

FILE NO. 031151

ORDINANCE NO. 41-04

[Ordinance creating the Divisadero Street Alcohol Restricted Use District, prohibiting new off-sale liquor establishments, regulating existing non-conforming liquor establishments, and amending Zoning Map Sheets 2SU and 7SU to indicate the boundaries of the Divisadero Street Alcohol Restricted Use District.]

Ordinance adding Section 783 to the Planning Code to create a Divisadero Street Alcohol Restricted Use District prohibiting liquor establishments and regulating existing non-conforming liquor establishments; amending Zoning Map Sheets 2SU and 7SU of the City and County of San Francisco to indicate the boundaries of the Divisadero Street Alcohol Restricted Use District, and making findings of consistency with the priority policies of Planning Code Section 101.1 and the General Plan.

Note: Additions are *single-underline italics Times New Roman*; deletions are ~~*strikethrough 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. The Board of Supervisors of the City and County of San Francisco hereby finds and determines that:

(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. 16672 recommending approval of this Planning Code Amendment, and incorporates such reasons by this reference thereto. A copy of said resolution is on file with the Clerk of the Board of Supervisors in File No. 031151.

(b) Pursuant to Planning Code Section 101.1, this Board of Supervisors finds that this ordinance is in consistent with the Priority Policies of Section 101.1(b) of the Planning Code and, when effective, with the General Plan as proposed to be amended and hereby adopts

1 the findings of the Planning Commission, as set forth in Planning Commission Resolution No.
2 16672 , and incorporates said findings by this reference thereto.

3
4 Section 2. The San Francisco Planning Code is hereby amended by adding Section
5 782, to read as follows:

6 Section 782 Divisadero Street Alcohol Restricted Use District Established.

7 There are an unusually large number of establishments dispensing alcoholic beverages,
8 including beer and wine, for off-site consumption in the Small-Scale Neighborhood Commercial
9 District along Divisadero Street between Haight and Geary Streets. The existence of this many
10 alcoholic beverage establishments appears to contribute directly to numerous peace, health, safety and
11 general welfare problems in the area, including loitering, littering, public drunkenness, defacement and
12 damaging of structures, pedestrian obstructions, as well as traffic circulation, parking and noise
13 problems on public streets and neighborhood lots. The existence of such problems creates serious
14 impacts on the health, safety and welfare of residents of nearby single- and multiple-family areas,
15 including fear for the safety of children, elderly residents and of visitors to the area. The problems also
16 contribute to the deterioration of the neighborhood and concomitant devaluation of property and
17 destruction of community values and quality of life. The number of establishments selling alcoholic
18 beverages and the associated problems discourage more desirable and needed commercial uses in the
19 area.

20 (a) In order to preserve the residential character and the neighborhood-serving commercial
21 uses of the area, the Divisadero Street Alcohol Restricted Use District (Divisadero Street Alcohol
22 RUD) is hereby established for the properties in the Small-Scale Neighborhood Commercial District
23 along Divisadero Street between Haight and Geary Streets , as designated on Sectional Map numbers 2
24 and 7. The Divisadero Street Alcohol RUD is designated on Sectional Map Numbers 2SU and 8SU.

1 (1) No new off-sale liquor establishments shall be permitted in the Divisadero Street
2 Alcohol RUD.

3 (2) The prohibition on Liquor Establishments shall not be interpreted to prohibit the
4 following:

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

6 (B) Establishment of a Liquor Establishment if an application for such Liquor
7 Establishment is on file with the California Department of Alcoholic Beverage Control prior to the
8 effective date of legislation establishing the Divisadero Street Alcohol RUD.

9 (C) Re-location of an existing liquor establishment from outside the
10 Divisadero Street Alcohol RUD to a location within the Divisadero Street Alcohol RUD if that
11 liquor establishment received conditional use authorization from the City Planning
12 Commission prior to the effective date of this legislation.

13 (3) Continuation of Existing Prohibited Liquor Establishments. In the Divisadero
14 Street Alcohol RUD, any Prohibited Liquor Establishment may continue in accordance with Planning
15 Code Section 180 through 186.2, subject to the following provisions:

16 (A) A Prohibited Liquor Establishment lawfully existing and selling alcoholic
17 beverages as licensed by the State of California prior to the effective date of this legislation, or
18 subsequent legislation prohibiting that type of Liquor Establishment, so long as otherwise lawful, may
19 continue to operate only under the following conditions, as provided by California Business and
20 Professions Code Section 23790:

21 (1) Except as provided by Subsection (B) below, the premises shall retain the same
22 type of retail liquor license within a license classification; and

23 (2) Except as provided by Subsection (B) below, the licensed premises shall be
24 operated continuously, without substantial change in mode or character of operation.

1 (B) A break in continuous operation shall not be interpreted to include the following,
2 provided that the location of the establishment does not change, the square footage used for the sale of
3 alcoholic beverages does not increase, and the type of California Department of Alcoholic Beverage
4 Control liquor license ("ABC License") does not change except as indicated:

5 (1) A change in ownership of a Prohibited Liquor Establishment or an owner-to-
6 owner transfer of an ABC License; or

7 (2) Re-establishment, restoration or repair of an existing Prohibited Liquor
8 Establishment on the same lot after total or partial destruction or damage due to fire, riot, insurrection,
9 toxic accident or act of God; or

10 (3) Temporary closure of an existing Prohibited Liquor Establishment for not more
11 than ninety (90) days for repair, renovation or remodeling;

12 (4) Re-location of an existing Prohibited Liquor Establishment in the Divisadero
13 Street Alcohol RUD to another location within the same Divisadero Street Alcohol RUD with
14 conditional use authorization from the City Planning Commission, provided that the original premises
15 shall not be occupied by a Prohibited Liquor Establishment, unless by another Prohibited Liquor
16 Establishment that is also relocating from within the Divisadero Street Alcohol RUD.

17 (b) The following shall apply to all liquor establishments in the Divisadero Street Alcohol
18 RUD in order to maintain the safety of the premises and vicinity:

19 (1) Liquor establishments shall provide outside lighting in a manner sufficient to
20 illuminate street and sidewalk areas and adjacent parking, as appropriate to maintain security, without
21 disturbing area residences;

22 (2) No more than 33 percent of the square footage of the windows and clear doors of
23 Liquor establishments shall bear advertising or signage of any sort, and all advertising and signage
24 shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear
25 and unobstructed view of the interior of the premises, including the area in which the cash registers are

1 maintained, from the exterior public sidewalk or entrance to the premises. This requirement shall not
2 apply to premises where there are no windows, or where existing windows are located at a height that
3 precludes a view of the interior of the premises to a person standing outside the premises.

4 (c) Definitions:

5 (1) A "liquor establishment" shall mean any enterprise selling alcoholic beverages,
6 as defined by California Business and Professions Code Section 23004 and 23025, pursuant to a
7 California Alcoholic Beverage Control Board license.

8 (2) An "off-sale liquor establishment" shall mean any liquor establishment which
9 has obtained Alcoholic Beverage Control Board License type 20 (off-sale beer and wine) or type 21
10 (off-sale general) selling alcoholic beverages in an open or a closed container for consumption off the
11 premises. Typical off-sale liquor establishments may include but are not limited to the following uses
12 licensed to sell off-sale alcoholic beverages: food markets, supermarkets, drugstores, liquor stores,
13 bars and convenience markets. It shall not include producers and distributor's licenses for offices or
14 establishments not open to the general public.

15 (3) A "prohibited liquor establishment" shall mean any establishment selling
16 alcoholic beverages lawfully existing prior to the effective date of the establishment of the Divisadero
17 Street Alcohol RUD and licensed by the State of California for the retail sale of alcoholic beverages for
18 off-site consumption, so long as otherwise lawful.

19
20 Section 3. Amendment of Sheet 2SU of the Zoning Map. In accordance with Planning
21 Code sections 106 and 302, the following change is hereby adopted as an amendment to
22 Zoning Map Sheet 8SU of the City and County of San Francisco, a copy of which is on file
23 with the Clerk of the Board of Supervisors in File No. 031151:

24 The Small-Scale Neighborhood Commercial along Divisadero Street between Haight
25 and Geary Streets, and as indicated on a map of the Divisadero Street Alcohol Restricted Use


1 District, a copy of which is on file with the Clerk of the Board of Supervisors in File No.
2 031151, shall be part of the Divisadero Street Alcohol Restricted Use District.

3
4 Section 4. Amendment of Sheet 7SU of the Zoning Map. In accordance with Planning
5 Code sections 106 and 302, the following change is hereby adopted as an amendment to
6 Zoning Map Sheet 7SU of the City and County of San Francisco, a copy of which is on file
7 with the Clerk of the Board of Supervisors in File No. 031151 :

8 The Small-Scale Neighborhood Commercial along Divisadero Street between Haight
9 and Geary Streets, and as indicated on a map of the Divisadero Street Alcohol Restricted Use
10 District, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 031151, shall be part of the Divisadero Street Alcohol Restricted Use District.

11
12
13 Section 5. The Planning Department concluded environmental review of this ordinance
14 pursuant to the California Environmental Quality Act. Documentation of that review is on file
15 with the Clerk of the Board of Supervisors in File No. 031151.

16
17 APPROVED AS TO FORM:
18 DENNIS J. HERRERA, City Attorney

19 By: 
20 Sarah Ellen Owsowitz
21 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: 031151

Date Passed:

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March 9, 2004 Board of Supervisors — PASSED ON FIRST READING

Ayes: 9 - Alioto-Pier, Daly, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Peskin,
Sandoval

Excused: 2 - Ammiano, Dufty

March 16, 2004 Board of Supervisors — FINALLY PASSED

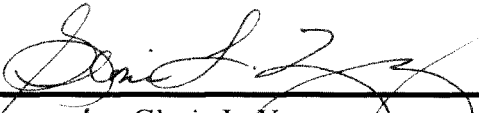
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Gonzalez, Hall, Ma, Maxwell,
McGoldrick, Peskin, Sandoval

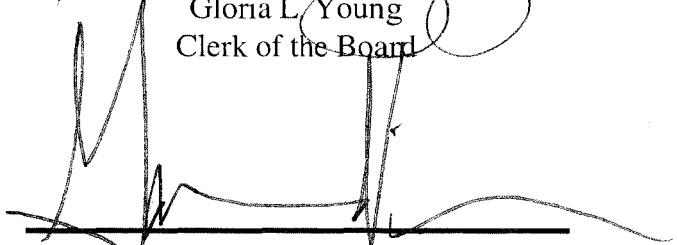
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I hereby certify that the foregoing Ordinance was FINALLY PASSED on March 16, 2004 by the Board of Supervisors of the City and County of San Francisco.

MAR 19 2004

Date Approved


Gloria L. Young
Clerk of the Board


Mayor Gavin Newsom