



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Zoning Map and Planning Code Text Change

HEARING DATE: JULY 25, 2013

Project Name: **Establish Third Street Formula Retail Restricted Use District**
Case Number: 2013.0852TZ [Board File No. 130372]
Initiated by: Supervisor Cohen/ Introduced April 13, 2013
Staff Contact: Aaron Starr, Legislative Affairs
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Reviewed by: AnMarie Rodgers, Manager 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 create the Third Street Formula Retail Restricted Use District (hereinafter "RUD"); amend Zoning Map Sheet SU10, for property located on Third Street between Williams Avenue and Egbert Avenue; and making findings, including environmental findings pursuant to the California Environmental Quality Act, findings of consistency with the General Plan and the priority policies of Planning Code, Section 101.1.

The Way It Is Now:

- Properties along Third Street between Williams Avenue and Egbert Avenue are zoned PDR-1-B (Light Industrial Buffer) PDR-2 (Core Production Distribution and Repair), and M-1 (Light Industrial). While these are industrially zoned districts, retail operations are permitted.
- PDR-1-B, PDR-2, and M-1 districts are not subject to Formula Retail Controls.
- Currently, Formula Retail controls do not require existing Formula Retail operations that have not obtained Conditional Use (hereinafter "CU") authorization but which are now subject to Formula Retail controls to obtain CU authorization.

The Way It Would Be:

The proposed legislation would:

- Create the Third Street Formula Retail RUD along Third Street from Williams Avenue to Egbert Avenue. (See Exhibit D)
- The proposed RUD would require that any new Formula Retail use on Third Street between Williams Avenue and Egbert Avenue seek CU authorization to operate. If any existing formula retail use has not already procured a CU permit to operate as a formula retail use, any alteration permits for a new formula retail use would require CU authorization. Any expansion or intensification of an existing Formula Retail use would also require CU authorization.

ISSUES AND CONSIDERATIONS

Existing Neighborhood Context

The proposed RUD is sandwiched between two NC-3 (Neighborhood Commercial, Moderate Scale) Districts; one to the north which goes from Jerrold Avenue to Yosemite Avenue (15 blocks) and one to the south, which goes from Paul Avenue to Key Avenue (four blocks). The relatively recent arrival of the T Line, which runs down the middle of Third Street, is helping to transform this area of the City in to a more transit-oriented neighborhood while connecting it to the rest of the City. The building scale within the NC-3 Districts and the proposed RUD tends to be low rise with most building between one and three stories tall; however there are some six story buildings. The NC-3 District to the north of the proposed RUD is a vibrant commercial corridor providing a central area for neighborhood activity. It contains a mix of uses that include outdoor gather spaces, neighborhood serving retail, restaurants and bars. The NC-3 District to the south of the RUD is slightly less active but still has a good deal of commercial activity. Uses within the proposed RUD are predominantly industrial, including warehouses, builder supply stores and the like; however there are a number of retail storefronts, a church and some newer mixed use buildings including the new mixed use development Egbert and Third Street that contains condominiums above a supermarket (dba Fresh and Easy).

Current Formula Retail Controls

Formula Retail is currently defined a type of retail sales activity or retail sales establishment which has eleven or more other retail sales establishments located in the United States. In addition to the eleven establishments, the business maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, uniform apparel, standardized signage, a trademark or a service mark.

Retail sales establishments include "Bar," "Drive-up Facility," "Eating and Drinking Use," "Liquor Store," "Sales and Service, Other Retail," "Restaurant," "Limited-Restaurant," "Take-Out Food," "Sales and Service, Retail," "Service, Financial," "Movie Theater," and "Amusement and Game Arcade."

The Planning Commission is required to consider the following criteria in addition to the standard CU criteria for Formula Retail applications:

1. The existing concentrations of Formula Retail uses within the district.
2. The availability of other similar retail uses within the district.
3. The compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the district.
4. The existing retail vacancy rates within the district.
5. The existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the district.

In areas of the City that have Formula Retail controls, you are required to obtain a Formula Retail CU authorization if you:

1. Seek to establish a new Formula Retail business; or
2. Purchase some but not all locations of an existing Formula Retail business. For example, if *StarCoffee* purchases some, but not all, *Paul's Coffee* locations, *StarCoffee* would have to apply for CU authorization for those locations it purchased.

You are not required to get a CU for Formula Retail if you:

3. Purchase the entire chain and continue to operate it as the existing business. For example, *StarCoffee* purchases *Sandwiches n' More* and continues to operate all locations as *Sandwiches n' More*.
4. Purchase the entire chain but operate it as a new business. For example, *StarCoffee* purchases *Sandwiches n' More*, but turns them all into *StarCoffee*.

Zoning of Subject Properties

M-1 District. These are one of two types of districts providing land for industrial development. In general, the M-1 Districts are more suitable for smaller industries dependent upon truck transportation, while the M-2 Districts are more suitable for larger industries served by rail and water transportation and by large utility lines. In M-1 Districts, most industries are permitted, but some with particularly noxious characteristics are excluded. The permitted industries have certain requirements as to enclosure, screening and minimum distance from Residential Districts. All Retail Sales and Personal Service uses are permitted as of right in M-1 Districts with no specific limitations on size or concentration.

PDR-1-B Districts. The intent of this district is to create a buffer area between residential neighborhoods and light industrial areas, primarily in the Bayview Hunters Point neighborhood. Thus, this district prohibits residential uses and limits office, retail, and institutional uses. Generally, all other uses are permitted. This zone allows for less intensive production, distribution, and repair activities that will not compromise the quality of life of nearby residents. These uses generate less external noise, odors, and vibrations and engage in fewer trucking activities than those permitted in PDR-2 districts. Uses in this district are generally conducted completely within enclosed structures. Retail business or personal service establishments that are under 2,500 are permitted, as are other activities that may serve well to buffer existing residential neighborhoods from areas of concentrated industrial operations.

PDR-2 Districts. The intent of this district is to encourage the introduction, intensification, and protection of a wide range of light and contemporary industrial activities. Thus, this district, prohibits new housing, large office developments, large-scale retail, and the heaviest of industrial uses, such as incinerators. Generally, all other uses are permitted. The conservation of existing flexible industrial buildings is also encouraged. These districts permit certain non-industrial, non-residential uses, including small-scale retail and office, entertainment, certain institutions, and similar uses that would not create conflicts with the primary industrial uses or are compatible with the operational characteristics of businesses in the area. Retail business or personal service establishments are limited to 2,500 gross square feet. These uses may require trucking activity multiple times per day, including trucks with up to 18 wheels or more, and occurring at any time of the day or night. As part of their daily operations, PDR activities in these areas may emit noises, vibrations, odors, and other emissions, as permitted by law.

Other Pending Proposals

In addition to this Ordinance, there are seven other proposals or pending modifications Formula Retail controls in the City. In response to this increased interested and concern with Formula Retail controls, the Department is in the processing of reassessing our Formula Retail controls in order to propose a more holistic approach. The following are a summary of active Formula Retail control proposals:

1. **Commission Policy for Upper Market.** This policy provides the first quantitative measure for concentration. Under the law, concentration is to be considered but without guidance

concentration levels have been interpreted differently. Under this enacted policy, the Department recommends disapproval if certain concentrations are reached.

2. **Supervisor Breed** would create the Fillmore and Divisadero NCDs which, among other controls, would she originally sought to prohibit new formula retail uses. Her new proposal would seek to weight the community voice over other considerations (including staff recommendation); generally weight the hearing towards disapproval; legislate a requirement for pre-application meeting; and codify our current FR policy for Fillmore and Divisadero. While the commission recommended not codifying the FR policy and not deferring the commission recommendation to community groups, it is unclear if the Supervisor will accept the Commission's recommendations.
3. **Supervisor Breed** would also amend the definition of Formula Retail but only in the Hayes-Gough District. The legislation proposes to modify the definition of formula retail for the Hayes-Gough NCT only, to include formula retail that is a type of retail sales activity or retail sales establishment and has eleven or more other retail sales establishments located anywhere in the world. The definition of formula retail would also include a type of retail sales activity or retail sales establishment where fifty percent (50%) or more of the stock, shares, or any similar ownership interest of such establishment is owned by a formula retail use, or a subsidiary, affiliate, or parent of a formula retail use, even if the establishment itself may have fewer than eleven retail sales establishments located anywhere in the world.
4. **Supervisor Kim** announced at the June 25th, 2013 Board hearing that she has asked the City Attorney to draft interim controls to require CU for certain Formula Retail uses in the Mid-Market area.
5. **Implications from recent Board of Appeals hearing.** The Board of Appeals recently ruled that if a company has signed a lease for a location (even if the location is not yet occupied) we should count that towards the 11 needed to become formula retail. The Board discussed but did not act on web-based establishments.
6. **Mobile Food Facilities.** Supervisor Wiener's recently approved ordinance amended the DPW code (BF 120193) that would restrict food trucks in the public right of way that are associated with formula retail. The change of note is that for this restriction, the formula retail definition includes "affiliates" of formula retail restaurants, which includes an entity that is owned by or has a financial or contractual agreement with a formula retail use.
7. **Interim Controls in Upper Market.** On June 25, 2013, Supervisor Wiener introduced interim controls for Upper Market (BF 130677). Although not specifically related to formula retail this resolution seeks to require CU for uses that are not currently regulated by formula retail controls but that have been suggested for inclusion in formula retail definition in the same way that financial services were recently added to the definition. Centers around 16th and Market would require a CU for limited financial and business services for 18 months.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modification* of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The proposed modifications include:

1. Revise the proposed District boundaries so that the proposed RUD includes all properties from Williams Avenue to Paul Avenue that face Third Street and are not zoned NC, as show in the attached map, Exhibit C.
2. Revise the Ordnance so that the proposed RUD is subject to the same controls as all other Formula Retail establishments in the City.
3. Revise Planning Code Section 303(i) to reflect the changes outlined in Exhibit E.

BASIS FOR RECOMMENDATION

The Department supports the Supervisor's effort to institute Formula Retail controls along this stretch of Third Street. This is a unique stretch of industrial zoned land in that it is located between two NC-3 Districts and serves as a continuation of the Third Street retail corridor. Creating this Formula Retail RUD would fill in a gap that could be exploited by Formula Retail businesses wishing to avoid the CU authorization requirement in the adjacent NC-3 Districts. Further, The proposed Ordnance is consistent with the 2004 Redevelopment Plan for the Bay View (amended in 2010), which seeks to strengthening the economic base of the Project Area and the community by strengthening retail and other commercial functions within the Project Area, retaining existing residents and existing cultural diversity to the extent feasible, and supporting locally-owned small businesses and local entrepreneurship.

Recommendation #1

The Department is proposing a revised map for the RUD that includes all properties that front on Third Street between Williams Avenue to Paul Avenue not already zoned Neighborhood Commercial. The Ordinance does not include all properties between the two existing NC-3 zoning districts and it also includes some properties zoned NC-3 that are already subject to Formula Retail controls (see exhibit D). One of the goals of this Ordinance is to fill the gap between the two existing neighborhood commercial districts along this stretch of Third Street; the Department's proposed map better accomplishes this goal. The Department has discussed this with the Supervisor's office and they support our proposed change.

Recommendation #2

The Department wants to avoid a patchwork of different Formula Retail controls throughout the city; this recommendation is geared toward that aim. The majority of the proposed Formula Retail controls outlined in the Ordinance are already covered by existing controls, except for the provision that requires existing Formula Retail businesses within the proposed Third Street Formal Retail RUD that have not obtained CU authorization to operate as a Formula Retail business to obtain a Formula Retail CU. The Department addresses this issue Recommendation #3 below.

Recommendation #3

The Department shares the Supervisor’s concern that our current controls have a loophole, which allows an existing Formula Retail business to convert to new a Formula Retail business without obtaining CU authorization. Changing the business plan or model of an existing Formula Retail store could have a negative impact on the neighborhood; for example, a new business may be more of a regional draw than the previous business bringing more traffic congestion to the neighborhood. A new business could also sell a different mix of products that weren’t anticipated in the original approval. In response, the Department is proposing to close that loophole by amending Section 303(i)(7), which applies citywide, so that a Formula Retail operator would have to seek CU authorization if they purchase an existing Formula Retail business and operate it as a new business, regardless of whether or not the entire business was purchased or only some locations (see discussion above on Current Formula Retail Controls, example #4).

However, the Department does not think it is necessary to require an existing Formula Retail use that has not obtained Formula Retail CU authorization, but which is now subject the Formula Retail requirements, to go through that process if it hasn’t changed operations. This is also inconsistent with current Planning Code regulations, which grandfather’s existing uses that become conditionally permitted uses. The proposed Ordinance would require existing Formula Retail businesses in the new RUD to obtain Formula Retail CU approval if they apply for any City permit, regardless of what that permit entails. The Department believes that this may places an unnecessary burden on existing businesses that haven’t changed operations. In addition, it could result in existing businesses performing work without proper City permits, or lead to blighted storefronts because the business is delaying maintenance in order to avoid the CU process.

ENVIRONMENTAL REVIEW

The proposal ordinance would result in no physical impact on the environment. The Project was determined to be exempt from the California Environmental Quality Act (“CEQA”) under the Non-Physical Exemption (CEQA Guidelines Section 15060(c)(2)) as described in the determination contained in the Planning Department files for this Project.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any comments about the proposed NCD.

RECOMMENDATION:	Recommendation of Approval with Modification
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 130372
- Exhibit C: Department Proposed Third Street RUD Map
- Exhibit D: Map of Proposed Third Street RUD per the proposed Ordinance
- Exhibit E: Proposed changes to Planning Code Section 303(i)((7),



SAN FRANCISCO PLANNING DEPARTMENT

Draft Planning Commission Resolution

HEARING DATE: JULY 25, 2013

Project Name: **Establish Third Street Formula Retail Restricted Use District**
Case Number: 2013.0852TZ [Board File No. 130372]
Initiated by: Supervisor Cohen/ Introduced April 13, 2013
Staff Contact: Aaron Starr, Legislative Affairs
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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE WITH MODIFICATIONS THAT WOULD AMEND THE PLANNING CODE TO CREATE THE THIRD STREET FORMULA RETAIL RESTRICTED USE DISTRICT; AMEND ZONING MAP SHEET SU10, FOR PROPERTY LOCATED ON THIRD STREET BETWEEN WILLIAMS AVENUE AND EGBERT AVENUE; AND MAKING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1.

PREAMBLE

Whereas, on April 13, 2013, Supervisor Cohen introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 12-0372, which would amend the San Francisco Planning Code to create the Third Street Formula Retail Restricted Use District (hereinafter "RUD"); amend Zoning Map Sheet SU10, for property located on Third Street between Williams Avenue and Egbert Avenue; and making findings, including environmental findings pursuant to the California Environmental Quality Act, findings of consistency with the General Plan and the priority policies of Planning Code, Section 101.1.

Whereas, on July 25, 2013, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, on May 24, 2013, the Project was determined to be exempt from the California Environmental Quality Act ("CEQA") under the Non-Physical Exemption (CEQA Guidelines Section 15060(c)(2)) as described in the determination contained in the Planning Department files for this Project; and

Whereas, the 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 the applicant, 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 Commission has reviewed the proposed Ordinance; and

MOVED, that the Commission hereby recommends that the Board of Supervisors recommends *approval of the proposed Ordinance with modifications* and adopts the attached Draft Resolution to that effect.

The proposed modifications include:

1. Revise the proposed District boundaries so that the proposed RUD includes all properties from Williams Avenue to Paul Avenue that face Third Street and are not zoned NC, as show in the attached map, Exhibit C.
2. Revise the Ordinance so that the proposed RUD is subject to the same controls as all other Formula Retail establishments in the City.
3. Revise Planning Code Section 303(i) to reflect the changes outlined in Exhibit E.

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:

- This is a unique stretch of industrial zoned land in that it is located between two NC-3 Districts and serves as a continuation of the Third Street retail corridor. Creating this Formula Retail RUD would fill in a gap that could be exploited by Formula Retail businesses wishing to avoid the CU authorization requirement in the adjacent NC-3 Districts.
- One of the goals of this Ordinance is to fill the gap between the two existing neighborhood commercial districts along this stretch of Third Street; the Commission's proposed map better accomplishes this goal.
- The Commission wants to avoid a patchwork of different Formula Retail controls throughout the City, and as such is recommending that the proposed RUD use the Formula Retail controls that apply to the rest of the City.
- The Commission shares the Supervisor's concern that our current controls have a loophole, which allows an existing Formula Retail business to convert to new a Formula Retail business without obtaining CU authorization. Changing the business plan or model of an existing Formula Retail store could have a negative impact on the neighborhood; for example, a new business may be more of a regional draw than the previous business bringing more traffic congestion to the neighborhood.

- The Commission does not find that it is necessary to require an existing Formula Retail use that has not obtained Formula Retail CU authorization, but which is now subject the Formula Retail requirements, to go through that process if it hasn't changed operations. In addition to this being inconsistent with current Planning Code regulations, which grandfather's existing uses that become conditionally permitted uses, it is also places an unnecessary burden on existing businesses that haven't changed operations.

1. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

I. COMMERCE & INDUSTRY ELEMENT

THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN SETS FORTH OBJECTIVES AND POLICIES THAT ADDRESS THE BROAD RANGE OF ECONOMIC ACTIVITIES, FACILITIES, AND SUPPORT SYSTEMS THAT CONSTITUTE SAN FRANCISCO'S EMPLOYMENT AND SERVICE BASE.

OBJECTIVE 4

IMPROVE THE VIABILITY OF EXISTING INDUSTRY IN THE CITY AND THE ATTRACTIVENESS OF THE CITY AS A LOCATION FOR NEW INDUSTRY.

Policy 6.2

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

The proposed legislation would help protect a vital neighborhood commercial district by ensuring that Formula Retail businesses could not open adjacent to existing neighborhood commercial districts unless they were found to be necessary or desirable.

BAY VIEW HUNTERS POINT AREA PLAN

OBJECTIVE 7

ENCOURAGE HEALTHY RETAIL REUSE IN THE EXISTING COMMERCIAL CORE OF THIRD STREET AND COMPLEMENTARY GROWTH IN ADJACENT SECTIONS.

Policy 7.2

Make the commercial blocks on Third Street between Kirkwood Avenue to the north and Thomas and Thornton Avenues to the south the core of new commercial growth.

The proposed Ordinance will help discourage retail in industrial zoned areas outside of the commercial core of Third Street, which will help encourage more concentrated retail development within the commercial core.

2. The proposed replacement project is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

Formula retail businesses can have a competitive advantage over independent operators because they are typically better capitalized and can absorb larger startup costs, pay more for lease space, and commit to longer lease contracts. This can put pressure on existing businesses and potentially price out new startup independent businesses. This Ordinance would help ensure that Formula Retail businesses do not over concentrate in this area of the city.

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed Ordinance would not impact existing housing; however it will help preserve existing neighborhood character by ensuring that that Formula Retail businesses do not over concentrate in this area of the city. An over concentration of Formula Retail can degrade the visual character and uniqueness of a neighborhood.

- C) The City's supply of affordable housing will be preserved and enhanced:

The proposed Ordinance will have no adverse effect on the City's supply of affordable housing.

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

The proposed Ordinance will have no significant impact on commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed Ordinance preserves the existing industrial zoning of the subject parcels and discourages some retail uses. It would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

Preparedness against injury and loss of life in an earthquake is unaffected by the proposed

Ordinance. Any new construction or alteration associated with a use would be executed in compliance with all applicable construction and safety measures.

- G) That landmark and historic buildings will be preserved:

Landmarks and historic buildings would be unaffected by the proposed Ordinance. Should a proposed use be located within a landmark or historic building, such site would be evaluated under typical Planning Code provisions and comprehensive Planning Department policies.

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed Ordinance. It is not anticipated that permits would be such that sunlight access, to public or private property, would be adversely impacted.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on July 25, 2013.

Jonas P Ionin
Acting Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: July 25, 2013

Exhibit B

1 [Planning Code, Zoning Map - Third Street Formula Retail Restricted Use District]

2

3 **Ordinance amending the Planning Code to create the Third Street Formula Retail**
 4 **Restricted Use District; amending Zoning Map Sheet SU10 for property located on**
 5 **Third Street between Williams Avenue and Egbert Avenue; and making findings,**
 6 **including environmental findings pursuant to the California Environmental Quality Act,**
 7 **findings of consistency with General Plan and the priority policies of Planning Code,**
 8 **Section 101.1.**

9

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 ~~strike through normal~~.

10

11

12

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

14

Section 1. Findings.

15

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

19

(b) Pursuant to Planning Code Section 302, this Board finds that these Planning Code
 20 Amendments will serve the public necessity, convenience, and welfare for the reasons set
 21 forth in Planning Commission Resolution No. _____ and the Board incorporates such reasons
 22 herein by reference. A copy of Planning Commission Resolution No. _____ is on file with the
 23 Board of Supervisors in File No. _____.

24

(c) This Board finds that these Planning Code amendments are consistent with the
 25 General plan and with the Priority Policies of Planning Code Section 101.1 for the reasons set

1 forth in Planning Commission Resolution No. _____ and the Board hereby incorporates such
2 reasons herein by reference.

3 Section 2. The San Francisco Planning Code is hereby amended by adding Section
4 786 thereto, to read as follows:

5 **SEC. 786. THIRD STREET FORMULA RETAIL RESTRICTED USE DISTRICT.**

6 *(a) Findings.*

7 *(1) San Francisco is a city of diverse and distinct neighborhoods identified in large part*
8 *by the character of their commercial corridors.*

9 *(2) San Francisco must create a supportive environment for small businesses in order*
10 *to preserve the unique character of the City and foster a vibrant commercial sector.*

11 *(3) One of the eight Priority Policies of the City's General Plan resolves that "existing*
12 *neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident*
13 *employment in and ownership of such businesses enhanced."*

14 *(4) The Bayview neighborhood is home to a diverse array of businesses including*
15 *neighborhood commercial and industrial businesses that serve the working class community. The Third*
16 *Street Corridor has served as the main merchant corridor for this neighborhood and is receiving*
17 *significant investment of City resources to revitalize, grow and expand local business opportunities.*

18 *(5) As development in San Francisco continues, neighborhoods, including residential*
19 *and commercial areas in the Bayview area, will be subject to change, and new businesses may wish to*
20 *locate in the Bayview area, particularly along the Third Street Corridor.*

21 *(6) The Third Street Corridor presently has a mix of businesses, housing, shops, work*
22 *places, community serving uses, religious institutions, parks and civic facilities that create an*
23 *identifiable neighborhood.*

24 *(7) An influx of formula retail businesses can put pressure on existing businesses and*
25 *potentially price out existing and new independent businesses.*

1 (8) Bayview's mix of businesses, uses and architecture contributes to a strong sense of
2 neighborhood community. The Third Street Corridor is generally of small scale, with buildings that
3 have been identified as potential historic resources or have been landmarked as historic places. There
4 is both architectural variety and variety in the types of goods and services offered on the Third Street
5 Corridor. Additionally the majority of businesses on the Third Street Corridor are locally-owned,
6 many for generations, and some have historically served the diverse ethnic communities of the
7 Bayview.

8 (9) Standardized architecture, color schemes, décor and signage of many formula retail
9 businesses can detract from the distinctive character of the Bayview neighborhood community.

10 (10) The increase of formula retail businesses in the Third Street Corridor, if not
11 monitored and regulated, will hamper the City's goal of a diverse retail base within distinct
12 neighborhood communities.

13 (11) In 2004 the Board of Supervisors adopted a redevelopment plan (“Redevelopment
14 Plan”) for the Bayview Hunters Point Project Area, which was subsequently amended in 2010. The
15 Redevelopment Plan was the result of years of community based planning efforts with the goal of
16 revitalizing the area to create new parks and open space, retail opportunities, affordable housing and
17 other community benefits. Three of the objectives outlined in the Redevelopment Plan are focused on
18 supporting the commercial activities of the Third Street Corridor. Specifically, Section 1.2.1 lists these
19 objectives as: strengthening the economic base of the Project Area and the community by strengthening
20 retail and other commercial functions within the Project Area, retaining existing residents and existing
21 cultural diversity to the extent feasible, and supporting locally-owned small businesses and local
22 entrepreneurship.

23 (12) One of the goals of the Redevelopment Plan was to provide structure and
24 limitations to the development of the Bayview to encourage uses that would benefit the neighborhood,
25 create new economic development opportunities and draw more residents and patrons to the Third

1 Street Corridor. By establishing a Conditional Use process, both the City and the community have an
2 opportunity to review and provide comments on any proposed location, expansion or alteration of
3 formula retail uses to ensure that they meet the objectives of the Redevelopment Plan.

4 (13) The unregulated and unmonitored establishment of additional formula retail uses
5 may unduly limit or eliminate business establishment opportunities for non-traditional or unique
6 businesses, thereby decreasing the diversity of merchandise and merchants along the Third Street
7 corridor.

8 (14) The public welfare of the Bayview residential, retail and business community is
9 served by the monitoring and regulating of formula retail businesses on Third Street, for these reasons
10 and the reasons set forth in Planning Code Section 703.3.

11 (b) Boundaries. The Third Street Formula Retail Restricted Use District shall regulate all
12 properties fronting Third Street between Williams Avenue and Egbert Avenue. The following
13 restrictions shall apply within the district.

14 (c) Conditional Use Authorization Required. A Conditional Use Authorization shall be
15 required for any new formula retail use, as defined in Planning Code Section 303(i)(1), in the Third
16 Street Formula Retail Restricted Use District.

17 (d) Change in Use. Notwithstanding the provisions of Planning Code Section 303(i), any
18 change from one formula retail use to another requires Conditional Use Authorization, when the
19 existing formula retail use has not procured a conditional use permit for the formula retail use that
20 existed prior to the effective date of this Ordinance, and any City permits are required for any physical
21 change to the premises for the new formula retail business.

22 (e) Conditional Use Criteria. With regard to Conditional Use Permit applications for formula
23 retail uses within the Third Street Formula Retail Restricted Use District, the Planning Commission
24 shall consider the criteria set forth in Planning Code Sections 303(c) and 303(i)(3). The procedures
25

1 and requirements of Planning Code Section 303 shall apply to Formula Retail Uses in the Third Street
2 Formula Retail Restricted Use District, except as explicitly modified in this Section 786.

3 (f) Prohibition of Expansion of Existing Formula Retail Uses. Any formula retail use that
4 lawfully exists prior to the effective date of this ordinance may continue in existence, provided that it
5 does not expand the square footage devoted to formula retail uses, intensify the formula retail use or
6 alter the structure. Any prior non-conforming formula retail shall apply for a Conditional Use
7 Authorization in order to change, expand or intensify the use or expand the structure.

8 Section 3. The San Francisco Planning Code is hereby amended by amending Section
9 303, to read as follows:

10 * * *

11 **(i) Formula Retail Uses.**

12 **(1) Formula Retail Use.** A formula retail use is hereby defined as a type of retail
13 sales activity or retail sales establishment which has eleven or more other retail sales
14 establishments located in the United States. In addition to the eleven establishments, the
15 business maintains two or more of the following features: a standardized array of
16 merchandise, a standardized facade, a standardized decor and color scheme, a uniform
17 apparel, standardized signage, a trademark or a servicemark.

18 (A) Standardized array of merchandise shall be defined as 50% or more
19 of in-stock merchandise from a single distributor bearing uniform markings.

20 (B) Trademark shall be defined as a word, phrase, symbol or design, or a
21 combination of words, phrases, symbols or designs that identifies and distinguishes the
22 source of the goods from one party from those of others.

23 (C) Servicemark shall be defined as word, phrase, symbol or design, or a
24 combination of words, phrases, symbols or designs that identifies and distinguishes the
25 source of a service from one party from those of others.

1 (D) Decor shall be defined as the style of interior furnishings, which may
2 include but is not limited to, style of furniture, wall coverings or permanent fixtures.

3 (E) Color Scheme shall be defined as selection of colors used throughout,
4 such as on the furnishings, permanent fixtures, and wall coverings, or as used on the facade.

5 (F) Facade shall be defined as the face or front of a building, including
6 awnings, looking onto a street or an open space.

7 (G) Uniform Apparel shall be defined as standardized items of clothing
8 including but not limited to standardized aprons, pants, shirts, smocks or dresses, hat, and
9 pins (other than name tags) as well as standardized colors of clothing.

10 (H) Signage shall be defined as business sign pursuant to Section 602.3
11 of the Planning Code.

12 (2) "**Retail Sales Activity or Retail Sales Establishment.**" For the
13 purposes of subsection (i), a retail sales activity or retail sales establishment shall include the
14 following uses, as defined in Article 7 and Article 8 of this Code: "Bar," "Drive-up Facility,"
15 "Eating and Drinking Use," "Liquor Store," "Sales and Service, Other Retail," "Restaurant,"
16 "Limited-Restaurant," "Take-Out Food," "Sales and Service, Retail," "Service, Financial,"
17 "Movie Theater," and "Amusement and Game Arcade."

18 (3) **Conditional Use Criteria.** With regard to a conditional use authorization
19 application for a formula retail use, the Planning Commission shall consider, in addition to the
20 criteria set forth in Subsection (c) above:

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

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

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

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

1 (E) The existing mix of Citywide-serving retail uses and neighborhood-
2 serving retail uses within the district.

3 (4) **Conditional Use Authorization Required.** A Conditional Use Authorization
4 shall be required for a formula retail use in the following zoning districts unless explicitly
5 exempted:

- 6 (A) All Neighborhood Commercial Districts in Article 7;
- 7 (B) All Mixed Use-General Districts in Section 840;
- 8 (C) All Urban Mixed Use Districts in Section 843;
- 9 (D) All Residential-Commercial Districts as defined in Section 206.3;
- 10 (E) Japantown Special Use District as defined in Section 249.31;
- 11 (F) Chinatown Community Business District as defined in Section
12 810.1;
- 13 (G) Chinatown Residential/Neighborhood Commercial District as
14 defined in Section 812.1;
- 15 (H) Western SoMa Planning Area Special Use District as defined in
16 Section 823;
- 17 (I) Residential Transit-Oriented Districts as defined in Sections 206.4
18 and 206.5;
- 19 (J) Limited Conforming Use /Non-Conforming Use in RH-RM-RTO
20 and RED Districts.
- 21 (K) Third Street Formula Retail Restricted Use District, as defined in Section
22 786.

23 (5) **Formula Retail Uses Not Permitted.** Formula Retail Uses are not permitted
24 in the following zoning districts:

- 25 (A) Hayes-Gough Neighborhood Commercial Transit District;

1 (B) North Beach Neighborhood Commercial District;

2 (C) Chinatown Visitor Retail District.

3 (D) Upper Fillmore District does not permit Formula Retail uses that are
4 also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and 790.91;

5 (E) Broadway Neighborhood Commercial District does not permit
6 Formula Retail uses that are also Restaurant or Limited-Restaurant uses as defined in
7 Section 790.90 and 790.91;

8 (F) Mission Street Formula Retail Restaurant Subdistrict does not permit
9 Formula Retail uses that are also Restaurant or Limited-Restaurant uses as defined in
10 Section 790.90 and 790.91;

11 (G) Geary Boulevard Formula Retail Pet Supply Store and Formula
12 Retail Eating and Drinking Subdistrict does not permit Formula Retail uses that are also either
13 a Retail Pet Supply Store or an Eating and Drinking use as set forth in Section 781.4;

14 (H) Taraval Street Restaurant Subdistrict does not permit Formula Retail
15 uses that are also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and
16 790.91;

17 (6) **Neighborhood Commercial Notification and Design Review.** Any building
18 permit application for a "formula retail use" as defined in this section and located within a
19 Neighborhood Commercial District in Article 7 shall be subject to the Neighborhood
20 Commercial Notification and Design Review Procedures of Section 312 of this Code.

21 (7) **Change in Use.** A change from one formula retail use to another requires a
22 new Conditional Use Authorization, whether or not a Conditional Use Authorization would
23 otherwise be required by the particular change in use in question. This Conditional Use
24 Authorization requirement also applies in changes from one Formula Retail operator to
25

1 another within the same use category. A new Conditional Use Authorization shall not apply to
2 a change in a formula use retailer that meets the following criteria:

3 (A) the formula use operation remains the same in terms of its size,
4 function and general merchandise offering as determined by the Zoning Administrator, and

5 (B) the change in the formula retail use operator is the result of the
6 business being purchased by another formula retail operator who will retain all components of
7 the existing retailer and make minor alterations to the establishment(s) such as signage and
8 branding.

9 The new operator shall comply with all conditions of approval previously imposed on
10 the existing operator, including but not limited to signage programs and hours of operation;
11 and shall conduct the operation generally in the same manner and offer essentially the same
12 services and/or type of merchandise; or seek and be granted a new Conditional Use
13 Authorization.

14 (8) **Determination of Formula Retail Use.** In those areas in which "formula retail
15 uses" are prohibited, any building permit application determined by the City to be for a
16 "formula retail use" that does not identify the use as a "formula retail use" is incomplete and
17 cannot be processed until the omission is corrected. Any building permit approved that is
18 determined by the City to have been, at the time of application, for a "formula retail use" that
19 did not identify the use as a "formula retail use" is subject to revocation at any time. If the City
20 determines that a building permit application or building permit subject to this Section of the
21 Code is for a "formula retail use," the building permit application or holder bears the burden of
22 proving to the City that the proposed or existing use is not a "formula retail use."

23 * * *

24 Section 4. The San Francisco Planning Code is hereby amended by amending
25 Sectional Map SU10 of the Zoning Map of the City and County of San Francisco, as follows:

Description of Property	Use District Hereby Approved
Assessor's Block 4881, Lots 002 and 012; Assessor's Block 5387, Lots 010, 022, 026 – 033; Assessor's Block 5413, Lot 017; Assessor's Block 5414, Lot 031; Assessor's Block 5419, Lots 006, 007, 007B, 007C, 009, 015 – 018, and 023; Assessor's Block 5420, Lot 001; Assessor's Block 5421, Lots 013, 138 – 142; Assessor's Block 5429, Lot 002; Assessor's Block 5431A, Lots 001V and 043; Assessor's Block 5431B, Lots 001 – 142; Assessor's Block 5881, Lots 024 – 032.	Third Street Formula Retail Restricted Use District

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

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1 Board amendment deletions in accordance with the "Note" that appears under the official title
2 of the legislation.

3
4 APPROVED AS TO FORM:

5 DENNIS J. HERRERA,
6 City Attorney

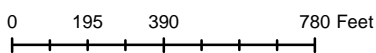
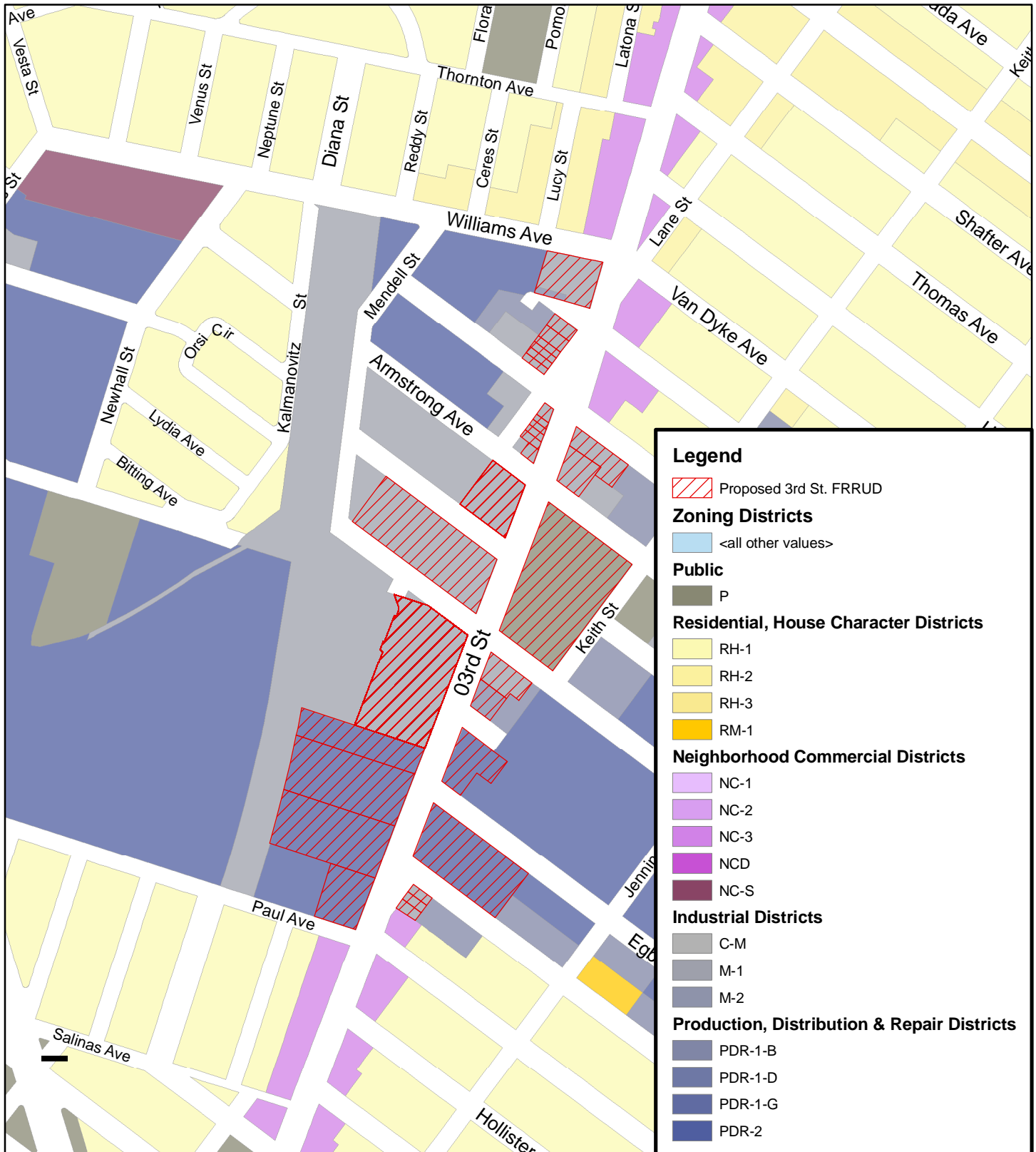
7 By: _____
8 KATE HERRMANN STACY
9 Deputy City Attorney

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Exhibit C

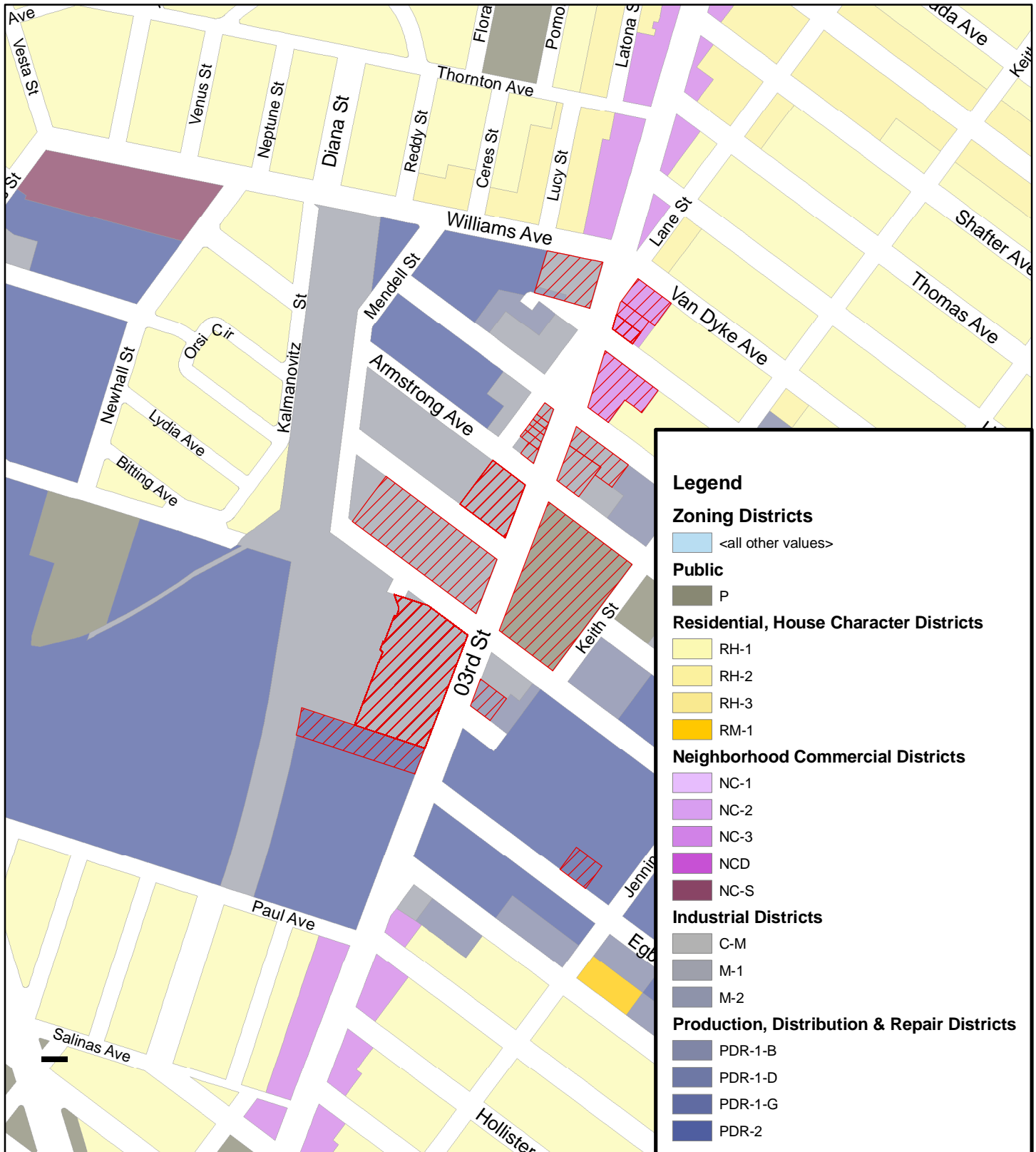
Proposed 3rd Street Formula Retail RUD Department Recommended



The City and County of San Francisco (CCSF) does not guarantee the accuracy, adequacy, completeness or usefulness of any information. CCSF provides this information on an "as is" basis without warranty of any kind, including but not limited to warranties of merchantability or fitness for a particular purpose, and assumes no responsibility for anyone's use of the information.

Exhibit D

Proposed 3rd Street Formula Retail RUD Per Ordinance



0 195 390 780 Feet

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Exhibit E

Proposed Changes to Planning Code Section 303(i)(7)

(7) **Change in Use.** A change from one formula retail use to another requires a new Conditional Use Authorization, whether or not a Conditional Use Authorization would otherwise be required by the particular change in use in question. This Conditional Use Authorization requirement also applies in changes from one Formula Retail operator to another within the same use category. A new Conditional Use Authorization shall not apply to a change in a formula use retailer that meets the following criteria:

(A) the formula use operation remains the same in terms of its size, function and general merchandise offering as determined by the Zoning Administrator, and

(B) the change in the formula retail use operator is the result of the business being purchased by another formula retail operator who will retain all components of the existing retailer including but not limited to the name, branding and general merchandise offering ~~and make minor alterations to the establishment(s) such as signage and branding.~~

The new operator shall comply with all conditions of approval previously imposed on the existing operator, including but not limited to signage programs and hours of operation; and shall conduct the operation generally in the same manner and offer essentially the same services and/or type of merchandise; or seek and be granted a new Conditional Use Authorization.