Ordinance amending Planning Code, Sections 721.1 and 733.1, to modify the explanation of the boundaries of the Upper Market Street Neighborhood Commercial District and the Upper Market Street Neighborhood Commercial Transit District; Section 703.2(b), to permit in a limited area food processing as an accessory use to a nearby off-site non-residential use; Section 733, making clerical corrections in tables; and making environmental findings, Planning Code, Section 302, findings, and findings of consistency with the General Plan and the priority policies of Planning Code, Section 101.1.

NOTE: Additions are single-underline italics Times New Roman; deletions are strike-through 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.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply 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. 120901 and is incorporated herein by reference.

(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. 18812, which reasons are incorporated herein by reference as though fully set forth. A copy of Planning Commission Resolution No. 18812 is on file with the Clerk of the Board of Supervisors in File No. 120901.
(c) At a duly noticed public hearing held on February 21, 2013, the Planning
Commission in Resolution No. 18812 found that the proposed Planning Code amendments
contained in this ordinance are consistent with the City's General Plan and with the Priority
Policies of Planning Code Section 101.1. The Commission recommended that the Board of
Supervisors adopt the proposed Planning Code amendments. The Board finds that the
proposed Planning Code amendments contained in this ordinance are consistent with the
City's General Plan and with the Priority Policies of Planning Code Section 101.1 for the
reasons set forth in said Resolution.

Section 2. The Planning Code is hereby amended by amending Sections 721.1 and
733.1, to read as follows:

SEC. 721.1. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL
DISTRICT.

The Upper Market Street Neighborhood Commercial District, on Market Street from
Church to Castro, and on side streets off Market, is situated at the border of the Eureka Valley,
Buena Vista, and Duboce Triangle neighborhoods. Upper Market Street is a multi-purpose
commercial district that provides limited convenience goods to adjacent neighborhoods, but
also serves as a shopping street for a broader trade area. A large number of offices are
located on Market Street within easy transit access to downtown. The width of Market Street
and its use as a major arterial diminish the perception of the Upper Market Street District as a
single commercial district. The street appears as a collection of dispersed centers of
commercial activity, concentrated at the intersections of Market Street with secondary streets.

This district is well served by transit and is anchored by the Castro Street Station of the
Market Street subway and the F-Market historic streetcar line. The F, K, L, and M streetcar
lines traverse the district, and the Castro Station serves as a transfer point between light rail
and crosstown and neighborhood bus lines. Additionally, Market Street is a primary bicycle
corridor. Residential parking is not required and generally limited. Commercial establishments are discouraged or prohibited from building accessory off-street parking in order to preserve the pedestrian-oriented character of the district and prevent attracting auto traffic. There are prohibitions on access (i.e. driveways, garage entries) to off-street parking and loading on Market Street to preserve and enhance the pedestrian-oriented character and transit function.

The Upper Market Street district controls are designed to promote moderate-scale development which contributes to the definition of Market Street's design and character. They are also intended to preserve the existing mix of commercial uses and maintain the livability of the district and its surrounding residential areas. Large-lot and use development is reviewed for consistency with existing development patterns. Rear yards are protected at residential levels. To promote mixed-use buildings, most commercial uses are permitted with some limitations above the second story. In order to maintain continuous retail frontage and preserve a balanced mix of commercial uses, ground-story neighborhood-serving uses are encouraged, and eating and drinking, entertainment, and financial service uses are limited. Continuous frontage is promoted by prohibitions of most automobile and drive-up uses.

Housing development in new buildings is encouraged above the second story. Existing upper-story residential units are protected by limitations on demolitions and upper-story conversions.

SEC. 733.1. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.

The Upper Market Street Neighborhood Commercial Transit District is located on Market Street from Church to NeeCastro Streets, and on side streets off Market. Upper Market Street is a multi-purpose commercial district that provides limited convenience goods to adjacent neighborhoods, but also serves as a shopping street for a broader trade area. A large number of offices are located on Market Street within easy transit access to downtown.
1. The width of Market Street and its use as a major arterial diminish the perception of the Upper
2. Market Street Transit District as a single commercial district. The street appears as a
3. collection of dispersed centers of commercial activity, concentrated at the intersections of

   This district is well served by transit and is anchored by the Market Street subway (with
5. stations at Church Street and Castro Street) and the F-Market historic streetcar line. All light-
6. rail lines in the City traverse the district, including the F, J, K, L, M, and N, and additional key
7. cross-town transit service crosses Market Street at Fillmore and Castro Streets. Additionally,
8. Market Street is a primary bicycle corridor. Housing density is limited not by lot area, but by
9. the regulations on the built envelope of buildings, including height, bulk, setbacks, and lot
10. coverage, and standards for residential uses, including open space and exposure, and urban
11. design guidelines. Residential parking is not required and generally limited. Commercial
12. establishments are discouraged or prohibited from building accessory off-street parking in
13. order to preserve the pedestrian-oriented character of the district and prevent attracting auto
14. traffic. There are prohibitions on access (i.e. driveways, garage entries) to off-street parking
15. and loading on Market and Church Streets to preserve and enhance the pedestrian-oriented
16. character and transit function.

   The Upper Market Street district controls are designed to promote moderate-scale
17. development which contributes to the definition of Market Street's design and character. They
18. are also intended to preserve the existing mix of commercial uses and maintain the livability of
19. the district and its surrounding residential areas. Large-lot and use development is reviewed
20. for consistency with existing development patterns. Rear yards are protected at all levels. To
21. promote mixed-use buildings, most commercial uses are permitted with some limitations
22. above the second story. In order to maintain continuous retail frontage and preserve a
23. balanced mix of commercial uses, ground-story neighborhood-serving uses are encouraged,
and eating and drinking, entertainment, and financial service uses are limited. Ground floor-
commercial space is required along Market and Church Streets. Most automobile and drive-
up uses are prohibited or conditional.

Housing development in new buildings is encouraged above the second story. Existing
upper-story residential units are protected by limitations on demolitions and upper-story
 conversions.

Section 3. The Planning Code is hereby amended by amending Section 703.2(b) to
read as follows:

(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 737.1 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.

<table>
<thead>
<tr>
<th>No.</th>
<th>Zoning Control Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>.56</td>
<td>Automobile Parking</td>
</tr>
<tr>
<td>.57</td>
<td>Automotive Gas Station</td>
</tr>
</tbody>
</table>
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 737.1 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 737.1. Conditional uses are subject to the provisions set forth in Sections 178, 179, 303 and 316 through 316.6 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.

(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.
(iii) Notwithstanding any other provision of this Article, a change in use or demolition of a general grocery store use, as defined in Section 790.102(a), which use exceeds 5,000 gross square feet shall require conditional use authorization. This Subsection shall not authorize a change in use if the new use or uses are otherwise prohibited.

(iv) Large-Scale Urban Agriculture, as defined in Section 102.35(b), shall require conditional use authorization.

(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 205.4 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 and accessory wholesaling, manufacturing or processing of foods, goods, or commodities;

(ii) Any Bar or Restaurant, or any other 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 1/3 of the total floor area or up to 500 s/f whichever
is more restrictive in a general grocery or specialty grocery store. This Take-Out Food use includes the area devoted to food preparation and service and excludes storage and waiting areas;

(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 Restaurant or Limited-Restaurant use;

(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 retail sale of such foods, goods or commodities at the same location where such wholesaling, manufacturing or processing takes place. Notwithstanding this or any other limitation in this Section 703.2(b)(1)(C) relating to accessory uses, a food processing use as defined in Section 790.54(a)(1) located on the west side of Noe Street between 16th Street and Beaver Street may be allowed on the ground floor as an accessory use to a non-residential establishment located within 300 feet of the food processing use so long as such food processing use is set back from the front property line by no less than 15 feet; provided further that authorization for such accessory use shall be subject to the notice requirements of Sections 312(d) and (e). This provision authorizing an off-site accessory food processing use shall be repealed one year after its initial effective date, unless the Board of Supervisors, on or before that date, extends or re-enacts this provision.

(vi) Any retail liquor sales, as defined in Section 790.55, except for beer, wine, and/or liquor sales for the consumption off the premises with a State of California Alcoholic Beverage Control ("ABC") Board License type (off-sale beer and wine) or type 21 (off-sale general) which occupy less that 15% of the gross square footage of the establishment (including all areas devoted to the display and sale of alcoholic beverages) in a general grocery store or specialty grocery store, or Limited-Restaurant use (ABC license type 20 only).
(vii) Medical Cannabis Dispensaries as defined in 790.141.

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

(viii) Any other entertainment use, as defined in Section 790.38, except for one that involves a Limited Live Performance Permit as set forth in Police Code Section 1060 et seq.

(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. Except in the SoMa NCT, where these uses are permitted accessory uses.

Section 4. The Planning Code is hereby amended by amending Sections 733.10, 733.17, 733.48 and 733.69 to read as follows:
## SEC. 733. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT

### DISTRICT ZONING CONTROL TABLE

<table>
<thead>
<tr>
<th>No.</th>
<th>Zoning Category</th>
<th>§ References</th>
<th>Upper Market Street Controls</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>§ 790.118</td>
<td>1st</td>
</tr>
</tbody>
</table>

### BUILDING STANDARDS

**733.10** Height and Bulk Limit

- §§ 102.12, 105, 106, 250 - 252, 260, 261.1, 263.18, 263.20, 270, 271
- Varies
- See Zoning Map:
- Height Sculpting on Alleys; § 261.1
- Additional 5’ Height Allowed for Ground Floor Active Uses in 40-X and 50-X; § 263.18, 263.20

**733.17** Street Trees

- Required § 443.138.1

### Retail Sales and Services

**733.48** Other Entertainment

- § 790.38

**733.69** Tobacco Paraphernalia Establishments

- § 790.123
- C

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* Supervisor Wiener

* BOARD OF SUPERVISORS

* 4/18/2013
SPECIFIC PROVISIONS FOR THE UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT

** § 733.48 **

| Boundaries: Applicable for the Upper Market Street NCT. |
| Controls: Existing bars in the Upper Market Street Neighborhood Commercial Transit District will be allowed to apply for and receive a place of entertainment permit from the Entertainment Commission without obtaining conditional use authorization from the Planning Commission if they can demonstrate to the satisfaction of the Entertainment Commission that they have been in regular operation as an entertainment use prior to January 1, 2004; provided, however, that a conditional use is required (1) if an application for a conditional use for the entertainment use was filed with the Planning Department prior to the date this ordinance was introduced or (2) if a conditional use was denied within 12 months prior to the effective date of this ordinance. |

* * * *

Section 5. Effective Date. This ordinance shall become effective 30 days from the date of passage.

Section 6. This section is uncodified. In enacting this Ordinance, the Board intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams, or any other constituent part of the Planning Code that are explicitly shown in this legislation as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the legislation.
APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: Elaine C. Warren
Deputy City Attorney

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Supervisor Wiener
BOARD OF SUPERVISORS

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4/18/2013
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April 15, 2013 Land Use and Economic Development Committee - AMENDED

April 15, 2013 Land Use and Economic Development Committee - RECOMMENDED AS AMENDED

April 23, 2013 Board of Supervisors - PASSED, ON FIRST READING
   Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

May 07, 2013 Board of Supervisors - FINALLY PASSED
   Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 5/7/2013 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

Date Approved

5/15/13