



# SAN FRANCISCO PLANNING DEPARTMENT

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February 25, 2014

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

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**Re: Transmittal of Planning Department Case Number 2013.1783T  
Amendments to the Third Street Alcohol Restricted Use District.  
Board File No. 131121  
Recommendation: Approval**

Dear Ms. Calvillo and Supervisor Cohen,

On February 20, 2014, the Planning Commission conducted a duly noticed public hearing at regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Cohen that would amend the Third Street Alcohol Restricted Use District to allow Alcoholic Beverage Control Type 2, "Winegrower" licenses.

The proposed Planning Code amendments were found to be categorically exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

Please find attached documents relating to the actions of the Commissions. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "AnMarie Rodgers", with a horizontal line extending to the right.

AnMarie Rodgers  
Manager of Legislative Affairs

cc:  
Andrea Ruiz-Esquide, Deputy City Attorney  
Mawuli Tugbenyoh, Legislative Aide to Supervisor Cohen  
Alisa Miller, Office of the Clerk of the Board

Attachments  
Planning Commission Resolution  
Planning Department Executive Summary



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. 19084

HEARING DATE FEBRUARY 20, 2014

*Case No.:* 2013.1783T [Board File No. 131121]  
*Project:* Amendments to the Third Street Alcohol Restricted Use District  
*Initiated by:* Supervisor Cohen  
*Staff Contact:* Aaron Starr – (415) 558-6362  
[aaron.starr@sfgov.org](mailto:aaron.starr@sfgov.org)  
*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
[anmarie.rodgers@sfgov.org](mailto:anmarie.rodgers@sfgov.org), 415-558-6395  
*Recommendation:* **Recommend Approval**

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**RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE A PROPOSED ORDINANCE TO AMEND THE THIRD STREET ALCOHOL RESTRICTED USE DISTRICT TO ALLOW ALCOHOL BEVERAGE CONTROL LICENSE TYPE 2, "WINEGROWER" LICENSES; TO MAKE AND ADOPT ENVIRONMENTAL FINDINGS; AND FINDINGS OF CONSISTENCY WITH THE PRIORITY POLICIES OF PLANNING CODE SECTION 101.1 AND THE GENERAL PLAN.**

WHEREAS, on November 19, 2013, Supervisor Cohen introduced an Ordinance under Board of Supervisors (hereinafter "Board") File Number 131121 for a Planning Code Amendment to amend the Third Street Alcohol Restricted Use District (hereinafter Third Street Alcohol RUD), to allow Alcoholic Beverage Control (hereinafter ABC) Type 2, "Winegrower" licenses; and

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on February 20, 2014; and

WHEREAS, the Ordinance was determined not to be a project per State CEQA Guidelines, Section 15060(c)(2); 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 by Department staff and other interested parties; and

WHEREAS, the Commission has reviewed the proposed Ordinances; and

**MOVED**, that the Commission hereby recommends that the Board of Supervisors *approve the proposed Ordinances* and adopts this Resolution to that effect.

## 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. Winetasting was not specifically evaluated when the controls for the Third Street Alcohol RUD was originally adopted.
  2. Given limits placed on wine tasting by both ABC and the Zoning Administrator's interpretation, the Commission finds that the change proposed in this Ordinance is very minor and that it would not increase or exacerbate any of the issues that the RUD is intended to address.
  3. The proposed Ordinance would allow persons with a winegrower's license to sell their product within the Third Street Corridor, enhancing and preserving the neighborhood's economic base.
  4. San Francisco is fortunate to have many world class wineries within close proximity of its borders. This Ordinance will encourage sale of locally produced products with San Francisco and add to the Bay Area's regional economy.
1. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

## COMMERCE AND INDUSTRY ELEMENT

### OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

#### Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

*The proposed Ordinance would attract new commercial activity to the Third Street corridor by allowing a new type of commercial enterprise to establish there.*

2. The proposed project is consistent with the eight General Plan priority policies set forth in Section 101 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 Ordinances will enhance neighborhood-serving retail uses by allowing some business to offer winetasting to its customers.*

- 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 Ordinances will not displace existing housing, nor will it have a negative effect on existing neighborhood character.*

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

*The proposed Ordinances will not adversely affect 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 Ordinances would 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 Ordinances will 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 Ordinances. 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:

*The proposed Ordinance will not have a negative effect on and City Landmarks or historic buildings.*

- 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 Ordinances. Any additional development caused by the sale of TDR will also be subject to the City's Proposition K shadow requirements.*

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board APPROVE the proposed Ordinances as described in this Resolution to modify the Third Street Alcohol RUD to allow ABC Licenses Type 2, "Winegrowers" license.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on February 20, 2014.

Jonas P. Ionin  
Commission Secretary

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

NOES: none

ABSENT: none

ADOPTED: February 20, 2014



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Change

HEARING DATE: FEBRUARY 20, 2014

*Project Name:* **Amendments to the Third Street Alcohol Restricted Use District.**  
*Case Number:* 2013.1783T [Board File No. 131121]  
*Initiated by:* Supervisor Cohen / Introduced November 19, 2013  
*Staff Contact:* Aaron Starr, Legislative Affairs  
aaron.starr@sfgov.org, 415-558-6257  
*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395  
*Recommendation:* **Recommend Approval**

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### PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Third Street Alcohol Restricted Use District (hereinafter RUD), to allow Alcoholic Beverage Control (hereinafter ABC) Type 2, "Winegrower" licenses.

#### The Way It Is Now:

Planning Code Section 249.62 establishes the Third Street Alcohol RUD (See Exhibit C for Map), which prohibits new on-sale or off-sale liquor establishment within its boundaries. An on-sale liquor establishment is defined as a Bar or Restaurant (Code Sections 790.22 and 790.91 respectively) that has an ABC license to sell alcoholic beverage for consumption on site. An off-sale liquor establishment is defined as a Liquor Store (Code Section 790.55) with an ABC license to sell alcohol for consumption off site. Per the Zoning Administrator's interpretation, the RUD also indirectly prohibits ABC Type 2 "Wine Growers" licenses because it prohibits off-site sales.

#### The Way It Would Be:

The proposed Ordinance would permit new ABC Type 2 "Winegrowers" licenses within the Third Street Alcohol RUD. The ABC Type 2 "Winegrowers" licenses allow the holder to sell wine and brandy directly to the public for off-site consumption and to conduct wine or brandy tastings. The licenses type does not require that a vineyard be located at the site with the "Winegrowers" license.

### ISSUES AND CONSIDERATIONS

- The Third Street Alcohol RUD was adopted by the Board of Supervisors in 2003 [BF 021338, Ord. No. 67-03]<sup>1</sup>. It was initiated by the District Supervisor, then Supervisor Maxwell, to address numerous issues including: loitering, littering, drug trafficking, prostitution, public drunkenness, defacement and damaging of structures, pedestrian obstructions, traffic, and noise issues within the Third Street corridor. This RUD's controls are very similar to other RUDs in the City. The RUD allows existing licensee holders to transfer their license to other properties or business

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<sup>1</sup> The original ordinance establishing the Third Street Alcohol Restricted Use District is available at: <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances03/o0067-03.pdf>

within the boundaries of the RUD with conditional use authorization, and it allows existing alcohol license holder to replace an existing full alcohol license serving beer, wine and spirits, with a license that only allows the sale of beer and wine.

- An ABC Type 02 Winegrower (Winery) License authorizes the sale of wine and brandy to any person holding a license authorizing the sale of wine and brandy, and to consumers for consumption off the premises where sold. This license authorizes the sale of all wines and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place that is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and operated by and for the licensee. The holder of this license may possess wine and brandy for use in the preparation of food and beverage to be consumed at the bona fide eating place and may conduct winetasting under prescribed conditions (Section 23356.1; Rule 53). Minors are allowed on the premises.
- Per Section 23356.1; Rule 53, a winetasting is defined as “a presentation of samples of one or more wines, representing one or more wineries or industry labels, to a group of consumers for the purpose of acquainting the tasters with the characteristics of the wine or wines tasted.” Wine tasting sample sizes and the type of food allowed to be served with a wine tasting are limited by ABC. Further, alcohol can be purchased only after the tasting, although a fee can be charged for the tasting itself.
- A Zoning Administrator’s interpretation classifies winetasting as an accessory use and places additional restrictions on wine tastings, which include: Any such tasting would (1) occur entirely during regular operating hours only, (2) take place no more than twice each week for no more than four hours each occurrence and on a further occasional appointment-only basis, (3) not occur on a premises on which any type of permit from the Entertainment Commission is held, (4) not occur in an area physically separated from the main liquor store retail area by full-height partitions or partitions that otherwise prevent clear visual access to and from the main retail area and (5) be limited to one ounce servings and three servings per individual customer per day. Should the establishment not adhere to each of these five conditions it would be considered a "bar." It is also noted that conditions 4 and 5, above, reflect ABC and Police Department policies at the time of this interpretation (last revised January, 2014), and may be modified should those regulations change.
- Winegrowers have expressed interest in opening wine tasting venues within the Third Street Alcohol RUD.
- While not covered under this Ordinance, small breweries with an ABC license Type 23<sup>2</sup> have also expressed interest in opening in this area. Based on the ZA’s interpretation, small breweries with

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<sup>2</sup> ABC License Type 23 for Small Beer Manufacturers provides the same privileges and restrictions as the ABC license Type 1, Large Breweries, but restricts production to 60,000 barrels a year.

this license type would also be prohibited from having a tasting room in conjunction with their brewery.

- The RUD calls out specific ABC License Types that are prohibited; however it does not specifically call out ABC License Type 2.

## **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* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

## **BASIS FOR RECOMMENDATION**

- Based on the Department's review of the original Ordinance that established the alcohol RUD, the Department finds that wine tasting was not specifically evaluated when the controls for the Third Street Alcohol RUD was originally adopted.
- Given limits placed on wine tasting by both ABC and The Zoning Administrator's interpretation, the Department finds that the change proposed in this Ordinance is very minor and that it would not increase or exacerbate any of the issues that the RUD is intended to address.
- The proposed Ordinance would allow persons with a winegrower's license to sell their product within the Third Street Corridor, enhancing and preserving the neighborhood's economic base.
- San Francisco is fortunate to have many world class wineries within close proximity of its boards. This Ordinance will encourage sale of locally produced products with San Francisco and add to the Bay Area's regional economy.

## **ENVIRONMENTAL REVIEW**

The proposed Ordinance would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

## **PUBLIC COMMENT**

As of the date of this report, the Planning Department has not received any correspondence regarding this Ordinance.

<b>RECOMMENDATION:</b> <b>Recommend Approval</b>
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**Attachments:**

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 131121
- Exhibit C: Map of Third Street Alcohol Restricted Use District