

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

June 13, 2017

File No. 170514-2

Lisa Gibson  
Acting Environmental Review Officer  
Planning Department  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Ms. Gibson:


On June 6, 2017, Supervisor Breed introduced the following substitute legislation:

**File No. 170514-2**

**Ordinance amending the Planning Code to allow a grocery store that may be defined as a formula retail use in the Fulton Street Grocery Store Special Use District, and adding criteria for approval; extending the duration of the controls; and making environmental findings, findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.**

This substitute legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

*for* By:   
Erica Major, Assistant Clerk  
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning  
Laura Lynch, Environmental Planning

1 [Planning Code - Fulton Street Grocery Store Special Use District]

2

3 **Ordinance amending the Planning Code to allow a grocery store that may be defined as**  
4 **a formula retail use in the Fulton Street Grocery Store Special Use District, and adding**  
5 **criteria for approval; extending the duration of the controls; and making environmental**  
6 **findings, findings of consistency with the General Plan and the eight priority policies of**  
7 **Planning Code, Section 101.1, and findings of public necessity, convenience, and**  
8 **welfare under Planning Code, Section 302.**

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

13

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

15

16 Section 1. Findings.

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

21 (b) Pursuant to Planning Code Section 302, this Board finds that this Planning Code  
22 amendment will serve the public necessity, convenience, and welfare for the reasons set forth  
23 in Planning Commission Resolution No. 18990 and the Board incorporates such reasons  
24 herein by reference. A copy of Planning Commission Resolution No. 18990 is on file with the  
25 Clerk of the Board of Supervisors in File No. \_\_\_\_\_.

1 (c) On September 26, 2013, the Planning Commission, in Resolution No. 18990,  
2 adopted findings that the actions contemplated in this ordinance are consistent, on balance,  
3 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The  
4 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of  
5 the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.  
6

7 Section 2. The Planning Code is hereby amended by revising Section 249.35A to read  
8 as follows:

9 **SEC. 249.35A. FULTON STREET GROCERY STORE SPECIAL USE DISTRICT.**

10 (a) **Purpose.** In order to provide for the consideration of a neighborhood-serving  
11 grocery store of moderate size in a location accessible to the Hayes Valley and Western  
12 Addition neighborhoods, there shall be a Fulton Street Grocery Store Special Use District,  
13 consisting of Lots 001, 015, and 028 of Assessor's Block 0794 as designated on Sectional  
14 Map 2SU of the Zoning Map. This Special Use District would enable the consideration of a  
15 project containing a grocery store in a district that does not permit such uses and of a building  
16 height not permitted by the established height limitations in the surrounding NCT district. *This*  
17 *Special Use District would conditionally permit a grocery store that may be defined as a formula retail*  
18 *use for a specified period of time, in order to allow consideration of a grocery store that is affordable*  
19 *to the neighborhood. A non-formula retail grocery store may be less affordable, and this one-time lift*  
20 *of the ban on formula retail is intended to support an affordable grocery store that is committed to*  
21 *servicing and hiring from the neighborhood. According to a 2013 census, income in the neighborhood*  
22 *adjacent to this site can be as low as \$16,136.*

23 (b) **Definition.** "Grocery Store" shall mean a retail use that provides fresh produce  
24 and other unprepared perishable food products (such as dairy, fish, grains), in addition to  
25 other general groceries, personal items, household goods, and similar goods.

1 (c) **Application.** This special use district shall apply only to projects that meet all of the  
2 following standards:

3 (1) Project is mixed-use, with both commercial and residential uses;

4 (2) Commercial uses include a grocery store larger than 15,000 square feet of  
5 gross occupied floor area; and

6 (3) Residential uses achieve a density of not less than 1 unit per 600 square  
7 feet of lot area.

8 (d) **Controls.** The following controls apply to projects meeting the criteria of subsection  
9 (c) and to any subsequent alterations or changes of use in a building approved under this  
10 Section 249.35A.

11 (1) The controls of the Hayes-Gough NCT apply in their entirety, except as  
12 specified in this Section.

13 (2) A grocery store may be permitted as a formula retail use, as defined in Section  
14 303.1, through Conditional Use Authorization pursuant to Section 303.1. All other formula retail uses  
15 shall be prohibited.

16 ~~(2) Any commercial uses in addition to the grocery store may not exceed 3,000 square~~  
17 ~~feet of occupied floor area per use.~~

18 (3) Accessory off-street parking shall not be permitted for any commercial use  
19 except the grocery store.

20 (4) All subsequent changes of use shall require Conditional Use authorization  
21 from the Planning Commission. The only non-residential uses ~~which~~ that may be permitted in  
22 the space initially approved for a grocery store shall include Trade Shop (Planning Code  
23 Section 790.124), Other Institutions, Large (Planning Code Section 790.50), Other Institutions,  
24 Small (Planning Code Section 790.51), and Public Use (Planning Code Section 790.80),  
25 except that Other Retail Sales and Services (Planning Code Section 790.102) may be

1 permitted provided that no individual tenant occupies more than 3,000 square feet of gross  
2 floor area.

3 (5) In addition to the standard criteria for Conditional Use authorization, as outlined in  
4 Section 303, a project sponsor proposing either a grocery store or a specialty grocery shall also  
5 present information about the affordability of food for the Commission's consideration. The  
6 Commission shall consider whether the project sponsor can demonstrate that the proposed grocery  
7 store will accept payment assistance, as set forth below.

8 (A) Acceptance of Payment Assistance. The project sponsor shall describe the  
9 proposed grocery store's commitment to accept payment from individuals through assistance programs  
10 including but not limited to the United States Department of Agriculture's (USDA) Supplemental  
11 Nutritional Assistance Program (SNAP); the Special Supplemental Nutrition Program for Women,  
12 Infants, and Children (WIC), or other similar assistance programs.

13 (B) Food Affordability Projection. The project sponsor shall prepare a  
14 projection of food affordability at the proposed location and submit it for review by the Planning  
15 Commission. The projection shall consist of current retail pricing for a sampling of everyday grocery  
16 items that represent all categories within the market basket of foods maintained by the USDA's Center  
17 for Nutrition Policy and Promotion for their Official USDA Food Plans.

18 (6) Signs shall be subject to the requirements of Article 6 of this Code, except  
19 that allowable business signs for the grocery store shall be limited to the following:

20 (A) Window Signs. The total area of all window signs, as set forth in  
21 Section 602.1(b), shall not exceed 10% of the area of the window on or in which the signs are  
22 located. Such signs may be nonilluminated.

23 (B) Wall Signs. The area of all wall signs shall not exceed 40 square feet  
24 on the Fulton Street frontage occupied by the use, and 40 square feet on the Laguna Street  
25 frontage occupied by the use. The height of any wall sign shall not exceed 24 feet, or the

1 height of the wall to which it is attached, or the height of the lowest of any residential  
2 windowsill on the wall to which the sign is attached, whichever is lower. Such signs may be  
3 nonilluminated or indirectly illuminated.

4 (C) Projecting Signs. The number of projecting signs shall not exceed  
5 one per business. The area of such sign, as set forth in Section 602.1(a), shall not exceed 24  
6 square feet. The height of such sign shall not exceed 24 feet, or the height of the wall to which  
7 it is attached, or the height of the lowest of any residential windowsill on the wall to which the  
8 sign is attached, whichever is lower. No part of the sign shall project more than 75% percent of  
9 the horizontal distance from the street property line to the curblin, or six feet six inches,  
10 whichever is less. Such signs may be nonilluminated or indirectly illuminated.

11 (D) Signs on Awnings and Marquees. Sign copy may be located on  
12 permitted awnings or marquees in lieu of wall signs. The area of such sign copy as set forth in  
13 Section 602.1(c) shall not exceed 40 square feet on the Fulton Street frontage occupied by  
14 the use, and 40 square feet on the Laguna Street frontage occupied by the use. Such sign  
15 copy may be nonilluminated or indirectly illuminated.

16 (E) Freestanding Signs and Sign Towers. Freestanding signs or sign  
17 towers per lot shall not be permitted.

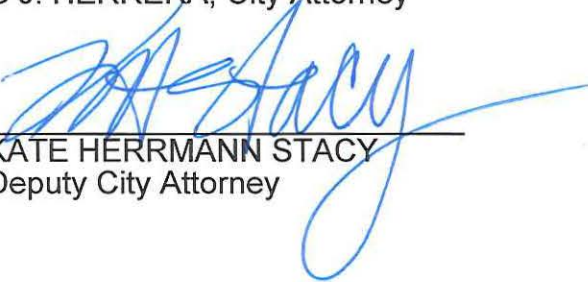
18 (e) **Effectiveness of Controls in this Ordinance.** The controls of this Section  
19 249.35A shall apply only to a grocery store that the Planning Commission approves pursuant  
20 to the requirements of this Section 249.35A within five years of the effective date of the ordinance  
21 in Board File No. \_\_\_\_\_ between May 4, 2008 and January 1, 2019.

22  
23 Section 3. Effective Date. This ordinance shall become effective 30 days after  
24 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
25

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
2 of Supervisors overrides the Mayor's veto of the ordinance.

3  
4 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
6 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
7 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
8 additions, and Board amendment deletions in accordance with the "Note" that appears under  
9 the official title of the ordinance.

10  
11 APPROVED AS TO FORM:  
12 DENNIS J. HERRERA, City Attorney

13  
14 By:   
15 KATE HERRMANN STACY  
16 Deputy City Attorney

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**REVISED LEGISLATIVE DIGEST**  
(Substituted, 6/6/2017)

[Planning Code - Fulton Street Grocery Store Special Use District]

**Ordinance amending the Planning Code to allow a grocery store that may be defined as a formula retail use in the Fulton Street Grocery Store Special Use District, and adding criteria for approval; extending the duration of the controls; and making environmental findings, findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.**

Existing Law

Formula Retail uses generally are prohibited in the Hayes Gough Neighborhood Commercial Transit District, and the controls of the Hayes Gough Neighborhood Commercial Transit District apply to this special use district. Planning Code Section 249.35A allows a grocery store meeting certain criteria to be approved through the conditional use permit process if it is approved between May 4, 2008 and January 1, 2019.

Amendments to Current Law

The Amendment would allow a formula retail grocery store to be approved through the conditional use permit process if it is approved within 5 years of the effective date of the Amendment. The Amendment would add a requirement that the proposed grocery store provide information about affordability of its groceries, including its willingness to accept payment from individuals through assistance programs, as well as a projection of the affordability of food sold at the grocery store.

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