File No. 120901 Committee Item No. 2
Board Item No. 4

# COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

**Committee:** Land Use and Economic Development **Date** April 15, 2013

**Board of Supervisors Meeting** **Date** May 7, 2013

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| ☒ | ☒ | Ordinance |
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|---|---|---|
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| ☐ | ☐ | |

**Completed by:** Alisa Miller **Date** April 12, 2013
**Completed by:** Alisa Miller **Date** April 10, 2013

[Planning Code - Upper Market Zoning]

**Ordinance amending 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 Neighborhood Commercial Transit District; Section 703.2(b), to permit in a limited area food processing as an accessory use to a nearby off-site non-residential use; Section 733, making clerical corrections in tables; and making environmental findings, Planning Code, Section 302, findings, and findings of consistency with the General Plan and the priority policies of Planning Code, Section 101.1.**

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 120901 and is incorporated herein by reference.

(b) Pursuant to Planning Code Section 302, the Board finds that the proposed ordinance will serve the public necessity, convenience and welfare for the reasons set forth in Planning Commission Resolution No. 18812, which reasons are incorporated herein by reference as though fully set forth. A copy of Planning Commission Resolution No. 18812 is on file with the Clerk of the Board of Supervisors in File No. 120901.

(c) At a duly noticed public hearing held on February 21, 2013, the Planning Commission in Resolution No. 18812 found that the proposed Planning Code amendments contained in this ordinance are consistent with the City's General Plan and with the Priority Policies of Planning Code Section 101.1. The Commission recommended that the Board of Supervisors adopt the proposed Planning Code amendments. The Board finds that the proposed Planning Code amendments contained in this ordinance are consistent with the City's General Plan and with the Priority Policies of Planning Code Section 101.1 for the reasons set forth in said Resolution.

Section 2. The Planning Code is hereby amended by amending Sections 721.1 and 733.1, to read as follows:

**SEC. 721.1. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

The Upper Market Street Neighborhood Commercial District, on Market Street ~~*from Church to at*~~ Castro~~*, and on side streets off Market,*~~ is situated at the border of the Eureka Valley, Buena Vista, and Duboce Triangle neighborhoods. Upper Market Street is a multi-purpose commercial district that provides limited convenience goods to adjacent neighborhoods, but also serves as a shopping street for a broader trade area. A large number of offices are located on Market Street within easy transit access to downtown. The width of Market Street and its use as a major arterial diminish the perception of the Upper Market Street District as a single commercial district. The street appears as a collection of dispersed centers of commercial activity, concentrated at the intersections of Market Street with secondary streets.

This district is well served by transit and is anchored by the Castro Street Station of the Market Street subway and the F-Market historic streetcar line. The F, K, L, and M streetcar lines traverse the district, and the Castro Station serves as a transfer point between light rail and crosstown and neighborhood bus lines. Additionally, Market Street is a primary bicycle

corridor. Residential parking is not required and generally limited. Commercial establishments are discouraged or prohibited from building accessory off-street parking in order to preserve the pedestrian-oriented character of the district and prevent attracting auto traffic. There are prohibitions on access (i.e. driveways, garage entries) to off-street parking and loading on Market Street to preserve and enhance the pedestrian-oriented character and transit function.

The Upper Market Street district controls are designed to promote moderate-scale development which contributes to the definition of Market Street's design and character. They are also intended to preserve the existing mix of commercial uses and maintain the livability of the district and its surrounding residential areas. Large-lot and use development is reviewed for consistency with existing development patterns. Rear yards are protected at residential levels. To promote mixed-use buildings, most commercial uses are permitted with some limitations above the second story. In order to maintain continuous retail frontage and preserve a balanced mix of commercial uses, ground-story neighborhood-serving uses are encouraged, and eating and drinking, entertainment, and financial service uses are limited. Continuous frontage is promoted by prohibitions of most automobile and drive-up uses.

Housing development in new buildings is encouraged above the second story. Existing upper-story residential units are protected by limitations on demolitions and upper-story conversions.

**SEC. 733.1. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.**

The Upper Market Street Neighborhood Commercial Transit District is located on Market Street from Church to ~~*Noe*~~*Castro* Streets, and on side streets off Market. Upper Market Street is a multi-purpose commercial district that provides limited convenience goods to adjacent neighborhoods, but also serves as a shopping street for a broader trade area. A large number of offices are located on Market Street within easy transit access to downtown.

The width of Market Street and its use as a major arterial diminish the perception of the Upper Market Street Transit District as a single commercial district. The street appears as a collection of dispersed centers of commercial activity, concentrated at the intersections of Market Street with secondary streets.

This district is well served by transit and is anchored by the Market Street subway (with stations *at* Church Street and Castro Street) and the F-Market historic streetcar line. All light-rail lines in the City traverse the district, including the F, J, K, L, M; and N, and additional key cross-town transit service crosses Market Street at Fillmore and Castro Streets. Additionally, Market Street is a primary bicycle corridor. Housing density is limited not by lot area, but by the regulations on the built envelope of buildings, including height, bulk, setbacks, and lot coverage, and standards for residential uses, including open space and exposure, and urban design guidelines. Residential parking is not required and generally limited. Commercial establishments are discouraged or prohibited from building accessory off-street parking in order to preserve the pedestrian-oriented character of the district and prevent attracting auto traffic. There are prohibitions on access (i.e. driveways, garage entries) to off-street parking and loading on Market and Church Streets to preserve and enhance the pedestrian-oriented character and transit function.

The Upper Market Street district controls are designed to promote moderate-scale development which contributes to the definition of Market Street's design and character. They are also intended to preserve the existing mix of commercial uses and maintain the livability of the district and its surrounding residential areas. Large-lot and use development is reviewed for consistency with existing development patterns. Rear yards are protected at all levels. To promote mixed-use buildings, most commercial uses are permitted with some limitations above the second story. In order to maintain continuous retail frontage and preserve a balanced mix of commercial uses, ground-story neighborhood-serving uses are encouraged,

and eating and drinking, entertainment, and financial service uses are limited. Ground floor-commercial space is required along Market and Church Streets. Most automobile and drive-up uses are prohibited or conditional.

Housing development in new buildings is encouraged above the second story. Existing upper-story residential units are protected by limitations on demolitions and upper-story conversions.

Section 3. The Planning Code is hereby amended by amending Section 703.2(b) to read as follows:

(b) **Use Limitations.** The uses permitted in Neighborhood Commercial Districts are either principal, conditional, accessory, or temporary uses as stated in this Section, and include those uses set forth or summarized and cross-referenced in the zoning control categories as listed in Paragraph (a) in Sections 710.1 through 737.1 of this Code for each district class.

(1) **Permitted Uses.** All permitted uses shall be conducted within an enclosed building in Neighborhood Commercial Districts, unless otherwise specifically allowed in this Code. Exceptions from this requirement are: uses which, when located outside of a building, qualify as an outdoor activity area, as defined in Section 790.70 of this Code; accessory off-street parking and loading and other uses listed below which function primarily as open-air uses, or which may be appropriate if located on an open lot, outside a building, or within a partially enclosed building, subject to other limitations of this Article 7 and other sections of this Code.

| No. | Zoning Control Category |
|---|---|
| .56 | Automobile Parking |
| .57 | Automotive Gas Station |

| | |
|---|---|
| .58 | Automotive Service Station |
| .60 | Automotive Wash |
| .61 | Automobile Sale or Rental |
| .81 | Other Institutions, Large (selected) |
| .83 | Public Use (selected) |
| .95 | Community Residential Parking |

If there are two or more uses in a structure and none is classified below under Section 703.2(b)(1)(C) of this Code as accessory, then each of these uses will be considered separately as independent principal, conditional or temporary uses.

(A) **Principal Uses.** Principal uses are permitted as of right in a Neighborhood Commercial District, when so indicated in Sections 710.1 through 737.1 of this Code for each district class.

(B) **Conditional Uses.** Conditional uses are permitted in a Neighborhood Commercial District when authorized by the Planning Commission; whether a use is conditional in a given district is indicated in Sections 710.10 through 737.1. Conditional uses are subject to the provisions set forth in Sections 178, 179, 303 and 316 through 316.6 of this Code.

(i) An establishment which sells beer or wine with motor vehicle fuel is a conditional use, and shall be governed by Section 229.

(ii) Notwithstanding any other provision of this Article, a change in use or demolition of a movie theater use, as set forth in Section 790.64, shall require conditional use authorization. This Subsection shall not authorize a change in use if the new use or uses are otherwise prohibited.

(iii) Notwithstanding any other provision of this Article, a change in use or demolition of a general grocery store use, as defined in Section 790.102(a), which use exceeds 5,000 gross square feet shall require conditional use authorization. This Subsection shall not authorize a change in use if the new use or uses are otherwise prohibited.

(iv) Large-Scale Urban Agriculture, as defined in Section 102.35(b), shall require conditional use authorization.

(C) **Accessory Uses.** Except as prohibited in Section 728 and subject to the limitations set forth below and in 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) of this Code, a related minor use which is either necessary to the operation or enjoyment of a lawful principal use or conditional use, or is appropriate, incidental and subordinate to any such use, shall be permitted as an accessory use when located on the same lot. Any use which does not qualify as an accessory use shall be classified as a principal or conditional use, unless it qualifies as a temporary use under Sections 205 through 205.4 of this Code.

No use will be considered accessory to a permitted principal or conditional use which involves or requires any of the following:

(i) The use of more than 1/3 of the total floor area occupied by such use and the principal or conditional use to which it is accessory, except in the case of accessory off-street parking and loading and accessory wholesaling, manufacturing or processing of foods, goods, or commodities;

(ii) Any Bar or Restaurant, or any other retail establishment which serves liquor for consumption on-site;

(iii) Any Take-Out Food use, as defined in Section 790.122, except for a Take-Out Food use which occupies 1/3 of the total floor area or up to 500 s/f whichever

is more restrictive in a general grocery or specialty grocery store. This Take-Out Food use includes the area devoted to food preparation and service and excludes storage and waiting areas;

(iv) Any Take-Out Food use, as defined in Section 790.122, except for a Take-Out Food use operating as a minor and incidental use within a Restaurant or Limited-Restaurant use;

(v) The wholesaling, manufacturing or processing of foods, goods, or commodities on the premises of an establishment which does not also use or provide for retail sale of such foods, goods or commodities at the same location where such wholesaling, manufacturing or processing takes place. *Notwithstanding this or any other limitation in this Section 703.2(b)(1)(C) relating to accessory uses, a food processing use as defined in Section 790.54(a)(1) located on the west side of Noe Street between 16th Street and Beaver Street may be allowed on the ground floor as an accessory use to a non-residential establishment located within 300 feet of the food processing use so long as such food processing use is set back from the front property line by no less than 15 feet; provided further that authorization for such accessory use shall be subject to the notice requirements of Sections 312(d) and (e). This provision authorizing an off-site accessory food processing use shall be repealed one year after its initial effective date, unless the Board of Supervisors, on or before that date, extends or re-enacts this provision.*

(vi) Any retail liquor sales, as defined in Section 790.55, except for beer, wine, and/or liquor sales for the consumption off the premises with a State of California Alcoholic Beverage Control ("ABC") Board License type (off-sale beer and wine) or type 21 (off-sale general) which occupy less that 15% of the gross square footage of the establishment (including all areas devoted to the display and sale of alcoholic beverages) in a general grocery store or specialty grocery store, or Limited-Restaurant use (ABC license type 20 only).

(vii) Medical Cannabis Dispensaries as defined in 790.141.

The foregoing rules shall not prohibit take-out food activity which operates in conjunction with a Limited-Restaurant or a Restaurant. A Limited-Restaurant or a Restaurant, by definition, includes take-out food as an accessory and necessary part of its operation.

(viii) Any other entertainment use, as defined in Section 790.38, except for one that involves a Limited Live Performance Permit as set forth in Police Code Section 1060 *et seq.*

(D) **Temporary Uses.** Temporary uses are permitted uses, subject to the provisions set forth in Section 205 of this Code.

(2) **Not Permitted Uses.**

(A) Uses which are not specifically listed in this Article are not permitted unless they qualify as a nonconforming use pursuant to Sections 180 through 186.1 of this Code or are determined by the Zoning Administrator to be permitted uses in accordance with Section 307(a) of this Code.

(B) No use, even though listed as a permitted use, shall be permitted in a Neighborhood Commercial District which, by reason of its nature or manner of operation, creates conditions that are hazardous, noxious, or offensive through the emission of odor, fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste, or excessive noise.

(C) The establishment of a use that sells alcoholic beverages, other than beer and wine, concurrent with motor vehicle fuel is prohibited, and shall be governed by Section 229. Except in the SoMa NCT, where these uses are permitted accessory uses.

Section 4. The Planning Code is hereby amended by amending Sections 733.10, 733.17, 733.48 and 733.69 to read as follows:

SEC. 733. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT ZONING CONTROL TABLE

| | | | Upper Market Street |
|---|---|---|---|
| No. | Zoning Category | § References | Controls |
| **BUILDING STANDARDS** | | | |
| 733.10 | Height and Bulk Limit | §§ 102.12, 105, 106, 250 - 252, 260, 261.1, ~~263.18~~263.20, 270, 271 | Varies See Zoning Map: Height Sculpting on Alleys; § 261.1 Additional 5' Height Allowed for Ground Floor Active Uses in 40-X and 50-X; § ~~263.18~~263.20 |

* * * *

| | | | |
|---|---|---|---|
| 733.17 | Street Trees | - | Required § ~~143~~138.1 |

* * * *

| No. | Zoning Category | § References | Upper Market Street | | |
|---|---|---|---|---|---|
| | | | Controls by Story | | |
| | | § 790.118 | 1st | 2nd | 3rd+ |
| **Retail Sales and Services** | | | | | |
| 733.48 | Other Entertainment | § 790.38 | ~~C#~~C | - | - |
| 733.69 | Tobacco Paraphernalia Establishments | § 790.123 | C | | |

* * * *

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* * * *

SPECIFIC PROVISIONS FOR THE UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT

* * * *

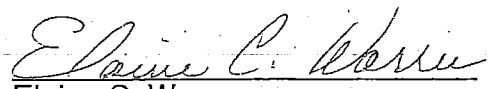
| | | |
|---|---|---|
| ~~§ 733.48~~ | ~~-~~ | ~~Boundaries: Applicable for the Upper Market Street NCT.~~<br>~~Controls: Existing bars in the Upper Market Street Neighborhood Commercial Transit District will be allowed to apply for and receive a place of entertainment permit from the Entertainment Commission without obtaining conditional use authorization from the Planning Commission if they can demonstrate to the satisfaction of the Entertainment Commission that they have been in regular operation as an entertainment use prior to January 1, 2004; provided, however, that a conditional use is required (1) if an application for a conditional use for the entertainment use was filed with the Planning Department prior to the date this ordinance was introduced or (2) if a conditional use was denied within 12 months prior to the effective date of this ordinance.~~ |

* * * *

Section 5. Effective Date. This ordinance shall become effective 30 days from the date of passage.

Section 6. This section is uncodified. In enacting this Ordinance, the Board intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams, or any other constituent part of the Planning Code that are explicitly shown in this legislation as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the legislation.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
Elaine C. Warren
Deputy City Attorney

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FILE NO. 120901

# REVISED LEGISLATIVE DIGEST

(4/15/2013, Amended in Committee)

[Planning Code - Upper Market Zoning]

**Ordinance amending 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 Neighborhood Commercial Transit District; Section 703.2(b), to permit in a limited area food processing as an accessory use to a nearby off-site non-residential use; Section 733, making clerical corrections in tables; and making environmental findings, Planning Code, Section 302, findings, and findings of consistency with the General Plan and the priority policies of Planning Code, Section 101.1.**

## Existing Law

Sections 721.1 and 733.1 of the Planning Code describe the nature of the land use controls in the Upper Market Street Neighborhood Commercial District (Upper Market NCD) and the Upper Market Street Neighborhood Commercial Transit District (Upper Market NCT), respectively. The Upper Market NCD is found from approximately Castro Street to Noe Street along Market Street and the Upper Market NCT is found from approximately Noe Street to Church Street along Market Street. The controls in these two districts are the same with the exception of the allowance for greater residential use densities in the Upper Market NCT as compared to the Upper Market NCD.

Section 703.2(b) of the Planning Code describes use limitations in the Neighborhood Commercial Districts. Section 703.2(b)(1)(C) addresses accessory uses. One limitation on accessory uses is that the accessory use must be located on the same lot of the lawfully permitted use to which it is necessary to the operation or enjoyment or appropriate, incidental and subordinate. Section 703.2(b)(1)(C)(v) further provides that food processing as an accessory use must provide for retail sale of the processed food on the same site.

## Amendments to Current Law

The legislation would make minor amendments to the text of Sections 721.1 and 733.1 to revise the geographic location description of the two zoning districts. Companion legislation proposes to rezone most of the Upper Market NCD to Upper Market NCT land use controls. Consequently, the Upper Market NCD would be limited to parcels found at the northwest corner of Castro Street and Market Street, and the Upper Market NCT would include properties on or near Market Street from approximately Church Street to Castro Street.

The legislation also makes four clerical corrections to tables that are found in Section 733.

The amendment to Section 703.2(b)(1)(C)(v) would create a limited exception to the requirement that an accessory use must be located on the same site as the permitted use and that in the case of food processing, it must be accessory to an on-site retail use. The amendment would allow a food processing use to function as an accessory use to a nearby but off-site non-residential use. The provision limits the exception to a one block area on Noe Street near Market Street and requires the off-site accessory use to be within 300 feet of the permitted use and set back 15 feet from the front of the property. The amendment expressly provides that one seeking approval of such accessory use will be subject to the notice provisions in Planning Code Section 312(d) and (3). Further, the provision is repealed one year after its effective date, unless the Board extends or re-enacts the exception.

Background Information

The intent of the amendments to Sections 721.1 and 733.1 and the companion legislation is to simplify the zoning along most of the Upper Market area. The two zoning districts are essentially the same except for the differences in residential density controls and there is no longer a planning rationale for the distinction. A height and bulk change for the one corner lot in the companion legislation is to allow for higher ground floor ceiling heights in keeping with good urban design principles.

# SAN FRANCISCO
# PLANNING DEPARTMENT

## Certificate of Determination
## EXCLUSION/EXEMPTION FROM ENVIRONMENTAL REVIEW

1650 Mission St.
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San Francisco,
CA 94103-2479

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| | |
|---|---|
| *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 |
| *Staff Contact:* | Kei Zushi – (415) 575-9036<br>kei.zushi@sfgov.org |

### 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

February 13, 2013
Date

cc: Sophie Hayward, San Francisco Planning Dept.
District 8 Supervisor Scott Wiener
Distribution List
Virna Byrd, M.D.F

## 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.[1]

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)[2], located on the west side of Noe Street between 16th 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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[1] 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.

[2] 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.[3]

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

[3] Per Planning Code Section 703.2(b)(1)(C), Accessory Uses are prohibited in Section 728 (24th 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.[4] 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.[5,6] 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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[4] San Francisco Board of Supervisors. *Ordinance No. 92-04, Ordinance to Designate 2362 Market Street, the Jose Theater/Nunes 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. Accessed January 25, 2013.

[5] 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.

[6] 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.[7] The shadow analysis found that shadows cast by the proposed project would not shade Section 295 Open Space.[8]

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.[9] 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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[7] 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.

[8] 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.

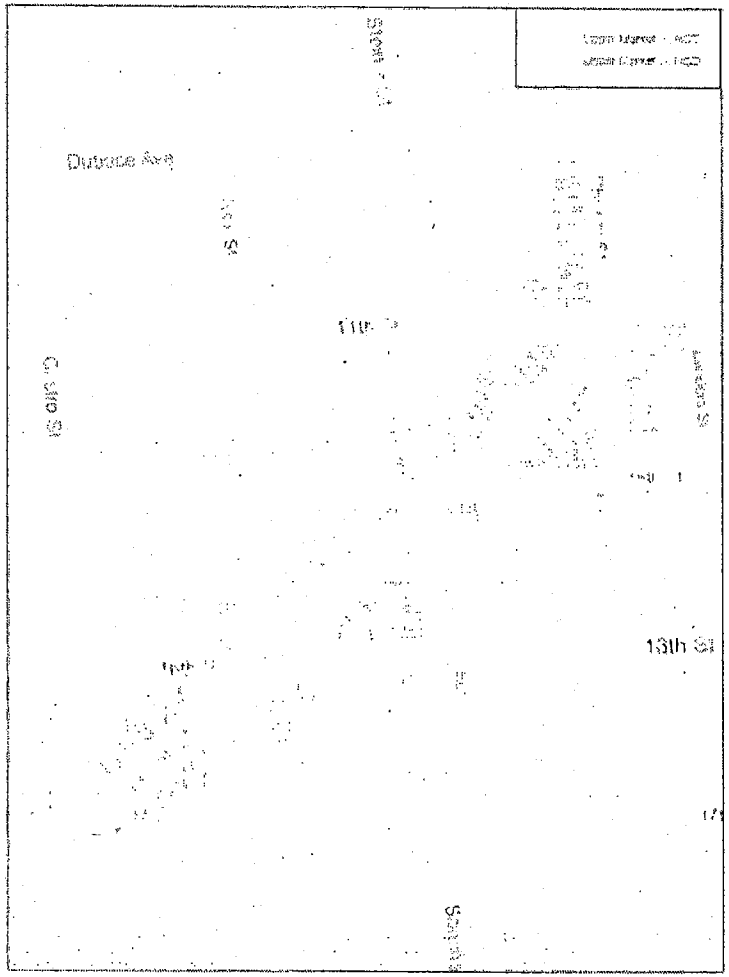
[9] Terry Asten Bennett, President, MUMC. *Comment Letter to Sophie Hayward and Kei Zushi, Staff Planners*, January 28, 2013. This document is available for review as part of Case File No. 2012.1306E at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California 94103.

Figure 1

Upper Market St NCD & NCT



BEFORE

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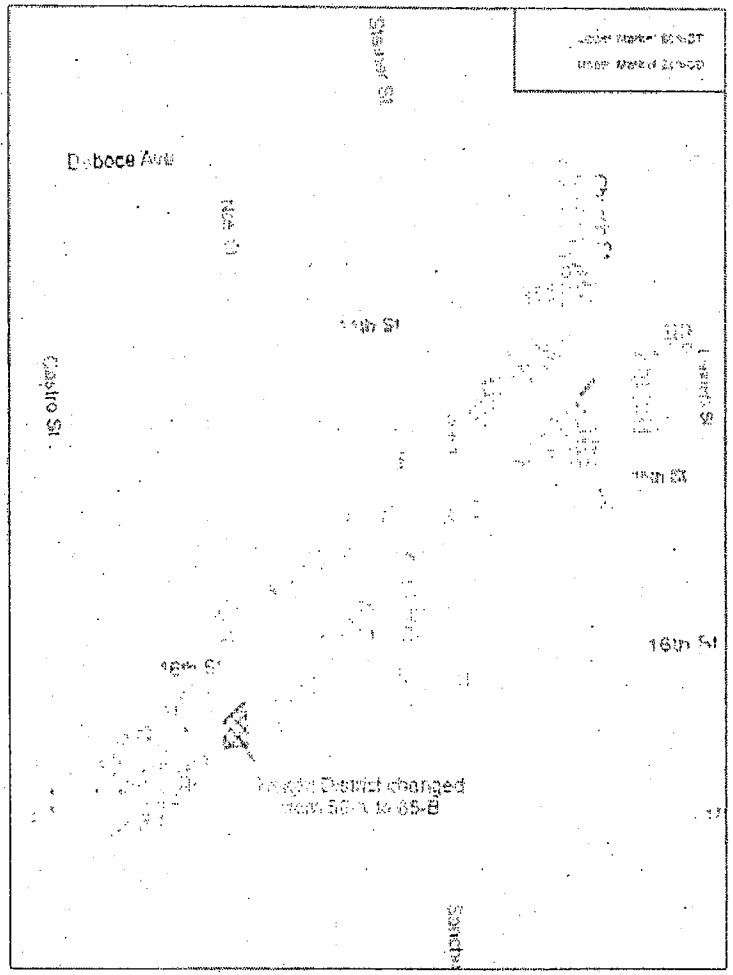



Created: 18 October 2012

Figure 2

Existing and Proposed Height/Bulk Districts

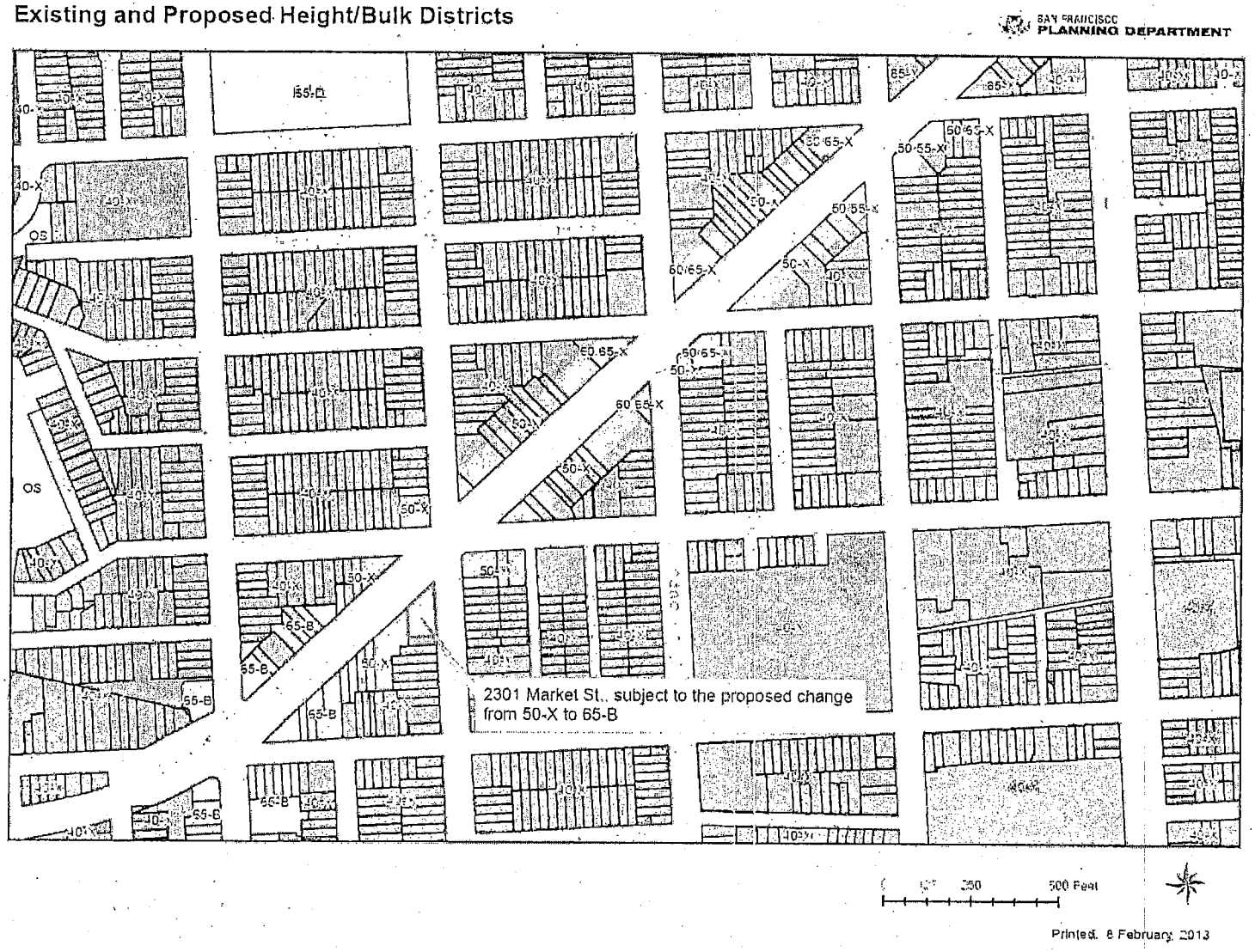
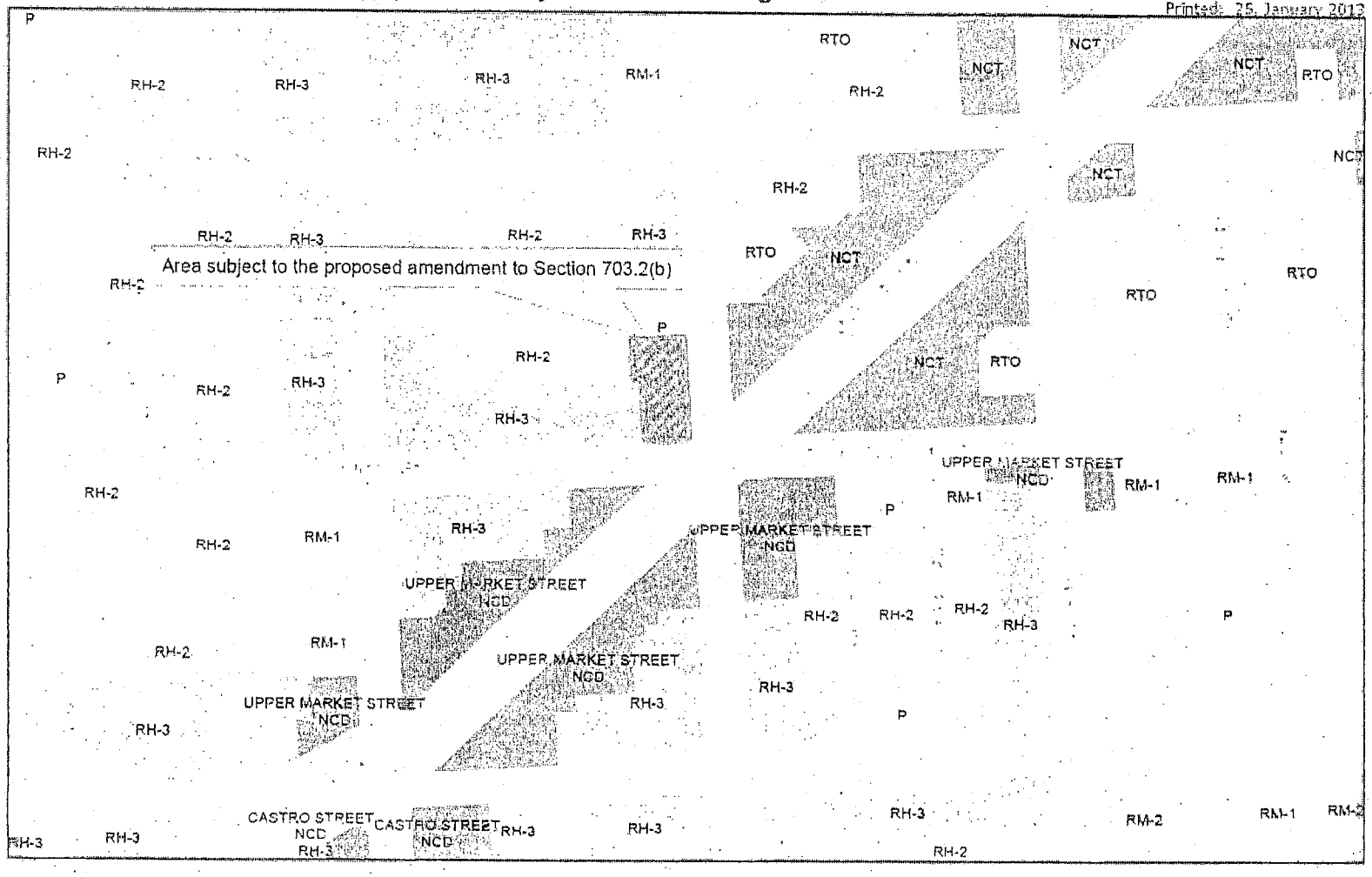


Figure 3

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

SAN FRANCISCO
PLANNING DEPARTMENT

Printed: 25 January 2013



# 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.

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,

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**

| | |
|---|---|
| *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<br>sophie.hayward@sfgov.org, 415-558-6257 |
| *Reviewed by:* | AnMarie Rodgers, Manager Legislative Affairs<br>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 15th Streets: Block 3542, Lot 039; Block 3558, Lots 137-152; Block 3559, 001; Block 3560, Lot 001;
   - Corner of Market, Church, and 14th 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 14th 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**

# Executive Summary
## Planning Code and Zoning Map Amendments
**HEARING DATE: FEBRUARY 21, 2013**

1650 Mission St.
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| | |
|---|---|
| *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<br>sophie.hayward@sfgov.org, 415-558-6257 |
| *Reviewed by:* | AnMarie Rodgers, Manager Legislative Affairs<br>anmarie.rodgers@sfgov.org, 415-558-6395 |
| *Recommendation:* | **Recommend Approval with Modifications** |

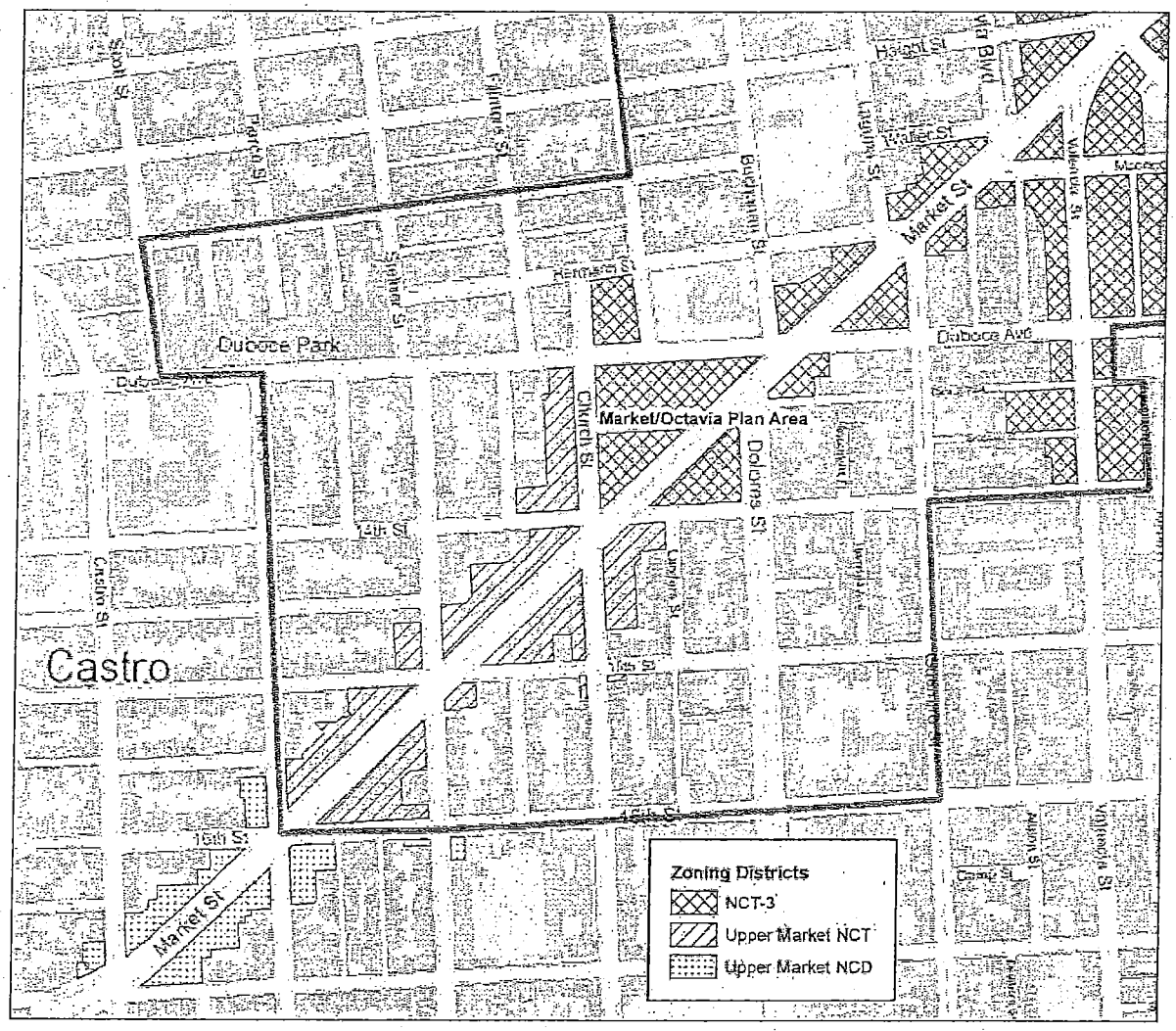
## PLANNING CODE AMENDMENT

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[1]. 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 16th 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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[1] 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[2], 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.[3] 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 17th 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 Section145.1(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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[2] 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.

[3] 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 (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

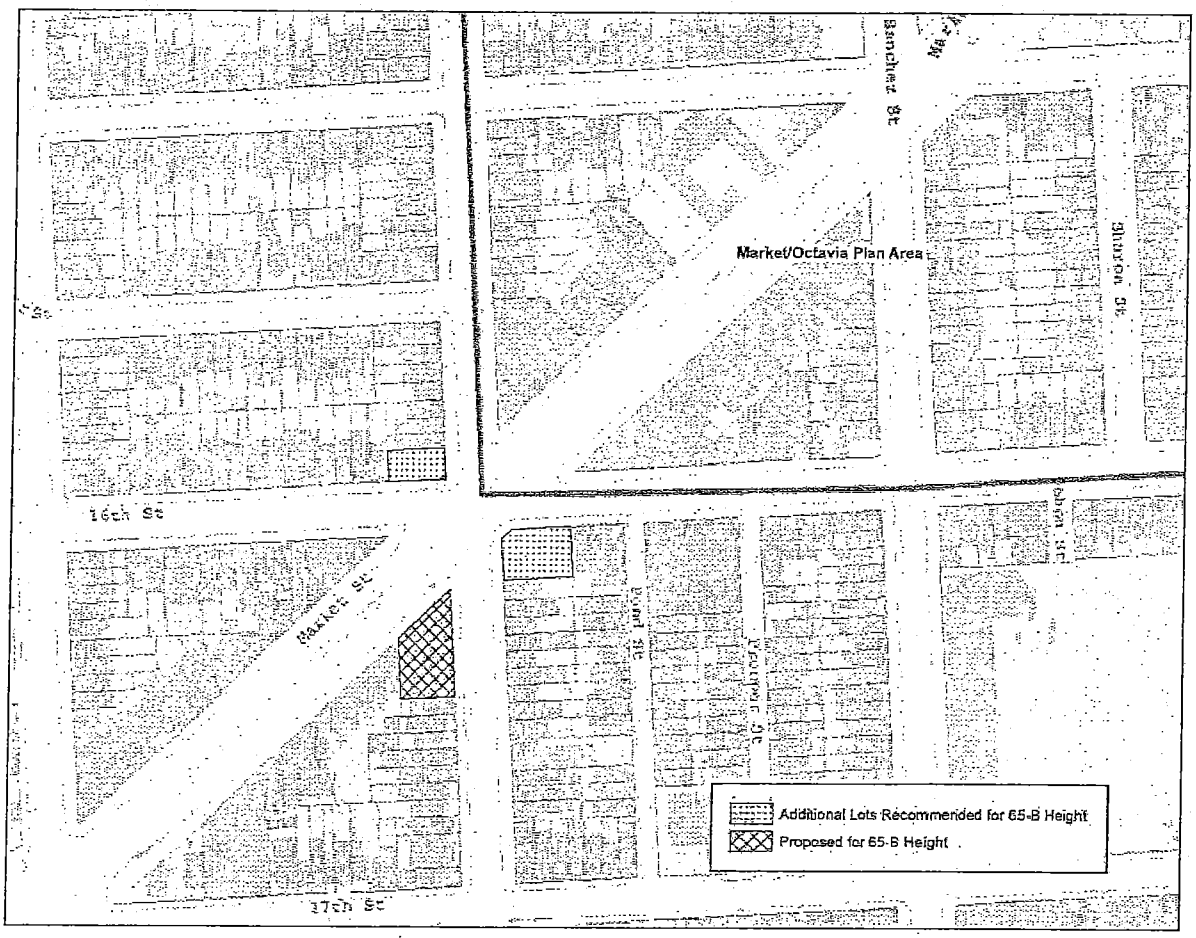
1. **Zoning Height Limits: Principals from the Market & Octavia Plan & Historic Survey Integration**

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.[4] The Survey Integration resulted in allowing

[4] 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 16th 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.

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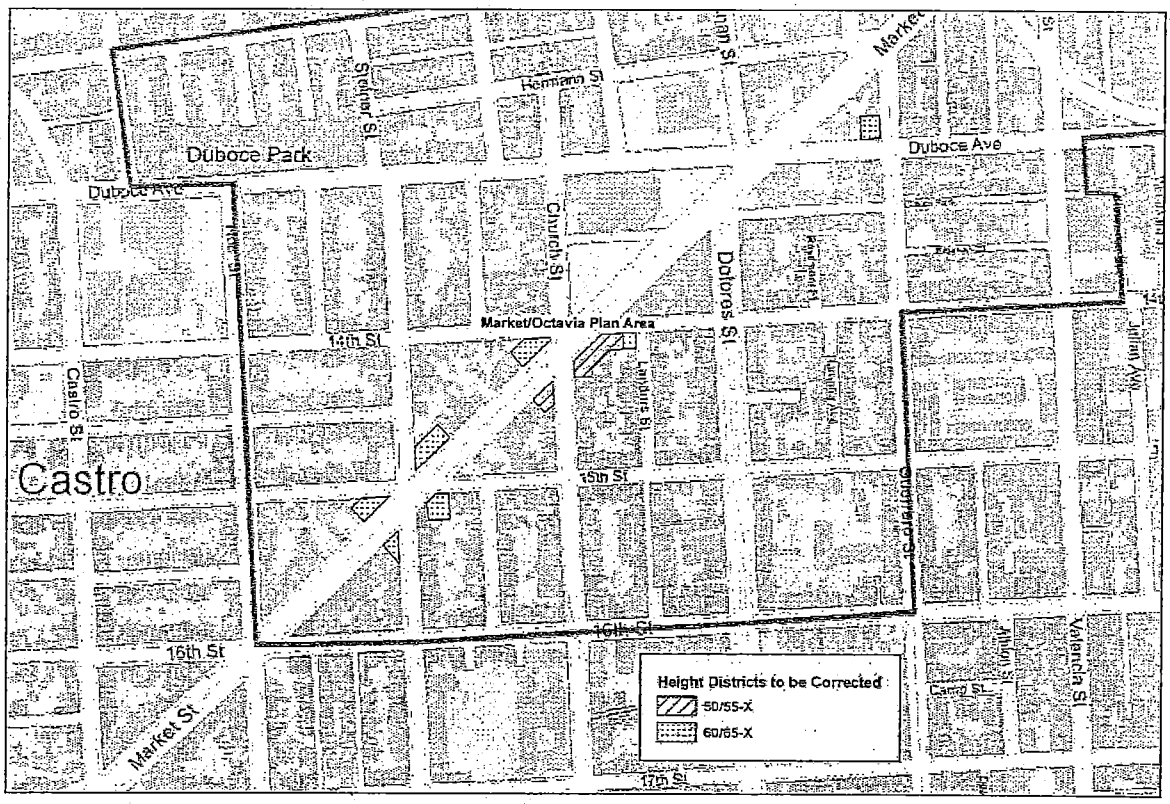
Commission, and the Board of Supervisors that higher height limits at corner parcels would promote compatible development on non-contributing sites within historic districts. For a more in-depth discussion of this particular issue, please see the materials associated with Case No. 2009.0707MZ for the 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:
    - Corner of Market, Sanchez, and 15th Streets: Block 3542, Lot 039; Block 3558, Lots 137-152; Block 3559, 001; Block 3560, Lot 001;
    - Corner of Market, Church, and 14th Streets: Block 3542, Lot 041; Block 3544, Lots 105-119.
    - 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.
    - Corner of Market, Church, and 14th 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)[5]. 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.

| RECOMMENDATION: | Recommendation of Approval with Modifications |
|---|---|

**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 |

[5] 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.

4/15/13
Received in
Committee

From: Ron Schmidt <ronstreehouse@earthlink.net>
Subject: **Preserving Cafe Flore ...**
Date: April 15, 2013 12:06:47 PM PDT
To: City of San Francisco Board of Supervisors

Dear Supervisors:

San Francisco has been my home for the last 16 years, the Castro my neighborhood and Cafe Flore the soul of the Castro. I cannot imagine my day without the camaraderie of this funky, laid back and welcoming venue. Whether my mood is up, fair-to-middlin' or down, I find nourishment for my body and my spirit in this remarkable space. The baristas, to a person, know my cappuccino order before I reach the register and the kitchen staff, the particulars of whether I will have toast or crackers with the steaming, delicious vegetarian soups ... oil instead of wine dressing on my avocado or beet salad. Warm greetings and equally warm smiles all around, even from the diligent cooks as they glance up from the splendors they place on the plates. The mood ever and always welcoming. Cafe Flore staff are extended family whether cooking, serving or bussing the tables.

But that's only part of the picture. Invariably I have a friend or two ... or more stop to share my table and catch up on each other's lives. Often these are friends I first met at Cafe Flore as I write in my Journal or catch up on my reading. Often, in fact, I am caught up in conversation with visitors from Montreal, Paris, Florence, Zurich, Hong Kong ... Cafe Flore brings together people from all over the world ... and I'm still in touch with many of them.

Most recently, as I sat on the patio sipping cappuccinos and lattes with four friends, I noticed a couple crossing Market Street holding hands as they chatted and came through the Cafe gate. I turned 76 on my last birthday and was nearly 40 when I came out. It is still thrilling for me to live in a community where people feel free and safe to be who they are. I get an actual rush when I see two men holding each other's hand across the table or women burst into laughter as they embrace or families ... straight or gay ... sharing the space comfortably with one another.

George Carlin once said: "Life is not measured by the number of breaths we take, but by the moments that take our breath away." And that's what Cafe Flore does for me ... provides me endless moments that take my breath away and fill my soul with warmth.

From my heart ...

Ron Schmidt

Ron Schmidt
415-587-6275
515 John Muir Drive, A501
San Francisco, CA 94132



120901
120902

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

October 22, 2012

**File Nos. 120901 & 120902 (Version 2)**

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On October 16, 2012, Supervisor Wiener introduced the following substitute legislation:

**File No. 120901-2**

Ordinance amending the San Francisco 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 Neighborhood 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) making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

**File No. 120902-2**

Ordinance amending the 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 Neighborhood Commercial District to the Upper Market Neighborhood Commercial Transit District, and to change the height and bulk classification of Assessor's Block No. 3563, Lot No. 034 from 50-X to 65-B; and adopting findings, including environmental findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

This legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning

BOARD of SUPERVISORS

City Hall
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San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

September 19, 2012

Planning Commission
Attn: Linda Avery
1660 Mission Street, 5th Floor
San Francisco, CA 94103

Dear Commissioners:

On October 16, 2012, Supervisor Wiener introduced the following substitute legislation:

**File No. 120901-2**

Ordinance amending the San Francisco 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 Neighborhood 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) making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

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The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

c: John Rahaim, Director of Planning
Scott Sanchez, Zoning Administrator
Bill Wycko, Chief, Major Environmental Analysis
AnMarie Rodgers, Legislative Affairs
Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

# MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Chris Schulman, Commission Secretary
**Small Business Commission, City Hall, Room 448**

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: October 22, 2012

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use & Economic Development Committee

The Board of Supervisors' Land Use and Economic Development Committee has received the following, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

**File No. 120901-2**

Ordinance amending the San Francisco 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 Neighborhood 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) making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

**File No. 120902-2**

Ordinance amending the 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 Neighborhood Commercial District to the Upper Market Neighborhood Commercial Transit District, and to change the height and bulk classification of Assessor's Block No. 3563, Lot No. 034 from 50-X to 65-B; and adopting findings, including environmental findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

**********

**RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____**

**____ No Comment**
**____ Recommendation Attached**

**_____**
**Chairperson, Small Business Commission**

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

# MEMORANDUM

TO: Ed Reiskin, Director, Municipal Transportation Agency

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: October 22, 2012

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

---

The Board of Supervisors' Land Use and Economic Development Committee has received the following substitute legislation, introduced by Supervisor Wiener on October 16, 2012, which is being forwarded to your department for informational purposes.

**File No. 120901-2**

Ordinance amending the San Francisco 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 Neighborhood 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) making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

**File No. 120902-2**

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If you have any additional reports or comments to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Kate Breen, Government Affairs Manager, Municipal Transportation Agency
Janet Martinsen, Government Affairs Liaison, Municipal Transportation Agency

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

September 19, 2012

**File Nos. 120901 & 120902**

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On September 11, 2012, Supervisor Wiener introduced the following proposed legislation:

**File No. 120901**

Ordinance amending the San Francisco Planning Code by 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 Neighborhood Commercial Transit District, and making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

**File No. 120902**

Ordinance amending the San Francisco Planning Code Sectional Map Sheets ZN07 and HT07 to change the use classification of specified lots on Block No. 2623 and Block Nos. 3561 through 3565, now in the Upper Market Neighborhood Commercial District to the Upper Market Neighborhood Commercial Transit District, and to change the height and bulk classification of Block No. 3563, Lot No. 034 from 50-X to 65-B; and adopting findings, including environmental findings and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

This legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning

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Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

September 19, 2012

Planning Commission
Attn: Linda Avery
1660 Mission Street, 5th Floor
San Francisco, CA 94103

Dear Commissioners:

On September 11, 2012, Supervisor Wiener introduced the following proposed legislation:

**File No. 120901**

Ordinance amending the San Francisco Planning Code by 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 Neighborhood Commercial Transit District, and making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

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Ordinance amending the San Francisco Planning Code Sectional Map Sheets ZN07 and HT07 to change the use classification of specified lots on Block No. 2623 and Block Nos. 3561 through 3565, now in the Upper Market Neighborhood Commercial District to the Upper Market Neighborhood Commercial Transit District, and to change the height and bulk classification of Block No. 3563, Lot No. 034 from 50-X to 65-B; and adopting findings, including environmental findings and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

c: John Rahaim, Director of Planning
Scott Sanchez, Zoning Administrator
Bill Wycko, Chief, Major Environmental Analysis
AnMarie Rodgers, Legislative Affairs
Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

# MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Chris Schulman, Commission Secretary
**Small Business Commission, City Hall, Room 448**

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: September 19, 2012

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use & Economic Development Committee

The Board of Supervisors' Land Use and Economic Development Committee has received the following, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

**File No. 120901**

Ordinance amending the San Francisco Planning Code by 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 Neighborhood Commercial Transit District, and making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

**File No. 120902**

Ordinance amending the San Francisco Planning Code Sectional Map Sheets ZN07 and HT07 to change the use classification of specified lots on Block No. 2623 and Block Nos. 3561 through 3565, now in the Upper Market Neighborhood Commercial District to the Upper Market Neighborhood Commercial Transit District, and to change the height and bulk classification of Block No. 3563, Lot No. 034 from 50-X to 65-B; and adopting findings, including environmental findings and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

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**RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____**

____ **No Comment**

____ **Recommendation Attached**

_____

**Chairperson, Small Business Commission**

BOARD of SUPERVISORS

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# MEMORANDUM

TO: Ed Reiskin, Director, Municipal Transportation Agency

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: September 19, 2012

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Economic Development Committee has received the following proposed legislation, introduced by Supervisor Wiener on September 11, 2012, which is being forwarded to your department for informational purposes.

**File No. 120901**

Ordinance amending the San Francisco Planning Code by 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 Neighborhood Commercial Transit District, and making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

**File No. 120902**

Ordinance amending the San Francisco Planning Code Sectional Map Sheets ZN07 and HT07 to change the use classification of specified lots on Block No. 2623 and Block Nos. 3561 through 3565, now in the Upper Market Neighborhood Commercial District to the Upper Market Neighborhood Commercial Transit District, and to change the height and bulk classification of Block No. 3563, Lot No. 034 from 50-X to 65-B; and adopting findings, including environmental findings and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

If you have any additional reports or comments to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Kate Breen, Government Affairs Manager, Municipal Transportation Agency
Janet Martinsen, Government Affairs Liaison, Municipal Transportation Agency

1/15/13 - Supervisor Wiener Amendments

File Nos. 120901 & 120902

**Items #2 and 3 – Upper Market Zoning and Map Change - AMENDMENTS**

1. Amend the Upper Market NCT Zoning Control Table Section 733.10 "Height and bulk Limit" to refer to Section 263.20 instead of 263.18. This is just a clerical correction.

2. Amend the Upper Market NCT Zoning Control Table Section 733.17, "Street Trees," to refer to Section 138.1, rather than Section 143. This is just a clerical correction.

3. Amend the Upper Market NCT Zoning Control Table Section 733.48, "Other Entertainment," to remove the "#" reference to the provision to allow bars with the Upper Market NCT to apply for and receive an entertainment permit without obtaining a CU. This is just a clerical correction.

4. Amend the Upper Market NCT Zoning Control Table to include Section 733.69 to include restrictions on Tobacco Paraphernalia Establishments. This section of the Zoning Table was inadvertently deleted.

5. Amend the height control for block and lot number 3563-034, as listed on page 4, lines 16-18, on file number 120902 from what is proposed in the ordinance as 65-B to 62-B.

Print Form

# Introduction Form

**By a Member of the Board of Supervisors or the Mayor**

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

☐ 1. For reference to Committee: _____

An ordinance, resolution, motion, or charter amendment.

☐ 2. Request for next printed agenda without reference to Committee.

☐ 3. Request for hearing on a subject matter at Committee: _____

☐ 4. Request for letter beginning "Supervisor _____ inquires"

☐ 5. City Attorney request.

☐ 6. Call File No. _____ from Committee.

☐ 7. Budget Analyst request (attach written motion).

☒ 8. Substitute Legislation File No. 120901

☐ 9. Request for Closed Session (attach written motion).

☐ 10. Board to Sit as A Committee of the Whole.

☐ 11. Question(s) submitted for Mayoral Appearance before the BOS on _____

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☐ Planning Commission ☐ Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.**

**Sponsor(s):**

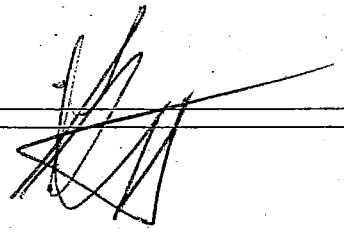
Supervisor Wiener

**Subject:**

Planning Code -- Upper Market Zoning

**The text is listed below or attached:**

Ordinance amending the San Francisco 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 Neighborhood 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) making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

Print Form

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

☒ 1. For reference to Committee: Land Use & Economic Development

An ordinance, resolution, motion, or charter amendment.

☐ 2. Request for next printed agenda without reference to Committee.

☐ 3. Request for hearing on a subject matter at Committee:

☐ 4. Request for letter beginning "Supervisor inquires"

☐ 5. City Attorney request.

☐ 6. Call File No. from Committee.

☐ 7. Budget Analyst request (attach written motion).

☐ 8. Substitute Legislation File No.

☐ 9. Request for Closed Session (attach written motion).

☐ 10. Board to Sit as A Committee of the Whole.

☐ 11. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☐ Planning Commission ☐ Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.**

**Sponsor(s):**

Supervisor Wiener

**Subject:**

PLANNING CODE – UPPER MARKET ZONING

**The text is listed below or attached:**

Ordinance amending the San Francisco Planning Code by 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 Neighborhood Commercial Transit District, and making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1

Signature of Sponsoring Supervisor:

For Clerk's Use Only:

120901