

1 [Planning Code - Expanding Formula Retail Controls]

2

3 **Ordinance amending the Planning Code to expand the definition of formula retail to**
 4 **include businesses that have eleven or more outlets worldwide, and to include**
 5 **businesses 50% or more owned by formula retail businesses; expand the applicability**
 6 **of formula retail controls to other types of retail uses; expand the notification**
 7 **procedures for formula retail applications; require an economic impact study as part of**
 8 **the formula retail conditional use application; charge administrative fees to pay for**
 9 **staff review time of such studies; and making environmental findings and findings of**
 10 **consistency with the General Plan, and the eight priority policies of Planning Code,**
 11 **Section 101.1.**

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

16

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

18 Section 1. Findings.

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

23 (b) 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
4 Section 2. The Planning Code is hereby amended by revising Section 303(i), to read
5 as follows:

6 * * * *

7 (i) Formula Retail Uses.

8 (1) Formula Retail Use. A formula retail use is hereby defined as a type of
9 retail sales activity or retail sales establishment which has eleven or more other retail sales
10 establishments located ~~in the United States~~ anywhere in the world. In addition to the eleven
11 establishments, the business maintains two or more of the following features: a standardized
12 array of merchandise, a standardized facade, a standardized decor and color scheme,
13 uniform apparel, standardized signage, a trademark or a servicemark; or a type of retail sales
14 activity or retail sales establishment where fifty percent (50%) or more of the stock, shares, or any
15 similar ownership interest of such establishment is owned by a formula retail use, or a subsidiary,
16 affiliate, or parent of a formula retail use, even if the establishment itself may have fewer than eleven
17 other retail sales establishments permitted or located in the world.

18 (A) Standardized array of merchandise shall be defined as 50% or more of
19 in-stock merchandise from a single distributor bearing uniform markings.

20 (B) Trademark shall be defined as a word, phrase, symbol or design, or a
21 combination of words, phrases, symbols or designs that identifies and distinguishes the
22 source of the goods from one party from those of others.

23 (C) Servicemark shall be defined as word, phrase, symbol or design, or a
24 combination of words, phrases, symbols or designs that identifies and distinguishes the
25 source of a service from one party from those of others.

1 (D) Decor shall be defined as the style of interior furnishings, which may
2 include but is not limited to, style of furniture, wall coverings or permanent fixtures.

3 (E) Color Scheme shall be defined as selection of colors used throughout,
4 such as on the furnishings, permanent fixtures, and wall coverings, or as used on the facade.

5 (F) Facade shall be defined as the face or front of a building, including
6 awnings, looking onto a street or an open space.

7 (G) Uniform Apparel shall be defined as standardized items of clothing
8 including but not limited to standardized aprons, pants, shirts, smocks or dresses, hat, and
9 pins (other than name tags) as well as standardized colors of clothing.

10 (H) Signage shall be defined as business sign pursuant to Section 602.3 of
11 the Planning Code.

12 (2) "Retail Sales Activity or Retail Sales Establishment." For the purposes of
13 subsection (i), a retail sales activity or retail sales establishment shall include the following
14 uses, as defined in Article 1, 7, and Article and 8 of this Code: "Bar," "Drive-up Facility,"
15 "Eating and Drinking Use," "Liquor Store," "Sales and Service, Other Retail," "Restaurant,"
16 "Limited-Restaurant," "Take-Out Food," "Sales and Service, Retail," "Service, Financial,"
17 "Movie Theater," ~~and~~ "Amusement and Game Arcade;" "Entertainment, Adult," "Entertainment,
18 Other," "Service, Limited Financial," "Service, Medical," "Service, Personal," "Service, Business or
19 Professional," "Massage Establishment," "Hotel, Tourist," "Automobile Parking," "Automotive Gas
20 Station," "Automotive Service Station," "Automotive Repair," "Automotive Wash," "Automobile Sale
21 or Rental," "Storage," "Service, Fringe Financial," "Tobacco Paraphernalia Establishments,"
22 "Service, Administrative," and "Light Manufacturing, Wholesale Sales, Storage."

23 (3) Conditional Use Criteria. With regard to a conditional use authorization
24 application for a formula retail use, the Planning Commission shall consider, in addition to the
25 criteria set forth in Subsection (c) above:

1 (A) The existing concentrations of formula retail uses within the district. To
2 determine the existing concentration, the Planning Commission shall consider the percentage of the
3 total linear street frontage within a 300-foot radius of the subject property that is occupied by formula
4 retail and non-formula retail businesses, including all parcels that are wholly or partially located
5 within the 300-foot radius. If the subject property is a corner parcel, the 300-foot radius shall include
6 all corner parcels at the subject intersection. For each property, the Planning Department shall divide
7 the total linear frontage of the lot facing a public-right of way by the number of storefronts, and then
8 calculate the percentage of the total linear frontage for formula retail and non-formula retail. Half
9 percentage points shall be rounded up. For the Upper Market Street Neighborhood Commercial
10 District only, if the application would bring the formula retail concentration within this 300-foot area
11 to a concentration of 20% or above, Planning Department staff shall recommend disapproval of the
12 application to the Planning Commission. If the application would not bring the formula retail
13 concentration within the 300-foot area to a concentration of 20% or above, Planning Department staff
14 shall assess the application according to all the other criteria listed in this Section 303(i), and
15 recommend approval or disapproval to the Planning Commission, according to its discretion and
16 professional judgment. In either case, the Planning Commission may approve or reject the application,
17 considering all the criteria listed in this Section 303(i).

18 (B) The availability of other similar retail uses within the district.

19 (C) The compatibility of the proposed formula retail use with the existing
20 architectural and aesthetic character of the district.

21 (D) The existing retail vacancy rates within the district.

22 (E) The existing mix of Citywide-serving retail uses and neighborhood-
23 serving retail uses within the district.

24 (F) If applicable pursuant to this subsection, the economic impact of the proposed
25 formula retail, as shown in an economic impact study.

1 (i) Size Categories. The following size categories shall be used to determine
2 whether this economic impact study requirement applies.

3 a. Small-scale. Applicants with a project of 3,000 gross sq. ft. and
4 below, and whose other stores in the City, if any, in combination occupy no more than 10,000 gross sq.
5 ft., shall be considered small-scale formula retail applicants. Small-scale applicants are not required to
6 prepare an economic impact study.

7 b. Medium-scale. Applicants with a project of 3,000-10,000 gross
8 sq. ft., and whose other stores in the City, if any, in combination occupy no more than 20,000 gross sq.
9 ft., or a project of 3,000 gross sq. ft. and below, and whose other stores in the City, if any, in
10 combination occupy 20,000 gross sq. ft or more, shall be considered medium-scale formula retail
11 applicants. Medium-scale formula retail applicants shall prepare an economic impact study covering
12 an area of 2.5 mile radius from the application location.

13 c. Large-scale. Applicants with a project of 10,000 gross sq.ft. and
14 above, or with a project of 3,000 gross sq. ft. and above and owning stores in the City that in
15 combination occupy more than 20,000 gross sq. ft., shall be considered large-scale formula retail
16 applicants. Large scale formula retail applicants shall prepare a City-wide economic impact study.

17 (ii) Contents of the Economic Impact Study. The applicant shall submit to the
18 Planning Department an economic impact study, prepared with the assistance of an independent
19 qualified consultant, which shall evaluate the potential economic impact of the applicant's business,
20 including:

21 a. the extent to which the proposed retailer will capture a share of
22 retail sales in the market area;

23 b. how the construction and operation of the proposed retailer will
24 affect the supply and demand for retail space in the market area;

1 _____ c. how the construction and operation of the proposed retailer will
2 affect employment in the market area, including an analysis of whether the proposed retailer will result
3 in a net increase or decrease in employment in the market area;

4 _____ d. the effect on wages and benefits of employees of other retail
5 businesses, and community income levels in the market area;

6 _____ e. the costs of public services and public facilities resulting from the
7 construction and operation of the proposed retailer and the incidence of those costs;

8 _____ f. the effect that the construction and operation of the proposed
9 retailer will have on retail operations, including grocery or retail shopping centers, in the same market
10 area;

11 _____ g. the effect that the construction and operation of the proposed
12 retailer will have on average total vehicle miles traveled by retail customers in the same market area;

13 _____ h. the potential for long-term vacancy of the property on which the
14 retailer is proposed in the event that the business vacates the premises; and

15 _____ i. For purpose of the economic impact study, the “market area” is
16 defined as an area around the store large enough to support its operation, but which may not extend
17 further than 2.5 miles from the store for a medium-scale project, City-wide for a large-scale project.

18 _____ (iii) **Public Comment.** After the study is complete, the public shall have an
19 opportunity to comment on the study as part of the Conditional Use hearing for the application.

20 _____ (iv) **Independent Analysis.** The Planning Department shall select from a pool
21 of pre-qualified consultants to prepare the economic impact study required by this section. The
22 consultant analysis, in the form of a study, shall be considered by the Planning Commission in its
23 review of the application.

24 _____ (v) **Payment for Economic Impact Statement; Fee to Pay for Staff Review.**
25 The applicant shall bear the cost of paying the consultant for his or her work preparing the economic

1 impact study, and any necessary documents prepared as part of that study. The applicant shall also
2 pay an administrative fee to compensate Planning Department and City staff for its time reviewing the
3 study, as set forth in Section 359 of this Code.

4 (4) Conditional Use Authorization Required. A Conditional Use Authorization
5 shall be required for a formula retail use in the following zoning districts unless explicitly
6 exempted:

- 7 (A) All Neighborhood Commercial Districts in Article 7;
- 8 (B) All Mixed Use-General Districts in Section 840;
- 9 (C) All Urban Mixed Use Districts in Section 843;
- 10 (D) All Residential-Commercial Districts as defined in Section 206.3;
- 11 (E) Japantown Special Use District as defined in Section 249.31;
- 12 (F) Chinatown Community Business District as defined in Section 810.1;
- 13 (G) Chinatown Residential/Neighborhood Commercial District as defined in
14 812.1;
- 15 (H) Western SoMa Planning Area Special Use District as defined in 823;
- 16 (I) Residential Transit-Oriented Districts as defined in 206.4 and 206.5;
- 17 (J) Limited Conforming Use/Non-Conforming Use in RH-RM-RTO and RED
18 Districts.

19 (5) Formula Retail Uses Not Permitted. Formula Retail Uses are not permitted
20 in the following zoning districts:

- 21 (A) Hayes-Gough Neighborhood Commercial Transit District;
- 22 (B) North Beach Neighborhood Commercial District;
- 23 (C) Chinatown Visitor Retail District;
- 24 (D) Upper Fillmore District does not permit Formula Retail uses that are
25 also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and 790.91;

1 (E) Broadway Neighborhood Commercial District does not permit Formula
2 Retail uses that are also Restaurant or Limited-Restaurant uses as defined in Section 790.90
3 and 790.91;

4 (F) Mission Street Formula Retail Restaurant Subdistrict does not permit
5 Formula Retail uses that are also Restaurant or Limited-Restaurant uses as defined in
6 Section 790.90 and 790.91;

7 (G) Geary Boulevard Formula Retail Pet Supply Store and Formula Retail
8 Eating and Drinking Subdistrict does not permit Formula Retail uses that are also either a
9 Retail Pet Supply Store or an Eating and Drinking use as set forth in Section 781.4;

10 (H) Taraval Street Restaurant Subdistrict does not permit Formula Retail
11 uses that are also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and
12 790.91;

13 (6) Neighborhood Commercial Notification and Design Review. Any building
14 permit application for a "formula retail use" as defined in this section ~~and located within a~~
15 ~~Neighborhood Commercial District in Article 7~~ shall be subject to the ~~Neighborhood Commercial~~
16 ~~Notification and~~ Design Review Procedures of Section 312 of this Code: and to the following
17 notice procedures. Upon determination that an application is in compliance with the standards set
18 forth in this Section, the Planning Department shall give notice of the application as follows:

19 (A) **Written notice:**

20 (i) The Planning Department shall provide written notice of the proposed
21 formula retail use. The notice shall include a description of the proposal compared to any existing
22 improvements on the site with dimensions of the basic features, elevations and site plan of the proposed
23 project including the position of any adjacent buildings, exterior dimensions and finishes, a graphic
24 reference scale, existing and proposed uses and commercial or institutional business name, if known.
25 The notice shall also include the name of the proposed formula retail business and its corporate parent

1 name(s), if any, and a map of the notification area, showing the location of proposed use and existing
2 adjacent businesses/uses. The notice shall describe the project review process and shall set forth the
3 mailing date of the notice and the expiration date of the notification period.

4 (ii) The written notice shall be mailed to the notification group, which
5 shall include the applicant, tenants of the subject property, relevant neighborhood organizations as
6 described in Subparagraph 312(d)(2)(C), all individuals having made a written request for notification,
7 and all owners of property and tenants within the notification area.

8 (iii) The notification area shall be all properties within 300 feet of the
9 subject lot in the same Assessor's Block and on the block face across from the subject lot. When the
10 subject lot is a corner lot, the notification area shall further include all property on both block faces
11 across from the subject lot, and the corner property diagonally across the street.

12 (iv) Notification period. All building permit applications shall be held
13 for a period of 45 calendar days from the date of the mailed notice to allow review by residents,
14 occupants, owners of neighboring properties and by neighborhood groups.

15 (B) **Posted Notice.** The notice shall also be posted at the project site with a 18"
16 x 24" poster-size orange-colored paper.

17 (C) **Internet Notice.** The notice shall also be posted on the Planning
18 Department's website.

19 (D) In addition, the Staff Report and Recommendation shall be available at the
20 Planning Department and on the Planning Department's website two weeks prior to the Planning
21 Commission hearing at which the Conditional Use permit would be considered.

22 (7) Change in Use. A change from one formula retail use to another requires a
23 new Conditional Use Authorization, whether or not a Conditional Use Authorization would
24 otherwise be required by the particular change in use in question. This Conditional Use
25 Authorization requirement also applies in changes from one Formula Retail operator to

1 another within the same use category. A new Conditional Use Authorization shall not apply to
2 a change in a formula use retailer that meets the following criteria:

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

5 (B) the change in the formula retail use operator is the result of the
6 business being purchased by another formula retail operator who will retain all components of
7 the existing retailer and make minor alterations to the establishment(s) such as signage and
8 branding.

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

14 (8) Determination of Formula Retail Use. In those areas in which “formula
15 retail uses” are prohibited, any building permit application determined by the City to be for a
16 “formula retail use” that does not identify the use as a “formula retail use” is incomplete and
17 cannot be processed until the omission is corrected. Any building permit approved that is
18 determined by the City to have been, at the time of application, for a “formula retail use” that
19 did not identify the use as a “formula retail use” is subject to revocation at any time. If the City
20 determines that a building permit application or building permit subject to this Section of the
21 Code is for a “formula retail use,” the building permit application or holder bears the burden of
22 proving to the City that the proposed or existing use is not a “formula retail use.”

23 * * * *

24

25

1 Section 3. The Planning Code is hereby amended by revising Section 703.3,
2 subsections (b) and (g), to read as follows:

3 * * * *

4 (b) Formula Retail Use. Formula retail use is hereby defined as a type of retail sales
5 activity or retail sales establishment which, along with eleven or more other retail sales
6 establishments located ~~in the United States~~ anywhere in the world, maintains two or more of the
7 following features: a standardized array of merchandise, a standardized facade, a
8 standardized decor and color scheme, a uniform apparel, standardized signage, a trademark
9 or a servicemark; or a type of retail sales activity or retail sales establishment where fifty percent
10 (50%) or more of the stock, shares, or any similar ownership interest of such establishment is owned by
11 a formula retail use, or a subsidiary, affiliate, or parent of a formula retail use, even if the
12 establishment itself may have fewer than eleven other retail sales establishments permitted or located
13 in the world.

14 (1) Standardized array of merchandise shall be defined as 50% or more of in-
15 stock merchandise from a single distributor bearing uniform markings.

16 (2) Trademark shall be defined as a word, phrase, symbol or design, or a
17 combination of words, phrases, symbols or designs that identifies and distinguishes the
18 source of the goods from one party from those of others.

19 (3) Servicemark shall be defined as word, phrase, symbol or design, or a
20 combination of words, phrases, symbols or designs that identifies and distinguishes the
21 source of a service from one party from those of others.

22 (4) Decor shall be defined as the style of interior finishings, which may include
23 but is not limited to, style of furniture, wallcoverings or permanent fixtures.

24 (5) Color Scheme shall be defined as selection of colors used throughout,
25 such as on the furnishings, permanent fixtures, and wallcoverings, or as used on the facade.

1 (6) Facade shall be defined as the face or front of a building, including
2 awnings, looking onto a street or an open space.

3 (7) Uniform Apparel shall be defined as standardized items of clothing
4 including but not limited to standardized aprons, pants, shirts, smocks or dresses, hat, and
5 pins (other than name tags) as well as standardized colors of clothing.

6 (8) Signage shall be defined as business sign pursuant to Section 602.3 of the
7 Planning Code.

8 * * * *

9 (g) Neighborhood Commercial Notification and Design Review. After the
10 effective date of this Ordinance, any building permit application for a use permitted in a
11 Neighborhood Commercial District which is also a “formula retail use” as defined in this
12 section shall be subject to the ~~Neighborhood Commercial Notification and~~ Design Review
13 Procedures of Section 312 of this Code: and the notification procedures set forth in Section 303(i).

14
15 Section 4. The Planning Code is hereby amended by revising Section 803.6,
16 subsection (c) to read as follows:

17 . . .

18 (c) Formula Retail Use Defined. Formula retail use is hereby defined as a type of
19 retail sales activity or retail sales establishment which, along with eleven or more other retail
20 sales establishments located ~~in the United States~~ anywhere in the world, maintains two or more
21 of the following features: a standardized array of merchandise, a standardized façade, a
22 standardized décor and color scheme, a uniform apparel, standardized signage, a trademark
23 or a servicemark; or a type of retail sales activity or retail sales establishment where fifty percent
24 (50%) or more of the stock, shares, or any similar ownership interest of such establishment is owned by
25 a formula retail use, or a subsidiary, affiliate, or parent of a formula retail use, even if the

1 establishment itself may have fewer than eleven other retail sales establishments permitted or located
2 in the world.

3 (1) Standardized array of merchandise shall be defined as 50% or more of in-
4 stock merchandise from a single distributor bearing uniform markings.

5 (2) Trademark shall be defined as a word, phrase, symbol or design, or a
6 combination of words, phrases, symbols or designs that identifies and distinguishes the
7 source of the goods from one party from those of others.

8 (3) Servicemark shall be defined as word, phrase, symbol or design, or a
9 combination of words, phrases, symbols or designs that identifies and distinguishes the
10 source of a service from one party from those of others.

11 (4) Decor shall be defined as the style of interior finishings, which may include
12 but is not limited to, style of furniture, wallcoverings or permanent fixtures.

13 (5) Color Scheme shall be defined as selection of colors used throughout,
14 such as on the furnishings, permanent fixtures, and wallcoverings, or as used on the facade.

15 (6) Facade shall be defined as the face or front of a building, including
16 awnings, looking onto a street or an open space.

17 (7) Uniform Apparel shall be defined as standardized items of clothing
18 including but not limited to standardized aprons, pants, shirts, smocks or dresses, hat, and
19 pins (other than name tags) as well as standardized colors of clothing.

20 (8) Signage shall be defined as business sign pursuant to Section 602.3 of the
21 Planning Code.

22 (9) "Retail Sales Activity or Retail Sales Establishment" shall include the uses
23 defined in Section 303(i)(2).
24
25

1 Section 5. The Planning Code is amended by adding subsection 803.6(f), to read as
2 follows:

3 * * * *

4 (f) Neighborhood Commercial Notification. After the effective date of this subsection (f),
5 any building permit application for a use permitted in a MUG District, UMU District, Chinatown
6 Mixed Use District, and the Western Soma Special Use District which is also a “formula retail use” as
7 defined in this section shall be subject to the notification procedures set forth in Section 303(i).

8
9 Section 6. The Planning Code is amended by revising Section 350(g), to read as
10 follows:

11 **SEC. 350. FEES, GENERAL.**

12 * * * *

13 **(g) Fee Adjustments.**

14 (1) The Controller will annually adjust the fee amounts specified in Sections 350-
15 ~~358~~359 by the two-year average consumer price index (CPI) change for the San
16 Francisco/San Jose Primary Metropolitan Statistical Area (PMSA). For a listing of the
17 Department's current fees inclusive of annual indexing for inflation, reference the Schedule of
18 Application Fees available on the Department website.

19
20 Section 7. The Planning Code is amended by adding new Section 359, to read as
21 follows:

22 **SEC. 359. ECONOMIC IMPACT STUDY REVIEW.**

23 The fee to review an economic impact study, as required by Section 303(i)(3)(F)(v), shall be
24 \$3,500.00, plus any additional time and materials as set forth in Section 350(c).

1 Section 6. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor’s veto of the ordinance.

5
6 Section 7. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
7 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
8 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
9 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
10 additions, and Board amendment deletions in accordance with the “Note” that appears under
11 the official title of the ordinance.

12
13 APPROVED AS TO FORM:
14 DENNIS J. HERRERA, City Attorney

15 By: _____
16 ANDREA RUIZ-ESQUIDE
17 Deputy City Attorney

18
19
20
21
22
23
24
25
n:\legana\as2013\1300348\00925081.doc