Amendment of the whole
In Committee. 04/26/04

FILE NO. 031463

ORDINANCE NO. 89-04

[Zoning – Large-scale Retail Use.]

Ordinance amending the Planning Code to add section 121.6 to impose a City-wide conditional use requirement for large-scale retail uses in excess of 50,000 gross square feet outside of the C-3 zoning districts and in excess of 90,000 gross square feet within the C-3 zones, to prohibit such uses if they are in excess of 120,000 gross square feet in any zone other than the C-3 zones, and to prohibit specified large-scale retail uses in excess of 120,000 gross square feet in the C-3 zones; amending Planning Code section 303 to add findings for the abovementioned uses concerning active street frontage patterns, mixed-use building opportunities, and other criteria set forth herein; making findings of consistency with the General Plan and Planning Code section 101.1(b); and exempting from this legislation those uses for which the City received a site permit application prior to July 15, 2003.

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

Section 1. Findings.

(a) The primary purpose of this ordinance is to reduce or prevent the negative impacts of large-scale retail businesses on traffic circulation, land use patterns, and the economic and social health of neighborhood commercial districts and other land use districts throughout the City. Many of these impacts are analyzed in reports and other documents contained in the Board of Supervisors files on this legislation. Copies of this information are in Clerk of the Board of Supervisors File No. 031463.
(b) Large-scale retail uses that exceed 120,000 gross square feet are aesthetically incompatible with the neighborhood character of San Francisco outside of its downtown districts and are expected to negatively impact the vitality of neighborhood commercial districts. These uses also are expected to generate greater traffic volumes than small-scale uses due to their regional draw of consumers.

(c) The impacts of certain large-scale retail uses that exceed 120,000 gross square feet and devote a considerable portion of their sale to non-taxable merchandise are likely to be especially severe.

(d) Such uses are expected to generate greater traffic volumes than general retail stores or supermarkets because the bulk of non-taxable items such as groceries purchased in large quantities generally require an automobile for transport. The automobile-oriented nature of these uses is incompatible with the planning goals of the downtown area that call for increased transit usage. Large-scale retail uses selling non-taxable goods also negatively impact the vitality of supermarkets located in neighborhood commercial districts. Supermarkets represent an important component to maintaining viable community retail districts. Negatively impacting these neighborhood supermarkets also will likely generate increased traffic as consumers must travel farther distances to purchase goods.

(e) 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 specified in this legislation.

(f) On November 20, 2003, the Planning Commission considered two legislative proposals concerning large retail uses. Copies of such proposals are on file with the Clerk of the Board of Supervisors File Nos. 031463 and 031239 and are incorporated herein by reference. On said date, the Planning Commission, in Resolutions Nos. 16689 and 16690, disapproved the legislative proposals as drafted, but recommended that the proposals be...
combined as a single piece of legislation containing specified requirements. Copies of the Planning Commission Resolutions are on file with the Clerk of the Board of Supervisors in File Nos. 031463 and 031239.

(g) In response to the Planning Commission’s recommendation, the legislative sponsors of the initial ordinances have agreed to co-sponsor amended legislation that reflects the recommended changes.

(h) Pursuant to Planning Code Section 101.1, this Board of Supervisors finds that this amended ordinance is consistent with the priority policies of Section 101.1(b) of the Planning Code and the General Plan hereby adopts as its own the findings of the Planning Commission, as set forth in Planning Commission Resolutions Nos. 16689 and 16690, and incorporates said findings by reference herein as though set forth fully.

Section 2. The San Francisco Planning Code is hereby amended by adding Section 121.6, to read as follows:

Sec. 121.6 Large-Scale Retail Uses.

(a) Notwithstanding any other provision of this Code, establishment of a single retail use in excess of 50,000 gross square feet in any zoning district other than the C-3 zoning districts shall require conditional use authorization pursuant to Section 303 unless such use already is prohibited. This Subsection shall apply to the establishment of a new use, and the expansion of an existing use, or change in use from one retail category to another.

(b) Notwithstanding any other provision of this Code, establishment of a single retail use in excess of 90,000 gross square feet within a C-3 zoning district shall require conditional use authorization pursuant to Section 303 unless such use already is prohibited. This Subsection shall apply only to the establishment of a new use.

(c) Notwithstanding any other provision of this Code, establishment of a single retail use in excess of 120,000 gross square feet is prohibited in any zoning district other than a C-3 zoning district.
This Subsection shall apply to the establishment of a new use, and the expansion of an existing use, or change in use from one retail category to another.

(e)(d) Notwithstanding any other provision of this Code, establishment of a single retail use in excess of 120,000 gross square feet in a C-3 zoning district shall be prohibited if it would sell groceries; contain more than 20,000 Stockkeeping Units (SKUs); and devote more than five percent (5%) of its total sales floor area to the sale of non-taxable merchandise. This Subsection shall apply only to the establishment of a new use.

For purposes of this Section:

(1) “sales floor area” includes only interior building space devoted to the sale of merchandise, and does not include restrooms, office space, storage space, automobile service areas, or open-air garden sales space.

(2) “non-taxable merchandise” includes only grocery products not subject to California State sales tax.

Section 3. The San Francisco Planning Code is hereby amended by amending Section 303, to read 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

(A) In Neighborhood Commercial Districts, if the proposed use is to be located at a location in which the square footage exceeds the limitations found in Planning Code § 121.2(a) or 121.2(b), the following shall be considered:

(i) The intensity of activity in the district is not such that allowing the larger use will be likely to foreclose the location of other needed neighborhood-servicing uses in the area; and

(ii) The proposed use will serve the neighborhood, in whole or in significant part, and the nature of the use requires a larger size in order to function; and
(iii) The building in which the use is to be located is designed in discrete elements which respect the scale of development in the district; 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 addition to 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.

(C) 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.

(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.

(d) Conditions. When considering an application for a conditional use as provided herein with respect to applications for development of "dwellings" as defined in Chapter 87 of the San Francisco Administrative Code, the Commission shall comply with that Chapter which requires, among other things, that the Commission not base any decision regarding the development of "dwellings" in which "protected class" members are likely to reside on information which may be discriminatory to any member of a "protected class" (as all such terms are defined in Chapter 87 of the San Francisco Administrative Code). In addition, 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 applicant for the conditional use had submitted false or
misleading information in the application process that could have reasonably had a substantial
effect upon the decision of the Commission or 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 submitted within one year of the effective date of the Conditional Use authorization
that the applicant for the conditional use had submitted false or misleading information in the
application process that could have reasonably had a substantial effect upon the decision of
the Commission or 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 whether and how the false or misleading information submitted by the applicant could have reasonably had a substantial effect upon the decision of the Commission, or the Board of Supervisors on appeal, to authorize the conditional use, 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 shall not initiate any action against the applicant for failure to comply with the requirements of this Section.
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.

(g) Hotels and Motels.

(1) 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, childcare, 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.

(2) Notwithstanding the provisions of Sub-sections (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.

(3) 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.

(h) Internet Services Exchange.
(1) With respect to application for development of Internet Services Exchange as defined in Section 209.6(c), the Planning Commission shall, in addition to the criteria set forth in Subsection (c) above, find that:

(A) The intensity of the use at this location and in the surrounding neighborhood is not such that allowing the use will likely foreclose the location of other needed neighborhood-serving uses in the area;

(B) The building in which the use is located is designed in discrete elements, which respect the scale of development in adjacent blocks, particularly any existing residential uses;

(C) Rooftop equipment on the building in which the use is located is screened appropriately.

(D) The back-up power system for the proposed use will comply with all applicable federal state, regional and local air pollution controls.

(E) Fixed-source equipment noise does not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

(F) The building is designed to minimize energy consumption, such as through the use of energy-efficient technology, including without limitation, heating, ventilating and air conditioning systems, lighting controls, natural ventilation and recapturing waste heat, and as such commercially available technology evolves;

(G) The project sponsor has examined the feasibility of supplying and, to the extent feasible, will supply all or a portion of the building's power needs through on-site power generation, such as through the use of fuel cells or co-generation;

(H) The project sponsor shall have submitted design capacity and projected power use of the building as part of the conditional use application; and
(2) As a condition of approval, and so long as the use remains an Internet Services Exchange, the project sponsor shall submit to the Planning Department on an annual basis power use statements for the previous twelve-month period as provided by all suppliers of utilities and shall submit a written annual report to the Department of Environment and the Planning Department which shall state: (a) the annual energy consumption and fuel consumption of all tenants and occupants of the Internet Services Exchange; (b) the number of all diesel generators located at the site and the hours of usage, including usage for testing purposes; (c) evidence that diesel generators at the site are in compliance with all applicable local, regional, state and federal permits, regulations and laws; and (d) such other information as the Planning Commission may require.

(3) The Planning Department shall have the following responsibilities regarding Internet Services Exchanges:

(A) Upon the effective date of the requirement of a conditional use permit for an Internet Services Exchange, the Planning Department shall notify property owners of all existing Internet Services Exchanges that the use has been reclassified as a conditional use;

(B) Upon the effective date of the requirement of a conditional use permit for an Internet Services Exchange, the Planning Department shall submit to the Board of Supervisors and to the Director of the Department of Building Inspection a written report covering all existing Internet Services Exchanges and those Internet Services Exchanges seeking to obtain a conditional use permit, which report shall state the address, assessor's block and lot, zoning classification, square footage of the Internet Services Exchange constructed or to be constructed, a list of permits previously issued by the Planning and/or Building Inspection Departments concerning the Internet Services Exchange, the date of issuance of such permits, and the status of any outstanding requests for permits from the Planning and/or Building Inspection Departments concerning Internet Services Exchange; and
(C) Within three years from the effective date of the requirement of a conditional use permit for an Internet Services Exchange, the Planning Department, in consultation with the Department of Environment, shall submit to the Board of Supervisors a written report, which report shall contain the Planning Commission's evaluation of the effectiveness of the conditions imposed on Internet Services Exchanges, and whether it recommends additional or modified conditions to reduce energy and fuel consumption, limit air pollutant emissions, and enhance the compatibility of industrial uses, such as Internet Services Exchanges, located near or in residential or commercial districts.

(i) Large-Scale Retail Uses. With respect to applications for the establishment of large-scale retail uses under Section 121.6, in addition to the criteria set forth in Subsections (c) and (d) above, the Commission shall consider the following:

(A) The extent to which the retail use's parking is planned in a manner that creates or maintains active street frontage patterns;

(B) The extent to which the retail use is a component of a mixed-use project or is designed in a manner that encourages mixed-use building opportunities;

(C) The market demand for the proposed use and the extent to which the proposed use may result in the displacement or closure of similar retail uses in neighborhood commercial districts and elsewhere in the City;

(D) The shift in traffic patterns that may result from drawing traffic to the location of the proposed use; and,

(E)(D) The impact that the employees at the proposed use will have on the demand in the City for housing, public transit, childcare, and other social services.

Section 4. This is an uncodified section of the legislation. The provisions of this legislation shall not apply to those uses for which the City received a site permit application.
prior to July 15, 2003, the introduction date of superceded legislation in Clerk of the Board of
Supervisors File No. 031239.

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

By: John D. Malamut
Deputy City Attorney
Ordinance amending the Planning Code to add section 121.6 to impose a conditional use requirement for large-scale retail uses in excess of 50,000 gross square feet outside of the C-3 zoning districts and in excess of 90,000 gross square feet within the C-3 zones, to prohibit such uses if they are in excess of 120,000 gross square feet in any zone other than the C-3 zones, and to prohibit specified large-scale retail uses in excess of 120,000 gross square feet in the C-3 zones; amending Planning Code section 303 to add findings for the abovementioned uses concerning active street frontage patterns, mixed-use building opportunities, and other criteria set forth herein; making findings of consistency with the General Plan and Planning Code section 101.1(b); and exempting from this legislation those uses for which the City received a site permit application prior to July 15, 2003.

March 9, 2004 Board of Supervisors — SUBSTITUTED

May 11, 2004 Board of Supervisors — PASSED ON FIRST READING
Ayes: 8 - Alioto-Pier, Daly, Dufty, Gonzalez, Ma, McGoldrick, Peskin, Sandoval
Noes: 2 - Hall, Maxwell
Excused: 1 - Ammiano

May 18, 2004 Board of Supervisors — FINALLY PASSED
Ayes: 9 - Alioto-Pier, Ammiano, Daly, Dufty, Gonzalez, Ma, McGoldrick, Peskin, Sandoval
Noes: 2 - Hall, Maxwell
File No. 031463

I hereby certify that the foregoing Ordinance was FINALLY PASSED on May 18, 2004 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young
Clerk of the Board

MAY 27 2004

Date Approved

Mayor Gavin Newsom