



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

**DATE:** June 1, 2010  
**TO:** Biodiesel Task Force  
Biofuel Permit Working Group  
**FROM:** Daniel A. Sider, Planning Department Staff  
**RE:** Permit Process Memorandum  
Zoning Requirements for Various Biofuel Dispensing Scenarios

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Thank you for including the Planning Department in your continued discussions regarding biofuels and their increasing use in the City. This memorandum responds to a series of specific scenarios which the Biofuel Permit Working Group outlined in the "Biodiesel Dispensing and Storage Site Permitting Summary" issued on April 10, 2010.

Below, each of the six contemplated scenarios are analyzed with respect to relevant zoning parameters. This analysis does not reflect the many relevant regulatory issues which are beyond the jurisdiction of the Planning Department.

Please understand that this memorandum is a staff-level summary of the broad zoning framework which is likely to apply to the stated scenarios. It is intended to assist the Biodiesel Task Force in its understanding of general land use parameters however it is not a formal determination on any zoning or planning matters either for particular biofuel proposals or for general policy issues.

## **Scenario 1 - Business dispensing biodiesel to the Public**

*"In a commercial area, a current business such as an automobile repair shop or alternative health food store, would like to begin dispensing biodiesel for their customers. This also includes biodiesel only dispensing stations. All commercial business that have a space for holding a tank and vehicle access are potential options. This fuel is for retail sale."*

It is important to note that, from a land use perspective, many externalities associated with conventional gas stations (traffic, noise, pedestrian safety, urban design impacts) appear to be shared by biofueling stations. While it is possible that certain issues – fumes and other noxious odors, for example – may be reduced when dispensing biofuel as opposed to conventional fuel, the core planning issues likely remain. In preliminary terms, this similarity is borne out in the Planning Code, which makes no distinction between conventional gas stations and any other type of fueling station. If there are factors unique to biofuel gas stations that indicate a different physicality or set of land use impacts, it is well within the realm of possibility that the Planning Code could be amended accordingly.

However, until such time the current "bio-blind" provisions of the Code continue to apply. Under those controls, and from a land-use perspective, this first scenario actually posits three distinct sub-scenarios, each discussed below.

(1) With respect to existing businesses that already dispense conventional automobile fuel, the additional dispensing of biofuel in itself is not likely to trigger any additional zoning regulations or review by the Planning Department. As discussed above, the nature of the fuel in question is not addressed under the Planning Code and would therefore have no impact on the land use characteristics of the facility.

(2) With respect to existing businesses that are unrelated to automobile fueling or automobile service (e.g. an alternative health food store), the dispensing of biofuel (or any other automobile fuel) would comprise a new principal land use which would in turn require new permits and land use entitlements. While the Code allows for the addition of “accessory uses” without significant regulatory burden, such uses must be related minor uses which are necessary, appropriate, incidental, and subordinate to the lawful principal use. In other words, it would seem unlikely that a biofuel filling function could be considered accessory to a health food store.

The Planning Code establishes unique land use definitions and regulations which apply in City’s various Zoning Districts. With respect to the dispensing of biofuel at an existing non-auto-related business, as set forth in this scenario:

- In Neighborhood Commercial (NC) Districts, the use would likely be considered an “automotive gas station” pursuant to Code Section 790.14. This use is generally not permitted in individual NC Districts (e.g. Castro Street NCD; Haight Street NCD) and is generally allowable only with Conditional Use Authorization in “generic” NC Districts (e.g. NC-2, NC-3, etc).
- In Mixed Use Districts (primarily located in Chinatown and the southeastern quadrant of the City), the use would likely be considered an “automotive gas station” pursuant to Code Section 890.14. This use is generally not permitted in any Mixed Use District. However, if the dispensing of motor fuels (biofuels or otherwise) occurs in conjunction with minor automobile repairs, the use would likely be considered an “automotive service station,” pursuant to Code Section 890.18, which is generally permitted in South of Market and Eastern Neighborhoods Mixed Use Districts. The Task Force may wish to explore the notion of offering automotive services such as biodiesel conversion or related repairs alongside the dispensing of biofuel; a dual-purpose facility would be more widely permitted in these specific districts.
- In Commercial (C), Industrial (M), and Production, Distribution, and Repair (PDR) Districts, the use would likely be considered an “automobile service station,” pursuant to Planning Code Sections 223(f) and (g). This use is permitted in all Districts except the C-3-O and C-3-R Districts, which are located in the downtown shopping area and the Financial District.
- In Residential (R) Districts, located primarily but by no means exclusively in the south and west of the City, the use would likely be considered a “commercial establishment... which is designed primarily for customers arriving at that establishment by private motor vehicle,” pursuant to Code Sections 209.8(a) through (d). This use is not permitted in any Residential District.

(3) With respect to existing businesses that provide automobile repair services but do not provide motor fuels, the dispensing of biofuel would be addressed differently depending on the Zoning District in which a given business is located.

- In NC Districts, the addition of any fueling use (biofuel or otherwise) would likely be viewed as a change of use to an “automotive service station” pursuant to Code Section 790.17 from an “automotive repair use” pursuant to Code Section 790.15. Like automotive gas stations, discussed above, service stations are generally not permitted in individual NC Districts and are generally allowable only with Conditional Use Authorization in generic NC Districts.
- In Mixed Use Districts, the use would likely also be considered an “automotive service station” pursuant to Code Section 890.18. As discussed above, this use is not permitted in the Chinatown Mixed Use Districts or the Downtown Residential Districts, however it is generally permitted in the South of Market and the Eastern Neighborhoods Mixed Use Districts.
- In C, M, and PDR Districts, the use would likely fall into the same “automobile service station” classification into which fuel dispensing facilities (without auto repair) also fall. Accordingly, the same allowance for the use in all but the C-3-O and C-3-R Districts would apply.
- In R Districts, much like in C, M, and PDR Districts, no distinction is made between facilities that sell fuel and those that do not. Accordingly, the same prohibition on the use would apply throughout all the Residential Districts.

## **Scenario 2 - Buyers club dispensing biodiesel**

*Buyers clubs purchase fuel in bulk quantity and have it delivered to a location, residential or commercial, to be picked up by members. All taxes are paid at the certified metered bulk purchase and then the fuel is divided among the buyers club. This fuel can be poured directly into a vehicle’s tank or into plastic fueling jugs.*

Neither the ownership structure or the organizational nature of fuel dispensing facilities is contemplated in the Planning Code. Rather, the zoning regulations that the Planning Department implements relate to physicality and land use. These two factors are independent of a particular fueling station’s status, for example, as a franchisee of a multi-national corporation or a non-profit association of environmentally conscious neighbors.

Assuming that it follows a conventional gas station model, the land use itself would likely be considered similar to that described in Scenario One, above, and subject to the same regulations.

If, on the other hand, biofuels are delivered, stored, and distributed differently than at a conventional gas station, the use would be assessed based on the characteristics unique to that particular operation. Assuming that no fueling actually takes place on the property, and rather than members of the buyer’s club visit the location and receive containers of fuel to be taken off-site, the following would likely apply:

- Within Residential or Neighborhood Commercial Districts, the use would likely be considered a warehousing, wholesaling, storage or other industrial use which would generally not be permitted.
- In Commercial Districts, particularly the Downtown, it is likely that the use would be considered to fall within the “wholesaling, storage, [and] distribution” category set forth in Planning Code Sections 225(a) through (e). Depending on the precise nature of the biofuel (particularly with respect to flammability and explosivity) and the nature of the operation, such use may be permitted as-of-right, permitted with Conditional Use Authorization, or not permitted at all.
- In most Mixed Use Districts, the use would likely be considered a “wholesale sales” use or a “storage” use, as set forth in Planning Code Sections 890.54(b) or 890.54(c), respectively. Excepting the Chinatown, Downtown Residential, South Park, and Residential Enclave Districts, such a use is typically permitted.

### **Scenario 3 – Biodiesel storage in a commercial unit**

*Commercial fleets wishing to use biodiesel can purchase fuel in bulk and store it on site to be used as needed. This fuel will be used only by the commercial entity and the volume of storage will be maximized to reduce cost and frequency of delivery.*

As discussed above, the regulation of such a use under the Planning Code would not differ from that applicable to one which dispenses conventional fuel. In most cases, it is assumed that a parking facility of the scale necessary to accommodate a commercial fleet would already provide some level of refueling or other vehicle service functions, thus suggesting that the addition of a biofuel component would likely not be strictly regulated, as discussed above. This is especially true considering the location of such facilities in San Francisco. The properties in question are likely to be located with an Industrial or PDR Zoning classification which would likely permit a new fueling (or fueling and servicing) facility (biofuel or conventional fuel) even where one does not already exist.

### **Scenario 4 – Biodiesel storage in a residential unit**

*Residents of San Francisco can purchase fuel in bulk to store at home or in their vehicle, which overcomes the most difficult component of all alternatives, access. This storage capability allows for ease of fueling and reduced frequency of vehicle trips to fuel at a station if available.*

In Residential Districts, accessory uses are permitted within individual dwelling units so long as they meet the criteria set forth in Planning Code Section 204.1. In very broad terms, these criteria relate to – and enable - home office-type uses. None of them speak specifically to the storage of fuel (biofuel or conventional fuel) for use by the persons who reside at that dwelling. The only clear prohibition on this use appears to be triggered if (1) the fuel is offered for sale or distribution to persons not in residence or (2) if the storage of fuel consumes more than ¼ of the dwelling’s total floor area. As such, it is conceivable that this type of activity, under certain circumstances, could be construed as a limited type of household storage which would not be subject to the Planning Code. Also, and as you are no doubt aware, there may be significant concerns with this

scenario related to the Fire Department, Health Department, or Department of Building Inspection. On balance, this particular scenario would benefit from further discussions with Planning and other City Staff.

#### **Scenario 5 - Filling of residential and commercial storage tanks**

*All fuel tanks at both residential and commercial sites need to be filled by a fueling truck. This activity will need to take place periodically as fuel is used.*

The Planning Code does not specifically regulate the movement or activities of particular vehicles (commercial or otherwise) when located on public rights-of-way. For example, if a fueling truck were to retrieve fuel from a depot at "Location A" and deposit it at "Location B," zoning controls would apply to the land uses at Locations A and B but not to the vehicle which passes between them.

#### **Scenario 6 - Mobile dispensing of fuel for special events and fleet vehicles**

*Often called "wet fueling" small to medium fleets have a vendor fuel their trucks while they are parked overnight. Public events such as car shows, earth day events, parades, concerts and press conferences, may include fueling of generators, trucks and specialized equipment. In addition, construction equipment on construction sites also need to be filled periodically. These activities occur every day in San Francisco with regular petroleum diesel and may also occur with Biodiesel.*

As discussed above, the Planning Code does not regulate the movement or activities of particular vehicles, including fuel trucks. Moreover, also as discussed above, no distinction would likely be made under the Planning Code between supplying biofuels versus conventional fuels. As such, one of two scenarios is likely: (1) should the aforementioned events or activities themselves take place within public rights-of-ways (e.g. parades) they would not be subject to the Planning Code whatsoever or (2) should they take place outside of public rights-of-ways, so long as they are allowed by the zoning and properly permitted by the Planning Department, there is no reason to think that the Planning Code would restrict the use or dispensing of biofuels rather than conventional fuels.