



SAN FRANCISCO PLANNING DEPARTMENT

June 17, 2013

Ms. Angela Calvillo, Clerk
Supervisor London Breed
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 Board File No. 120796, Version 3; Planning Case No. 2012.0950TZ
Divisadero Street NCD
Planning Commission Recommendation: *Approval with modifications***

1650 Mission St.
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San Francisco,
CA 94103-2479

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Dear Ms. Calvillo and Supervisor Breed;

On June 13, 2013, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Breed.

The proposed Ordinance would create a new named Neighborhood Commercial District along Divisadero Street from Haight Street to O'Farrell Street. The Commission heard the original version of this Ordinance on November 29, 2012, the outcome of which was transmitted to the Clerk of the Board on December 4, 2012.

The proposed Ordinance would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15061(b)(3) of the CEQA Guidelines.

At the June 13, 2013 hearing, the Commission adopted Resolution Number 18906 with a recommendation of approval with modifications to the Board of Supervisors for the proposed ordinance. This recommendation is based on the proposed Ordinance as well as a memo sent by Supervisor Breed to the Planning Commission outlining some proposed changes to the Ordinance (see attachment).

Specifically, the Commission recommended that the Board of Supervisors modify Supervisor Breed's proposed Ordinance [Board File No. 120796, Version 3] by incorporating the changes proposed by the Planning Commission, which are as follows:

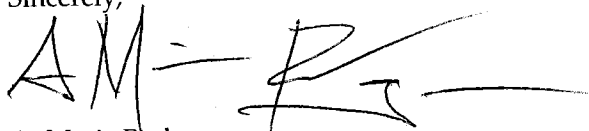
1. Recommend that the Board of Supervisor codify the pre-application meeting requirement in the Planning Code, by adding the following language to Planning Code Sections 303(i), 703.3 and 803.6 that states:

"Prior to accepting a Conditional Use application for Formula Retail, the Planning Department will verify that the applicant has conducted a pre-application meeting, per the specifications outlined in the Planning Commission's Pre-Application Meeting policy."

2. Recommend that a criteria be added to Section 303(i)(3) stipulating that the Planning Commission shall pay attention to the input of the community and merchants groups. This recommendation removes the "particular" from the language proposed by Supervisor Breed and makes it apply to all Formula Retail Conditional Use applications
3. Recommend that the Board of Supervisor not codify a "Planning staff predilection for disapproval such that staff only recommends approval of a formula retail application if there is a demonstrated overriding need or public support for the particular use."
4. Eliminate the Formula Retail ban from the proposed Ordinance and state that the Commission will proceed with adopting a similar policy for the Divisadero NCD that was adopted for the Upper Market Neighborhood.

The Department recommends that the legislative sponsors advise the City Attorney at your earliest convenience if you wish to incorporate any changes recommended by the Commission. This electronic copy is our transmittal to the Board of Supervisors. Per instructions by the Clerk of the Board, no hard copies will be provided; however hardcopies will be provided upon request. Attached are documents relating to the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,



AnMarie Rodgers
Manager of Legislative Affairs

cc: Alisa Miller, Assistant Clerk
Conor Johnston, Aide to Supervisor Breed
Judith A. Boyajian, Deputy City Attorney

Attachments [one copy of each of the following]
Planning Commission Resolution Number 18906
Planning Commission Executive Summary
Memo from Supervisor Breed



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18906

HEARING DATE: JUNE 13, 2013

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Project Name: **Amendments relating to the proposed Divisadero Street NCDs**
Case Number: 2012.0950TZ [Board File No. 12-0796 Version 3]
Initiated by: Supervisor Breed/ Reintroduced February 26, 2013
Staff Contact: Aaron Starr, Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation: **Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE WITH MODIFICATIONS THAT WOULD AMEND THE SAN FRANCISCO PLANNING CODE BY: 1) ADDING SECTION 743.1 TO ESTABLISH THE DIVISADERO NEIGHBORHOOD COMMERCIAL DISTRICT; 2) REPEALING THE DIVISADERO STREET ALCOHOL RESTRICTED USE DISTRICT ESTABLISHED IN SECTION 783; 3) AMENDING SECTION 151.1 AND A PORTION OF TABLE 151.1, SECTIONS 263.20, 607.1(F), AND 702.3, THE SPECIFIC PROVISIONS OF THE SECTION 711 ZONING CONTROL TABLE, AND SECTION 790.55 TO MAKE CONFORMING AND OTHER TECHNICAL CHANGES; 4) AMENDING SHEETS ZN02 AND ZN07 OF THE ZONING MAP TO INCLUDE THE DIVISADERO NEIGHBORHOOD COMMERCIAL DISTRICT; 5) AMENDING SHEET SU02 OF THE ZONING MAP TO DELETE THE DIVISADERO STREET ALCOHOL RESTRICTED USE SUD; AND 6) ADOPTING 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.

PREAMBLE

Whereas, on July 24, 2012, Former District 5 Supervisor Olague introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 12-0796 which would amend the San Francisco Planning Code by 1) adding Section 743.1 to establish the Divisadero Neighborhood Commercial District; 2) repealing the Divisadero Street Alcohol Restricted Use District established in Section 783; 3) amending Section 151.1 and a portion of Table 151.1, Sections 263.20, 607.1(f), and 702.3, the Specific Provisions of the Section 711 Zoning Control Table, and Section 790.55 to make conforming and other technical changes; 4) amending Sheets ZN02 and ZN07 of the Zoning Map to include the Divisadero Neighborhood Commercial District; 5) amending Sheet SU02 of the Zoning Map to delete the Divisadero Street Alcohol Restricted Use SUD; and 6) adopting 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; and

Whereas, on November 29, 2012, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance and recommended approval with modifications of the proposed Ordinance; and

Whereas, on February 26, 2013, Supervisor Breed introduced a substitute version of the proposed Ordinance incorporating the Planning Commission's recommendations as well as including a ban on all Formula Retail in the proposed Divisadero Street NCD; and

Whereas on April 25, 2013, Supervisor Breed send the Planning Department a memo outlining additional modifications to the proposed Ordinance; and

Whereas, on June 13, 2013, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed revised Ordinance; and

Whereas, on October 23, 2012, the Project was determined to be exempt from the California Environmental Quality Act ("CEQA") under the General Rule Exclusion (CEQA Guidelines Section 15061(b)(3)) as described in the determination contained in the Planning Department files for this Project; and

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

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

Whereas, the Commission has reviewed the proposed Ordinance; and

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

The proposed modifications include:

1. Recommend that the Board of Supervisor codify the pre-application meeting requirement in the Planning Code, by adding the following language to Planning Code Sections 303(i), 703.3 and 803.6 that states:

"Prior to accepting a Conditional Use application for Formula Retail, the Planning Department will verify that the applicant has conducted a pre-application meeting, per the specifications outlined in the Planning Commission's Pre-Application Meeting policy."

2. Recommend that a criteria be added to Section 303(i)(3) stipulating that the Planning Commission shall pay attention to the input of the community and merchants groups. This recommendation removes the "particular" from the language proposed by Supervisor Breed and makes it apply to all Formula Retail Conditional Use applications

3. Recommend that the Board of Supervisor not codify a “Planning staff predilection for disapproval such that staff only recommends approval of a formula retail application if there is a demonstrated overriding need or public support for the particular use.”
4. Eliminate the Formula Retail ban from the proposed Ordinance and state that the Commission will proceed with adopting a similar policy for the Divisadero NCD that was adopted for the Upper Market Neighborhood.

Pending ordinances which should be accommodated in this draft ordinance: This note is being provided as a courtesy to the City Attorney and the Clerk of the Board to help identify other Ordinances which may present conflicting amendments as the legislative process proceeds.

1. Sections 263.20 BF 120774 Permitting a Height Bonus in Castro Street and 24th Street NCDs
2. Sections 151.1, 702.1 BF Pending Western SoMa Plan
3. Sections 151.1, 263.20, 702.1, 702.3, 703.3 BF Pending Code Corrections Ordinance 2012
4. Sections 151.1, 263.20, 744.1, 607.1 BF 120796 Divisadero Street NCD

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:

- Individually named neighborhood commercial districts help to preserve and enhance the character of a neighborhood and a sense of identity.
- The Divisadero Street has been transformed over the past decade by changing demographics and increased involvement from merchants and residents. Creating a named neighborhood commercial district for the Divisadero Street would help continue this transformation and allow the neighborhood to more easily respond to emerging issues and concerns.
- The Commission’s role in evaluating Formula Retail applications is to take staff’s professional analysis and public comment into consideration when making its decision. Strict Formula Retail bans or numerical caps remove the Commission’s ability to take community sentiment into consideration.
- The Commission finds that Pre-application meetings are an important community outreach tool. They provide an opportunity for the community to hear and comment on proposals prior to their submittal to the Planning Department and they allow the applicant an opportunity to hear any concerns from the community prior to finalizing their proposal.
- Stipulating as a criteria that the Planning Commission shall pay attention to the input of the community and merchants groups for Formula Retail Conditional Use applications will reinforce the applicant’s responsibility to conduct appropriate levels of community outreach and give the issue greater attention in Staff’s analysis of the project; however the Commission does not recommend making this a weighted criteria. Placing greater emphasis on community input would hamper the Commission’s ability to weigh all of the criteria when making its decision. Certain public policy goals may be more important in any one case and the Commission is the Charter-authorized body to apply discretion to planning issues. As part of that the Commission is required to consider all factors when making its decision.

- The Commission finds that codifying a “planning staff predilection for disapproval unless there is overwhelming need or public support for the particular use” would be impractical to implement because it’s a highly subjective criterion. Further, a requirement like this would remove Staff’s impartiality and require planners to base their recommendation of approval or disapproval on a highly subjective criterion.

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

I. COMMERCE & INDUSTRY ELEMENT

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

OBJECTIVE 4

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

Policy 6.2

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

The proposed legislation would create an individually named Neighborhood Commercial District on Divisadero Street, which would help to preserve and enhance the character of a neighborhood and create a sense of identity. The proposed changes will also allow this neighborhood to more easily respond to economic and technological innovation in the marketplace and society.

Policy 6.6

Adopt specific zoning districts, which conform to a generalized neighborhood commercial land use and density plan.

As amended, the proposed NCD conforms to the generalized neighborhood commercial land use and density plan published in the General Plan.

2. The proposed replacement project is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:
 - A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed Ordinance does not propose significant changes to the controls in the subject Neighborhood Commercial Districts. However, creating named NCDs will allow the district to

respond more easily to emerging issues that may impact opportunities for resident employment in and ownership of neighborhood-serving retail uses.

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

The proposed legislation would create individually named Neighborhood Commercial Districts on Divisadero Street, which help to preserve and enhance the character of the various neighborhoods.

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

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

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

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

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

The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.

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

Preparedness against injury and loss of life in an earthquake is unaffected by the proposed Ordinance. Any new construction or alteration associated with a use would be executed in compliance with all applicable construction and safety measures.

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

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

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

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

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

Jonas P Ionin
Commission Secretary

AYES: Commissioners Borden, Hillis, Moore, Sugaya, Wu

NAYS: Commissioner Antonini

ABSENT: Commissioner Fong

ADOPTED: June 13, 2013



SAN FRANCISCO PLANNING DEPARTMENT

Memo to the Planning Commission

HEARING DATE: JUNE 13, 2013
Originally Heard on November 29, 2012

Project Name: **Amendments relating to the proposed Divisadero Street NCD**
Case Number: 2012.0950TZ [Board File No. 120796]
Initiated by: Supervisor Breed/ Re-introduced February 26, 2013
Staff Contact: Aaron Starr, Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
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Recommendation: **Recommend Approval with Modifications**

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BACKGROUND

Former District 5 Supervisor, Christine Olague, introduced the original version of this Ordinance on July 24, 2012. The Commission voted to recommend Approval with Modification on November 29, 2012. Subsequently, Supervisor Breed was elected Supervisor for District 5 and took over sponsorship of the Ordinance. Supervisor Breed then reintroduced the Ordinance on February 26, 2013 incorporating the Commission's recommendations and adding a new provision that would ban Formula Retail from the proposed Divisadero Street Neighborhood Commercial District. The Ordinance is back before the Commission so that they can review and make a recommendation on the revised Ordinance. While the entire Ordinance can be reconsidered by the Commission, the focus of this memo and Staff's presentation will be on the addition of the Formal Retail prohibition to the Ordinance.

The original Ordinance as reviewed by the Commission in November 2012 contained the following major provisions (see attached case report for more detail):

1. Created a new named Neighborhood Commercial District along Divisadero from Haight to O'Farrell Street.
2. Permit Bars, Restaurants, Limited-Restaurants, Movie Theaters, Other Entertainment, Philanthropic Administrative Services and Trade Shops on the second floor of buildings with no prior residential use.
3. Institute maximum parking controls within the Divisadero Street NCD, as outlined under Section 151.1.
4. Remove the Divisadero Street Alcohol Street Restricted Use Districts, but preserve the prohibition on new liquor stores in the new NCD. The Ordinance would remove the restrictions on the type of alcohol that can be sold in the Liquor Stores that already exist on Divisadero Street, which the Department has found difficult to enforce.
5. Maintain the prohibition on Fringe Financial Services in the proposed Divisadero Street NCD.

6. Provide a 5 foot height bonus for properties zoned 40-X along Divisadero Street. There are only two block on this stretch of Divisadero Street from Haight to Oak that are zoned 40-X. The rest of the blocks are zoned 65-X and would not be impacted by this provision.

The Commission voted 6 to 1, with Commissioner Antonini voting no, to recommend *Approval with Modifications*. The recommended modifications included the following in addition to some clerical modifications:

1. Modify the description of the proposed Divisadero to read: "All parcels currently zoned NC-2 on blocks 1100, 1101, 1126, 1127, 1128, 1129, 1153, 1154, 1155, 1156, 1179, 1180, 1181, 1182, 1201, 1202, 1203, 1204, 1215, 1216, 1217, 1218, 1237, 1238, 1239, and 1240."
2. Reinstate the "Good Neighbor Policies" for General and Specialty Groceries, which was inadvertently removed when the Ordinance was drafted. These policies are listed in the zoning control table for the proposed Divisadero Street NCD in the "SPECIFIC PROVISIONS" section.
3. Modify the Ordinance so that Bars, Restaurants, Limited-Restaurants, Movie Theaters, Other Entertainment, Philanthropic Administrative Services and Trade Shops are permitted on the second floor so long as they are not displacing "an existing residential unit," instead of allowing them only in a space where there was "no prior residential unit."

The revised Ordinance incorporates the Commission's previous recommendations. Therefore, the remainder of this report will focus on the new substantive change for Formula Retail.

CURRENT PROPOSAL

The Ordinance before the Commission is substantially the same as the original; however Supervisor Breed has integrated the Commission recommendations and included a provision that would ban all Formula Retail in the Divisadero Street NCD.

Since the revised Ordinance was introduced, Supervisor Breed sent the Department a memo detailing a revised proposal (see Exhibit E) that would eliminate the proposed Formula Retail ban in favor of codifying pre-application meetings, additional Conditional Use criteria¹ and having the Commission extend its policy on Formula Retail concentration in the Upper Market neighborhood to the Fillmore NCD. The additional conditional use criteria are as follows:

- Include a weighted condition in the Conditional Use stipulating that the Planning Commission shall pay particular attention to the input of the community and merchants groups and have a strong predilection toward disapproval.
- Codify a Planning staff predilection for disapproval such that staff only recommends approval of a formula retail application if there is a demonstrated overriding need or public support for the particular use.

¹ Supervisor Breed's memo uses the term "condition," however the Planning Code uses the term "criteria" when referring to the issues the Commission shall consider in assessing conditional use applications. For consistency with the Planning Code, the Department also uses the term criteria in this memo.

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.

ISSUES FOR CONSIDERATION

Formula Retail: Past and Present

The City has been struggling with how to regulate Formula Retail at least since the 1980s when the Neighborhood Commercial (NC) Districts were added to the Code. At that time, the main concern was over chain fast-food restaurants, so various restaurant definitions were added to the Code to either prohibit larger chain fast-food restaurants or limit them through the Conditional Use process. In 2004, the Board of Supervisors adopted San Francisco's first official Formula Retail use controls that established a Formula Retail definition and prohibited Formula Retail in one district while requiring Conditional Use authorization in another. In 2007, San Francisco voters approved Proposition G, which required any Formula Retail use desiring to locate in any NC district to obtain Conditional Use authorization. Most recently the Board of Supervisors passed an Ordinance (BF 120047) expanding the definition of Formula Retail so that it included Financial Services (most commonly, banks) and expanded the Formal Retail Controls to the Western SOMA Plan (BF 130002). Yet despite these efforts, Formula Retail proliferation continues to be a concern in many communities.

Formula Retail Bans

Of the 27 individually named neighborhood commercial districts only two, the Hayes Valley NCD and the North Beach NCD, have chosen to ban Formula Retail entirely. In the Mixed Use Districts, Formula Retail is also banned in the Chinatown Visitor Retail District (CVRD) and the Residential Mix- Enclave (RED-MX) District. Some NCDs have adopted more targeted controls that ban Formula Retail Restaurants and Limited Restaurants. Outright bans are a simple and effective solution to the problem of over concentration, but it does present some challenges. Banning Formula Retail means that most if not all large grocery stores and banks are prohibited from moving into a neighborhood because there are very few large grocery stores and banks that are not Formal Retail. This problem could be further exacerbated if the list of uses included in the Formula Retail definition is expanded, as was recently done for Financial Services. Once the ban is in place it's very difficult to overturn should the needs of a neighborhood change.

Another difficulty with Formula Retail bans is that not all Formal Retail is valued equally by the community. The Department evaluates each application based on the Planning Code and the General Plan, and cannot place a value judgment on the type of business or its business model; however, community members often decide which Formula Retail to support or oppose based on those factors. The Commission's role is to take staff's professional analysis as well as public comment into consideration when making its decision. Strict Formula Retail bans remove the Commission's ability to take community sentiment into consideration and prohibit some desirable locally owned or unique business from establishing in these neighborhoods that a community may want or need.

Upper Market Formula Retail Controls

On April 11, 2013 the Planning Commission adopted a Policy that established a method to determine the appropriate level of concentration of Formula Retail in the Upper Market Neighborhood. Under the proposed policy, Planning Department staff would recommend disapproval of any project that brings the concentration of Formal Retail within 300 feet of the subject property to 20% or greater. The Department would still evaluate the proposed Formula Retail application based on the other applicable criteria in the Planning Code to aid the Commission's deliberation, and the Commission would still retain its discretion to approve or disapprove the use. If the concentration were determined to be lower than 20%, the Department would evaluate the proposed Formula Retail application based on the other applicable criteria in the Planning Code and recommend approval or disapproval accordingly. Please see Exhibit B for a complete outline of the policy.

Pre-Application Meeting Requirements

The Pre-application meeting requirement is a Commission policy that was adopted as part of the larger Discretionary Review reform process in 2010. Pre-application meetings are intended to initiate neighbor communication to identify issues and concerns early on; provide the project sponsor the opportunity to address neighbor concerns about the potential impacts of the project prior to submitting an application; and, reduce the number of Discretionary Reviews (DRs) that are filed.

The policy requires applicants to host a pre-application meeting prior to submitting any entitlement for a project subject to Section 311 or 312 notification that is either new construction, a vertical addition of 7 feet or more, a horizontal addition of 10 feet or more, decks over 10 feet above grade or within the required rear yard; or any Formula Retail uses subject to a Conditional Use Authorization.

Pre application meetings are subject to the following rules:

- Invite all Neighborhood Associations for the relevant neighborhood.
- Invite all abutting property owners and occupants, including owners of properties directly across the street from the project site to the meeting.
- Send one copy of the invitation letter to the project sponsor as proof of mailing.
- Invitations to the meeting should be sent at least 14 calendar days before the meeting.
- Conducted the meeting at either the project site, an alternate location within a one-mile radius of the project site or, at the Planning Department. Meetings are to be conducted from 6:00 p.m. -9:00 p.m., Mon.-Fri.; or from 10:00 a.m.-9:00 p.m., Sat-Sun., unless the Project Sponsor has selected a Department Facilitated Pre-Application Meeting. Facilitated pre-application meetings will be conducted during regular business hours.

Other Pending Proposals

In addition to this Ordinance and the Fillmore Street NCD Ordinance, two other Ordinances have been introduced at the Board of Supervisors that would modify the Formal Retail controls. The following are a summary of those proposals that have been introduced at the Board:

Supervisor Breed would also amend the definition of Formula Retail but only in the Hayes-Gough District. The legislation proposes to modify the definition of formula retail for the Hayes-Gough NCT only, to include formula retail that is a type of retail sales activity or retail sales

establishment and has eleven or more other retail sales establishments located anywhere in the world. The definition of formula retail would also include a type of retail sales activity or retail sales establishment where fifty percent (50%) or more of the stock, shares, or any similar ownership interest of such establishment is owned by a formula retail use, or a subsidiary, affiliate, or parent of a formula retail use, even if the establishment itself may have fewer than eleven retail sales establishments located anywhere in the world.

Supervisor Cohen is proposing to create a "Third Street Formula Retail RUD". The legislation would require that any new formula retail use on Third Street between Williams Avenue and Egbert Avenue seek conditional use authorization to operate. If any existing formula retail use has not already procured a conditional use permit to operate as a formula retail use, any alteration permits for a new formula retail use would require conditional use authorization. Any expansion or intensification of an existing formula retail use would also require conditional use authorization.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* to the Board of Supervisors.

Specifically, the Department recommends that the Commission recommend the following modifications:

1. Recommend that the Board of Supervisor codify the pre-application meeting requirement in the Planning Code, by adding the following language to Planning Code Sections 303(i), 703.3 and 803.6 that states:

"Prior to accepting a Conditional Use application for Formula Retail, the Planning Department will verify that the applicant has conducted a pre-application meeting, per the specifications outlined in the Planning Commission's Pre-Application Meeting policy."
2. Recommend that a criteria be added to Section 303(i)(3) stipulating that the Planning Commission shall pay attention to the input of the community and merchants groups. This recommendation removes the "particular" from the language proposed by Supervisor Breed and makes it apply to all Formula Retail Conditional Use applications
3. Recommend that the Board of Supervisor not codify a "Planning staff predilection for disapproval such that staff only recommends approval of a formula retail application if there is a demonstrated overriding need or public support for the particular use."
4. Eliminate the Formula Retail ban from the proposed Ordinance and state that the Commission will proceed with adopting a similar policy for the Divisadero NCD that was adopted for the Upper Market Neighborhood.

BASIS FOR RECOMMENDATION

The Department is in support of the majority of the propose ordinance and appreciates Supervisor Breeds openness to considering formula retail controls in lieu of an outright ban. Towards that end, the Department recommends that the Commission consider recommending the four modifications described below to Supervisor Breed.

Recommendation 1: Codify Neighborhood Meeting requirements

Pre-application meetings are an important community outreach tool. They provide an opportunity for the community to hear and comment on proposals prior to their submittal to the Planning Department and they allow the applicant an opportunity to hear any concerns from the community prior to finalizing their proposal. Per Planning Commission Policy, Formula Retail applicants are already required to conduct pre-application meetings. This policy was adopted as part of the larger Discretionary Review reform process in 2010. The intent behind making the pre-application meeting a policy rather than codifying it in the Planning Code was to test out the effectiveness of pre-application meetings and their associated requirements; Planning Commission policies are easily amended while Planning Code requirements are not. The Department supports the Supervisor's intent to codify the pre-application meeting requirement for Formula Retail applications. The Department would like retain the ability to amend certain procedural issues in administering the pre-application requirement through commission policy should the need arise, therefore, Department recommends codification of this requirement with the language described above.

Recommendation 2: Add Specific Criteria to Consider Community Impact.

While taking community input into consideration is implied in the Conditional Use process, the Department finds that making it a criteria for Formula Retail Conditional Use applications will reinforce the applicant's responsibility to conduct appropriate levels of community outreach and give the issue greater attention in Staff's analysis of the project; however staff does not recommend making this a weighted criteria that requires the Commission to pay particular attention to community input. The purpose of a CU process is to allow uses that would otherwise be prohibited if the Commission finds that the proposal is necessary or desirable. Placing greater emphasis on community input would hamper the Commission's ability to weigh all of the criteria when making its decision. Certain public policy goals may be more important in any one case and the Commission is the Charter-authorized body to apply discretion to planning issues. As part of that the Commission is required to consider all factors when making its decision.

If the Commission or the Board decides that a weighted condition of this type is necessary for Formal Retail, the Department would strongly recommend that it be done city-wide. Creating special Formula Retail criteria for the Divisadero Street NCD would set a precedent for special criteria in other NCDs, and the Department wants to avoid creating a patchwork of controls throughout the city. The Department would prefer an outright ban on Formula Retail in the Divisadero Street NCD, as proposed in the revised ordinance, over special conditional use criteria on for the Divisadero Street NCD. The Department is open to working with Supervisor Breed on reevaluate our citywide Formula Retail Controls, but we strongly advise against making special criteria for any one NCD.

Recommendation 3: Maintain the Commission's Role in Assessing Community Support

Staff finds that codifying a "planning staff predilection for disapproval unless there is overwhelming need or public support for the particular use" would be impractical to implement because it's a highly subjective criterion. For the Department to provide an impartial analysis we would need some way to quantify an overriding need or public support. Even if we had a quantifiable way to do that, would the Department then be required to make a distinction between public support from residents or businesses of immediate vicinity verses other places in the City? Public support has always been a crucial factor in how the Commission makes its decisions, but the Commission, not the Department, has always been the entity that evaluates the quality and quantity of that support. Staff recommendations are made based on

our impartial analysis of the project; a requirement like this would remove that impartiality and require planners to base their recommendation of approval or disapproval on a highly subjective criterion.

Recommendation 4: Apply the Commission Policy to the Divisadero Street NCD

Adopting a Commission policy that sets a maximum concentration rather than placing an outright ban on Formula Retail in the Planning Code gives the Commission more flexibility when making its decision by being able to take community sentiment into consideration.

RECOMMENDATION: Approval with Modifications
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Attachments:

- Exhibit A: Draft Resolution
- Exhibit B: Board of Supervisors File No. 120796, Version 3
- Exhibit C: Original Case Report for the Divisadero Street NCD from November 29, 2013
- Exhibit D: Adopted Upper Market Formula Retail Controls.
- Exhibit E: Memo from Supervisor Breed



LONDON N. BREED

The original iterations of our Fillmore and Divisadero Neighborhood Commercial District legislation, files 120814 and 120796 respectively, included outright formula retail bans. Supervisor Breed is committed to protecting local small businesses and fostering unique commercial communities. In District 5 we have had tremendous success with a formula retail ban in Hayes Valley. However, after careful deliberation with merchants and residents along Fillmore and Divisadero, as well as consultation with Planning staff and the City Attorney, Supervisor Breed has elected to revise the formula retail approach in these NCDs.

The Supervisor wants the process for these NCDs to be strongly biased against formula retail uses, but to nonetheless allow formula retail under certain circumstances. If there is a manifest need for the use and demonstrable community support, then the formula retail should be considered for a conditional use. Supervisor Breed believes this will give our communities more flexibility to meet their needs, without having to perpetually re-fight the same battles against formula retailers who do not meet their needs.

The Supervisor is actively working with the City Attorney's office to amend the NCDs. In lieu of a formula retail ban, the amended legislation will:

1. **Require a pre-application notice** for any formula retail applicant, such that prior to applying for Conditional Use the applicant will be required to conduct substantive meetings with the relevant neighborhood and merchant groups. This requirement will be codified.
2. **Include a weighted condition in the Conditional Use** stipulating that the Planning Commission shall pay particular attention to the input of the community and merchants groups and have a strong predilection toward disapproval.
3. **Codify a Planning staff predilection for disapproval** such that staff only recommends approval of a formula retail application if there is a demonstrated overriding need or public support for the particular use.
4. **Incorporate Planning's recently-developed 20% within 300' guidelines** such that Planning staff will recommend disapproval whenever 20% or more of the existing retail frontage within a 300 foot radius of the applicant's site is already formula retail use.

We believe these changes will make the Divisadero and Fillmore NCDs more effective, more flexible, and more reflective of the communities they serve. Supervisor Breed welcomes your feedback and thanks you for your consideration and your service to San Francisco.