



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: JANUARY 11, 2018

90-DAY DEADLINE: JANUARY 22, 2018

Project Name: Jackson Square Special Use District
Case Number: 2017-013742PCA [Board File No. 171108]
Initiated by: Supervisor Peskin / Introduced October 17, 2017
Staff Contact: Diego R Sánchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron Starr, Manager of Legislative Affairs
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Recommendation: **Recommend Approval with Modifications**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to regulate restaurant and bar uses in the Jackson Square Special Use District.

The Way It Is Now:

1. Within the Jackson Square SUD Limited Restaurants, Restaurants and Bars are principally permitted.
2. Within the Jackson Square SUD new eating and drinking uses may occupy tenant spaces last legally occupied by any use.
3. Within the Jackson Square SUD any use may be converted to a Limited Restaurant, a Restaurant or a Bar use.

The Way It Would Be:

1. Within the Jackson Square SUD Limited Restaurants, Restaurants and Bars would require Conditional Use authorization.
2. Within the Jackson Square SUD:
 - a. Bar uses would only be allowed to occupy spaces currently or last legally occupied by a Bar use;
 - b. Restaurants would only be allowed to occupy spaces currently or last legally occupied by a Bar or Restaurant use; and
 - c. Limited Restaurants would only be allowed to occupy spaces currently or last legally occupied by a Bar, Restaurant, or Limited Restaurant use.
3. Within the Jackson Square SUD only existing eating and drinking uses may convert to Limited Restaurant, Restaurant or Bar uses.

BACKGROUND

The Jackson Square Special Use District (JSSUD) is located in the City's northeast sector, adjacent to Chinatown, North Beach and the Financial District. The underlying zoning district in the JSSUD is the Community Business (C-2) district. The C-2 provides convenience goods and services to the residential areas of the City as well as to a Citywide or regional market area. The C-2 is intended to complement the

main retail areas in downtown San Francisco. As such, most Retail uses are allowed as of right, without neighborhood notification.

In 2003 Board of Supervisors established the JSSUD in order to protect and enhance the specialty retail and antique store uses found there.¹ It does this in two ways. First, the JSSUD requires the Planning Commission and Planning Department to consider the following when reviewing the establishment of ground floor uses:

1. Continuation and enhancement of existing ground floor retail uses are of critical importance to the character of the District and displacement of such uses should be discouraged;
2. Attraction and retention of similar new retail establishments that conform with the character of this District should be encouraged; and
3. Uses that greatly intensify the density of employment have a negative impact on the provision of neighborhood services, traffic circulation, and limited on- and off-street parking.

Second, the JSSUD imposes the following additional non-residential controls:

1. Conditional Use authorization (CU) is required for Office uses, Business Service Uses and Institutional Uses when locating on the ground floor. An exception to the CU requirement is provided for these uses fronting Pacific Avenue.
2. Adult Businesses are prohibited at all floors.

ISSUES AND CONSIDERATIONS

Healthy Retail Areas Provide a Mix of Goods and Services

San Francisco has dozens of commercial corridors that serve adjacent neighborhoods as well as wider trade areas. These shopping areas contribute to the City's economic well-being by providing property taxes, business taxes, and employment opportunities. They also serve as hubs for leisure, and entertainment. As noted in the General Plan, the success of these shopping areas depends on their ability to supply a variety of goods and services in a safe and attractive environment.²

The Planning Code also recognizes the need to maintain a diverse retail offering by ensuring that commercial corridors are not dominated by one type of use. A principal example is the added consideration for Limited Restaurants, Restaurants and Bars requiring Conditional Use authorization.³ The Planning Code indicates that the concentration of these eating and drinking uses should not exceed 25% of total commercial frontage within the 300 feet of a proposed eating and drinking use. This helps assure these eating and drinking uses do not dominate any one segment of a commercial corridor. It also affords space for other vital non-residential uses to locate within the City's shopping areas.

¹ Ordinance 203-03:

<https://sfgov.legistar.com/View.ashx?M=F&ID=2600187&GUID=EA717527-7E11-4564-B03B-913A109B7505>

² Commerce and Industry Element. Objective 6: Maintain and Strengthen Viable Neighborhood Commercial Areas Easily Accessible to City Residents.

³ Planning Code Section 303(o). These retail uses are defined in Section 102.

Using Quantitative Limits to Manage Retail Corridor Diversity

One regulatory mechanism that the Planning Code uses to ensure retail corridor diversity is a hard cap or limit on the number of a particular retail use type. This mechanism is currently in place in the Haight Street Neighborhood Commercial District (NCD) and the Union Street NCD. Both districts set quantitative limits on the number of Restaurants allowed in those shopping areas.⁴ The Japantown NCD and the West Portal NCD have similar controls for Financial Services and Stock Brokerages, respectively.⁵ This regulation sends very clear signals to prospective entrepreneurs and corridor merchants about allowed uses in a shopping area by avoiding a discretionary action. It is also an efficient regulation in that it avoids dedicating staff and Planning Commission time towards Conditional Use authorization entitlement.

Retail Trends in the Internet Age

The rise of online sales and services has impacted the viability of brick and mortar retail, and as a result has impacted the City's shopping areas. In particular, retail establishments that compete directly with online venues, such as clothing and electronics, are faring worse than those that, by the nature of their offerings, do not.⁶ As a result, demand for retail space for restaurants, personal services and specialty retailers is growing since their offerings cannot be easily purchased online.

The desire to change land use controls to limit entry of particular retail types should be tempered by trends in the retail sector. Shopping areas with multiple vacancies do not attract foot traffic or patrons and this works against creating a safe and inviting retail environment. Amendments to land use controls should recognize this and afford some growth in the number of retail uses that successfully compete with online sales, including Eating and Drinking Uses.

December 2017 Survey of Ground Floor Non-Residential Uses in the JSSUD

In December 2017 Planning Department staff conducted a walking survey of the JSSUD. The aim of the walking survey was to note existing street level retail conditions, with a focus on the number of Eating and Drinking Uses. Staff found that of all street-level occupied commercial spaces, 15% were occupied by Eating and Drinking Uses. Stores selling apparel, and household goods, including antiques and art, occupy 30% of the occupied street-level commercial spaces. Professional Service uses are also found in significant numbers, occupying 20% of street-level commercial spaces. (*See Table 1*).

In general there is a balance of ground floor retail offerings in the JSSUD. No one retail use type dominates the JSSUD. Importantly, the concentration of Eating and Drinking Uses is reasonable in comparison to other retail uses.

⁴ Planning Code Section 719 Haight Street Neighborhood Commercial District; Planning Code Section 725 Union Street Neighborhood Commercial District.

⁵ Planning Code Section 721 Japantown Neighborhood Commercial District; Planning Code Section 729 West Portal Neighborhood Commercial District.

⁶ Mission Street Corridor Economic Analysis. August 30, 2017. Strategic Economics.

Office on Economic and Workforce Development Memorandum to the Planning Commission on Retail to Office Conversions in Union Square. March 18, 2016.

TABLE 1: JACKSON SQUARE SPECIAL USE DISTRICT STREET LEVEL COMMERCIAL USES DECEMBER 2017

Use Type	Total	Percent of Total
Eating and Drinking	16	15%
Apparel, Household Goods, Antiques, Art Galleries	32	30%
Professional Services	21	20%
Personal Services Other Retail	8	8%
Business Services	9	8%
Health Services	4	4%
Other	16	15%
Total	106	100%

General Plan Compliance

Commerce and Industry Element

Objective 2: Maintain and Enhance a Sound and Diverse Economic Base and Fiscal Structure for the City

Policy 2.1: Seek to Retain Existing Commercial and Industrial Activity and to Attract New such Activity to the City

The enhanced controls proposed for Eating and Drinking Uses can help retain and make available tenant spaces for other commercial endeavors because they hinder the introduction of subsequent Eating and Drinking Uses into the JSSUD.

Implementation

The Department has determined that this ordinance will not impact our current implementation procedures. However, there are regulations that are more straightforward and achieve the same goal, including a limit or hard cap on the number of Eating and Drinking Uses.

RECOMMENDATION

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Amend the JSSUD to set a limit on the number of total Limited Restaurants, Restaurants, and Bars in the JSSUD at 25 in the following manner:

249.25(b)(3) Prohibited Uses.*(i)* Adult Businesses, as defined in Section 102 of this Code, are prohibited. *(ii)* Limited Restaurants, Restaurants and Bars when the total number of these uses, combined, exceeds 25 in the Jackson Square Special Use District are prohibited.

BASIS FOR RECOMMENDATION

The Department supports the Ordinance because it furthers the goal of the JSSUD's purpose of providing protection for and enhancement of specialty retail and antique store uses within the SUD. Further, encouraging diversity among the City's multiple shopping districts is a goal in the General Plan that

should also apply to the JSSUD.⁷ These new controls will help ensure that the JSSUD retains and further develops its unique retail offerings, while still allowing for a diversity of uses.

However, the Department believes that the same goal can be accomplished by using a simpler and more straightforward mechanism than what is being proposed in the Ordinance. Further, new land use controls should also allow for additional, albeit modest, growth in the number of Eating and Drinking Uses in the JSSUD.

Recommendation 1: Add A Subsection 249.25(b)(3)(ii): Set a limit on the number of Limited Restaurants, Restaurants, and Bars in the JSSUD at 25.

Changes to the Eating and Drinking Use controls in the JSSUD should balance the need to promote retail diversity with recognition of current retail trends. New controls should also be sufficiently clear to prospective merchants, existing business and property owners, and City staff implementing them. An upper limit on the number of Limited Restaurants, Restaurants, and Bars accomplishes this. An upper limit above the existing number of Eating and Drinking Uses in the JSSUD allows for some expansion in a segment of the retail sector that is growing. These additional eating and drinking venues can also attract patrons to the specialty retailers, antique shops and art galleries currently in the JSSUD. It also avoids the inherent uncertainty that accompanies a discretionary entitlement such as Conditional Use authorization.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

ENVIRONMENTAL REVIEW

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Map of Jackson Square Special Use District
- Exhibit C: Board of Supervisors File No. 171108

⁷ Commerce and Industry Element. Objective 6: Maintain and Strengthen Viable Neighborhood Commercial Areas Easily Accessible to City Residents. Policy 6.1: Ensure and Encourage the Retention of Neighborhood-Serving Goods and Services in the City's Neighborhood Commercial Districts, while Recognizing and Encouraging Diversity among the Districts.



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Resolution

HEARING DATE JANUARY 11, 2018

Project Name: Jackson Square Special Use District
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RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO REGULATE RESTAURANT AND BAR USES IN THE JACKSON SQUARE SPECIAL USE DISTRICT; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on October 17, 2017 Supervisor Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 171108, which would amend the Planning Code to regulate restaurant and bar uses in the Jackson Square Special Use District;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on January 11, 2018; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2) and 15378; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance.

The modifications include the following:

1. Amend the Jackson Square Special Use District (JSSUD) to set a limit on the number of total Limited Restaurants, Restaurants, and Bars in the JSSUD at 25 in the following manner:

249.25(b)(3) Prohibited Uses.(i) Adult Businesses, as defined in Section 102 of this Code, are prohibited. (ii) Limited Restaurants, Restaurants and Bars when the total number of these uses, combined, exceeds 25 in the Jackson Square Special Use District are prohibited.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Commission supports the Ordinance because it furthers the goal of the Jackson Square Special Use District's purpose of providing protection for and enhancement of specialty retail and antique store uses within the SUD. Amended land controls can help ensure that the Jackson Square Special Use District retains and further develops its unique retail offerings, while still allowing for a diversity of uses.
2. However, the Commission believes that this goal can be accomplished by using a quantitative cap on the number of new eating and drinking uses allowed in the Jackson Square Special Use District. This is a simpler and more straightforward mechanism than what is being proposed in the Ordinance. Further, amended land use controls should also allow for additional, albeit modest, growth in the number of eating and drinking uses in the Jackson Square Special Use District.
3. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

The enhanced controls proposed for eating and drinking uses can help retain and make available tenant spaces for other commercial endeavors because they hinder the introduction of subsequent eating and drinking uses into the Jackson Square Special Use District.

4. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance will help preserve and enhance the existing neighborhood-serving retail by establishing additional controls to hinder the introduction of additional eating and drinking uses, including eating and drinking uses that serve a City-wide and regional trade area.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance will establish retail controls that can help conserve the existing neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing as the Ordinance proposes new retail land use controls.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking as the Ordinance proposes new retail land use controls that will hinder the introduction of new eating and drinking uses.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired because the Ordinance proposes new retail land use controls.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake because the Ordinance proposes new retail land use controls.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings because the Ordinance proposes new retail land use controls.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas because the Ordinance proposes new retail land use controls.

5. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on January 11, 2018.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

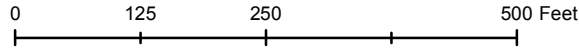
ABSENT:

ADOPTED: January 11, 2018

JACKSON SQUARE SUD



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1 [Planning Code - Jackson Square Special Use District]

2

3 **Ordinance amending the Planning Code to regulate restaurant and bar uses in the**
 4 **Jackson Square Special Use District; affirming the Planning Department's**
 5 **determination under the California Environmental Quality Act; making findings of**
 6 **public necessity, convenience, and welfare under Planning Code, Section 302; and**
 7 **making findings of consistency with the General Plan, and the eight priority policies of**
 8 **Planning Code, Section 101.1.**

9 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
 10 **Additions to Codes** are in *single-underline italics Times New Roman font*.
 11 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
 12 **Board amendment additions** are in double-underlined Arial font.
 13 **Board amendment deletions** are in ~~strikethrough Arial font~~.
 14 **Asterisks (* * * *)** indicate the omission of unchanged Code
 15 subsections or parts of tables.

13

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

15

16 Section 1. Findings.

17 (a) The Planning Department has determined that the actions contemplated in this
 18 ordinance comply with the California Environmental Quality Act (California Public Resources
 19 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
 20 Supervisors in File No. _____ and is incorporated herein by reference. The Board affirms this
 21 determination.

22 (b) On _____, the Planning Commission, in Resolution No. _____, adopted findings
 23 that the actions contemplated in this ordinance are consistent, on balance, with the City's
 24 General Plan and eight priority policies of Planning Code Section 101.1. The Board adopts
 25

1 these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of
2 Supervisors in File No. _____, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
4 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
5 in Planning Commission Resolution No. _____, and the Board incorporates such reasons
6 herein by reference. A copy of Planning Commission Resolution No. _____ is on file with the
7 Board of Supervisors in File No. _____.

8

9 Section 2. The Planning Code is hereby amended by revising Section 249.25, to read
10 as follows:

11 **SEC. 249.25. JACKSON SQUARE SPECIAL USE DISTRICT.**

12 * * * *

13 (b) Controls.

14 (1) General. The provisions of the C-2 use district as established in Section
15 210.2 and applicable provisions of the Washington-Broadway Special Use Districts (Section
16 239), and the Chinatown Community Business District (Section 810.1), shall prevail except as
17 provided in paragraphs (2) and (3) below.

18 (2) Conditional Uses.

19 (A) Office Uses Business Services and Institutional Uses as set forth in
20 Section 102 of this Code at the ground floor are subject to Conditional Use authorization
21 pursuant to Section 303 of this Code, provided, however, that building lobbies, entrances, and
22 exits to and from the basement, ground floor, or upper floors, and other reasonably-sized
23 common areas at the ground floor shall be permitted without Conditional Use authorization. In
24 addition to the findings required under Section 303(c) for Conditional Use authorization, the
25 Commission shall make the following findings:

1 (i) The use shall be necessary to preserve the historic resource
2 and no other use can be demonstrated to preserve the historic resource.

3 (ii) The use shall be compatible with, and shall enhance, the
4 unique retail character of the District.

5 (B) Subsection (b)(2)(A) shall not apply to any use that fronts Pacific
6 Street.

7 (C) Restaurants, Limited Restaurants, and Bars. Restaurant and Bar uses may
8 be permitted as a Conditional Use on the First Story through the procedures set forth in Section 303 if
9 the Zoning Administrator determines that the Restaurant, Limited Restaurant, or Bar would occupy a
10 space that is currently or was last legally occupied by the uses described below; provided that such use
11 has not been discontinued or abandoned pursuant to Sections 186.1(d) or 178(d) of this Code; and
12 provided further that no Conditional Use shall be required if the use remains the same as the prior
13 authorized use, with no enlargement or intensification of use:

14 (i) A Bar may occupy a space that is currently or last legally
15 occupied by a Bar;

16 (ii) A Restaurant may occupy a space that is currently or was last
17 legally occupied by a Restaurant or Bar; and

18 (iii) A Limited Restaurant may occupy a space that is currently or was
19 last legally occupied by a Limited Restaurant, Restaurant or Bar.

20 (iv) Except as provided herein, no other use shall be allowed to
21 convert to a Limited Restaurant, Restaurant or Bar.

22 (3) Prohibited Uses. Adult Businesses, as defined in Section 102 of this Code,
23 are prohibited.

1 Section 3. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor’s veto of the ordinance.

5
6 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
7 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
8 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
9 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
10 additions, and Board amendment deletions in accordance with the “Note” that appears under
11 the official title of the ordinance.

12
13 APPROVED AS TO FORM:
14 DENNIS J. HERRERA, City Attorney

15 By: _____
16 KATE H. STACY
17 Deputy City Attorney

18 n:\legana\as2017\1800115\01225688.docx