Ordinance amending the San Francisco Planning Code by amending Sections 186 and 186.1 to allow certain nonconforming uses to occupy public sidewalk space with tables and chairs, when otherwise permitted; and making findings, including environmental findings and 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. On 8-3-06 at a duly noticed public hearing, the Planning Commission in Resolution No. 17289 found that the proposed Planning Code amendments contained in this ordinance were consistent with the City's General Plan and with Planning Code Section 101.1(b). In addition, the Planning Commission recommended that the Board of Supervisors adopt the proposed Planning Code amendments. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. 061069 and is incorporated herein by reference. The Board finds that the proposed Planning Code amendments contained in this ordinance are consistent with the City's General Plan and with Planning Code Section 101.1(b) for the reasons set forth in said Resolution.

B. Pursuant to Planning Code Section 302, the Board finds that the proposed ordinance will serve the public necessity, convenience and welfare for the reasons set forth in
Planning Commission Resolution No. 17289, which reasons are incorporated herein by reference as though fully set forth.

C. 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 section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 061069 and is incorporated herein by reference.

Section 2. The San Francisco Planning Code is hereby amended by amending Section 186, to read as follows:

SEC. 186. EXEMPTION OF LIMITED COMMERCIAL AND INDUSTRIAL NONCONFORMING USES.

The purpose of this Section is to provide for the further continuance in R Districts of nonconforming uses of a limited commercial and industrial character, as herein described, which are beneficial to, or can be accommodated within, the residential areas in which they are located. It is hereby found and declared that, despite the general incompatibility of nonconforming uses with the purposes of this Code, and with other nearby uses, these limited commercial uses may be tolerated in residential areas, and tend to provide convenience goods and services on a retail basis to meet the frequent and recurring needs of neighborhood residents within a short distance of their homes or, within the South of Market RED Districts, tend to provide jobs and continuation of small scale service and light industrial activities. These uses tend to be small in scale, to serve primarily a walk-in trade, and cause a minimum of interference with nearby streets and properties. Accordingly, this Section recognizes the public advantages of these uses and establishes conditions for their continued operation.

Supervisor Mirkarimi
BOARD OF SUPERVISORS
(a) The following nonconforming uses in R Districts shall be exempt from the termination provisions of Section 185, provided such uses comply with all the conditions specified in Subsection (b) below:

(1) Any nonconforming use at any story in an RH or RM District which is located more than ¼ mile from the nearest Individual Area Neighborhood Commercial District or Restricted Use Subdistrict described in Article 7 of this Code, and which complies with the use limitations specified for the first story and below of an NC-1 District, as set forth in Sections 710.10 through 710.95 of this Code.

(2) Any nonconforming use in an RH or RM District which is located within ¼ mile from any Individual Area Neighborhood Commercial District or restricted use subdistrict and which complies with the most restrictive use limitations specified for the first story and below of:
   (A) NC-1 District, as set forth in Sections 710.10 through 710.95 of this Code; and
   (B) Any Individual Area Neighborhood Commercial District within ¼ mile of the use, as set forth in Sections 714.10 through 729.95 of this Code;
   (C) Any Restricted Use Subdistrict within ¼ mile of the use, as set forth in Sections 781 through 781.7 of this Code.

(3) In the RED Districts, any nonconforming use which is a personal service use falling within zoning category 816.31; home and business service use falling within zoning categories 816.42 through 816.47; live/work unit falling within zoning category 816.55; wholesale sales, storage or light manufacturing uses falling within zoning categories 816.64 through 816.67.

(b) The limited nonconforming uses described above shall meet the following conditions:
(1) The building shall be maintained in a sound and attractive condition, consistent with the general appearance of the neighborhood;

(2) Any signs on the property shall be made to comply with the requirements of Article 6 of this Code applying to nonconforming uses;

(3) The hours during which the use is open to the public shall be limited to the period between 6:00 a.m. and 10:00 p.m.;

(4) No public sidewalk space may be occupied in connection with the use provided that it is only occupied with tables and chairs as permitted by this Municipal Code;

(5) Truck loading shall be limited in such a way as to avoid undue interference with sidewalks, or with crosswalks, bus stops, hydrants and other public features;

(6) Noise, odors and other nuisance factors shall be adequately controlled; and

(7) All other applicable provisions of this Code shall be complied with.

(c) Any use affected by this Section which does not comply with all of the conditions herein specified shall be subject to termination in accordance with Section 185 at the expiration of the period specified in that Section, but shall be qualified for consideration as a conditional use under Section 185(e). Any such use which is in compliance with such conditions at the expiration of such period but fails to comply therewith at any later date shall be subject to termination when it ceases to comply with any of such conditions.

(d) The provisions for nonconforming uses contained in Sections 180 through 183 shall continue to apply to all uses affected by this Section 186, except that the cost limit for structural alterations contained in Section 181(b)(4) shall not be applicable thereto.

Section 3. The San Francisco Planning Code is hereby amended by amending Section 186.1, to read as follows:
SEC. 186.1. EXEMPTION OF NONCONFORMING USES IN NEIGHBORHOOD COMMERCIAL DISTRICTS.

The purpose of this Section is to provide for the further continuance in NC Districts of nonconforming uses created by adoption of Ordinance No. 69-87, as herein described, and subsequent ordinances that change the uses allowed in NC Districts, which are beneficial to, or can be accommodated within the neighborhood commercial areas in which they are located.

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

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

(a) Expansion. A nonconforming use may expand in floor area as provided in Subsection (b) below, but may not expand beyond the lot which it occupies, nor may the boundaries of such lot be expanded for purposes of expanding the use; nor may the use...
expand upward above the story or stories which it lawfully occupies, except as provided in Section 186.2 below.

(b) Enlargements or Alteration.

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

(2) A nonconforming use may expand to include public sidewalk space provided that such space is only occupied with tables and chairs as permitted by this Municipal Code.

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

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

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

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

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

(A) Any use described in zoning categories .41, .42, .43 or .44, as defined in Sections 790.22, 790.92, 790.90 and 790.91, respectively, may change to another use described in zoning categories .41, .42, or .44, even though such other use is not permitted in that Neighborhood Commercial District, unless such other use is located in an Alcohol Restricted Use Subdistrict and is prohibited by the provisions governing that Alcohol Restricted Use Subdistrict.

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

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

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

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

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

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

(A) to a conforming use size or
(B) to a size specified in Subsection 121.2(a) pursuant to conditional use authorization.

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

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

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

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

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

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

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

By: Marlena G. Byrne
Deputy City Attorney
Ordinance amending the San Francisco Planning Code by amending Sections 186 and 186.1 to allow certain nonconforming uses to occupy public sidewalk space with tables and chairs, when otherwise permitted; and making findings, including environmental findings and findings of consistency with the priority policies of Planning Code Section 101.1 and the General Plan.

September 26, 2006 Board of Supervisors — PASSED ON FIRST READING
Ayes: 10 - Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
Excused: 1 - Alioto-Pier

October 3, 2006 Board of Supervisors — FINALLY PASSED
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
I hereby certify that the foregoing Ordinance was FINALLY PASSED on October 3, 2006 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young
Clerk of the Board

Mayor Gavin Newsom

10/11/2006
Date Approved