Amendment of the whole
In committee. 10/25/04

FILE NO. 041070
ORDINANCE NO. 270-04

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

Section 1. General Findings.

(a) San Francisco has a proud tradition of neighborhoods and thriving commercial districts that reflect the diverse character of the city.

(b) Movie theaters serve as important anchors in many of these neighborhood commercial districts, helping generate pedestrian traffic critical for the economic vitality of surrounding retail stores, restaurants and other small businesses.

(c) Movie theaters contribute to the unique character of our neighborhoods and significantly enhance the quality of life of the City's residents.

(d) Over the last twenty years, San Francisco has lost more than thirty-five movie theaters, including such neighborhood institutions as the Alhambra Theater (Russian Hill), the Avenue Theater (Silver Terrace), the Haight Theater (Haight-Ashbury), the Apollo Theater
(Excelsior), the New Mission Theater (Mission), the Coliseum Theater (Richmond), the Parkside Theater (Taraval), the Pagoda Palace (North Beach), the Noe Theater (Noe Valley), the Surf Theater (Outer Sunset), the EI Capitan Theater (Mission) and the EI Rey Theater (Ingleside).

(e) Many of the remaining neighborhood theaters are threatened with potential closures, conversion or demolition in the near future, including such theaters as the Cinema 21 (Marina), the Roxie (Mission), the Coronet (Richmond), the Metro (Pacific Heights), the Presidio (Marina), the Balboa (Richmond), the Vogue (Presidio Heights), and the Empire (West Portal).

(f) 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 and in Planning Commission Motion No. 6776, a copy of which is in Clerk of the Board of Supervisors file No. 6470. Said motion is incorporated herein by reference.

(g) Pursuant to Planning Code Section 101.1, this Board of Supervisors finds that this ordinance is consistent with the priority policies of Section 101.1(b) of the Planning Code and the General Plan for the reasons set forth in said Planning Commission Motion No. 6776.

Section 2. Specific Findings. The Board finds that in order to effectuate this legislation, the Planning Department, prior to Planning Commission action on a conditional use application subject to this Ordinance, should consult with other affected city departments, including, but not limited to, the Mayor's Office of Economic Development, the Mayor's Office of Neighborhood & Community Services, the Small Business Commission, and the Film Commission, to assist in determining the neighborhood impacts of particular changes in use or demolition of a movie theater.

Section 3. Environmental Findings. The Planning Department has determined that the actions contemplated in this Ordinance are in compliance with the California Environmental
Quality Act (California Public Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 07/07 and is incorporated herein by reference.

Section 4. The San Francisco Planning Code is hereby amended by adding Section 221.1 to read as follows:

**SEC. 221.1. LIMITATION ON CHANGE IN USE OR DEMOLITION OF MOVIE THEATER USE.**

Notwithstanding any other provision of this Article, a change in use or demolition of a movie theater use, as set forth in Section 221(d), shall require conditional use authorization pursuant to Section 303. This Section shall not authorize a change in use if the new use or uses are otherwise prohibited.

Section 5. The San Francisco Planning Code is hereby amended by amending Section 703.2 to read as follows:

**SEC. 703.2. USES PERMITTED IN NEIGHBORHOOD COMMERCIAL DISTRICTS.**

A use is the specific purpose for which a property or building is used, occupied, maintained, or leased. Whether or not a use is permitted in a specific district is set forth or summarized and cross-referenced in Sections 710.1 through 730.95 of this Code for each district class.

(a) Use Categories. The uses, functions, or activities, which are permitted in each Neighborhood Commercial District class include those listed below by zoning control category and number and cross-referenced to the Code Section containing the definition.

<table>
<thead>
<tr>
<th>No.</th>
<th>Zoning Control Categories for Uses</th>
<th>Section Number of Use Definition</th>
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<tr>
<td>.24</td>
<td>Outdoor Activity Area</td>
<td>§ 790.70</td>
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<td>7</td>
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<td>8</td>
<td>Large Fast-Food Restaurant</td>
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</table>

(b) Use Limitations. The uses permitted in Neighborhood Commercial Districts are either principal, conditional, accessory, or temporary uses as stated in this Section, and include those uses set forth or summarized and cross-referenced in the zoning control categories as listed in Paragraph (a) in Sections 710.1 through 729.95 of this Code for each district class.

(1) Permitted Uses. All permitted uses shall be conducted within an enclosed building in Neighborhood Commercial Districts, unless otherwise specifically allowed in this Code. Exceptions from this requirement are: uses which, when located outside of a building, qualify as an outdoor activity area, as defined in Section 790.70 of this Code; accessory off-street parking and loading and other uses listed below which function primarily as open-air
uses, or which may be appropriate if located on an open lot, outside a building, or within a partially enclosed building, subject to other limitations of this Article 7 and other sections of this Code.

If there are two or more uses in a structure and none is classified below under Section 703.2(b)(1)(C) of this Code as accessory, then each of these uses will be considered separately as independent principal, conditional or temporary uses.

(A) Principal Uses. Principal uses are permitted as of right in a Neighborhood Commercial District, when so indicated in Sections 710.1 through 729.95 of this Code for each district class.

(B) Conditional Uses. Conditional uses are permitted in a Neighborhood Commercial District when authorized by the Planning Commission; whether a use is conditional in a given district is indicated in Sections 710.10 through 729.95. Conditional uses are subject to the provisions set forth in Sections 178, 179, 303, and 316 through 316.8 of this Code.
(i) An establishment which sells beer or wine with motor vehicle fuel is a conditional use, and shall be governed by section 229. Conditional uses are subject to the provisions set forth in Sections 178, 179, and 316 through 316.8 of this Code.

(ii) Notwithstanding any other provision of this Article, a change in use or demolition of a movie theater use, as set forth in Section 790.64, shall require conditional use authorization. This Subsection shall not authorize a change in use if the new use or uses are otherwise prohibited.

(C) Accessory Uses. Except as prohibited in Section 728 and subject to the limitations set forth below and in Sections 204.1 (Accessory Uses for Dwelling Units in R and NC Districts), 204.4 (Dwelling Units Accessory to Other Uses), and 204.5 (Parking and Loading as Accessory Uses) of this Code, a related minor use which is either necessary to the operation or enjoyment of a lawful principal use or conditional use, or is appropriate, incidental and subordinate to any such use, shall be permitted as an accessory use when located on the same lot. Any use which does not qualify as an accessory use shall be classified as a principal or conditional use, unless it qualifies as a temporary use under Sections 205 through 205.2 of this Code.

No use will be considered accessory to a permitted principal or conditional use which involves or requires any of the following:

(i) The use of more than 1/3 of the total floor area occupied by such use and the principal or conditional use to which it is accessory, except in the case of accessory off-street parking and loading;

(ii) Any bar, restaurant, other entertainment, or any retail establishment which serves liquor for consumption on-site;

(iii) Any take-out food use, as defined in Section 790.122, except for a take-out food use which occupies 100 square feet or less (including the area devoted to food
preparation and service and excluding storage and waiting areas) in a general grocery or specialty grocery store;

(iv) Any take-out food use, as defined in Section 790.122, except for a take-out food use operating as a minor and incidental use within a full-service restaurant;

(v) The wholesaling, manufacturing or processing of foods, goods, or commodities on the premises of an establishment which does not also use or provide for primarily retail sale of such foods, goods or commodities at the same location where such wholesaling, manufacturing or processing takes place.

The foregoing rules shall not prohibit take-out food activity which operates in conjunction with a fast-food restaurant or a self-service restaurant. A fast-food restaurant or a self-service restaurant, by definition, includes take-out food as an accessory and necessary part of its operation.

(D) Temporary Uses. Temporary uses are permitted uses, subject to the provisions set forth in Section 205 of this Code.

(2) Not Permitted Uses.

(A) Uses which are not specifically listed in this Article are not permitted unless they qualify as a nonconforming use pursuant to Sections 180 through 186.1 of this Code or are determined by the Zoning Administrator to be permitted uses in accordance with Section 307(a) of this Code.

(B) No use, even though listed as a permitted use, shall be permitted in a Neighborhood Commercial District which, by reason of its nature or manner of operation, creates conditions that are hazardous, noxious, or offensive through the emission of odor, fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste, or excessive noise.
(C) The establishment of a use that sells alcoholic beverages, other than
beer and wine, concurrent with motor vehicle fuel is prohibited, and shall be governed by
Section 229.

Section 6. The San Francisco Planning Code is hereby amended by amending Section
803.2 to read as follows:

SEC. 803.2. USES PERMITTED IN CHINATOWN MIXED USE DISTRICTS.

A use is the specific purpose for which a property or building is used, occupied,
maintained, or leased. Whether or not a use is permitted in a specific Chinatown Mixed Use
District is set forth, summarized or cross-referenced in Sections 810.1 through 812.96 of this
Code for each district class.

(a) Use Categories. The uses, functions, or activities, which are permitted in
each Chinatown Mixed Use District class include those listed in Table 803.2 below by zoning
control category and numbered and cross-referenced to the Code Section containing the
definition.

TABLE 803.2 USE CATEGORIES PERMITTED IN THE CHINATOWN MIXED USE
DISTRICTS

<table>
<thead>
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<th>No.</th>
<th>Zoning Control Categories for Uses</th>
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<td>Hospital or Medical Center</td>
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(b) Use Limitations. Uses in Chinatown Mixed Use Districts are either permitted, conditional, accessory, temporary, or are not permitted.

(1) Permitted Uses. All permitted uses in Chinatown Mixed Use Districts shall be conducted within an enclosed building, unless otherwise specifically allowed in this Code. Exceptions from this requirement are: accessory off-street parking and loading; uses which, when located outside of a building, qualify as an outdoor activity area, as defined in Section 890.71 of this Code; and uses which by their nature are to be conducted in an open lot or outside a building, as described in Sections 890 through 890.140 of this Code.

If there are two or more uses in a structure and none is classified under Section 803.2(b)(1)(C) of this Code as accessory, then each of these uses will be considered separately as an independent permitted, conditional, temporary or not permitted use.

(A) Principal Uses. Principal uses are permitted as of right in a Chinatown Mixed Use District, when so indicated in Sections 810.1 through 812.96 of this Code for each district class.

(B) Conditional Uses.

(i) Conditional uses are permitted in a China-town Mixed Use District when authorized by the Planning Commission; whether a use is conditional in a given district is...
indicated in Sections 810 through 812. Conditional uses are subject to the provisions set forth in
Section 303 of this Code.

(i) An establishment which sells beer and wine with motor vehicle fuels is a conditional use, and shall be governed by Section 229. Conditional uses are subject to the provisions set forth in Section 303 of this Code.

(ii) Any use or feature which lawfully existed and was permitted as a principal or conditional use on the effective date of these controls which is not otherwise nonconforming or noncomplying as defined in Section 180 of this Code, and which use or feature is not permitted under this Article is deemed to be a permitted conditional use subject to the provisions of this Code.

(iii) Notwithstanding any other provision of this Article, a change in use or demolition of a movie theater use, as set forth in Section 890.64, shall require conditional use authorization. This Subsection shall not authorize a change in use if the new use or uses are otherwise prohibited.

(C) Accessory Uses. Subject to the limitations set forth below and in Sections 204.1 (Accessory Uses for Dwelling Units in R Districts) and 204.5 (Parking and Loading as Accessory Uses) of this Code, a related minor use which is either necessary to the operation or enjoyment of a lawful principal use or conditional use or is appropriate, incidental and subordinate to any such use, shall be permitted in Chinatown Mixed Use Districts as an accessory use when located on the same lot. Any use not qualified as an accessory use shall only be allowed as a principal or conditional use, unless it qualifies as a temporary use under Sections 205 through 205.2 of this Code.

No use in a Chinatown Mixed Use District will be considered accessory to a principal use which involves or requires any of the following:
(i) The use of more than 1/3 of the total floor area occupied by both the accessory use and the principal use to which it is accessory, combined, except in the case of accessory off-street parking;

(ii) Any bar, restaurant, other entertainment, or any retail establishment which serves liquor for consumption on-site;

(iii) Any take-out food use, except for a take-out food use which occupies 100 square feet or less (including the area devoted to food preparation and service and excluding storage and waiting areas) in a retail grocery or specialty food store;

(iv) The wholesaling, manufacturing or processing of foods, goods, or commodities on the premises of an establishment which does not also provide for primarily retail sale of such foods, goods or commodities at the same location where such wholesaling, manufacturing or processing takes place.

The above shall not prohibit take-out food activity which operates in conjunction with a fast-food restaurant. A fast-food restaurant, by definition, includes take-out food as an accessory and necessary part of its operation.

(D) Temporary Uses. Uses not otherwise permitted are permitted in Chinatown Mixed Use Districts to the extent authorized by Sections 205, 205.1 or 205.2 of this Code.

(2) Not Permitted Uses.

(A) Uses which are not listed in this Article are not permitted in a Chinatown Mixed Use District unless determined by the Zoning Administrator to be permitted uses in accordance with Section 307(a) of this Code.

(B) No use, even though listed as a permitted use or otherwise allowed, shall be permitted in a Chinatown Mixed Use District which, by reason of its nature or manner of operation, creates conditions that are hazardous, noxious, or offensive through the emission
of odor, fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste, or excessive noise.

(C) The establishment of a use that sells alcoholic beverages, other than beer and wine, concurrent with motor vehicle fuel is prohibited, and shall be governed by Section 229.

Section 7. The San Francisco Planning Code is hereby amended by amending Section 803.3 to read as follows:

SEC. 803.3. USES PERMITTED IN SOUTH OF MARKET USE DISTRICTS.

(a) Use Categories. A use is the specified purpose for which a property or building is used, occupied, maintained, or leased. Whether or not a use is permitted in a specific South of Market district is generally set forth, summarized or cross-referenced in Sections 813.3 through 818 of this Code for each district class.

(b) Use Limitations. Uses in South of Market districts are either permitted, conditional, accessory, temporary or are not permitted.

(1) Permitted Uses. If there are two or more uses in a structure, any use not classified below under Section 803.3(b)(1)(C) of this Code as accessory will be considered separately as an independent permitted, conditional, temporary or not permitted use.

(A) Principal Uses. Principal uses are permitted as of right in a South of Market district, when so indicated in Sections 813 through 818 of this Code for the district. Additional requirements and conditions may be placed on particular uses as provided pursuant to Section 803.5 and other applicable provisions of this Code.

(B) Conditional Uses. Conditional uses are permitted in a South of Market district, when authorized by the Planning Commission; whether a use is conditional in a given district is generally indicated in Sections 813 through 818 of this Code. Conditional uses are
subject to the applicable provisions set forth in Sections 178, 179, 263.11, 303, 316.8, and 803.5 of this Code.

(i) An establishment which sells beer or wine with motor vehicle fuel is a conditional use, and shall be governed by Section 229. Conditional uses are subject to the applicable provisions set forth in Sections 178, 179, 263.11, 303, 316 through 316.8, and 803.5 of this Code.

(ii) Notwithstanding any other provision of this Article, a change in use or demolition of a movie theater use, as set forth in Section 890.64, shall require conditional use authorization. This Section shall not authorize a change in use if the new use or uses are otherwise prohibited.

(C) Accessory Uses. Subject to the limitations set forth below and in Sections 204.1 (Accessory Uses for Dwelling Units in R and NC Districts), 204.2 (Accessory Uses for Uses Other Than Dwellings in R Districts), 204.4 (Dwelling Units Accessory to Other Uses), and 204.5 (Parking and Loading as Accessory Uses) of this Code, an accessory use is a related minor use which is either necessary to the operation or enjoyment of a lawful principal use or conditional use, or is appropriate, incidental and subordinate to any such use, and shall be permitted as an accessory use in a South of Market district. In order to accommodate a principal use which is carried out by one business in multiple locations within the same general area, such accessory use need not be located in the same structure or lot as its principal use provided that (1) the accessory use is located within 1,000 feet of the principal use; (2) the multiple locations existed on April 6, 1990 (the effective date of this amendment); and (3) the existence of the multiple locations is acknowledged in writing by the Zoning Administrator within 60 days after the effective date of this amendment. Any use which does not qualify as an accessory use shall be classified as a principal use.
No use will be considered accessory to a principal use which involves or requires any of the following:

(i) The use of more than one-third of the total occupied floor area which is occupied by both the accessory use and principal use to which it is accessory, combined, except in the case of accessory off-street parking or loading which shall be subject to the provisions of Sections 151, 156 and 157 of this Code;

(ii) A hotel, motel, inn, hostel, nighttime entertainment, adult entertainment, massage establishment, large fast food restaurant, or movie theater use in a RED, SPD, RSD, SLR, SLI or SSO District;

(iii) Any take-out food use, except for a take-out food use which occupies 100 square feet or less (including the area devoted to food preparation and service and excluding storage and waiting areas) in a restaurant, bar, catering establishment, bakery, retail grocery or specialty food store.

(iv) Any sign not conforming to the limitations of Section 607.2(f)(3).

(D) Temporary Uses. Temporary uses not otherwise permitted are permitted in South of Market Districts to the extent authorized by Sections 205 through 205.3 of this Code.

Section 8. 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

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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.

(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

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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

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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) Formula Retail Uses.

(1) With respect to an application for a formula retail use as defined in Section 703.3, whenever a conditional use permit is required per Section 703.3(f), the Planning Commission shall consider, in addition to the criteria set forth in Subsection (c) above:

(A) The existing concentrations of formula retail uses within the neighborhood commercial district.

(B) The availability of other similar retail uses within the neighborhood commercial district.

(C) The compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the neighborhood commercial district.

(D) The existing retail vacancy rates within the neighborhood commercial district.

(E) The existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the neighborhood commercial district.
(j) 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 shift in traffic patterns that may result from drawing traffic to the location of the proposed use; and

(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.

(k) Movie Theater Uses.

(1) With respect to a change in use or demolition of a movie theater use as set forth in Sections 221.1, 703.2(b)(1)(B)(ii), 803.2(b)(2)(B)(iii) or 803.3 (b)(1)(B)(ii), in addition to the criteria set forth in Subsections (c) and (d) above, the Commission shall make the following findings:

(A) Preservation of a movie theater use is no longer economically viable and cannot effect a reasonable economic return to the property owner;

(B) The change in use or demolition of the movie theater use will not undermine the economic diversity and vitality of the surrounding neighborhood commercial district; and

(C) The resulting project will preserve the architectural integrity of important historic features of the movie theater use affected.
Section 9. This is an uncodified section of the legislation. The provisions of this legislation shall not apply to those uses for which the City received an environmental evaluation application on or before July 27, 2004, the introduction date of this legislation.

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

By: [Signature]
John D. Malamut
Deputy City Attorney
Ordinance amending the Planning Code to add Section 221.1 and to amend sections 703.2, 803.2, and 803.3 to require conditional use authorization for any project involving the change in use or demolition of a movie theater; amending Planning Code section 303 to require specific findings as part of a conditional use authorization for a change in use or demolition of a movie theater; making findings of consistency with the General Plan and priority policies of the Planning Code Section 101.1; making environmental findings; and making the Ordinance inapplicable to uses for which an environmental evaluation application was submitted on or before July 27, 2004.

October 26, 2004 Board of Supervisors — PASSED ON FIRST READING
Ayes: 10 - Alioto-Pier, Ammiano, Daly, Duffy, Elsbernd, Gonzalez, Maxwell, McGoldrick, Peskin, Sandoval
Noes: 1 - Ma

November 2, 2004 Board of Supervisors — FINALLY PASSED
Ayes: 9 - Alioto-Pier, Ammiano, Daly, Duffy, Elsbernd, Gonzalez, Maxwell, McGoldrick, Peskin
Noes: 1 - Ma
Absent: 1 - Sandoval
I hereby certify that the foregoing Ordinance was FINALLY PASSED on November 2, 2004 by the Board of Supervisors of the City and County of San Francisco.

[Signature]

Date Approved: 11.09.04

[Signature]

Gloria L. Young
Clerk of the Board

Mayor Gavin Newsom