



# SAN FRANCISCO PLANNING DEPARTMENT

## Certificate of Determination EXCLUSION/EXEMPTION FROM ENVIRONMENTAL REVIEW

**Date:** February 13, 2013  
**Case No.:** 2012.1306E  
**Project Name:** BOS File Nos. 120901-2 & 120902-2 Amendments to San Francisco Planning Code related to the Upper Market St. Neighborhood Commercial District (NCD) and Upper Market St. Neighborhood Commercial Transit District (NCT)  
**Zoning:** Upper Market St. NCD and Upper Market St. NCT  
**Block/Lot:** Various  
**Lot Size:** Various  
**Project Sponsor:** Supervisor Scott Wiener, District 8, San Francisco Board of Supervisors  
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### PROJECT DESCRIPTION:

The proposed legislation, introduced by District 8 Supervisor Scott Wiener, would: 1) amend San Francisco Planning Code ("Planning Code") Sections 721.1 and 733.1 to modify the boundaries of the Upper Market St. NCD and the Upper Market St. NCT; 2) amend San Francisco Planning Code 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) amend San Francisco Planning Code Sectional Map Sheets ZN07 and HT07 to change the use classification of specified lots on Assessor's Block Nos. 3561 through 3565, now in the Upper Market St. NCD to the Upper Market St. NCT, and to change the height and bulk classification of a parcel at 2301 Market Street (Assessor's Block No. 3563, Lot No. 034) from 50-X to 65-B. [Continued on following page.]

### EXEMPT STATUS:

General Rule Exclusion (State CEQA Guidelines, Section 15061(b)(3))

### REMARKS:

Please see next page.

### DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and Local requirements.

  
Bill Wycko  
Environmental Review Officer

  
Date

cc: Sophie Hayward, San Francisco Planning Dept.  
District 8 Supervisor Scott Wiener

Distribution List  
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## PROJECT DESCRIPTION (CONTINUED):

Planning Code Sections 721.1 and 733.1 describe the general location of the boundaries of the Upper Market St. NCD and Upper Market St. NCT, respectively. The proposed legislation would rezone the parcels on Assessor's Block Nos. 3561 through 3565, which are currently zoned Upper Market St. NCD (Neighborhood Commercial District), to Upper Market St. NCT (Neighborhood Commercial Transit District) (see Figure 1). In addition, San Francisco Planning Code Sectional Map Sheets ZN07 and HT07 would be amended to reflect the above rezoning.

Furthermore, the proposed legislation would also change the height and bulk classification of a parcel at 2301 Market Street (Assessor's Block No. 3563, Lot No. 034), which is located on the southwest corner of Market and Noe Streets, from 50-X to 65-B. This property is one of the parcels subject to the above rezoning (see Figure 2). Pursuant to Article 2.5 of the Planning Code, a 50-X Height and Bulk District allows a maximum building height of 50 feet with no bulk restrictions, and a 65-B Height and Bulk District allows a maximum building height of 65 feet and limits building bulk by restricting length and diagonal dimensions to 110 feet and 125 feet, respectively, above 50 feet in height. The parcel, approximately 9,800 square feet in size, is irregularly shaped along its front property line, as Market Street crosses Noe Street diagonally. A 25-foot-tall, two-story, 17,600-sf over-basement commercial building presently occupies the site. The predominant use of the building is the Gold's Gym Health Club on the first and second floors. A commercial space is also provided on the ground floor. The basement level is a 23-space parking garage, accessed from Noe Street.<sup>1</sup>

Finally, the proposed legislation also includes an amendment to Planning Code Section 703.2(b) to permit a food processing use as defined in Section 790.54(a)(1)<sup>2</sup>, located on the west side of Noe Street between 16<sup>th</sup> and Beaver Streets on the ground floor, as an accessory use to a non-residential establishment located within 300 feet of the food processing use. The parcels subject to this proposed amendment to Planning Code Section 703.2(b) generally contain two- to three-story mixed-use (residential above ground-floor commercial use) buildings, and ground-floor neighborhood commercial uses, including a restaurant, cafe, and dry cleaning shop. These parcels are currently zoned Upper Market St. NCD and would be rezoned to the Upper Market St. NCT as part of this legislation (see Figure 3). An off-site accessory food processing use permitted through this amendment would be required to be set back from the front property line by 15 feet or greater. In addition, authorization for an off-site accessory food processing use would be subject to the notice requirements outlined in Planning Code Sections 312(d) and 321(e). This proposed provision authorizing an off-site accessory food processing use would be repealed one year after its initial effective date, unless the Board of Supervisors extends or re-enacts the said provision on or before the expiration date.

## REMARKS:

California Environmental Quality Act (CEQA) State Guidelines Section 15061(b)(3) establishes the general rule that CEQA applies only to projects that have the potential to cause a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

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<sup>1</sup> Paul Maltzer, San Francisco Planning Department. *Preliminary Project Assessment, Case No. 2011.0423U, 2301 Market Street, Assessor's Block No. 3563, Lot No. 034*, September 16, 2011. Available online at: <http://www.sfpplanning.org/ftp/files/notice/2011.0423U.pdf>. Accessed January 25, 2013.

<sup>2</sup> A food processing use does not include mechanized assembly line production of canned or bottled goods pursuant to Section 790.54(a)(1) of the Planning Code.

**Land Use.** Both the Upper Market St. NCD and the Upper Market St. NCT zoning districts are intended to be multi-purpose commercial districts that provide limited convenience goods to adjacent neighborhoods, but also serve as a shopping street for a broader trade area. A large number of offices are located along Market Street in both of the districts. Market Street is a collection of dispersed centers of commercial activity, concentrated at the intersections of Market Street with secondary streets. Both of these zoning districts are well served by transit, and Market Street is a primary bicycle corridor. Commercial establishments are discouraged or prohibited from building accessory off-street parking to preserve the pedestrian-oriented character of the districts.

A project could have a significant effect on land use if it would physically divide an established community; conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect; or have a substantial adverse impact on the existing character of the vicinity.

Given the similarity of the zoning controls and permitted uses in both of the zoning districts, the proposed change in the boundaries of the Upper Market St. NCD and the Upper Market St. NCT would not be considered to cause a substantial adverse impact on the existing character of the subject area or conflict with an applicable land use plan, policy, or regulation. The proposed change in the height and bulk classification for the parcel at 2301 Market Street (Assessor's Block No. 3563, Lot No. 034) from 50-X to 65-B would not have a significant impact on land use because any future redevelopment that may occur at the site would be consistent with the existing land uses and buildings in the area.

The proposed amendment to Planning Code Section 703.2(b) to permit an off-site accessory food processing use would not cause a substantial adverse impact on the existing character of the subject area or its vicinity, given that: 1) the subject area currently contains similar commercial uses (including a restaurant, café, etc.); 2) a food processing use permitted through this legislation would be subject to existing and proposed development standards, including the minimum 15-foot front setback requirement and 300-foot distance standard (the maximum allowable distance between an off-site accessory food processing use and the non-residential establishment), which would minimize the food processing use's impacts on the physical character of the area; 3) the proposed provision authorizing food processing uses would be repealed one year after its initial effective date (unless the Board of Supervisors extends or re-enacts the said provision on or before the expiration date), which in turn would allow the Board of Supervisors to determine whether or not this provision should be continued beyond the one-year period; and 4) under the current Planning Code Section 703.2(b)(1)(C), a similar accessory use located on the same lot as the lawful principal use can be permitted in the subject area, provided that it complies with specific standards relative to floor area and other applicable restrictions to provide flexibility to local land uses.<sup>3</sup>

In light of the above, the proposed project would not physically disrupt or divide an established community, or conflict with any land use plan, policy, or regulation that has been adopted for the

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<sup>3</sup> Per Planning Code Section 703.2(b)(1)(C), Accessory Uses are prohibited in Section 728 (24<sup>th</sup> Street – Noe Valley Neighborhood Commercial District Zoning Control Table) and subject to certain limitations set forth in Planning Code Sections 204.1 (Accessory Uses for Dwelling Units in R and NC Districts), 204.4 (Dwelling Units Accessory to Other Uses), and 204.5 (Parking and Loading as Accessory Uses).

purpose of avoiding or mitigating an environmental effect. For these reasons, the proposed project would not result in a significant impact on land use.

**Visual Quality and Urban Design.** The proposed legislation would not result in a substantial change in physical characteristics of existing buildings or sites within the subject area, except for the proposed change in the height and bulk classification of the parcel at 2301 Market Street (Assessor's Block No. 3563, Lot No. 034) from 50-X to 65-B.

Under the proposed height and bulk classification, the parcel at 2301 Market Street could be redeveloped with a building up to 65 feet in height with bulk restrictions, which limit building bulk by restricting length and diagonal dimensions to 110 feet and 125 feet, respectively, above 50 feet in height (a 5-foot height increase would not be allowed in a 65-B Height and Bulk District per Planning Code Section 263.20). The parcel at 2301 Market Street could be redeveloped with a building up to 55 feet in height with a qualified ground-floor space (per Planning Code Section 263.20) under the current height and bulk classification (50-X). This ten-foot increase in the maximum allowable height (or forty-foot increase measured from the height of the existing structure on the parcel) would not be considered a significant change considering the physical context of the area, which contains many 40- to 50-foot-tall buildings in a dense, urban setting. As a result, the proposed change in the height and bulk classification would not have a substantial adverse impact on the existing character of the vicinity.

The proposed amendment to Planning Code Section 703.2(b) to permit a food processing use would not cause a substantial adverse impact with respect to visual quality and urban design, as such a food processing use would be established inside an existing building. Thus, the proposed amendment to Planning Code Section 703.2(b) would not result in a significant impact with respect to visual quality and urban design.

In reviewing visual quality and urban design under CEQA generally, consideration of the existing context in which a project is proposed is required, and evaluation must be based on the impact on the existing environment. That some people may not find a given development project attractive does not mean that it creates a significant aesthetic environmental impact; projects must be judged in the context of the existing conditions. For the proposed legislation, the context is a well-established, dense urban environment. Given the context, the proposed legislation would be consistent with the existing developed environment, and its visual effects would not be unusual and would not create adverse aesthetic impacts on the environment. Furthermore, it would not result in a substantial, demonstrable negative aesthetic effect, or obstruct or degrade scenic views or vistas now observed from public areas. Thus, the proposed legislation would result in less-than-significant impacts on visual quality and urban design.

Lastly, the proposed legislation would not directly or indirectly contribute to the generation of any obtrusive light or glare that is unusual in the subject area. Furthermore, use of reflective glass would be restricted by Planning Commission Resolution 9212. For all the above reasons, the proposed legislation would not result in a significant adverse effect on public views or aesthetics.

**Historic Resources.** There are no designated historic districts within or adjacent to the subject area. The only known historic resource for purposes of CEQA that is located within the subject area is the Jose Theater/Names Project building at 2362 Market Street (Assessor's Block No. 3562, Lot No. 011),



Landmark No. 241, pursuant to Article 10 of Planning Code.<sup>4</sup> This property is one of the parcels subject to the rezoning proposed through this legislation.

The area along Market Street from approximately Church Street on the east to Castro Street on the west, including the parcel at 2301 Market Street (Assessor's Block No. 3563, Lot No. 034), was identified in the Market and Octavia Neighborhood Plan as a potential California Register Historic District.<sup>5,6</sup> Any proposed future development projects that may occur within the subject area would be subject to further review by the Planning Department's historical resources review team to ensure that the design, colors, and materials of the proposed building would not adversely impact existing and potential historic resources.

The proposed amendment to Planning Code Section 703.2(b) to permit a food processing use would not cause a substantial adverse impact with respect to historic resources, because such a food processing use would be established inside an existing building.

In light of the above, the proposed legislation would not result in a significant impact on historical resources.

**Shadow.** In general, adverse shadow impacts result when the height or bulk of a building increases. The proposed legislation would not result in an increase in building height or bulk, except for the proposed change in the height and bulk classification of the parcel at 2301 Market Street (Assessor's Block No. 3563, Lot No. 034) from 50-X to 65-B. This proposed change could result in redevelopment of the parcel (currently containing a 25-foot-tall building) with a building up to 65 feet in height with bulk restrictions, which limit building bulk by restricting length and diagonal dimensions to 110 feet and 125 feet, respectively, above 50 feet in height.

Section 295 of the Planning Code was adopted in response to Proposition K (passed November 1984). Planning Code Section 295 mandates that new structures above 40 feet in height that would cast additional shadows on properties under the jurisdiction of, or designated to be acquired by, the Recreation and Parks Department (RPD) can only be approved by the Planning Commission (based on recommendation from the Recreation and Parks Commission) if the shadow is determined to be insignificant or not adverse to the use of the park. A shadow fan analysis for the proposed change in height and bulk district for the parcel at 2301 Market Street was prepared in compliance with Section 295

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<sup>4</sup> San Francisco Board of Supervisors. *Ordinance No. 92-04, Ordinance to Designate 2362 Market Street, the Jose Theater/Names Project building, as a Landmark Under Planning Code Article 10*, passed May 18, 2004. Available online at: [http://ec2-50-17-237-182.compute-1.amazonaws.com/docs/landmarks\\_and\\_districts/LM241.pdf](http://ec2-50-17-237-182.compute-1.amazonaws.com/docs/landmarks_and_districts/LM241.pdf). Accessed January 25, 2013.

<sup>5</sup> Paul Maltzer, San Francisco Planning Department. *Preliminary Project Assessment, Case No. 2011.0423U, 2301 Market Street, Assessor's Block No. 3563, Lot No. 034*, September 16, 2011. Available online at: <http://www.sfplanning.org/ftp/files/notice/2011.0423U.pdf>. Accessed January 25, 2013.

<sup>6</sup> Caitlin Harvey, Page & Turnbull, Inc. *State of California & The Resources Agency, Department of Parks and Recreation, District Record, the Upper Market Street Commercial Historic District*, June 2007. This document is available for review as part of Case File No. 2012.1306E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

of the Planning Code.<sup>7</sup> The shadow analysis found that shadows cast by the proposed project would not shade Section 295 Open Space.<sup>8</sup>

The proposed rezoning of the parcel at 2301 Market Street would potentially result in increased shadows on the adjacent properties. However, reduction in the amount of lighting into a private parcel resulting from development on an adjacent parcel would not be considered a significant physical environment impact under CEQA.

The proposed rezoning of the parcel at 2301 Market Street would also shade portions of nearby streets and sidewalks at times within the project vicinity. These new shadows would not exceed levels commonly expected in urban areas, and would be considered a less-than-significant effect under CEQA. For this reason, the proposed legislation would not result in a significant impact with regard to shadow.

**Cumulative Impacts.** As described above, the proposed rezoning of the parcel at 2301 Market Street would not have a significant adverse effect on the environment. In light of the fact that the parcel is located in a fully developed area with existing buildings and uses, it would not have the potential to have a considerable contribution to a significant cumulative impact. Thus, cumulative impacts would be less than significant.

**Neighborhood Concerns.** A “Notification of Project Receiving Environmental Review” was mailed on January 24, 2013, to potentially interested parties. A comment letter was submitted by the Merchants of Upper Market & Castro (MUMC), stating that the Board of Directors of the MUMC unanimously supports the proposed legislation.<sup>9</sup> No comments raising concerns or issues related to physical environmental effects have been submitted.

**Conclusion.** CEQA Guidelines Section 15061(b)(3) provides an exemption from environmental review where it can be seen with certainty that the proposed project would not have a significant impact on the environment. As noted above, there are no unusual circumstances surrounding the current proposal that would suggest a reasonable possibility of a significant effect. Since the proposed project would have no significant environmental effects, it is appropriately exempt from environmental review under the General Rule Exclusion (CEQA Guidelines Section 15061(b)(3)).

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<sup>7</sup> Kei Zushi, San Francisco Planning Department. *Shadow Analysis for Height and Bulk Change: Block No. 3563, Lot No. 034*, January 25, 2013. This document is available for review as part of Case File No. 2012.1306E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

<sup>8</sup> The Eureka Valley / Harvey Milk Memorial Branch Library site located at 1 Jose Sarria Ct. is not subject to Section 295 of the Planning Code because the site is owned by San Francisco Public Library, not San Francisco Recreation and Park Department.

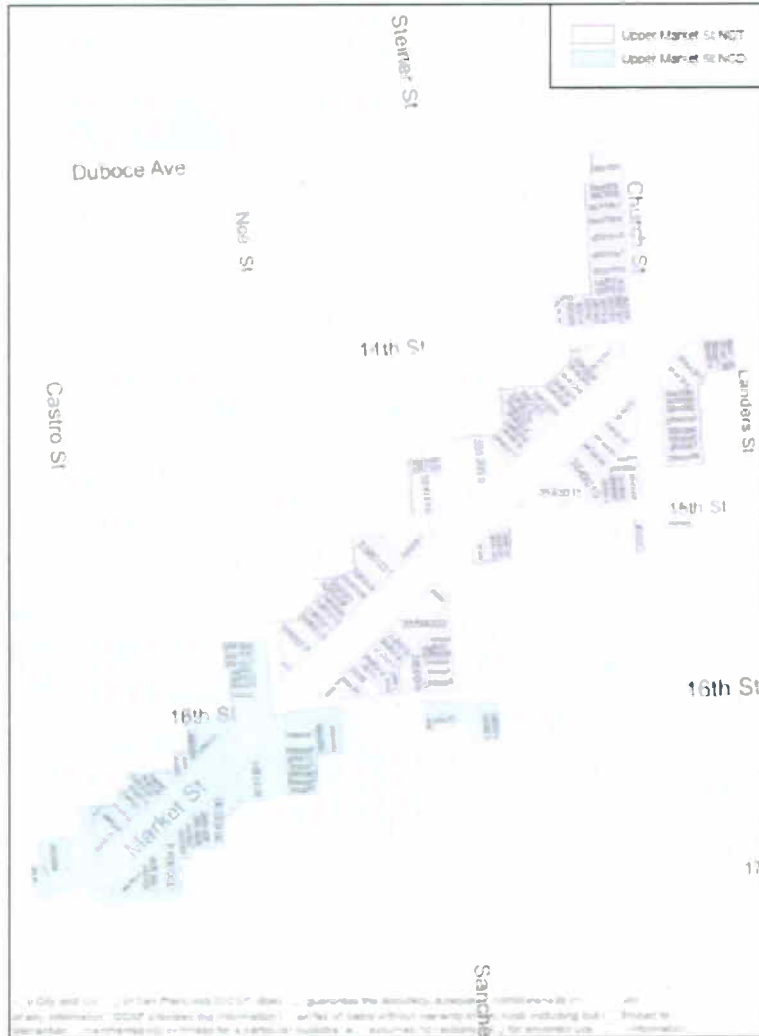
<sup>9</sup> Terry Asten Bennett, President, MUMC. *Comment Letter to Sophie Hayward and Kei Zushi, Staff Planners*, January 28, 2013. This document is available for review as part of Case File No. 2012.1306E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

Figure 1

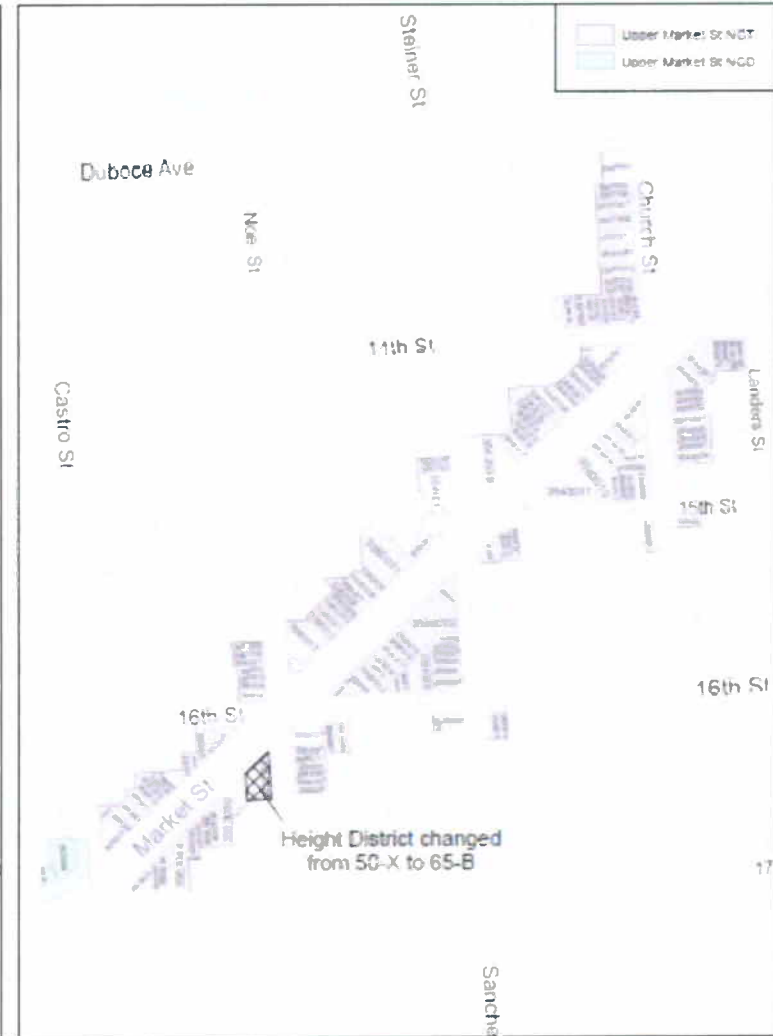
Upper Market St NCD & NCT



BEFORE



AFTER



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Figure 2

Existing and Proposed Height/Bulk Districts



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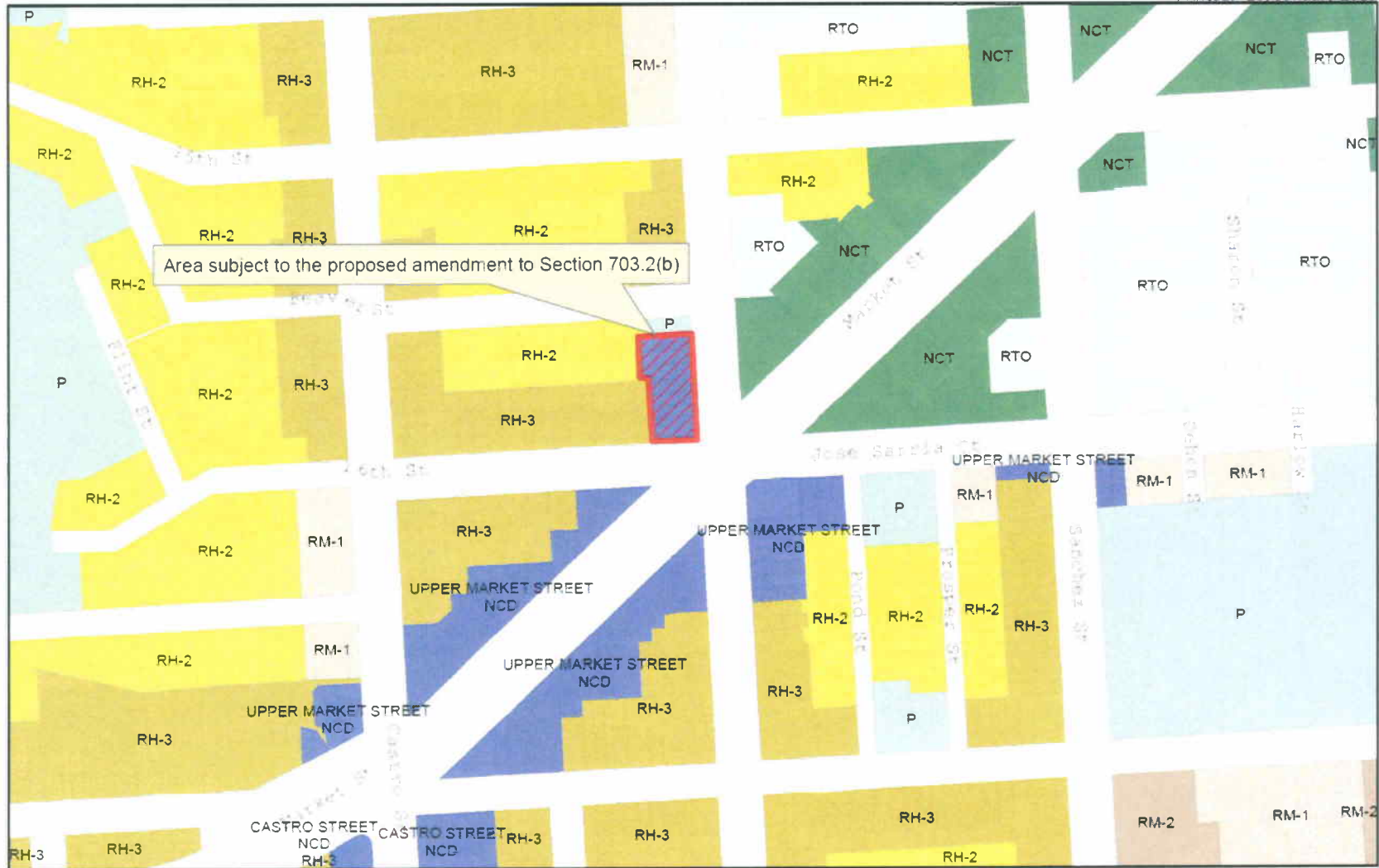
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Figure 3

Amendment to Section 703.2(b): Accessory Food Processing Use

Printed: 25 January 2013



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