



# SAN FRANCISCO PLANNING DEPARTMENT

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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. 120814, Version 2; Planning Case No. 2012.1183TZ  
Fillmore Street NCD  
Planning Commission Recommendation: *Approval with modifications***

1650 Mission St.  
Suite 400  
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 Fillmore Street from Bush Street to McAlister Street.

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 18907 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. 120814] 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 Fillmore 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 18907  
Planning Commission Executive Summary  
Memo from Supervisor Breed



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. 18907

HEARING DATE: JUNE 13, 2013

*Project Name:* Amendments relating to the proposed Fillmore Street NCDs  
*Case Number:* 2012.1183TZ [Board File No. 12-0814]  
*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

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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE WITH MODIFICATIONS THAT WOULD AMEND THE SAN FRANCISCO PLANNING CODE BY: 1) ADDING SECTION 744.1 TO ESTABLISH THE FILLMORE STREET NEIGHBORHOOD COMMERCIAL DISTRICT ALONG FILLMORE STREET BETWEEN BUSH AND FULTON STREETS; 2) AMENDING SECTION 151.1, A PORTION OF TABLE 151.1, SECTION 263.20 AND SECTION 607.1(F) TO MAKE CONFORMING AND OTHER TECHNICAL CHANGES; 3) AMENDING SHEETS ZN02 AND ZN07 OF THE ZONING MAP TO REZONE SPECIFIED PROPERTIES TO THE FILLMORE STREET NEIGHBORHOOD COMMERCIAL DISTRICT; AND 4) 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 31, 2012, former Supervisor Olague reintroduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 12-0814 which would amend the San Francisco Planning Code by: 1) adding Section 744.1 to establish the Fillmore Street Neighborhood Commercial District along Fillmore Street between Bush and Fulton Streets; 2) amending Section 151.1, a portion of Table 151.1, Section 263.20 and Section 607.1(f) to make conforming and other technical changes; 3) amending Sheets ZN02 and ZN07 of the Zoning Map to rezone specified properties to the Fillmore Street Neighborhood Commercial District; and 4) 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 7, 2013 Supervisor Breed was elected Supervisor for District 5 and once in office took over sponsorship of the Ordinance; and

Whereas Supervisor Breed reintroduced the Ordinance on February 26, 2013 as "Version Two"; 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 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.
5. Make the following change to the proposed Fillmore Street NCD Use Table:

744.25	Drive-Up Facility	§ 790.30	#-(remove #)
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**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 24<sup>th</sup> 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.
- This neighborhood was under the authority of the Redevelopment Agency for several decades and this stretch of Fillmore Street experienced a concentrated period of development in the late 1980s and early 1990s. While the new development kept the density, the new buildings did not maintain the historic ties to the street that the historic ground floor commercial spaces once had. Many of the new buildings face the street with arcades, utility boxes and non-active uses on the ground floor, which has a negative effect on visual interest and street activity.
- In the last decade the neighborhood underwent another wave of urban renewal in the form of a new "Jazz District." In many ways this effort was successful in bring increased nightlife activity back to the area; however the street still suffers from a lack of activity and vitality during the day. Creating a named Neighborhood Commercial District for the Fillmore is a positive first step improving the vitality of this commercial street because it provides a mechanism for the community to further build upon its identity.
- 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.
- Removing parking maximums is consistent with the City's Transit First policy, the General Plan and because it will help increase the supply of affordable housing in the City. Requiring that each unit have parking adds considerable cost to the dwelling unit. It also takes away space that could otherwise be dedicated to commercial storefronts or other residential amenities.

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 Fillmore 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 Fillmore 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 June 23, 2013.

Jonas P Ionin  
Commission Secretary

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

NAYS: Commissioner Antonini

ABSENT: Commissioner Fong

ADOPTED: June 13, 2013





# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Zoning Map & Planning Code Text Change

HEARING DATE: JUNE 13, 2013

*Project Name:* **Amendments relating to the proposed Fillmore Street NCDs**  
*Case Number:* 2012.1183TZ [Board File No. 120814]  
*Initiated by:* Supervisor Breed/ Re-introduced July 31, 2012  
*Staff Contact:* Aaron Starr, Legislative Affairs  
aaron.starr@sfgov.org, 415-558-6362  
*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395  
*Recommendation:* **Recommend Approval with Modifications**

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### PLANNING CODE AMENDMENT

The proposed Ordinance would amend the San Francisco Planning Code and Zoning Map by: 1) adding Section 744.1 to establish the Fillmore Street Neighborhood Commercial District along Fillmore Street between Bush and McAllister Streets; 2) amending Section 151.1, a portion of Table 151.1, Section 263.20 and Section 607.1(f) to make conforming and other technical changes; 3) amending Sheets ZN02 and ZN07 of the Zoning Map to rezone specified properties to the Fillmore Street Neighborhood Commercial District; and 4) 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.

#### The Way It Is Now:

- There is a Neighborhood Commercial, Moderate-Scale (NC-3) zoning district that runs along Fillmore Street from Bush to McAllister that also includes parcels that front on Webster, Turk, Geary, Sutter and Bush Streets.
- NC-3 Zoning Districts have minimum parking requirements that are outlined in Planning Code Section 151.
- In NC-3 Districts, residential conversion is permitted on the ground floor and requires Conditional Use authorization on the second and third floors.
- Philanthropic Administrative Services are only permitted in the Upper Fillmore Neighborhood Commercial District.
- The subject area is within the Fringe Financial Services Restricted Use District, which prohibits new check caching services.
- Formula Retail requires Conditional Use authorization

#### The Way It Would Be:

The proposed legislation would:

- Create a new named Neighborhood Commercial District (NCD) primarily along Fillmore Street from Bush to McAllister.
- Institute maximum parking controls within the Fillmore Street NCD, as outlined under Section 151.1. The new controls would permit up to one car for each two dwelling units, require Conditional Use authorization for up to 0.75 cars for each dwelling unit, and prohibit parking above 0.75 cars for each dwelling unit. Commercial uses would be governed by the standard maximum parking controls in Section 151.1
- Provide a 5 foot height bonus for properties zoned 40-X along Fillmore Street.
- Prohibit residential conversion on the second and third floors.
- Allow Philanthropic Administrative Services on the second floor as of right.
- Per the way the Ordinance is currently drafted, all Formula Retail would be banned from the new NCD. However, 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 findings and having the Commission extend its policy on Formula Retail concentration in the Upper Market neighborhood to the Fillmore 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 criteria<sup>1</sup> 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.

## **ISSUES AND CONSIDERATIONS**

### **NC-3 and Named Neighborhood Commercial Districts**

NC-3 Districts are intended to offer a wide variety of comparison and specialty goods and services to a population greater than the immediate neighborhood, additionally providing convenience goods and services to the surrounding neighborhoods. NC-3 Districts are linear districts located along heavily trafficked thoroughfares which also serve as major transit routes. NC-3 Districts include some of the longest linear commercial streets in the City, some of which have continuous retail development for many blocks. Large-scale lots and buildings and wide streets distinguish the districts from smaller-scaled

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<sup>1</sup> 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.

commercial streets, although the districts may include small as well as moderately scaled lots. Buildings typically range in height from two to four stories with occasional taller structures.

Named Commercial Districts are generally of the same scale and intensity as Neighborhood Commercial, Small-Scale (NC-2) Districts. There are currently 27 named NCDs in the City. Some of the oldest named NCDs in the City include the Broadway, Castro, Upper Fillmore, Haight and Inner and Outer Clement NCDs, and there is a trend to create more individually named NCDs throughout the City. These types of districts allow for more tailored controls and help to protect or enhance unique characteristics associated with a neighborhood. Changes that are made to a named commercial district only apply to that district, whereas changes made to NC-1, NC-2 or NC-3 Districts apply citywide. For example, if a named NCD wants to control the number of nail salons because of a perceived over-concentration, then the controls for that named NCD can be changed to prohibit or require Conditional Use authorization for Personal Service uses. Conversely, if a neighborhood wants to encourage a type of use, the controls for that named NCD can be changed so that use is principally permitted.

#### **Japantown Planning Process**

The Japantown Economic and Social Heritage Strategy (formerly Japantown Better Neighborhoods Plan) will include multiple strategies for preserving and supporting Japantown's social heritage and stimulating its economy. One of these strategies will be the creation of a Japantown Neighborhood Commercial – Transit (NCT) District along those portions of Post and Buchanan Streets that are reflective of Japanese and Japanese American culture and commerce. None of the properties included in the proposed Fillmore NCD are being considered for inclusion in the Japantown NCT.

#### **NCD Height Controls**

San Francisco's commercial height districts tend to be base ten numbers such as 40, 50, etc. These base ten districts may lead to buildings that are similar in height to the neighboring buildings but that are lesser in human comfort than buildings of similar scale built prior to the City's height limits. This is due to the desire to maximize the number of stories in new projects. Recent community planning efforts have highlighted some failings of these base 10 height districts. The 2008 Market & Octavia<sup>2</sup> and Eastern Neighborhoods<sup>3</sup> Plans recognize that the base ten height limits in neighborhood commercial districts often encourage inferior architecture. For this reason, both of these plans sought to encourage more active and attractive ground floor space by giving a five foot height bonus to buildings which meet the definition of "active ground floor" use. This five foot increase must be used for adding more space to the ground floor.

In 2008, Supervisor Sandoval sponsored a similar text amendment that extended this height increase outside of established plan areas to provide for a maximum five foot special height exception for active ground floor uses in the NC-2 and NC-3 designated parcels fronting portions of Mission Street<sup>4</sup>. Another amendment introduced by Supervisor Avalos in 2009 that now allows a maximum five foot height increase in certain NC-1 parcels in District 11<sup>5</sup>. Most recently, Geary Boulevard, Inner Clement, Outer

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<sup>2</sup> Ord. 72-08, File No. 071157, App. 4/3/2008.

<sup>3</sup> Ord. 297-08, 298-08, 299-08 and 300-08, App. 12/19/2008.

<sup>4</sup> Ord. 321-08, File no. 081100, App. 12/19/2008.

<sup>5</sup> Ord. [5-10](#), File No. 090319, App. 1/22/2010

Clement, the new Outer Sunset NCDs, 24<sup>th</sup>-Noe Street NCD and NC-2 zoned portions of Balboa Street were added to the list of zoning districts that allow the 5' height bonus.

The proposed Ordinance would not allow an additional floor to new projects. A 40-X and 50-X height limit can accommodate a maximum of four and five floors, respectively. Since the additional five foot height can only be used on the ground floor, the height limit still can only accommodate the same number of floors.

#### **Parking Requirements**

A recent study done by Michael Manville at UCLA found that there is a strong correlation between the elimination of parking mandates and increase housing supply<sup>6</sup>. The study found that when parking requirements are removed, developers provide more housing and less parking, and also that developers provide different types of housing: housing in older buildings, in previously disinvested areas, and housing marketed toward non-drivers. Minimum parking requirements result in more space being dedicated to parking than is really needed; height limits, setback requirements, open space requirements and other development regulations leave less space for actual housing units. Further, because of the active street frontage requirements in the Planning Code, parking in newer buildings is typically provided underground, and underground parking spaces are expensive costing between \$30,000 and \$50,000 each or more. Developers recoup those costs by including it in the cost of housing.

#### **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 targets 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 groceries 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

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<sup>6</sup> [http://www.its.ucla.edu/research/rpubs/manville\\_aro\\_dec\\_2010.pdf](http://www.its.ucla.edu/research/rpubs/manville_aro_dec_2010.pdf)

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.

### **REQUIRED COMMISSION ACTION**

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

### **RECOMMENDATION**

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

1. 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.
5. Make the following change to the proposed Fillmore Street NCD Use Table:

744.25	Drive-Up Facility	§ 790.30	#-(remove #)
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## **BASIS FOR RECOMMENDATION**

The Department supports the creation of an individually named neighborhood commercial district on Fillmore Street; individually named NCDs help to preserve and enhance the character of a neighborhood and they also help create a sense of identity. This neighborhood was under the authority of the Redevelopment Agency for several decades and this stretch of Fillmore Street experienced a concentrated period of development in the late 1980s and early 1990s. While the new development kept the density, the new buildings did not maintain the historic ties to the street that the historic ground floor commercial spaces once had. Many of the new buildings face the street with arcades, utility boxes and non-active uses on the ground floor, which has a negative effect on visual interest and street activity. Further, in the last decade the neighborhood underwent another wave of urban renewal in the form of a new "Jazz District." In many ways this effort was successful in bring increased nightlife activity back to the area; however the street still suffers from a lack of activity and vitality during the day. Creating a named Neighborhood Commercial District for the Fillmore is a positive first step improving the vitality of this commercial street because it provides a mechanism for the community to further build upon its identity.

### **Parking Maximums**

The Department supports the removal of the parking minimums because it is consistent with the City's Transit First policy, the General Plan and because it will help increase the supply of affordable housing in the City. Requiring that each unit have parking adds considerable cost to the dwelling unit. It also takes away space that could otherwise be dedicated to commercial storefronts or other residential amenities.

### **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 5**

This is a clerical correction. The # sign refers you to the Specific Provisions for the Fillmore Street NCD chart at the end of the use table; however there is no specific provision listed for Drive-up Facilities in this table. Drive-up facilities are prohibited.

**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.



- Sections 263.20 BF 120774 Permitting a Height Bonus in Castro Street and 24<sup>th</sup> Street NCDs
- Sections 151.1, 702.1 BF Pending Western SoMa Plan
- Sections 151.1, 263.20, 702.1, 702.3, 703.3 BF Pending Code Corrections Ordinance 2012
- Sections 151.1, 263.20, 744.1, 607.1 BF 120796 Divisadero Street NCD

## **ENVIRONMENTAL REVIEW**

The proposal ordinance has would result in no physical impact on the environment. The Project was determined to be exempt from the California Environmental Quality Act (“CEQA”) under the General Rule Exclusion (CEQA Guidelines Section 15061(b)(3)) as described in the determination contained in the Planning Department files for this Project.

## **PUBLIC COMMENT**

As of the date of this report, the Planning Department has received several inquiries about the proposed legislation from members of the public. Representatives of Safeway supermarket have contact our office and expressed concerns over the proposed parking ratio, sign controls and the proposed ban on Formula Retail.

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

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 120814, Version 2
- Exhibit C: Map of Proposed District
- Exhibit D: Environmental Determination
- Exhibit E: Adopted Upper Market Formula Retail Controls.
- Exhibit F: 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.