



# SAN FRANCISCO PLANNING DEPARTMENT

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February 25, 2013

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

**Re: Transmittal of Planning Department Case Number 2012.1306TZ:  
Amendments relating to the Upper Market NCD, and permitting food  
processing as an accessory use on one parcel, and amending the Height and  
Bulk designation for one parcel.  
Board File Nos. 12-0901 and 12-0902  
Planning Commission Recommendation: Approval with Modifications**

Dear Ms. Calvillo and Supervisor Wiener,

As you know, on February 21, 2013, the Planning Commission conducted a duly noticed public hearing at the regularly scheduled meeting to consider the proposed amendments to the Planning Code and the Zoning Maps introduced by Supervisor Scott Wiener. At the hearing, the Planning Commission recommended approval with modifications.

The specific modifications recommended by the Planning Commission were:

1. That the Upper Market NCD (Planning Code Section 721.1) be eliminated in its entirety and replaced by the Upper Market NCT (Planning Code Section 733.1), by including Lots 006 and 091 on Assessor's Block 2623 in the Upper Market NCT. This would serve to further clarify the zoning in the area, and would result in fewer duplicative Zoning Districts defined in the Planning Code. This modification would require that Zoning Map Sheets ZN07 and HT07 be modified, as well as all references in the Code to the Upper Market NCD.
2. That specific technical amendments as described in the attached resolution be made to Planning Code Section 733.1 in order to correct errors in the existing Code.

The proposed amendments would result in no significant impact to the environment, and the proposal is subject to a General Rule Exclusion under Section 15061(b)(3) of the California Environmental Quality Act. Pursuant to San Francisco's Administrative Code Section 8.12.5 "Electronic Distribution of Multi-page Documents," the Department is sending electronic documents and one hard copy. Additional hard copies may be requested by contacting Sophie Hayward at 558-6372.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commissions.

[www.sfplanning.org](http://www.sfplanning.org)

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**415.558.6377**

Please find attached documents relating to the action taken by the Planning 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 'AnMarie Rodgers', with a long horizontal line extending to the right.

AnMarie Rodgers  
Manager of Legislative Affairs

cc:

Supervisor Scott Wiener  
Jon Givner, Elaine Warren, Deputy City Attorney  
Jason Elliot, Mayor's Director of Legislative & Government Affairs

Attachments (two hard copies of the following):

Planning Commission Resolution  
Draft Ordinance  
Planning Department Executive Summary



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution 18812

HEARING DATE FEBRUARY 21, 2013

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*Project Name:* **Amendments relating to the Upper Market NCD, and permitting food processing as an accessory use on one parcel, as well as amending the Height and Bulk district for one parcel**

*Case Number:* 2012.1306TZ [Board File Nos. 12-0901 and 12-0902]

*Initiated by:* Supervisor Wiener / Introduced September 19, 2012

*Staff Contact:* Sophie Hayward, Legislative Affairs  
sophie.hayward@sfgov.org, 415-558-6257

*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395

*Recommendation:* **Recommend Approval with Modifications**

**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTIONS 721.1 AND 733.1 TO MODIFY THE EXPLANATION OF THE BOUNDARIES OF THE UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL DISTRICT AND THE UPPER MARKET STREET COMMERCIAL TRANSIT DISTRICT, AND SECTION 703.2(B) TO PERMIT IN A LIMITED AREA FOOD PROCESSING AS AN ACCESSORY USE TO A NEARY OFF-SITE NON-RESIDENTIAL USE, AND AMEND SECTIONAL MAP SHEETS ZN07 AND HT07 TO CHANGE THE USE CLASSIFICATION OF SPECIFIED LOTS ON BLOCKS 3561 THROUGH 3565A ND TO CHANGE THE HEIGHT AND BULK DESIGNATION OF BLOCK 3563, LOT 034 FROM 50-X TO 65-B; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.**

WHEREAS, on October 26, 2012, Supervisor Wiener introduced proposed Ordinances under Board of Supervisors (hereinafter "Board") File Numbers 120901-2 and 120902-2, which would amend Sections 721.1, 733.1, and 703.2(b) of the Planning Code and would amend San Francisco Planning Code Sectional Map Sheets ZN07 and HT07 regarding the Upper Market Neighborhood Commercial District (NCD), the Upper Market Neighborhood Commercial Transit District (NCT), accessory use definitions, and the Height and Bulk Classification of Assessor's Block 3563, Lot 034;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on February 21, 2013; and,

WHEREAS, the proposed Ordinance has been determined to be subject to a General Rule Exclusion under the California Environmental Quality Act Section 15061(b)(3); and

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

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

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

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed ordinance. Specifically, the Commission recommends the following modifications:

1. That the Upper Market NCD (Planning Code Section 721.1) be eliminated in its entirety and replaced by the Upper Market NCT (Planning Code Section 733.1), by including Lots 006 and 091 on Assessor's Block 2623 in the Upper Market NCT. This would serve to further clarify the zoning in the area, and would result in fewer duplicative Zoning Districts defined in the Planning Code. This modification would require that Zoning Map Sheets ZN07 and HT07 be modified, as well as all references in the Code to the Upper Market NCD.
2. That the following technical amendments be made to Planning Code Section 733.1 be made in order to correct errors in the existing Planning Code:
  - a. **Amend the Upper Market NCT Zoning Control Table Section 733.10, "Height and Bulk Limit," to refer to Section 263.20, rather than 263.18.** This appears to be an error, as Section 263.18 establishes a special height and bulk district for the Transbay Downtown Residential District. The correct reference is to 263.20, which provides a 5' height bonus for active ground floor uses in certain districts, including both the Upper Market NCD and the NCT.
  - b. **Amend the Upper Market NCT Zoning Control Table Section 733.17, "Street Trees," to refer to Section 138.1, rather than to Section 143.** This appears to be an error, as Section 143 is a reserved section of the Planning Code. The applicable Code section is Section 138.1, the "Streetscape and Pedestrian Improvements" section which is based on the policies of the City's Better Street's Policy.
  - c. **Amend the Upper Market NCT Zoning Control Table Section 733.48, "Other Entertainment," to remove the "#" reference to the provision to allow bars within the Upper Market NCT to apply for and receive an entertainment permit without obtaining conditional use authorization.** This appears to be an error, as the legislation that permitted this "amnesty" program included a sunset provision which has expired.
  - d. **Amend the Upper Market NCT Zoning Control Table to include Section 733.69 to include restrictions on Tobacco Paraphernalia Establishments.** It appears that this section of the Zoning Table was inadvertently deleted from the Upper Market NCT.
3. The Commission directs Staff to prepare an Ordinance for initiation to make additional amendments for the two remaining corner parcels at Noe and Market Streets that are not historic resources (Block 3561, Lot 015 and Block 3564, Lot 091) to reclassify them from 50-X to 65-B

Height and Bulk designations in order to apply a consistent design principal for all of the Market Street parcels from Castro Street to Van Ness Avenue.

4. The Commission also directs Staff to initiate additional amendments as separate legislation to correct erroneous Height and Bulk designations parcels that were re-designated during the Historic Resource Survey Integration. The following parcels are currently zoned "60/65X" and should be zoned "65B":

- Corner of Market, Sanchez, and 15<sup>th</sup> Streets: Block 3542, Lot 039; Block 3558, Lots 137-152; Block 3559, 001; Block 3560, Lot 001;
- Corner of Market, Church, and 14<sup>th</sup> Streets: Block 3542, Lot 041; Block 3544, Lots 105-119.
- Northeast corner of Duboce Avenue and Guerrero Street, Block 3501, Lot 003.

The following parcels are currently zoned "50/55X," but should be zoned as "50X" Height and Bulk (allowing up to 5' in additional height as a bonus for active ground floor uses under Section 263.20):

- Corner of Market, Church, and 14<sup>th</sup> Streets: Block 3544, Lot 067 and 3543, Lot 001.

## **FINDINGS**

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

1. The Upper Market Neighborhood Commercial Transit District was established as part of the Market-Octavia Area Plan (the "Plan") of the General Plan, adopted in April, 2008. At the time of the Plan adoption, the stretch of Market Street west of Church Street that extends to Castro Street was not included in the new NCT district.
2. The controls for the two existing districts are nearly identical, except that residential density is controlled within the Upper Market NCD based on lot size, whereas residential density is controlled within the NCT by physical envelope controls of height, bulk, setbacks, open space, exposure, etc.
3. There is no land use or planning rationale to maintain two, nearly identical zoning districts adjacent to one another.
4. Heights within the Upper Market NCT were defined in two phases: first, at the time of the Plan adoption in 2008, and then, for parcels west of Church Street, at the time of the Market and Octavia Historic Resource Survey Integration ("Survey Integration"), in 2010.
5. The result is that within the Upper Market NCT, corner parcels that are not historic resources have a higher height designation than do mid-block parcels. The policy rationale balances three goals: to maintain the integrity of potential historic districts, to promote development along transit corridors, and to encourage new development in a manner that enhances existing neighborhood character.

6. The proposed Ordinance would also amend the Height and Bulk Classification of Block Number 3563, Lot 034 from 50-X to 65-B, which is consistent with the policy rationale considered at the time of the Survey Integration.
7. The proposed Ordinance would also amend Planning Code Section 703.2(b) to allow a food processing use (as defined in Planning Code Section 790.54(a)(1)) to legally operate as an accessory use to a non-residential establishment located within 300 feet of the food processing use. This use would be subject to the noticing requirements set forth in Planning Code Section 312(d) and (e).
8. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

#### **I. URBAN DESIGN ELEMENT**

##### **OBJECTIVE 2**

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING

##### **POLICY 2.4**

Preserve notable landmarks and areas of historic, architectural or aesthetic value, and promote the preservation of other buildings and features that provide continuity with past development.

*Allowing a height increase for the parcel located on Block 3563, Lot 034, is consistent with the principles outlined during the Survey Integration proceedings, which call for increased heights on corner parcels that do not contain historic resources. This will allow for increased development without threatening historic resources.*

##### **OBJECTIVE 3**

MODERATION OF MAJOR NEW DEVELOPMENT TO COMPLEMENT THE CITY PATTERN, THE RESOURCES TO BE CONSERVED, AND THE NEIGHBORHOOD ENVIRONMENT.

##### **POLICY 3.5**

Relate the height of buildings to important attributes of the city pattern and to the height and character of existing development.

*Both the proposed height increase as well as the proposed conversion of the NCD to the NCT complement the existing pattern and neighborhood environment, particularly as defined through the Market and Octavia planning effort.*

8. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:
  1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed amendments will not have a negative impact on neighborhood serving retail uses and will not impact opportunities for resident employment in and ownership of neighborhood-serving retail.*

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

*The proposed amendments, including the proposed change to the height and bulk designation of one parcel, are consistent with the goals and policies of the Market-Octavia plan and will help preserve existing neighborhood character by allowing a height increase only at a corner location on a parcel that is not an historic resource.*

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

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

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

*The proposed amendments will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

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

*The proposed amendments would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.*

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

*The proposed ordinance may facilitate new development, which would be constructed using all current building and safety codes, therefore improving the City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*Landmarks and historic buildings would not be negatively impacted by the proposed amendments.*

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

*The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments. Any specific new construction projects would be reviewed at the time of their*

*project applications in order to assess potential impacts on sunlight access, to public or private property, would be reviewed.*

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

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance as described in this Resolution and in the proposed Ordinance with the modifications outlined above.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on February 21, 2013.

Jonas P. Ionin  
Commission Secretary

AYES: Commissioners Antonini, Borden, Fong, Hillis, Moore, and Sugaya

NOES: Commissioner Wu

ABSENT: None

ADOPTED: February 21, 2013





# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code and Zoning Map Amendments

HEARING DATE: FEBRUARY 21, 2013

*Project Name:* **Amendments generally rezoning the Upper Market NCD to Upper Market NCT; permitting food processing as an accessory use on one parcel; and amending the Height and Bulk district for one parcel**

*Case Number:* 2012.1306TZ [Board File Nos. 12-0901 and 12-0902]

*Initiated by:* Supervisor Wiener / Introduced September 19, 2012

*Staff Contact:* Sophie Hayward, Legislative Affairs  
sophie.hayward@sfgov.org, 415-558-6257

*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 by: (1) amending Sections 721.1 and 733.1 to modify the explanation of the boundaries of the Upper Market Street Neighborhood Commercial District and the Upper Market Street Commercial Transit District; (2) amending Section 703.2(b) to permit in a limited area food processing as an accessory use to a nearby off-site non-residential use; and (3) amending Sectional Map Sheets ZN07 and HT07 to change the use classification of specified lots on Blocks 3561 through 3565 (much of the Upper Market NCD to the Upper Market NCT) and to change the Height and Bulk classification of Block 3563, Lot 034 from 50-X to 65-B.

#### The Way It Is Now:

The proposed Ordinance would amend several components of both the existing Upper Market Neighborhood Commercial District (UM NCD) and the Upper Market Neighborhood Commercial Transit District (UM NCT). The following aspects of the UM NCD and the UM NCT may be amended with the proposed Ordinance.

The Upper Market Neighborhood Commercial District (UM NCD), described in Planning Code Section 721.1, as originally created in 1987, was located on Market Street from Church Street to Castro Street. In 2008, the Market & Octavia Plan rezoned the portions of the UM NCD within the plan area to a transit-oriented district. The Market & Octavia Plan generally replaced the UM NCD within the plan boundaries to the Upper Market Neighborhood Commercial Transit (UM NCT), described in Planning Code Section 733.1. This rezoning created a UM NCT from Church Street to Noe Street but left just over one residual block of UM NCD beyond the Market & Octavia Plan along Market Street generally from Noe Street to Castro Street, as shown in the map below.



*This zoning map shows the existing zoning along Market Street. The red line indicates the boundaries of the Market & Octavia Plan.*

Residential density within the Upper Market NCD is limited to one unit per 400 square feet of lot area for dwelling units, and one bedroom for every 140 square feet of lot area for Group Housing. Residential Demolition and Residential Conversions at the ground story within the Upper Market NCD are regulated by Planning Code Section 317, which requires a mandatory Discretionary Review for demolition or conversion of two units or less, and Conditional Use Authorization for three units or more.

The Height and Bulk Classification for Block 3563, Lot 034 is 50-X.

The manufacturing or processing of food if the retail sale of the food is not conducted on the premise may not be considered an accessory use, as detailed in Planning Code Section 703.2(b).

#### The Way It Would Be:

The proposed Ordinance would make three changes:

1. **Conversion from NCD to NCT:** The proposed Ordinance would convert much of the existing Upper Market NCD to the Upper Market NCT district. In the Upper Market NCT, residential density is not limited by lot area, but rather is restricted height, bulk, setbacks, open space, exposure and other applicable controls and Design Guidelines. Pursuant to Section 733.38, Residential Conversions at the ground story *of any number of units* require Conditional Use Authorization within the Upper Market NCT<sup>1</sup>. Similarly, Residential Demolition requires Conditional Use Authorization at the ground level in the Upper Market NCT.
2. **Height Change:** The proposed Ordinance would amend the Height and Bulk Classification of Block Number 3563, Lot 034 from 50-X to 65-B.
3. **Food Processing:** The proposed Ordinance would also amend Planning Code Section 703.2(b) to allow a food processing use (as defined in Planning Code Section 790.54(a)(1) currently located on the west side of Noe Street between 16<sup>th</sup> Street and Beaver Street on the ground floor to legally operate as an accessory use to a non-residential establishment located within 300 feet of the food processing use. This would only be allowed if the food processing use is set back a minimum of 15' from the front property line. This use would be subject to the noticing requirements set forth in Planning Code Section 312(d) and (e). This provision would be repealed after one year.

## 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 TO THE BOARD OF SUPERVISORS

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

1. Convert all of the Upper Market NCD to Upper Market NCT;
2. Expand the limited use of off-site food prep for Café Flore to allow this type of use more broadly; and
3. Incorporate minor, technical modifications.

## RECOMMENDATION FOR FUTURE COMMISSION CONSIDERATION

The Department recommends that the Commission consider review, separately and in the future, of the following additional modifications to the UM NCT:

1. Consider initiating other height changes consistent with the lessons learned from the Market & Octavia Plan and the related Historic Survey Integration; and
2. Fix existing height limit errors on Market Street.

If the Commission agrees with the above recommendations, the attached draft resolution would direct Staff to prepare an ordinance for initiation that would make these two height changes in a subsequent ordinance.

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<sup>1</sup> This is as opposed to the general residential demolition, conversion, and merger controls of Section 317 which only require CU for the loss of three or more dwelling units and otherwise require DR for the loss of one or two units.

## BASIS FOR RECOMMENDATION TO THE BOARD OF SUPERVISORS

The following discussion reviews important issues and describes the basis for the Department's position.

### 1. Convert all of the Upper Market NCD to the Upper Market NCT.

The Upper Market Neighborhood Commercial Transit District was established as part of the Market & Octavia Area Plan (the "Plan") of the General Plan, adopted in April 2008. At the time of the Plan adoption, the stretch of Market Street west of Noe Street was outside of the Plan area and therefore not included in the new NCT district. The controls for the two existing districts are nearly identical<sup>2</sup>, except for density controls. Residential density is controlled within the Upper Market NCD based on lot size (one unit for every 400 square feet of lot area for dwellings, and one bedroom for every 140 square feet of lot area for Group Housing), whereas residential density is controlled within the NCT by physical envelope controls of height, bulk, setbacks, open space, exposure, etc.<sup>3</sup> There is no land use or planning rationale to maintain two, nearly identical zoning districts adjacent to one another. Therefore, the Department recommends that the Commission recommend that the Upper Market NCD be rezoned, in its entirety, to the Upper Market NCT by including the last remaining parcels: Assessor's Block 2623, Lots 006 and 091 on the northeast corner of Castro and 17<sup>th</sup> Streets.

### 2. Expand the limited use of off-site food prep for Café Flore to allow this type of use more broadly.

The proposed Ordinance would create a path to legalize what appears to be an illegal accessory kitchen located at 260½ Noe Street, which supports the small kitchen at Café Flore. The Department supports for this component of the proposed Ordinance, while acknowledging that there is opposition to the proposal. The proposed Ordinance would allow food processing as an accessory use for a nearby, but off-site, primary use for one year, subject to the neighborhood notification procedures outlined in Planning Code Section 312. As drafted, the proposed Ordinance would sunset after one year. In practice, this would create a path by which Café Flore's accessory kitchen could become legal through proper permitting during the year in which the Ordinance, if adopted, is in effect. When the provision sunsets after one year, the use would become a "legal, non-conforming" use as described in Planning Code Section 180.

The Department recommends that the Commission recommend to the Board to allow food processing as an accessory use to a near-by, off-site non-residential use more broadly. The Department recommends that the Commission recommend a modification that would: 1) remove the sunset provision; 2) allow off-site food processing as an accessory use within 300 feet of existing Restaurants or Limited Restaurants with neighborhood notification pursuant to the notice requirement of Planning Code Section 312(d) and (e); 3) require that the food processing use is either visible to the public by satisfying the transparency and fenestration requirements of Section 145.1(c)(6) or is completely screened from view behind an active, ground floor use as defined by Section 145.1(b)(2); and 4) prohibit serving the public within the accessory food preparation area so that any service to the public within the accessory use would be considered a new Restaurant or Limited Restaurant, as defined in Planning Code Sections 790.91 or 790.91. If these conditions are met, the Department recommends that this provision apply in all NC districts, rather than

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<sup>2</sup> While the Upper Market NCT and NCD were more distinct at the time of the initial adoption of the Market & Octavia Plan, over time, the Upper Market NCD has been incrementally amended so that very few differences remain today.

<sup>3</sup> Planning Code Section 733 includes the Upper Market Street Neighborhood Commercial Transit District Zoning Control Table, available online at: [http://www.amlegal.com/nxt/gateway.dll/California/planning/planningcode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://www.amlegal.com/nxt/gateway.dll/California/planning/planningcode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1) (February 7, 2013).

limited to the geographic area outlined in the proposed Ordinance and that the proposed sunset provision be removed.

### 3. Incorporate Minor, Technical Modifications.

The Department also recommends a number of small modifications intended to correct errors in the existing Planning Code Section 733.1, which details the permitted uses within the Upper Market NCT. These technical modifications include:

1. **Amend the Upper Market NCT Zoning Control Table Section 733.10, "Height and Bulk Limit," to refer to Section 263.20, rather than 263.18.** This appears to be an error, as Section 263.18 establishes a special height and bulk district for the Transbay Downtown Residential District. The correct reference is to 263.20, which provides a 5' height bonus for active ground floor uses in certain districts, including both the Upper Market NCD and the NCT.
2. **Amend the Upper Market NCT Zoning Control Table Section 733.17, "Street Trees," to refer to Section 138.1, rather than to Section 143.** This appears to be an error, as Section 143 is a reserved section of the Planning Code. The applicable Code section is Section 138.1, the "Streetscape and Pedestrian Improvements" section which is based on the policies of the City's Better Street's Policy.
3. **Amend the Upper Market NCT Zoning Control Table Section 733.48, "Other Entertainment," to remove the "#" reference to the provision to allow bars within the Upper Market NCT to apply for and receive an entertainment permit without obtaining conditional use authorization.** This appears to be an error, as the legislation that permitted this "amnesty" program included a sunset provision which has expired.
4. **Amend the Upper Market NCT Zoning Control Table to include Section 733.69 to include restrictions on Tobacco Paraphernalia Establishments.** It appears that this section of the Zoning Table was inadvertently deleted from the Upper Market NCT.

## BASIS FOR RECOMMENDATION FOR FUTURE COMMISSION CONSIDERATION

### 1. Zoning Height Limits: Principals from the Market & Octavia Plan & Historic Survey Integration

The Department recommends that the Commission consider additional zoning map height amendments in light of the lessons learned from the Market & Octavia Plan and Historic Survey Integration. Heights within the Upper Market NCT were defined in two phases: first, at the time of the Plan adoption in 2008. And then again, for parcels west of Church Street, heights were adjusted with the Market and Octavia Historic Resource Survey Integration ("Survey Integration"), in 2010.

The Market & Octavia Plan originally called for Market Street to be zoned 85' in height beginning at the Church intersection and to the east, while west of Church Street was to be zoned for 65' height. Due to concerns about potential historic resources, the Commission adopted a plan that called for the heights to remain at 50' along Market Street (with a potential 5' bonus for active frontage) until the historic survey was complete. The historic Survey Integration balances three goals: to maintain the integrity of potential historic districts, to promote development along transit corridors, and to encourage new development in a manner that enhances existing neighborhood character.<sup>4</sup> The Survey Integration resulted in allowing

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<sup>4</sup> Information about the Market and Octavia Historic Resource Survey Integration is available online here: <http://www.sfplanning.org/index.aspx?page=1713> (February 7, 2013). These three goals, while not in direct competition with one another, did require careful consideration. The Department recommended to the Historic Preservation Commission, the Planning

heights to be raised for non-historic corner parcels to 65' while other parcels would remain 50' with a potential 5' bonus for active ground floor uses.



*This map shows the single parcel proposed for re-classification from 50-X Height and Bulk District to a 65-B Height and Bulk District, as well as the two additional parcel that the Department recommends be included for reclassification to 65-B. The red line indicates the boundaries of the Market & Octavia Plan.*

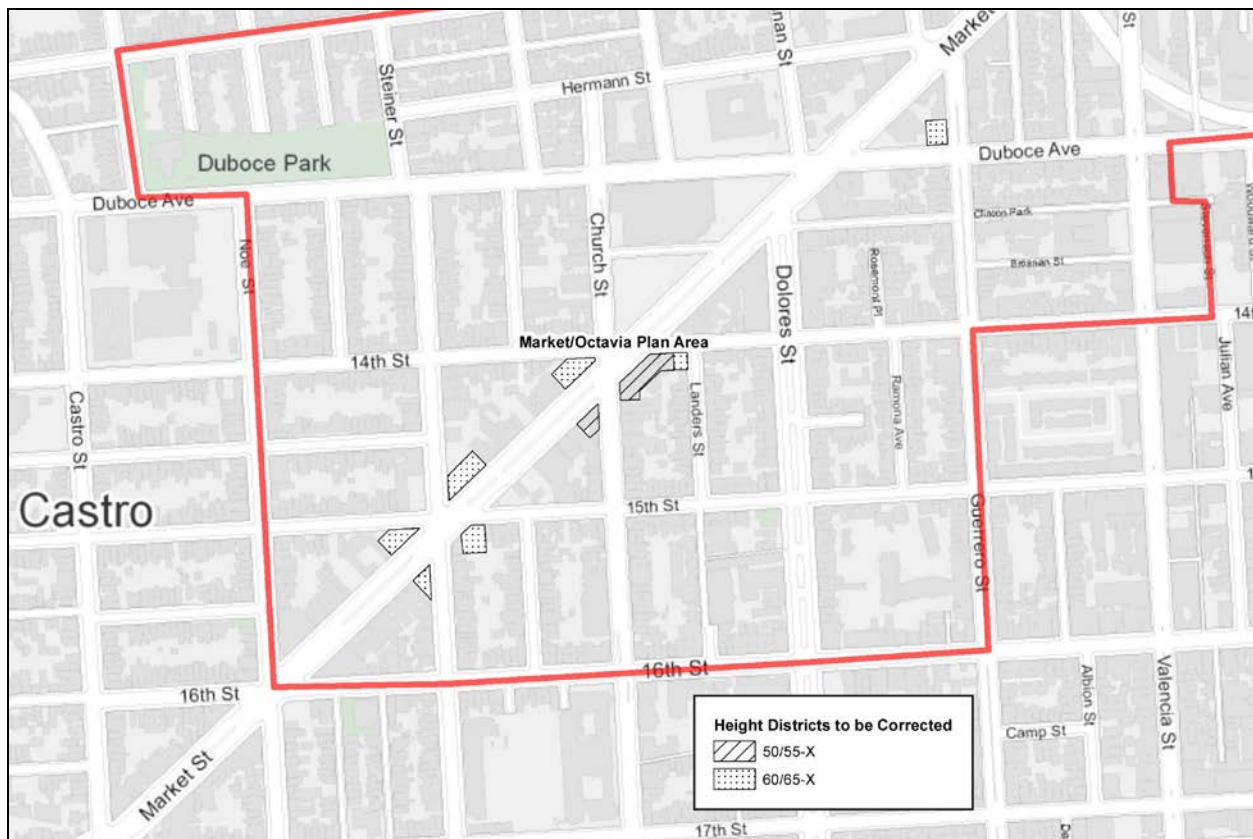
The Department believes that the same rationale should be applied to all of Market Street that has been surveyed. The Department recommends that the Commission support the proposed Height and Bulk reclassification of Block 3563, Lot 034 from 50-X to 65-B Height and Bulk District proposed in this draft Ordinance and that the Commission consider initiating separate legislation to rezone the two parcels at the corner of Market, Noe, and 16<sup>th</sup> Streets. These are the only two remaining corner parcels east of Castro Street that are not historic resources and that are not proposed for height reclassification in the proposed Ordinance. Rezoning these two additional parcels would apply a consistent design principal for all of the Market Street parcels from Castro Street to Van Ness Avenue.

Commission, and the Board of Supervisors that higher height limits at corner parcels would promote compatible development on non-contributing sites within historic districts. For a more in-depth discussion of this particular issue, please see the materials associated with Case No. 2009.0707MZ for the Historic Resource Survey Integration.

## 2. Zoning Height Limits: Fix Existing Map Errors.

While the intent of the Survey Integration was to follow consistent nomenclature for the rezoning, some parcels were incorrectly designated. Typically, a parcel is given one height limit (such as 50') and if a height bonus is allowed, it is indicated via Planning Code Section 263.20. During the Survey Integration process, some parcels were given a height district with two numbers (such as 50/55) which is not correct and which is not seen anywhere else in the City. Specifically, the following parcels appear to have been incorrectly zoned with split height districts and should just have one height district:

1. Currently zoned "60/65X", should be zoned "65B" Height and Bulk:
  - o Corner of Market, Sanchez, and 15<sup>th</sup> Streets: Block 3542, Lot 039; Block 3558, Lots 137-152; Block 3559, 001; Block 3560, Lot 001;
  - o Corner of Market, Church, and 14<sup>th</sup> Streets: Block 3542, Lot 041; Block 3544, Lots 105-119.
  - o Northeast corner of Duboce Avenue and Guerrero Street, Block 3501, Lot 003.
2. Currently zoned "50/55X" but should be zoned as "50X" Height and Bulk, allowing up to 5' bonus for active ground floor uses under Section 263.20.
  - o Corner of Market, Church, and 14<sup>th</sup> Streets: Block 3544, Lot 067 and 3543, Lot 001.



*This zoning map shows the two Height and Bulk Districts that the Department recommends be corrected. The red line indicates the boundaries of the Market & Octavia Plan.*

These parcels were mistakenly designated as "60/65X" and "50/55X," which are not districts that are defined in the Planning Code and have no meaning. Rather, these designations were meant to reflect the

so-called “5’ height bonus” available to parcels in within 30X, 40X, or 50X Height and Bulk districts within the NCT Zoning District, pursuant to Planning Code Section 263.20(b)<sup>5</sup>. The convention is to zone the parcel for a base 10 (i.e., 30’, 40’, 50’) and then to offer the 5’ height bonus to developments that qualify via the requirements of Section 263.20.

## **ENVIRONMENTAL REVIEW**

The proposal to amend Planning Code Sections 721.1 (Upper Market NCD), 733.1 (Upper Market NCT), and Section 703.2(b) (Uses Permitted in an NC District), and amending Sectional Map Sheets ZN07 and HT07 would result in no significant physical impact on the environment. The proposed amendment is subject to a General Rule Exclusion under Section 15061(b)(3) of the CEQA Guidelines.

## **PUBLIC COMMENT**

As of the date of this report, the Planning Department has received numerous letters and emails in response to the proposed legislation. The Eureka Valley Neighborhood Association (EVNA) expressed support for the re-zoning of the Upper Market NCD to the Upper Market NCT, and opposition to the proposed changes to the height limit at Market and Noe Streets as well as for the proposal to permit food processing as an accessory for a limited time in a specific geographic location. The Duboce Triangle Neighborhood Association (DTNA) and EVNA submitted a joint letter expressing opposition to the component of the legislation that would allow food processing as an accessory use. Staff has also received a letter of support for the proposed project from the Merchants of Upper Market and Castro (MUMC). At this time, Staff has also received 60 letters and emails in support of the legislation as it relates to Café Flore.

<b>RECOMMENDATION:</b>	<b>Recommendation of Approval with Modifications</b>
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### **Attachments:**

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File Nos. 12-0901 and 12-0902
- Exhibit C: Letters in Support and Opposition to the Proposed Ordinance (64 Letters)
- Exhibit D: General Rule Exclusion (GRE), dated February 13, 2013

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<sup>5</sup> Specifically, the height exception allows up to an additional 5’ in height above the base height restriction of 30, 40, or 50’ “in order to encourage generous ground floor ceiling heights for commercial and other active uses, encourage additional light and air into ground floor spaces, allow for walk-up ground floor residential uses to be raised slightly from sidewalk level for privacy and usability of front stoops, and create better building frontage on the public street[...].” The additional 5’ in height is not available in height districts greater than 50X.