



SAN FRANCISCO PLANNING DEPARTMENT

July 29, 2013

Ms. Angela Calvillo, Clerk
Honorable Supervisor Cohen
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

**Re: Transmittal of Planning Department Case Number 2013.0852TZ
Third Street Formula Retail Restricted Use District
Board File No. 130372
Planning Commission Recommendation: Approval with Modifications**

Dear Ms. Calvillo and Supervisor Cohen,

On July 25, 2013, the Planning Commission conducted a duly noticed public hearing at regularly scheduled meeting to consider the proposed Ordinance that would amend the Planning Code to create the Third Street Formula Retail Restricted Use District introduced by Supervisor Cohen. At the hearing, the Planning Commission recommended approval with modifications.

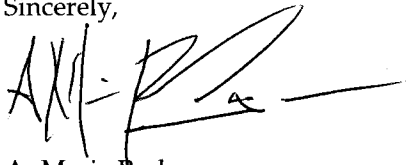
The proposed modifications are as follows:

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 A.
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 B.
4. Consider including the properties that front on Lane Street between Yosemite Street and Armstrong Avenue.

The proposed amendment to the Planning Code was found to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2).

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'AMR', followed by a horizontal line.

AnMarie Rodgers
Manager of Legislative Affairs

cc:

Kate H. Stacy, Deputy City Attorney
Andrea Bruss, Aide to Supervisor Cohen
Alisa Miller, Office of the Clerk of the Board

Attachments

Planning Commission Resolution w/Attachments
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18932

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
aaron.starr@sfgov.org, 415-558-6362
Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation: ***Recommend Approval with Modifications***

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San Francisco,
CA 94103-2479

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415.558.6409

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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 130372, 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 A.
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 B.
4. Consider including the properties that front on Lane Street between Yosemite Street and Armstrong Avenue.

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: Commissioners Antonini, Borden, Moore, Sugaya and Wu

NAYS: none

ABSENT: Commissioners Fong and Hillis

ADOPTED: July 25, 2013

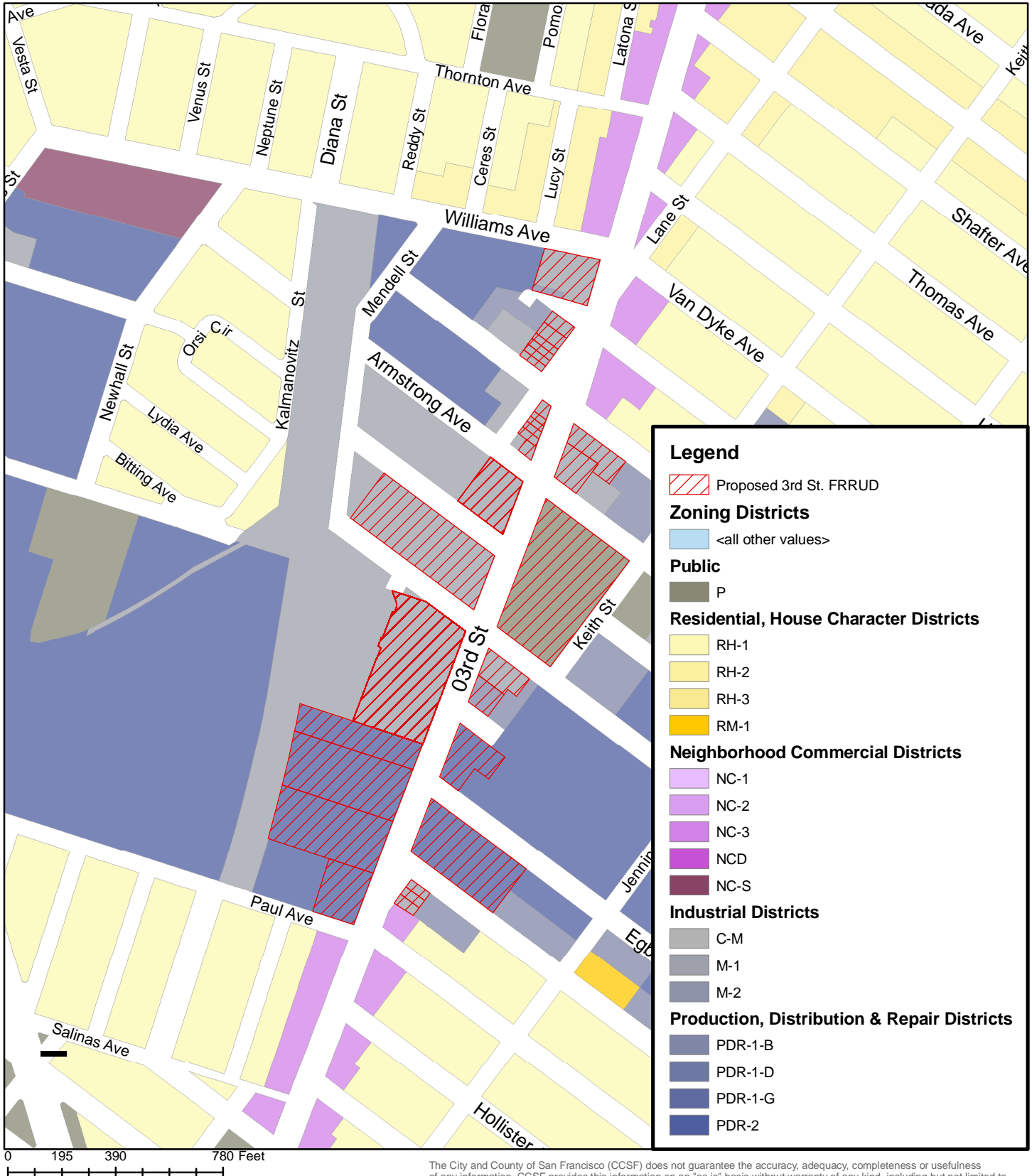
Attachments

Exhibit A: Commission proposed map for 3rd Street Formula Retail RUD

Exhibit B: Proposed changes to Planning Code Section 303(i)

Exhibit A

Proposed 3rd Street Formula Retail RUD Commission 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 B

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.



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
aaron.starr@sfgov.org, 415-558-6362
Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
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 G.

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 G: Proposed changes to Planning Code Section 303(i)((7),