



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. 18932

HEARING DATE: JULY 25, 2013

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

*Project Name:* **Establish Third Street Formula Retail Restricted Use District**  
*Case Number:* 2013.0852TZ [Board File No. 130372]  
*Initiated by:* Supervisor Cohen/ Introduced April 13, 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 PLANNING CODE TO CREATE THE THIRD STREET FORMULA RETAIL RESTRICTED USE DISTRICT; AMEND ZONING MAP SHEET SU10, FOR PROPERTY LOCATED ON THIRD STREET BETWEEN WILLIAMS AVENUE AND EGBERT AVENUE; AND MAKING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1.**

### **PREAMBLE**

Whereas, on April 13, 2013, Supervisor Cohen introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 130372, which would amend the San Francisco Planning Code to create the Third Street Formula Retail Restricted Use District (hereinafter "RUD"); amend Zoning Map Sheet SU10, for property located on Third Street between Williams Avenue and Egbert Avenue; and making findings, including environmental findings pursuant to the California Environmental Quality Act, findings of consistency with the General Plan and the priority policies of Planning Code, Section 101.1.

Whereas, on July 25, 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 May 24, 2013, the Project was determined to be exempt from the California Environmental Quality Act ("CEQA") under the Non-Physical Exemption (CEQA Guidelines Section 15060(c)(2)) 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, 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. Revise the proposed District boundaries so that the proposed RUD includes all properties from Williams Avenue to Paul Avenue that face Third Street and are not zoned NC, as show in the attached map, Exhibit A.
2. Revise the Ordinance so that the proposed RUD is subject to the same controls as all other Formula Retail establishments in the City.
3. Revise Planning Code Section 303(i) to reflect the changes outlined in Exhibit B.
4. Consider including the properties that front on Lane Street between Yosemite Street and Armstrong Avenue.

## 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:

- This is a unique stretch of industrial zoned land in that it is located between two NC-3 Districts and serves as a continuation of the Third Street retail corridor. Creating this Formula Retail RUD would fill in a gap that could be exploited by Formula Retail businesses wishing to avoid the CU authorization requirement in the adjacent NC-3 Districts.
- One of the goals of this Ordinance is to fill the gap between the two existing neighborhood commercial districts along this stretch of Third Street; the Commission's proposed map better accomplishes this goal.
- The Commission wants to avoid a patchwork of different Formula Retail controls throughout the City, and as such is recommending that the proposed RUD use the Formula Retail controls that apply to the rest of the City.
- The Commission shares the Supervisor's concern that our current controls have a loophole, which allows an existing Formula Retail business to convert to new a Formula Retail business without obtaining CU authorization. Changing the business plan or model of an existing Formula Retail

store could have a negative impact on the neighborhood; for example, a new business may be more of a regional draw than the previous business bringing more traffic congestion to the neighborhood.

- The Commission does not find that it is necessary to require an existing Formula Retail use that has not obtained Formula Retail CU authorization, but which is now subject the Formula Retail requirements, to go through that process if it hasn't changed operations. In addition to this being inconsistent with current Planning Code regulations, which grandfather's existing uses that become conditionally permitted uses, it is also places an unnecessary burden on existing businesses that haven't changed operations.

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 help protect a vital neighborhood commercial district by ensuring that Formula Retail businesses could not open adjacent to existing neighborhood commercial districts unless they were found to be necessary or desirable.*

**BAY VIEW HUNTERS POINT AREA PLAN**

**OBJECTIVE 7**

ENCOURAGE HEALTHY RETAIL REUSE IN THE EXISTING COMMERCIAL CORE OF THIRD STREET AND COMPLEMENTARY GROWTH IN ADJACENT SECTIONS.

**Policy 7.2**

Make the commercial blocks on Third Street between Kirkwood Avenue to the north and Thomas and Thornton Avenues to the south the core of new commercial growth.

*The proposed Ordinance will help discourage retail in industrial zoned areas outside of the commercial core of Third Street, which will help encourage more concentrated retail development within the commercial core.*

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:

*Formula retail businesses can have a competitive advantage over independent operators because they are typically better capitalized and can absorb larger startup costs, pay more for lease space, and commit to longer lease contracts. This can put pressure on existing businesses and potentially price out new startup independent businesses. This Ordinance would help ensure that Formula Retail businesses do not over concentrate in this area of the city.*

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 Ordinance would not impact existing housing; however it will help preserve existing neighborhood character by ensuring that that Formula Retail businesses do not over concentrate in this area of the city. An over concentration of Formula Retail can degrade the visual character and uniqueness of a neighborhood.*

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 have no significant impact on 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 preserves the existing industrial zoning of the subject parcels and discourages some retail uses. It 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 July 25, 2013.

Jonas P Ionin  
Acting Commission Secretary

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

NAYS: none

ABSENT: Commissioners Fong and Hillis

ADOPTED: July 25, 2013

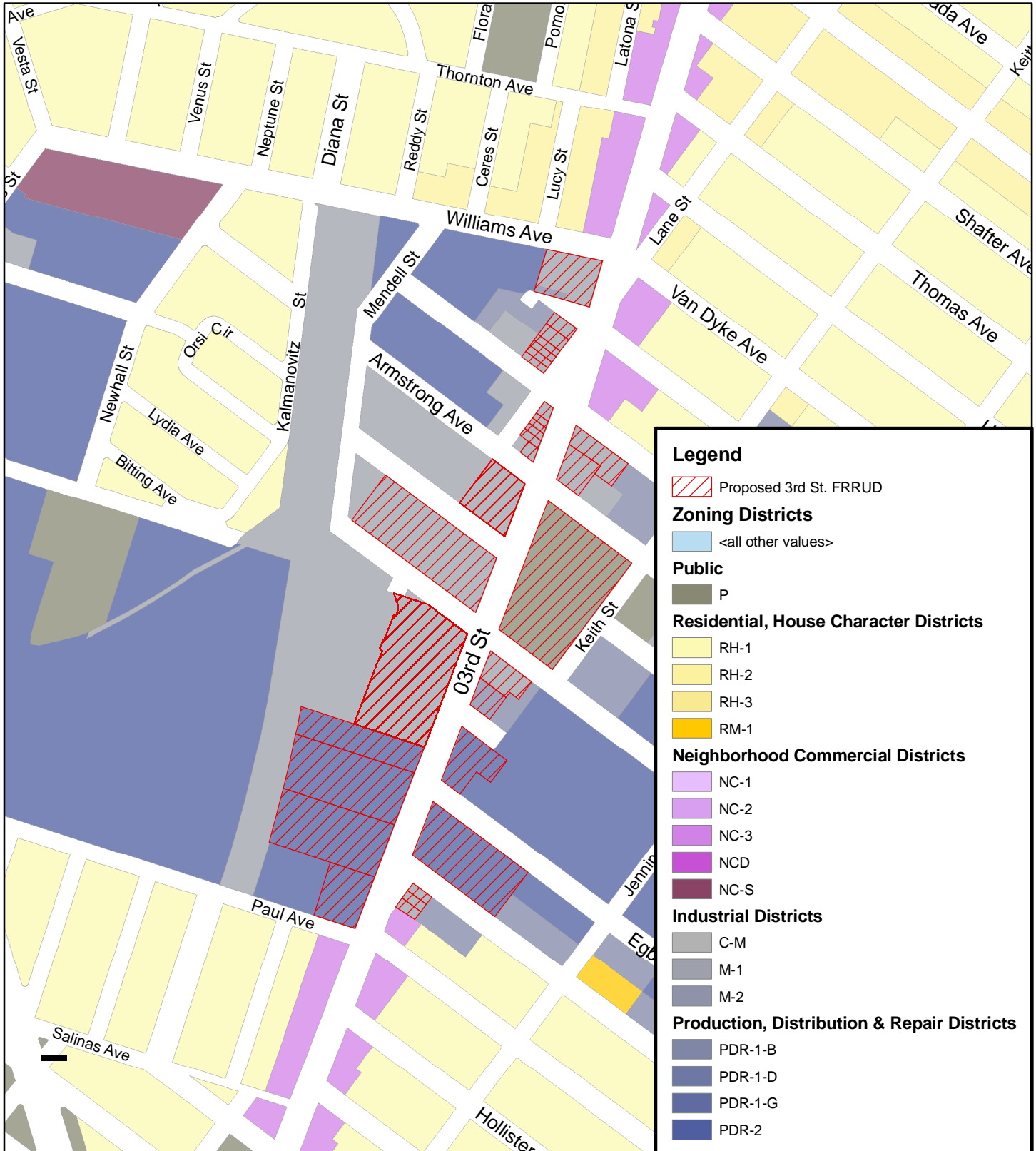
**Attachments**

Exhibit A: Commission proposed map for 3<sup>rd</sup> Street Formula Retail RUD

Exhibit B: Proposed changes to Planning Code Section 303(i)

Exhibit A

# Proposed 3rd Street Formula Retail RUD Commission Recommended



0 195 390 780 Feet

The City and County of San Francisco (CCSF) does not guarantee the accuracy, adequacy, completeness or usefulness of any information. CCSF provides this information on an "as is" basis without warranty of any kind, including but not limited to warranties of merchantability or fitness for a particular purpose, and assumes no responsibility for anyone's use of the information.

## Exhibit B

### Proposed Changes to Planning Code Section 303(i)(7)

(7) **Change in Use.** A change from one formula retail use to another requires a new Conditional Use Authorization, whether or not a Conditional Use Authorization would otherwise be required by the particular change in use in question. This Conditional Use Authorization requirement also applies in changes from one Formula Retail operator to another within the same use category. A new Conditional Use Authorization shall not apply to a change in a formula use retailer that meets the following criteria:

(A) the formula use operation remains the same in terms of its size, function and general merchandise offering as determined by the Zoning Administrator, and

(B) the change in the formula retail use operator is the result of the business being purchased by another formula retail operator who will retain all components of the existing retailer including but not limited to the name, branding and general merchandise offering ~~and make minor alterations to the establishment(s) such as signage and branding.~~

The new operator shall comply with all conditions of approval previously imposed on the existing operator, including but not limited to signage programs and hours of operation; and shall conduct the operation generally in the same manner and offer essentially the same services and/or type of merchandise; or seek and be granted a new Conditional Use Authorization.