

[Planning Code – Formula Retail and Large-Scale Retail Controls]

Ordinance amending the Planning Code to amend the definition of formula retail to include businesses that have 20 or more outlets worldwide; expand the applicability of formula retail controls to other types of uses; require Conditional Use Authorization for formula retail establishments in the C-3-G district with facades facing Market Street, between 6th Street and the intersection of Market Street, 12th Street and Franklin Street; expand the applicability of formula retail controls to create a new administrative review process for the authorization of a new formula retail operator at a parcel that had previously received a Conditional Use Authorization for the same formula retail use type and size, which will include new notification procedures, performance standards, and a process for requiring Planning Commission review when the performance standards are not met or upon request; delete the requirement for Conditional Use authorization when a formula retail establishment changes operator but remains the same size and use category and instead require the new administrative review; amend the Conditional Use criteria for Large-Scale Retail Uses to require an economic impact study and establish new fees for said study; and adopting findings, including environmental findings, Section 302 findings and findings of consistency with the General Plan and Planning Code Section 101.1.

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

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

2 Section 1. Findings.

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

7 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_, adopted  
8 findings that the actions contemplated in this ordinance are consistent, on balance, with the  
9 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board  
10 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
11 Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

12 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code  
13 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth  
14 in Planning Commission Resolution No. \_\_\_\_\_ and the Board incorporates such reasons  
15 herein by reference.

16  
17 Section 2. The Planning Code is hereby amended by revising Subsections 303(i) and  
18 303(j), to read as follows:

19 \* \* \* \*

20 (i) **Formula Retail Uses.**

21 (1) **Formula Retail Use.** A formula retail use is hereby defined as a type of  
22 retail sales activity or retail sales establishment which, if the requested application were to be  
23 approved, would have ~~has~~ ~~twenty eleven~~ or more other retail sales establishments in operation, or  
24 with local land use or permit entitlements already approved, located in the United States anywhere in  
25 the world. In addition to the ~~twenty eleven~~ establishments either in operation or with local land use

1 or permit entitlements approved for operation, the business maintains two or more of the  
2 following features: a standardized array of merchandise, a standardized facade, a  
3 standardized decor and color scheme, uniform apparel, standardized signage, a trademark or  
4 a servicemark.

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

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

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

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

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

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

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

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

1                   (2) **"Retail Sales Activity or Retail Sales Establishment."** For the purposes  
2 of this subsection (i), a retail sales activity or retail sales establishment shall include the  
3 following uses, as defined in Articles 1, 7, and Article and 8 of this Code: "Bar," "Drive-up  
4 Facility," "Eating and Drinking Use," "Liquor Store," "Sales and Service, Other Retail,"  
5 "Restaurant," "Limited-Restaurant," "Take-Out Food," "Sales and Service, Retail," "Service,  
6 Financial," "Movie Theater," ~~and~~ "Amusement and Game Arcade," "Service, Limited Financial,"  
7 "Service, Business or Professional," and "Service, Fringe Financial."

8                   (3) **Conditional Use Criteria.** With regard to a conditional use authorization  
9 application for a formula retail use, the Planning Commission shall consider, in addition to the  
10 criteria set forth in Subsection (c) above, the criteria below and the Performance-Based Standards  
11 adopted by the Planning Commission to implement the criteria below.

12                               (A) The existing concentrations of formula retail uses within a 1/4 mile of  
13 the proposed project~~the district~~.

14                               (B) The availability of other similar retail uses within a 1/4 mile of the  
15 proposed project~~the district~~.

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

18                               (D) The existing retail vacancy rates within a 1/4 mile of the proposed  
19 project~~the district~~.

20                               (E) The existing mix of Citywide-serving retail uses and ~~neighborhood~~  
21 daily needs-serving retail uses within a 1/4 mile of the proposed project~~the district~~.

22                               (F) Additional relevant data and analysis set forth in the Performance  
23 Review Standards adopted by the Planning Commission.

24                               (G) If required by Section 303(j) for Large Retail Uses, preparation of an  
25 economic impact study.

1 (H) Notwithstanding anything to the contrary contained in Planning Code  
2 Article 6 limiting the Planning Department's and Planning Commission's discretion to review signs,  
3 the Planning Department and Planning Commission may review and exercise discretion to require  
4 changes in the time, place and manner of the proposed signage for the proposed formula retail use.

5 (4) **Conditional Use Authorization Required.** A Conditional Use Authorization shall  
6 be required for a formula retail use in the following zoning districts unless explicitly 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 (K) The establishment of any new formula retail establishment in the C-3-G  
20 District with frontage on Market Street, between 6<sup>th</sup> Street and the intersection of Market Street, 12<sup>th</sup>  
21 Street and Franklin Street.

22 (5) **Formula Retail Uses Not Permitted.** Formula Retail Uses are not  
23 permitted in the following zoning districts:

- 24 (A) Hayes-Gough Neighborhood Commercial Transit District;  
25 (B) North Beach Neighborhood Commercial District;

1 (C) Chinatown Visitor Retail District;

2 (D) Upper Fillmore District does not permit Formula Retail uses that are  
3 also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and 790.91;

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

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

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

13 (H) Taraval Street Restaurant Subdistrict does not permit Formula Retail  
14 uses that are also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and  
15 790.91;

16 (I) Chinatown Mixed Use District does not permit Formula Retail uses that are  
17 also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and 790.91.

18 (6) **Neighborhood ~~Commercial~~ Notification and Design Review.** Any  
19 building permit application for a "formula retail use" as defined in this section ~~and located within~~  
20 ~~a Neighborhood Commercial District in Article 7~~ shall be subject to the ~~Neighborhood Commercial~~  
21 ~~Notification and~~ Design Review Procedures of Section 312 of this Code, unless the proposed  
22 formula retail use is subject to the process set forth in the Planning Commission's Performance-Based  
23 Review, as described in Section 303(i)(9), in which case the notice procedures described in that  
24 subsection shall apply.

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

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

10           (B) ~~the change in the formula retail use operator is the result of the business being~~  
11 ~~purchased by another formula retail operator who will retain all components of the existing retailer~~  
12 ~~and make minor alterations to the establishment(s) such as signage and branding the new application~~  
13 ~~complies with the Performance Review Standards adopted by the Planning Commission, as such~~  
14 ~~Standards may be amended by subsequent Planning Commission action.~~

15           (C) ~~the required public notification for the Performance Review Standards has been~~  
16 ~~provided as described in Section 303(i)(9), and~~

17           (D) ~~there has been no request made to the Department to bring the proposed project~~  
18 ~~to the Planning Commission for a discretionary review hearing.~~

19           The new operator shall comply with all conditions of approval previously  
20 imposed on the existing operator, including but not limited to signage programs and hours of  
21 operation; and shall conduct the operation generally in the same manner; ~~and shall comply with~~  
22 ~~the Performance Review Standards as described in Section 303(i)(9), and offer essentially the same~~  
23 ~~services and/or type of merchandise;~~ or seek and be granted a new Conditional Use  
24 Authorization.  
25



1           **(8) Determination of Formula Retail Use.** In those areas in which "formula  
2 retail uses" are prohibited, any building permit application determined by the City to be for a  
3 "formula retail use" that does not identify the use as a "formula retail use" is incomplete and  
4 cannot be processed until the omission is corrected. Any building permit approved that is  
5 determined by the City to have been, at the time of application, for a "formula retail use" that  
6 did not identify the use as a "formula retail use" is subject to revocation at any time.

7           In those areas in which "formula retail uses" are subject to the provisions of subsection  
8 303(i)(6) or 303(i)(9), any building permit application determined by the City to be for a "formula  
9 retail use" that does not identify the use as a "formula retail use" is incomplete and cannot be  
10 processed until the omission is corrected. Any building permit approved that is determined by the City  
11 to be for a "formula retail use" that does not identify the use as a "formula retail use" shall be void and,  
12 in order to be reconsidered, shall comply with the requirements in subsection (i)(6) or (i)(9), as  
13 applicable.

14           If the City determines that a building permit application or building permit subject to this  
15 Section of the Code is for a "formula retail use," the building permit application or holder bears  
16 the burden of proving to the City that the proposed or existing use is not a "formula retail use."

17           (9) Performance Review Standards. Certain applications for Formula Retail uses, which  
18 meet the criteria below, may be reviewed by Department staff pursuant to the Performance Review  
19 Standards adopted by the Planning Commission, unless other requirements of this Code require a  
20 Planning Commission hearing. The applicant shall also pay an administrative fee to compensate  
21 Planning Department and City staff for its time reviewing the project under this subsection, as set forth  
22 in Section 360 of this Code.

23           (A) Adherence to Performance Review Standards. The proposed project shall satisfy  
24 the Commission's adopted Performance Review Standards for Formula Retail as described in Sec.  
25 (i)(3)(C) for the design of the façade and signage.



1                    **(B) Public Notice.** Upon determination that an application is in compliance with the  
2 requirements of the Code and the Commission's Performance Review Standards for Formula Retail,  
3 the Planning Department shall give notice of the application as follows:

4                    **(i) Mailed and Posted Notice.** The Department shall cause a notice to be posted  
5 on the site pursuant to rules established by the Zoning Administrator and shall cause a written notice  
6 describing the proposed project to be sent in the manner described below. This notice shall be in  
7 addition to any other required notices required by the Municipal Code and shall have a format and  
8 content determined by the Zoning Administrator. It shall include a description of the proposal  
9 compared to any existing improvements on the site with dimensions of the basic features, elevations  
10 and site plan of the proposed project including the position of any adjacent buildings, exterior  
11 dimensions and finishes, a graphic reference scale, existing and proposed uses and commercial or  
12 institutional business name, if known. The notice shall describe the project review process and shall set  
13 forth the mailing date of the notice and the expiration date of the notification period. Written notice  
14 shall be mailed to the notification group which shall include the project sponsor, tenants of the subject  
15 property, the Planning Commission, relevant neighborhood organizations as described in Section  
16 312 (d)(2)(C), and all individuals having made a written request for notification for a specific parcel or  
17 parcels pursuant to Planning Code Section 351(g).

18                    **(ii) Notification Period.** Notwithstanding the notice requirement set forth in  
19 Planning Code Section 312, all building permit applications shall be held for a period that is the longer  
20 of 10 calendar days from either the date of the mailed notice or posting at the project site.

21                    **(iii) Elimination of Duplicate Notice.** The notice provisions of this Section may  
22 be waived by the Zoning Administrator for building permit applications for projects that have been, or  
23 before approval will be, the subject of a duly noticed public hearing before the Planning Commission  
24 or Zoning Administrator, provided that the nature of work for which the building permit application is  
25 required is both substantially included in the hearing notice and is the subject of the hearing.

(iv) Requests for Mandatory Discretionary Review. A request for the Planning Commission to hold a Discretionary Review hearing for a specific building permit application shall be considered by the Planning Commission if received by the Planning Department no later than 5:00 p.m. of the last day of the notification period as described under Subsection (i)(9)(B) above, and consistent with guidelines adopted by the Commission. The project sponsor of a building permit application may request a Discretionary Review by the Planning Commission to resolve conflicts between the Director of Planning and the project sponsor concerning requested modifications to comply with the Performance Review Standards for Formula Retail. If a timely request is made for Discretionary Review by the Commission for a permit that would otherwise only be subject to the Performance Review Standards for Formula Retail, then the Commission shall hold a Discretionary Review hearing and consider the proposed project and all of the criteria described in Sec.(i)(3)(A-H) at such hearing.

(10) Findings. The Planning Commission or Planning Department shall adopt findings for approval of a Formula Retail use as established in Section 703.3(a).

(j) **Large-Scale Retail Uses.** With respect to applications for the establishment of large-scale retail uses under Section 121.6, in addition to the criteria set forth in Subsections (c) and (d) above, the Commission shall consider the following:

(1) The extent to which the retail use's parking is planned in a manner that creates or maintains active street frontage patterns;

(2) The extent to which the retail use is a component of a mixed-use project or is designed in a manner that encourages mixed-use building opportunities;

(3) The shift in traffic patterns that may result from drawing traffic to the location of the proposed use; and

(4) The impact that the employees at the proposed use will have on the demand in the City for housing, public transit, childcare, and other social services.

1           **(5) An economic impact study.** *The Planning Department shall prepare an economic*  
2 *impact study using qualified city staff or shall select a consultant from a pool of pre-qualified*  
3 *consultants to prepare the economic impact study required by this subsection. The analysis, in the form*  
4 *of a study, shall be considered by the Planning Commission in its review of the application. The*  
5 *applicant shall bear the cost of paying the consultant for his or her work preparing the economic*  
6 *impact study, and any necessary documents prepared as part of that study. The applicant shall also*  
7 *pay an administrative fee to compensate Planning Department and City staff for its time reviewing the*  
8 *study, as set forth in Section 359 of this Code. The study shall evaluate the potential economic impact*  
9 *of the applicant's proposed project, including:*

10                   **(A) Employment.** *The report shall include the following employment*  
11 *information: a projection of both construction-related and permanent employment generated by the*  
12 *proposed project; an analysis of whether the proposed project will result in a net increase or decrease*  
13 *in permanent employment in the impact area; and the effect on wages and benefits of employees of*  
14 *other retail business and community income levels in the impact area.*

15                   **(B) Public Services.** *A projection of the costs of public services and facilities,*  
16 *including transit, childcare, and social services resulting from the operation of the proposed project*  
17 *and incident of those costs, including costs to the State or City and County of San Francisco of any*  
18 *public assistance that employees of the proposed store will be eligible for based on the wages and*  
19 *benefits to be paid by the proposed project.*

20                   **(C) Public Revenue.** *A projection of the potential changes to sales tax revenue,*  
21 *property taxes, impact fee assessments, and other public revenue that would be generated by the*  
22 *proposed project.*

23                   **(D) Leakage Study.** *An analysis of whether the proposed project will result in a*  
24 *net increase or decrease in the City's capture of spending by area residents on items that would*  
25 *otherwise be purchased outside the City & County of San Francisco.*

1                    **(E) Local Multiplier/Recirculation Study.** An analysis of whether the proposed  
2 project will result in a net increase or decrease of commercial activity within the City & County of San  
3 Francisco economy if the proposed project is approved. This study shall describe whether the  
4 recirculation of dollars would increase or decrease in the following categories: 1) direct spending by  
5 the proposed project and the spending of its competitors; 2) indirect spending that the supporting  
6 businesses of the proposed project and its competitors in the impact area spend; and 3) induced  
7 spending by the employees of the proposed project, the employees of its local competitors in the impact  
8 area and the employees of supporting businesses.

9                    **(F) Impact Area.** The area to be studied for potential economic impacts of the  
10 proposed project shall be determined by the City in consultation with the expert conducting the study.  
11 In no case shall the study area be less than 0.5 miles nor greater than 3.5 miles.

12                    \* \* \* \*

13                    Section 3. The Planning Code is hereby amended by revising Section 703.3 to read as  
14 follows:

15                    **(a) Findings.**

16                    (1) San Francisco is a city of diverse and distinct neighborhoods identified in large  
17 part by the character of their commercial areas.

18                    (2) San Francisco needs to protect its vibrant small business sector and create a  
19 supportive environment for new small business innovations. One of the eight Priority Policies  
20 of the City's General Plan resolves that "existing neighborhood-serving retail uses be  
21 preserved and enhanced and future opportunities for resident employment in and ownership  
22 of such businesses enhances."

23                    (3) Retail uses are the land uses most critical to the success of the City's  
24 commercial districts.

1 (4) Formula retail businesses are increasing in number in San Francisco, as they  
2 are in cities and towns across the country.

3 (5) Money earned by independent businesses is more likely to circulate within the  
4 local neighborhood and City economy than the money earned by formula retail businesses  
5 which often have corporate offices and vendors located outside of San Francisco.

6 (6) Formula retail businesses can have a competitive advantage over independent  
7 operators because they are typically better capitalized and can absorb larger startup costs,  
8 pay more for lease space, and commit to longer lease contracts. This can put pressure on  
9 existing businesses and potentially price out new startup independent businesses.

10 (7) San Francisco is one of a very few major urban centers in the State in which  
11 housing, shops, work places, schools, parks and civic facilities intimately co-exist to create  
12 strong identifiable neighborhoods. The neighborhood streets invite walking and bicycling and  
13 the City's mix of architecture contributes to a strong sense of neighborhood community within  
14 the larger City community.

15 (8) Notwithstanding the marketability of a retailer's goods or services or the visual  
16 attractiveness of the storefront, the standardized architecture, color schemes, decor and  
17 signage of many formula retail businesses can detract from the distinctive character of certain  
18 Neighborhood Commercial Districts.

19 (9) The increase of formula retail businesses in the City's neighborhood  
20 commercial areas, if not monitored and regulated, will hamper the City's goal of a diverse  
21 retail base with distinct neighborhood retailing personalities comprised of a mix of businesses.  
22 Specifically, the unregulated and unmonitored establishment of additional formula retail uses  
23 may unduly limit or eliminate business establishment opportunities for smaller or medium-  
24 sized businesses, many of which tend to be non-traditional or unique, and unduly skew the  
25 mix of businesses towards ~~national~~ formula retailers in lieu of ~~local or regional~~ unique or start-up

1 retailers, thereby decreasing the diversity of merchandise available to residents and visitors  
2 and the diversity of purveyors of merchandise.

3 (10) If, in the future, neighborhoods determine that the needs of their  
4 Neighborhood Commercial Districts are better served by eliminating the notice requirements  
5 for proposed formula retail uses, by converting formula retail uses into conditional uses in their  
6 district, or by prohibiting formula retail uses in their district, they can propose legislation to do  
7 so.

8 (11) Formula retailers are establishments with multiple locations and standardized features  
9 or a recognizable appearance. Recognition is dependent upon the repetition of the same  
10 characteristics of one store in multiple locations. The sameness of formula retailers outlets, while  
11 providing clear branding for consumers, counters the general direction of certain land use controls and  
12 General Plan Policies which value unique community character and therefore need controls, in certain  
13 areas, to maintain neighborhood individuality.

14 (12) According to an average of ten studies done by the firm Civic Economics and published  
15 by the American Independent Business Alliance in October of 2012, spending by independent retailers  
16 generated 3.7 times more direct local spending than that of formula retail chains.

17 (13) According to a 2014 Study by the San Francisco Office of Economic Analysis (OEA)  
18 report "Expanding Formula Retail Controls: Economic Impact Report" formula retail controls may  
19 have an effect on the City's economy, through their effect on the City's neighborhoods.

20 (14) The OEA Report found that in general, chain stores charge lower prices and provide  
21 affordable goods, but may spend less within the local economy, and can be unpopular with some  
22 residents because they can be seen to diminish the character of the neighborhood. At the same time,  
23 this OEA Report found that excessively limiting chain stores can reduce commercial rents and raise  
24 vacancy rates.



1           (15) Through a 2014 study commissioned by the Planning Department, titled "San Francisco  
2           Formula Retail Economic Analysis," staff and consultants conducted one on one interviews and  
3           worked with small groups including independent retailers, small business owners, merchants  
4           associations, formula retailers, commercial brokers, neighborhood representatives and other  
5           stakeholders. The Study found that landlords often perceive a benefit in renting to large established  
6           chains, which landlords believe typically have better credit and can sign longer leases than local,  
7           independent retailers, lowering the risk that the tenant will be unable to pay its rent. The existing land  
8           use controls for formula retail create a disincentive for formula retailers to locate where those controls  
9           on formula retail uses apply.

10  
11           **(b) Formula Retail Use.** Formula retail use is hereby defined in Section 303(i). ~~as a~~  
12 ~~type of retail sales activity or retail sales establishment which, along with eleven or more other retail~~  
13 ~~sales establishments located, maintains two or more of the following features: a standardized array of~~  
14 ~~merchandise, a standardized facade, a standardized decor and color scheme, a uniform apparel,~~  
15 ~~standardized signage, a trademark or a servicemark.~~

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

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

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

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

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

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

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

8           ~~—— (8) Signage shall be defined as business sign pursuant to Section 602.3 of the Planning~~  
9 ~~Code.~~

10           (c) **"Retail Sales Activity or Retail Sales Establishment"** shall include the uses  
11 defined in Section 303(i)(2) of this Code.

12           (d) **Formula Retail Uses Permitted.** Any use permitted in certain districts defined in  
13 Section 303 (i)(5)(A), which is also a "formula retail use" as defined in this Section, is hereby  
14 permitted.

15           (e) **Formula Retail Use Prohibited.** Notwithstanding subsection (d), certain districts  
16 may prohibit formula retail uses or a subset of formula retail uses as described in Section 303  
17 (i)(5).

18           (f) **Conditional Uses.** Notwithstanding subsections (d) or (e), a Conditional Use  
19 Authorization shall be required for a formula retail use in the zoning districts listed in Section  
20 303 (i)(4), unless explicitly exempted. Additional criteria to be used by the Planning  
21 Commission when considering granting conditional use permits to formula retail uses in these  
22 districts are listed in Section 303(i).

23           (g) **Neighborhood Commercial Notification and Design Review.** After the  
24 effective date of this Ordinance, any building permit application for a use permitted in a  
25 Neighborhood Commercial District which is also a "formula retail use" as defined in this

1 section shall be subject to the Neighborhood ~~Commercial~~ Notification and Design Review  
2 Procedures of Section ~~312-303(i)(6)~~ of this Code.

3 ~~—(h) **Discretionary Review Guidelines.** The Planning Commission shall develop and adopt~~  
4 ~~guidelines which it shall employ when considering any request for discretionary review made pursuant~~  
5 ~~to this Section. These guidelines shall include but are not limited to consideration of the following~~  
6 ~~factors:~~

7 ~~—(1) Existing concentrations of formula retail uses within the Neighborhood Commercial~~  
8 ~~District.~~

9 ~~—(2) Availability of other similar retail uses within the Neighborhood Commercial District.~~

10 ~~—(3) Compatibility of the proposed formula retail use with the existing architectural and~~  
11 ~~aesthetic character of the Neighborhood Commercial District.~~

12 ~~—(4) Existing retail vacancy rates within the Neighborhood Commercial District.~~

13 ~~—(5) Existing mix of Citywide serving retail uses and neighborhood serving retail uses~~  
14 ~~within the Neighborhood Commercial District.~~

15 ~~(h) —~~ **(i) Determination of Formula Retail Use.** Section 303(i) establishes the process  
16 for correcting omissions within ~~After the effective date of this Ordinance, in those areas in which~~  
17 ~~"formula retail uses" are prohibited, any building permit application determined by the City to be~~  
18 ~~for a "formula retail use" that does not identify the use as a "formula retail use," is incomplete~~  
19 ~~and cannot be processed until the omission is corrected. Any building permit approved after the~~  
20 ~~effective date of this Ordinance that is determined by the City to have been, at the time of application,~~  
21 ~~for a "formula retail use" that did not identify the use as a "formula retail use" is subject to revocation~~  
22 ~~at any time.~~

23 ~~—After the effective date of this Ordinance, in those areas in which "formula retail uses" are~~  
24 ~~subject to the Neighborhood Commercial Notification and Design Review provisions of subsection (g),~~  
25 ~~any building permit application determined by the City to be for a "formula retail use" that does not~~

1 ~~identify the use as a "formula retail use" is incomplete and cannot be processed until the omission is~~  
2 ~~corrected. After the effective date of this Ordinance, any building permit approved that is determined~~  
3 ~~by the City to be for a "formula retail use" that does not identify the use as a "formula retail use" must~~  
4 ~~complete the Neighborhood Commercial Notification and Design Review required in subsection (g).~~

5 ~~—If the City determines that a building permit application or building permit subject to this~~  
6 ~~Section of the Code is for a "formula retail use," the building permit applicant or holder bears the~~  
7 ~~burden of proving to the City that the proposed or existing use is not a "formula retail use."~~

8  
9 Section 4. The Planning Code is hereby amended by revising Section 803.6 to read  
10 as follows:

11 (a) **Findings.** The findings for Formula Retail controls are set forth in Section 703.3(a).

12 ~~—(1) San Francisco is a city of diverse and distinct neighborhoods identified in large part by~~  
13 ~~the character of their commercial areas.~~

14 ~~—(2) San Francisco needs to protect its vibrant small business sector and create a~~  
15 ~~supportive environment for new small business innovations. One of the eight Priority Policies of the~~  
16 ~~City's General Plan resolves that "existing neighborhood-serving retail uses be preserved and~~  
17 ~~enhanced and future opportunities for resident employment in and ownership of such businesses~~  
18 ~~enhances."~~

19 ~~—(3) Retail uses are the land uses most critical to the success of the City's commercial~~  
20 ~~districts.~~

21 ~~—(4) Formula retail businesses are increasing in number in San Francisco, as they are in~~  
22 ~~cities and towns across the country.~~

23 ~~—(5) Money earned by independent businesses is more likely to circulate within the local~~  
24 ~~neighborhood and City economy than the money earned by formula retail businesses which often have~~  
25 ~~corporate offices and vendors located outside of San Francisco.~~

1           ~~—(6) Formula retail businesses can have a competitive advantage over independent~~  
2           ~~operators because they are typically better capitalized and can absorb larger startup costs, pay more~~  
3           ~~for lease space, and commit to longer lease contracts. This can put pressure on existing businesses and~~  
4           ~~potentially price out new startup independent businesses.~~

5           ~~—(7) San Francisco is one of a very few major urban centers in the State in which housing,~~  
6           ~~shops, work places, schools, parks and civic facilities intimately co-exist to create strong identifiable~~  
7           ~~neighborhoods. The neighborhood streets invite walking and bicycling and the City's mix of~~  
8           ~~architecture contributes to a strong sense of neighborhood community within the larger City~~  
9           ~~community.~~

10           ~~—(8) Notwithstanding the marketability of a retailer's goods or services or the visual~~  
11           ~~attractiveness of the storefront, the standardized architecture, color schemes, decor and signage of~~  
12           ~~many formula retail businesses can detract from the distinctive character of certain Neighborhood~~  
13           ~~Commercial Districts.~~

14           ~~—(9) The increase of formula retail businesses in the City's neighborhood commercial areas,~~  
15           ~~if not monitored and regulated, will hamper the City's goal of a diverse retail base with distinct~~  
16           ~~neighborhood retailing personalities comprised of a mix of businesses. Specifically, the unregulated~~  
17           ~~and unmonitored establishment of additional formula retail uses may unduly limit or eliminate business~~  
18           ~~establishment opportunities for smaller or medium-sized businesses, many of which tend to be non-~~  
19           ~~traditional or unique, and unduly skew the mix of businesses towards national retailers in lieu of local~~  
20           ~~or regional retailers, thereby decreasing the diversity of merchandise available to residents and~~  
21           ~~visitors and the diversity of purveyors of merchandise.~~

22           ~~—(10) If, in the future, neighborhoods determine that the needs of their Neighborhood~~  
23           ~~Commercial Districts are better served by eliminating the notice requirements for proposed formula~~  
24           ~~retail uses, by converting formula retail uses into conditional uses in their district, or by prohibiting~~  
25           ~~formula retail uses in their district, they can propose legislation to do so.~~

1           (b) **Formula Retail Uses.**

2           (1) **Formula Retail Uses Permitted as a Conditional Use.** Formula retail uses  
3 ~~*within Article 8 districts require Conditional Use Authorization as described within Section 303(i).are*~~  
4 ~~*permitted in the MUG District, UMU District, Western SOMA Special Use District, the Chinatown*~~  
5 ~~*Community Business District and the Chinatown Residential Neighborhood Commercial District only*~~  
6 ~~*as a conditional use. When considering an application for a conditional use permit under this Section,*~~  
7 ~~*the Planning Commission shall consider the criteria defined in Section 303(i) of this Code.*~~

8           (2) **Formula Retail Uses Prohibited.** The establishment of new formula retail  
9 uses ~~*within Article 8 districts is prohibited as described within Section 303(i).in the Chinatown Visitor*~~  
10 ~~*Retail District is prohibited. The establishment of new Restaurant or Limited Restaurant uses that are*~~  
11 ~~*also defined as formula retail in any Chinatown Mixed Use Districts is prohibited.*~~

12           (c) **Formula Retail Use Defined.** Formula retail use is hereby defined in Section  
13 ~~*303(i). as a type of retail sales activity or retail sales establishment which, along with eleven or more*~~  
14 ~~*other retail sales establishments located in the United States, maintains two or more of the following*~~  
15 ~~*features: a standardized array of merchandise, a standardized façade, a standardized décor and color*~~  
16 ~~*scheme, a uniform apparel, standardized signage, a trademark or a servicemark.*~~

17           ~~*—— (1) Standardized array of merchandise shall be defined as 50% or more of in-stock*~~  
18 ~~*merchandise from a single distributor bearing uniform markings.*~~

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

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



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

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

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

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

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

12       ~~—— (9) "Retail Sales Activity or Retail Sales Establishment" shall include the uses defined~~  
13 ~~in Section 303(i)(2).~~

14  
15       **(d) Determination of Formula Retail Use.** Section 303(i) establishes the process for  
16 correcting omissions on any building permit application determined by the City to be a "formula retail  
17 use" that does not identify the use as a "formula retail use." If the City determines that a building  
18 permit application or building permit subject to this section of the Code is for a "formula retail use,"  
19 the building permit applicant or holder bears the burden of proving to the City that the proposed or  
20 existing use is not a "formula retail use."

21  
22       ~~—— (e) Permit Application Processing. After the effective date of this ordinance, any building~~  
23 ~~permit application determined by the City to be for a "formula retail use" that does not identify the use~~  
24 ~~as a "formula retail use" is incomplete and cannot be processed until the omission is corrected.~~

Section 5. The Planning Code is amended by revising Section 350(g), to read as follows:

Section 350. Fees, General

\* \* \* \*

**(g) Fee Adjustments.**

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

Section 6. The Planning Code is amended by adding new Section 359, to read as follows:

**Sec. 359. Economic Impact Study for Large Scale Retail Use.**

The fee to review an economic impact study, as required by Section 303(j)(5), shall be \$3,500.00, plus any additional time and materials as set forth in Section 350(c).

**Sec. 360 Performance Review for Formula Retail Use.**

The fee to provide performance review for formula retail uses as required by Section 303(i)(9), shall be the standard building permit fee, plus time and materials as set forth in Section 350(c).

Section 7. The Planning Code is amended by revising Section 209.8, to read as follows:

**SEC. 209.8. COMMERCIAL ESTABLISHMENTS IN R DISTRICTS.**

RH	RH	RH	RH	RH	RM	RM	RM	RM		RT	OR	CRC	
-1	-1	-1	-2	-3	-1	-2	-3	-4	RT	-M	-3	-4	
(D)		(S)											

[illegible]

											C	C	(d) Formula Retail Use, as defined in Section <del>703.3(b)</del> <u>303(i)</u> of this Code.
							P	P	P	P			(e) Any use meeting the standards and limitations set forth in Section 231: Limited Corner Commercial Uses in RTO Districts.
											C	C	(f) Non-residential use exceeding 6,000 gross square feet.
											P	P	(g) Liquor Store on the ground floor, as defined in Section 790.55 of this Code, unless otherwise specified in this Code.
													(h) Drive-up Facility, as defined in Section 790.30 of this Code.
											P	P	(i) Walk-up Facility, as defined in Section 790.140 of this Code, is permitted as a principle use on the ground floor if recessed 3 feet; requires a conditional use if not recessed.
											P	P	(j) Outdoor Activity Area, as defined in Section 790.70 of this Code, if in front; requires a conditional use if elsewhere.

Section 8. The Planning Code is amended by revising Section 218, to read as follows:

**SEC. 218. RETAIL SALES AND PERSONAL SERVICES.**

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													<b>SEC. 218. RETAIL SALES AND PERSONAL SERVICES.</b>  The uses specified in this Section shall not include any use first specifically listed in a subsequent Section of this Code.  (a) Retail business or personal service establishment.
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												<p><i>*Subject to the limitations of Section <u>121.6</u> and 121.8. <u># C for the establishment of new formula retail establishments, as described in Sec. 303(i), with frontage on Market Street between 6<sup>th</sup> Street and 12<sup>th</sup> Street.</u></i></p>

Section 9. The Planning Code is amended by revising Section 219 to read as follows:

**SEC. 219. OFFICES.**

EC	C	C-3-	C-3-	C-3-	C-M	M-1	M-2	PDR	PDR	PDR	PDR	
-	-	O(S	R	G	S			-1-G	-1-D	-1-B	-2	
±2	O	D)										

**SEC. 219. OFFICES.**

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										ss in	ss in		
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										nate	nate		
										d	d		
										land	land		
										-	-		
										mar	mar		
										k	k		
										build	build		
										-	-		
										ing.	ing.		
										P in	P in		
										desi	desi		

(a) Professional and business offices, as defined in 890.70, not more than 5,000 gross square feet in size and offering on-site services to the general public.

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[illegible]



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# C for the establishment of new formula retail establishments, as described in Sec. 303(i), with frontage on Market Street between 6th Street and the intersection of Market Street, 12th Street and Franklin Street.

[illegible]

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

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

14 By:

  
15 ANDREA RUIZ-ESQUIDE  
16 Deputy City Attorney

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