



# SAN FRANCISCO PLANNING DEPARTMENT

---

## 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**

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

### 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

---

<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

---

<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> |
|--|

**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



Exhibit A

# SAN FRANCISCO PLANNING DEPARTMENT

---

## Draft Planning Commission Resolution No. XXXXX

HEARING DATE FEBRUARY 20, 2014

*Date:* February 13, 2014  
*Case No.:* 2013.1783T [Board File No. 131121]  
*Project Address:* Amendments to the Third Street Alcohol Restricted Use District  
*Initiated by:* Supervisor Kim  
*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, 415-558-6395  
*Recommendation:* **Recommend Approval**

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

**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 Kim 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 boards. This Ordinance will encourage sale of locally produced products with San Francisco and adds 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 101.1 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 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 rezoned the Subject Property from RC-4 to C-3-G and expand Map 1 of the Downtown Area Plan to include the Subject Property.

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:

NOES:

ABSENT:

ADOPTED: February 20, 2014

## Exhibit B

1 [Planning Code - Amending the Third Street Alcohol Restricted Use District]

2

3 **Ordinance amending the Planning Code, to amend the Third Street Alcohol Restricted**  
 4 **Use District, to allow Alcoholic Beverage Control (ABC) Type 2, “Winegrower” licenses;**  
 5 **and making environmental findings, and findings of consistency with the General Plan,**  
 6 **and the eight priority policies of Planning Code, Section 101.1.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
 8 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
 9 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
 10 **Board amendment additions** are in double-underlined Arial font.  
 11 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
 12 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
 13 subsections or parts of tables.

11

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

13 Section 1.

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

18 (b) Pursuant to Planning Code Section 302, this Board finds that these Planning Code  
 19 amendments will serve the public necessity, convenience, and welfare for the reasons set  
 20 forth in Planning Commission Resolution No. \_\_\_\_\_ and the Board incorporates such  
 21 reasons herein by reference. A copy of Planning Commission Resolution No. \_\_\_\_\_ is on file  
 22 with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_.

23 (c) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_, adopted  
 24 findings that the actions contemplated in this ordinance are consistent, on balance, with the  
 25 City’s General Plan and eight priority policies of Planning Code Section 101.1. The Board

1 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
2 Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

3 Section 2. The Planning Code is hereby amended by revising Section 249.62, to read  
4 as follows:

5 **SEC. 249.62. THIRD STREET ALCOHOL RESTRICTED USE DISTRICT.**

6 There is an unusually large number of establishments dispensing alcoholic  
7 beverages, including beer and wine, for both on-site and off-site consumption in the Bayview  
8 area. The existence of this many alcoholic beverage establishments appears to contribute  
9 directly to numerous peace, health, safety and general welfare problems in the area, including  
10 loitering, littering, drug trafficking, prostitution, public drunkenness, defacement and damaging  
11 of structures, pedestrian obstructions, as well as traffic circulation, parking and noise  
12 problems on public streets and neighborhood lots. The existence of such problems creates  
13 serious impacts on the health, safety and welfare of residents of nearby single- and multiple-  
14 family areas, including fear for the safety of children, elderly residents and of visitors to the  
15 area. The problems also contribute to the deterioration of the neighborhood and concomitant  
16 devaluation of property and destruction of community values and quality of life. The number of  
17 establishments selling alcoholic beverages and the associated problems discourage more  
18 desirable and needed commercial uses in the area.

19 (a) In order to preserve the residential character and the neighborhood-serving  
20 commercial uses of the area, the Third Street Alcohol Restricted Use District (Third Street  
21 Alcohol RUD) is hereby established for the property in the area generally bounded by Islais  
22 Creek to the North, Quint Street, Phelps Street, Tampa Street, Bridgeview Drive, Newhall  
23 Street, Venus Street and Egbert Avenue to the West, US Highway 101 to the South, and  
24 Mendell Street, La Salle Avenue, Keith Street, Palou Street, Jennings Street, and Ingalls  
25

1 Street to the East, as designated on Sectional Map numbers 8 and 10. The Third Street  
2 Alcohol RUD is designated on Section Map Numbers 8SU and 10SU.

3 (1) No new on-sale or off-sale liquor establishment shall be permitted in the Third  
4 Street Alcohol RUD.

5 (2) The prohibition on Liquor Establishments shall not be interpreted to prohibit the  
6 following:

7 (A) Temporary uses, as described in Planning Code Section 205.1 or 205.3; ~~or~~

8 (B) Establishment of a Liquor Establishment if application for such Liquor  
9 Establishment is on file with the California Department of Alcoholic Beverage Control prior to  
10 the effective date of legislation establishing the Third Street Alcohol RUD; or

11 (C) Sales of wine and brandy pursuant to an Alcohol Beverage Control (ABC) License  
12 Type 2.

13 (3) Continuation of existing Prohibited Liquor Establishments. In the Third Street  
14 Alcohol RUD, any Prohibited Liquor Establishment may continue in accordance with Planning  
15 Code Section 180 through 186.2, subject to the following provisions.

16 (A) A Prohibited Liquor Establishment lawfully existing and selling alcoholic  
17 beverages as licensed by the State of California prior to the effective date of this legislation, or  
18 subsequent legislation prohibiting that type of Liquor Establishment, so long as otherwise  
19 lawful, may continue to operate only under the following conditions, as provided by California  
20 Business and Professions Code Section 23790:

21 (1) Except as provided by Subsection (B) below, the premises shall retain the  
22 same type of retail liquor license within a license classification; and

23 (2) Except as provided by Subsection (B) below, the licensed premises shall  
24 be operated continuously, without substantial change in mode or character of operation.  
25

1 (B) A break in continuous operation shall not be interpreted to include the  
2 following, provided that the location of the establishment does not change, the square footage  
3 used for the sale of alcoholic beverages does not increase, and the type of California  
4 Department of Alcoholic Beverage Control Liquor License ("ABC" License) does not change  
5 except as indicated:

6 (1) A change in ownership of a Prohibited Liquor Establishment or an owner-  
7 to-owner transfer of an ABC License;

8 (2) Re-establishment, restoration or repair of an existing Prohibited Liquor  
9 Establishment on the same lot after total or partial destruction or damage due to fire, riot,  
10 insurrection, toxic accident or act of God; or

11 (3) Temporary closure of an existing Prohibited Liquor Establishment for not  
12 more than ninety (90) days for repair, renovation or remodeling;

13 (4) Re-location of an existing Prohibited Liquor Establishment in the Third  
14 Street Alcohol RUD to another location within the same Third Street Alcohol RUD with  
15 conditional use authorization from the City Planning Commission, provided that the original  
16 premises shall not be occupied by a Prohibited Liquor Establishment, unless by another  
17 Prohibited Liquor Establishment that is also relocating from within the Third Street Alcohol  
18 RUD.

19 (5) A change from a Type 21 (off-sale) to a Type 20 (off-sale beer and wine)  
20 license or a change from any Alcohol Beverage Control Board License type to a Type 41 (on-  
21 sale beer and wine - eating place).

22 (b) The following shall apply to all liquor establishments in the Third Street Alcohol  
23 RUD in order to maintain the safety of the premises and vicinity:

1           (1) Liquor establishments shall provide outside lighting in a manner sufficient to  
2 illuminate street and sidewalk areas and adjacent parking, as appropriate to maintain security,  
3 without disturbing area residences;

4           (2) No more than 33 percent of the square footage of the windows and clear doors  
5 of Liquor establishments shall bear advertising or signage of any sort, and all advertising and  
6 signage shall be placed and maintained in a manner that ensures that law enforcement  
7 personnel have a clear and unobstructed view of the interior of the premises, including the  
8 area in which the cash registers are maintained, from the exterior public sidewalk or entrance  
9 to the premises. This requirement shall not apply to premises where there are no windows, or  
10 where existing windows are located at a height that precludes a view of the interior of the  
11 premises to a person standing outside the premises.

12           (c) Definitions.

13           (1) A "liquor establishment" shall mean any enterprise selling alcoholic beverages,  
14 as defined by California Business and Professions Code Section 23004 and 23025, pursuant  
15 to a California Alcoholic Beverage Control Board license.

16           (2) An "on-sale liquor establishment" shall mean any liquor establishment which  
17 has obtained Alcoholic Beverage Control Board license type 40 (on-sale beer), type 42 (on-  
18 sale beer and wine public premises), type 48 (on-sale general-public premises) or type 57  
19 (special on-sale general) selling alcoholic beverages for consumption on the premises.  
20 Typical on-sale establishments may include but are not limited to bars serving alcoholic  
21 beverages. It shall not include types 41, 47, 51, 52, 59, 60, 61, 67, 70 or 75.

22           (3) An "off-sale liquor establishment" shall mean any establishment that is defined  
23 in Section 790.55 of this Code.

24           (4) A "prohibited liquor establishment" shall mean any establishment selling  
25 alcoholic beverages lawfully existing prior to the effective date of the establishment of the

1 Third Street Alcohol RUD and licensed by the State of California for the retail sale of alcoholic  
2 beverages for on- or off-site consumption, so long as otherwise lawful.

3 (d) Fringe Financial Services. In addition to all other applicable controls set forth in  
4 this Code, properties in the Third Street Alcohol Restricted Use District are within the Fringe  
5 Financial Service Restricted Use District established by Section 249.35 and are subject to the  
6 controls and exemptions set forth in Section 249.35.

7 Section 3. Effective Date. This ordinance shall become effective 30 days after  
8 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
9 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
10 of Supervisors overrides the Mayor's veto of the ordinance.

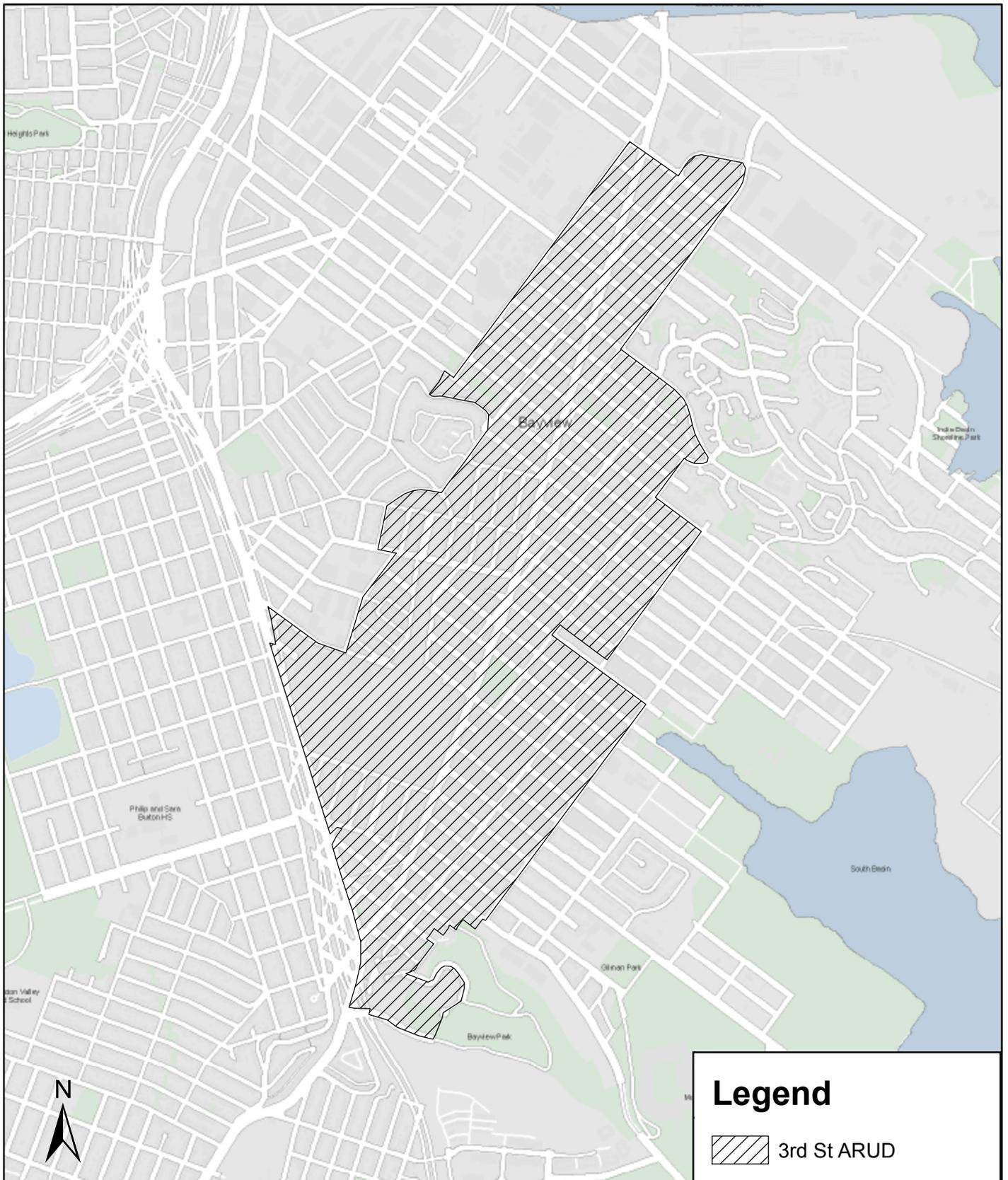
11 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
12 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
13 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Planning  
14 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
15 additions, and Board amendment deletions in accordance with the "Note" that appears under  
16 the official title of the ordinance.

17  
18 APPROVED AS TO FORM:  
19 DENNIS J. HERRERA, City Attorney

20 By: \_\_\_\_\_  
21 ANDREA RUIZ-ESQUIDE  
22 Deputy City Attorney

23  
24  
25  
n:\legana\as2013\1400231\00884432.doc

# Third Street Alcohol Restricted Use District



0 625 1,250 2,500 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.