a reasonable time from the
6 date of authorization; or

7 (2) Any use or feature which is classified as a conditional use in the district in
8 which it is located and which lawfully existed either on the effective date of this Code, or on
9 the effective date of any amendment imposing new conditional use requirements upon such
10 use or feature; or

11 (3) Any use deemed to be a permitted conditional use pursuant to Section
12 179 of this Code.

13 (b) **Continuation.** Except as provided for temporary uses in Section 205 of this
14 Code, and except where time limits are otherwise specified as a condition of authorization,
15 any permitted conditional use may continue in the form in which it was authorized, or in the
16 form in which it lawfully existed either on the effective date of this Code or the effective date of
17 any amendment imposing new conditional use requirements upon such use or feature, unless
18 otherwise provided in this Section or in Article 2 of this Code.

19 (c) **Enlargements or Alteration.** A permitted conditional use may not be
20 significantly altered, enlarged, or intensified, except upon approval of a new conditional use
21 application pursuant to the provisions of Article 3 of this Code.

22 (d) **Abandonment.** A permitted conditional use which is discontinued for a period of
23 three years, or otherwise abandoned, shall not be restored, except upon approval of a new
24 conditional use application pursuant to the provisions of Article 3 of this Code. For purposes
25 of this Subsection, the period of nonuse for a permitted conditional use to be deemed

1 discontinued in the North Beach and Castro Street Neighborhood Commercial Districts shall
2 be eighteen (18) months.

3 (e) **Changes in Use.** The following provisions shall apply to permitted conditional
4 uses with respect to changes in use:

5 (1) A permitted conditional use may be changed to another use listed in
6 Articles 2, 7 or 8 of this Code as a principal use for the district in which it is located and the
7 new use may thereafter be continued as a permitted principal use.

8 (2) A permitted conditional use may be changed to another use listed in
9 Articles 2, 7 or 8 of this Code as a conditional use for the district in which the property is
10 located, subject to the other applicable provisions of this Code, only upon approval of a new
11 conditional use application, pursuant to the provisions of Article 3 of this Code.

12 (3) A permitted conditional use may not be changed to another use not
13 permitted or prohibited by Articles 2, 7 or 8 of this Code. If a permitted conditional use has
14 been wrongfully changed to another use in violation of the foregoing provisions and the
15 violation is not immediately corrected when required by the Zoning Administrator, the wrongful
16 change shall be deemed to be a discontinuance or abandonment of the permitted conditional
17 use.

18 (4) Once a permitted conditional use has been changed to a principal use
19 permitted in the district in which the property is located, or brought closer in any other manner
20 to conformity with the use limitations of this Code, the use of the property may not thereafter
21 be returned to its former permitted conditional use status, except upon approval of a new
22 conditional use application pursuant to the provisions of Article 3 of this Code.

23 (5) In the North Beach Neighborhood Commercial District, any use that
24 exceeds the use size provisions of Section 121.2(a) or 121.2(b) may be changed to a new use
25

1 only upon 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 (6) In the Castro Street Neighborhood Commercial District, any use that
4 exceeds the use size provision of Section 121.2(a), but is smaller than the maximum use size
5 limit of Section 121.2(b), may be changed to a new use only upon approval of a new
6 conditional use application. The Commission's approval of such conditional use application
7 shall explicitly address the use size findings of Section 303(c).

8 (f) Notwithstanding the foregoing provisions of this Section 178, a structure
9 occupied by a permitted conditional use that is damaged or destroyed by fire, or other
10 calamity, or by Act of God, or by the public enemy, may be restored to its former condition and
11 use without the approval of a new conditional use application, provided that such restoration is
12 permitted by the Building Code, and is started within one year and diligently pursued to
13 completion. Except as provided in Subsection (g) below, no structure occupied by a permitted
14 conditional use that is voluntarily razed or required by law to be razed by the owner thereof
15 may thereafter be restored except upon approval of a new conditional use application
16 pursuant to the provisions of Article 3 of this Code.

17 (g) None of the provisions of this Section 178 shall be construed to prevent any
18 measures of construction, alteration or demolition necessary to correct the unsafe or
19 dangerous condition of any structure, other feature, or part thereof, where such condition has
20 been declared unsafe or dangerous by the Superintendent of the Bureau of Building
21 Inspection or the Chief of the Bureau of Fire Prevention and Public Safety, and where the
22 proposed measures have been declared necessary, by such official, to correct the said
23 condition; provided, however, that only such work as is absolutely necessary to correct the
24 unsafe or dangerous condition may be performed pursuant to this Section.

1 Section 3. Part II, Chapter II of the San Francisco Municipal Code (Planning Code) is
2 hereby amended by amending Section 186.1, to read as follows:

3 **SEC. 186.1. EXEMPTION OF NONCONFORMING USES IN NEIGHBORHOOD**
4 **COMMERCIAL DISTRICTS.** The purpose of this Section is to provide for the further
5 continuance in NC Districts of nonconforming uses created by adoption of Ordinance No. 69-
6 87, as herein described, and subsequent ordinances that change the uses allowed in NC
7 Districts, which are beneficial to, or can be accommodated within the neighborhood
8 commercial areas in which they are located.

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

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

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

1 Section 186.2 below.

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

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

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

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

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

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

25 (A) Any use described in zoning categories .41, .42, .43 or .44, as

1 defined in Sections 790.22, 790.92, 790.90 and 790.91, respectively, may change to another
2 use described in zoning categories .41, .42, or .44, even though such other use is not
3 permitted in that Neighborhood Commercial District, unless such other use is located in an
4 Alcohol Restricted Use Subdistrict and is prohibited by the provisions governing that Alcohol
5 Restricted Use Subdistrict.

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

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

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

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

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

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

1 (A) to a conforming use size or

2 (B) to a size specified in Subsection 121.2(a) pursuant to
3 conditional use authorization.

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

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

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

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

23 (2) No final permits to operate the relocated use at the new premises
24 are granted prior to the issuance of a certificate of final completion of any work to the original
25 premises which is required as conditions attached to the approval of the conditional use

1 application; and

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

7 Section 4. Part II, Chapter II of the San Francisco Municipal Code (Planning Code) is
8 hereby amended by amending Section 121.2, to read as follows:

9 **SEC. 121.2. USE SIZE LIMITS (NONRESIDENTIAL), NEIGHBORHOOD**
10 **COMMERCIAL DISTRICTS.** (a) In order to protect and maintain a scale of development
11 appropriate to each district, nonresidential uses of the same size or larger than the square
12 footage stated in the table below may be permitted only as conditional uses subject to the
13 provisions set forth in Sections 316 through 316.8 of this Code. The use area shall be
14 measured as the gross floor area for each individual nonresidential use.

District	Use Size Limits
<u>Castro Street,</u> North Beach	<u>2,000 sq. ft.</u> ((2,000 sq. ft.))
((Castro Street,)) Inner Clement Street, Outer Clement Street, Upper Fillmore Street, Haight Street, Sacramento Street, Union Street, 24th Street-Mission, 24th Street-Noe Valley, West Portal Avenue	((2,500 sq. ft.)) <u>2,500 sq. ft.</u>
NC-1, Broadway, Hayes-Gough,	3,000 sq.ft.

1 Upper Market Street,
2 Polk Street,
3 Valencia Street

4 NC-2 4,000 sq. ft.

5 NC-3, 6,000 sq. ft.
6 NC-S

7 In addition to the criteria of Section 303(c) of this Code, the Commission shall consider
8 the extent to which the following criteria are met:

9 (1) The intensity of activity in the district is not such that allowing the larger
10 use will be likely to foreclose the location of other needed neighborhood-serving uses in the
11 area.

12 (2) The proposed use will serve the neighborhood, in whole or in significant
13 part, and the nature of the use requires a larger size in order to function.

14 (3) The building in which the use is to be located is designed in discrete
15 elements which respect the scale of development in the district.

16 (b) In order to protect and maintain a scale of development appropriate to each
17 district, nonresidential uses which exceed the square footage stated in the table below shall
18 not be permitted. The use area shall be measured as the gross floor area for each individual
19 nonresidential use.

District	Use Size Limits
West Portal Avenue	4000 sq. ft.
North Beach	4000 sq. ft.
<u>Castro Street</u>	<u>4000 sq. ft.</u>

23 Section 5. Part II, Chapter II of the San Francisco Municipal Code (Planning Code) is
24 hereby amended by amending Section 715.21, to read as follows:

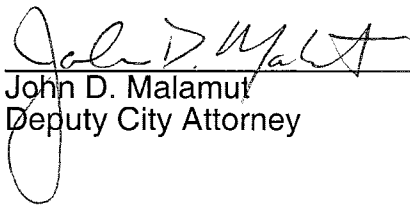
25 **Castro Street Neighborhood Commercial District**

Zoning Control Table

No.	Zoning Category	§ References	Castro Street Controls
715.21	Use Size (<i>Non Residential</i>)	§790.130	P to ((2,499)) <u>1,999</u> sq.ft.; C ((2,500 sq. ft. & above)) <u>2,000 sq.ft to 3,999 sq.ft.;</u> <u>NP 4,000 sq.ft. & above</u> § 121.2

APPROVED AS TO FORM:

LOUISE H. RENNE, City Attorney

By: 
 John D. Malamut
 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: 992321

Date Passed:

Ordinance amending Part II, Chapter II of the San Francisco Municipal Code (Planning Code) by amending Sections 178 and 186.1 to require uses that exceed specified use size provisions in the Castro Street Neighborhood Commercial District to be preserved or obtain conditional use authorization prior to a change in use and to reduce the period of abandonment for conditional and nonconforming uses in this district from three (3) years to 18 (eighteen) months; by amending Section 121.2 to reduce the size limit of nonresidential uses located in this district to two thousand (2,000) square feet for conditional use authorization and four thousand (4,000) square feet for the maximum size; and by amending Section 715.21 in the Castro Neighborhood Commercial District Zoning control table to reflect the use size modifications.

May 1, 2000 Board of Supervisors — SUBSTITUTED

July 31, 2000 Board of Supervisors — PASSED, ON FIRST READING

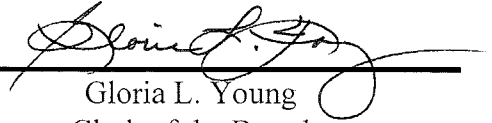
Ayes: 10 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yee
Absent: 1 - Yaki

August 7, 2000 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Ammiano, Becerril, Bierman, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee
Absent: 1 - Brown

File No. 992321

I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on August 7, 2000 by
the Board of Supervisors of the City and
County of San Francisco.



Gloria L. Young
Clerk of the Board

AUG 18 2000

Date Approved



Mayor Willie L. Brown Jr.