

FILE NO. 081234

ORDINANCE NO. 269-08

1 [Zoning – Prohibiting Formula Retail Uses in the Chinatown Visitor Retail District, and
2 Establishing a Conditional Use Permit Requirement for Formula Retail Uses in the Chinatown
3 Community Business District and the Chinatown Residential Neighborhood Commercial
4 District ~~the Chinatown Mixed Use Districts.~~]

5 **Ordinance amending the Planning Code by amending Section 803.6 to prohibit formula**
6 **retail uses in the Chinatown Visitor Retail District, and to create a conditional use**
7 **requirement for formula retail uses in the Chinatown Community Business District and**
8 **the Chinatown Residential Neighborhood Commercial District ~~Chinatown Mixed Use~~**
9 **Districts; amending Section 803.2 to refer to this prohibition and conditional use**
10 **requirement, and adopting findings, including environmental findings and findings of**
11 **consistency with the priority policies of Planning Code Section 101.1 and the General**
12 **Plan.**

13 Note: Additions are *single-underline italics Times New Roman*;
14 deletions are ~~*strikethrough italics Times New Roman*~~.
15 Board amendment additions are double underlined.
16 Board amendment deletions are ~~strikethrough normal~~.

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

18 Section 1. Findings. The Board of Supervisors of the City and County of San
19 Francisco hereby find and determine that:

20 (a) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
21 ordinance will serve the public necessity, convenience and welfare, for the reasons set forth in
22 Planning Commission Resolution No. 17728, and incorporates such reasons by this
23 reference thereto. A copy of said resolution is on file with the Clerk of the Board of
24 Supervisors in File No. 081234.

25
Supervisor Peskin
BOARD OF SUPERVISORS

1 (b) Pursuant to Planning Code Section 101.1, the Board of Supervisors finds that the
2 ordinance is consistent with the Priority Policies of Section 101.1(b) of the Planning Code and
3 with the General Plan and hereby incorporates a report containing those findings as if fully set
4 forth herein. A copy of said report is on file with the Clerk of the Board of Supervisors in File
5 No. 081234.

6 (c) The Planning Department concluded environmental review of this ordinance
7 pursuant to the California Environmental Quality Act, Public Resources Code Section 2100 et
8 seq. Documentation of that review is on file with the Clerk of the Board of Supervisors in File
9 No. 081234.

10 Section 2. The San Francisco Planning Code is hereby amended by amending Section
11 803.6, to read as follows:

12 SEC. 803.6. FORMULA RETAIL USES IN THE CHINATOWN MIXED USE DISTRICTS
13 AND IN THE WESTERN SOMA PLANNING AREA SPECIAL USE DISTRICT.

14 (a) Findings.

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

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

22 (3) Retail uses are the land uses most critical to the success of the City's
23 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 and mixed use districts.

19 (9) The increase of formula retail businesses in the City's neighborhood commercial
20 and mixed use 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
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1 mix of businesses towards national retailers in lieu of local or regional retailers, thereby
2 decreasing the diversity of merchandise available to residents and visitors and the diversity of
3 purveyors of merchandise.

4 (b) Formula Retail Uses.

5 (1) Formula Retail Uses Permitted as a Conditional Use. Formula retail uses are
6 permitted in the Western SoMa Planning Area Special Use District, the Chinatown Community
7 Business District and the Chinatown Residential Neighborhood Commercial District only as a
8 conditional use. When considering an application for a conditional use permit under this
9 Section, the Planning Commission shall consider the criteria defined in Section 703.3(h) of
10 this Code.

11 (2) Formula Retail Uses Prohibited. The establishment of new formula retail uses in the
12 Chinatown Mixed Use Districts, as defined in the Planning Code, Sections 810.1 (Chinatown
13 Community Business District), 811.1 (Chinatown Visitor Retail District) and 812.1 (Chinatown
14 Residential Neighborhood Commercial District) is prohibited.

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

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

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

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

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

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

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

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

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

15 (9) "Retail sales activity or retail sales establishment" shall include the following
16 uses, as defined in Article 8 of this code: "bar," "drive-up facility," "eating and drinking use,"
17 "restaurant, large fast-food," "restaurant, small fast-food," "restaurant, full-service," "sales and
18 services, other retail," "sales and services, nonretail," "movie theater," "amusement game
19 arcade," and "take-out food."

20 (d) Determination of Formula Retail Use. If the City determines that a building
21 permit application or building permit subject to this section of the Code is for a "formula retail
22 use," the building permit applicant or holder bears the burden of proving to the City that the
23 proposed or existing use is not a "formula retail use."
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1 (e) Permit Application Processing. After the effective date of this ordinance, any
2 building permit application determined by the City to be for a "formula retail use" that does not
3 identify the use as a "formula retail use" is incomplete and cannot be processed until the
4 omission is corrected.

5 Section 3. The San Francisco Planning Code is hereby amended by amending Section
6 803.2, to read as follows:

7 SEC. 803.2. USES PERMITTED IN CHINATOWN MIXED USE DISTRICTS.

8 A use is the specific purpose for which a property or building is used, occupied,
9 maintained, or leased. Whether or not a use is permitted in a specific Chinatown Mixed Use
10 District is set forth, summarized or cross-referenced in Sections 810.1 through 812.96 of this
11 Code for each district class.

12 (a) Use Categories. The uses, functions, or activities, which are permitted in each
13 Chinatown Mixed Use District class include those listed in Table 803.2 below by zoning
14 control category and numbered and cross-referenced to the Code Section containing the
15 definition.

16 TABLE 803.2 USE CATEGORIES PERMITTED IN THE
17 CHINATOWN MIXED USE DISTRICTS

18 TABLE INSET:

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No.	Zoning Control Categories for Uses	Section Number of Use Definition
20 803.2.24	Outdoor Activity Area	§ 890.71
21 803.2.25	Drive-Up Facility	§ 890.30
22 803.2.26	Walk-Up Facility	§ 890.140
23 803.2.27	Hours of Operation	§ 890.48

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803.2.38a	Residential Conversion, Residential Hotels	§ 890.84
803.2.38b	Residential Demolition, Residential Hotels	§ 890.86
803.2.39a	Residential Conversion, Apartments	§ 890.84
803.2.39b	Residential Demolition, Apartments	§ 890.86
803.2.40a	Other Retail Sales and Services	§ 890.102
803.2.40b	Gift Store--Tourist- Oriented	§ 890.39
No.	Zoning Control Categories for Uses	Section Number of Use Definition
803.2.40c	Jewelry	§ 890.51
803.2.41	Bar	§ 890.22
803.2.42	Full-Service Restaurant	§ 890.92
803.2.43	Fast-Food Restaurant-- Small	§ 890.90
803.2.44	Fast-Food Restaurant-- Large	§ 890.91
803.2.45	Take-Out Food	§ 890.122
803.2.46	Movie Theater	§ 890.64
803.2.47	Adult Entertainment	§ 890.36
803.2.48	Other Entertainment	§ 890.37
803.2.49	Financial Service	§ 890.110
803.2.50	Limited Financial Service	§ 890.112
803.2.51	Medical Service	§ 890.114
803.2.52	Personal Service	§ 890.116
803.2.53	Professional Service	§ 890.108
803.2.54	Massage Establishment	§ 890.60

1	803.2.55	Tourist Hotel	§ 890.46
2	803.2.56	Automobile Parking Lot, Community Commercial	§ 890.9
3	803.2.57	Automobile Parking Garage, Community Commercial	§ 890.10
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5	803.2.58	Automobile Parking Lot, Public	§ 890.11
6	803.2.59	Automobile Parking Garage, Public	§ 890.12
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8	803.2.60	Automotive Gas Station	§ 890.14
9	No.	Zoning Control Categories for Uses	Section Number of Use Definition
10	803.2.61	Automotive Service Station	§ 890.18
11	803.2.62	Automotive Repair	§ 890.15
12	803.2.63	Automotive Wash	§ 890.20
13	803.2.64	Automobile Sale or Rental	§ 890.13
14	803.2.65	Animal Hospital	§ 890.6
15	803.2.66	Ambulance Service	§ 890.2
16	803.2.67	Mortuary	§ 890.62
17	803.2.68	Trade Shop	§ 890.124
18	803.2.70	Administrative Service	§ 890.106
19	803.2.71	Light Manufacturing, Wholesale Sales or Storage	§ 890.54
20			
21	803.2.72	Fringe Financial Service	§ 890.113
22	803.2.73	Business Services	§ 890.111
23	803.2.80	Hospital or Medical Center	§ 890.44
24	803.2.81	Other Institutions	§ 890.50
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1	803.2.82	Public Use	§ 890.80
2	803.2.90	Residential Use	§ 890.88
3	803.2.95	Automobile Parking Lot, Community Residential	§ 890.7
4	803.2.96	Automobile Parking Garage, Community Residential	§ 890.8

6 (b) Use Limitations. Uses in Chinatown Mixed Use Districts are either permitted,
7 conditional, accessory, temporary, or are not permitted.

8 (1) Permitted Uses. All permitted uses in Chinatown Mixed Use Districts shall be
9 conducted within an enclosed building, unless otherwise specifically allowed in this Code.
10 Exceptions from this requirement are: accessory off-street parking and loading; uses which,
11 when located outside of a building, qualify as an outdoor activity area, as defined in Section
12 890.71 of this Code; and uses which by their nature are to be conducted in an open lot or
13 outside a building, as described in Sections 890 through 890.140 of this Code.

14 If there are two or more uses in a structure and none is classified under Section
15 803.2(b)(1)(C) of this Code as accessory, then each of these uses will be considered
16 separately as an independent permitted, conditional, temporary or not permitted use.

17 (A) Principal Uses. Principal uses are permitted as of right in a Chinatown Mixed Use
18 District, when so indicated in Sections 810.1 through 812.96 of this Code for each district
19 class.

20 (B) Conditional Uses. Conditional uses are permitted in a China-town Mixed Use
21 District when authorized by the Planning Commission; whether a use is conditional in a given
22 district is indicated in Sections 810 through 812. Conditional uses are subject to the provisions
23 set forth in Section 303 of this Code. In the case of formula retail uses, the provisions of
24 Planning Code Section 703.3(h) shall apply.

1 (i) An establishment which sells beer and wine with motor vehicle fuel is a conditional
2 use, and shall be governed by Section 229.

3 (ii) Any use or feature which lawfully existed and was permitted as a principal or
4 conditional use on the effective date of these controls which is not otherwise nonconforming
5 or noncomplying as defined in Section 180 of this Code, and which use or feature is not
6 permitted under this Article is deemed to be a permitted conditional use subject to the
7 provisions of this Code.

8 (iii) Notwithstanding any other provision of this Article, a change in use or demolition
9 of a movie theater use, as set forth in Section 890.64, shall require conditional use
10 authorization. This Subsection shall not authorize a change in use if the new use or uses are
11 otherwise prohibited.

12 (iv) Notwithstanding any other provision of this Article, a change in use or demolition
13 of a general grocery store use, as set forth in Section 890.102(a) and as further defined in
14 Section 790.102(a), shall require conditional use authorization. This Subsection shall not
15 authorize a change in use if the new use or uses are otherwise prohibited.

16 (C) Accessory Uses. Subject to the limitations set forth below and in Sections 204.1
17 (Accessory Uses for Dwelling Units in R Districts) and 204.5 (Parking and Loading as
18 Accessory Uses) of this Code, a related minor use which is either necessary to the operation
19 or enjoyment of a lawful principal use or conditional use or is appropriate, incidental and
20 subordinate to any such use, shall be permitted in Chinatown Mixed Use Districts as an
21 accessory use when located on the same lot. Any use not qualified as an accessory use shall
22 only be allowed as a principal or conditional use, unless it qualifies as a temporary use under
23 Sections 205 through 205.2 of this Code.

1 No use in a Chinatown Mixed Use District will be considered accessory to a principal
2 use which involves or requires any of the following:

3 (i) The use of more than 1/3 of the total floor area occupied by both the accessory use
4 and the principal use to which it is accessory, combined, except in the case of accessory off-
5 street parking;

6 (ii) Any bar, restaurant, other entertainment, or any retail establishment which serves
7 liquor for consumption on-site;

8 (iii) Any take-out food use, except for a take-out food use which occupies 100 square
9 feet or less (including the area devoted to food preparation and service and excluding storage
10 and waiting areas) in a retail grocery or specialty food store;

11 (iv) The wholesaling, manufacturing or processing of foods, goods, or commodities on
12 the premises of an establishment which does not also provide for primarily retail sale of such
13 foods, goods or commodities at the same location where such wholesaling, manufacturing or
14 processing takes place.

15 The above shall not prohibit take-out food activity which operates in conjunction with a
16 fast-food restaurant. A fast-food restaurant, by definition, includes take-out food as an
17 accessory and necessary part of its operation.

18 (D) Temporary Uses. Uses not otherwise permitted are permitted in Chinatown Mixed
19 Use Districts to the extent authorized by Sections 205, 205.1 or 205.2 of this Code.

20 (2) Not Permitted Uses.

21 (A) Uses which are not listed in this Article are not permitted in a Chinatown Mixed
22 Use District unless determined by the Zoning Administrator to be permitted uses in
23 accordance with Section 307(a) of this Code.
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1 (B) No use, even though listed as a permitted use or otherwise allowed, shall be
2 permitted in a Chinatown Mixed Use District which, by reason of its nature or manner of
3 operation, creates conditions that are hazardous, noxious, or offensive through the emission
4 of odor, fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste, or
5 excessive noise.

6 (C) No use, even though listed as a permitted use or otherwise allowed, which is also a
7 formula retail use as defined in Section 803.6, shall be permitted in the Chinatown Visitor Retail
8 District Mixed Use Districts.

9 ~~(C)(D)~~ The establishment of a use that sells alcoholic beverages, other than beer and
10 wine, concurrent with motor vehicle fuel is prohibited, and shall be governed by Section 229.

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

13 By:

14 
15 ANDREA RUIZ-ESQUIDE
16 Deputy City Attorney



City and County of San Francisco

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Tails

Ordinance

File Number: 081234

Date Passed:

Ordinance amending the Planning Code by amending Section 803.6 to prohibit formula retail uses in the Chinatown Visitor Retail District, and to create a conditional use requirement for formula retail uses in the Chinatown Community Business District and the Chinatown Residential Neighborhood Commercial District; amending Section 803.2 to refer to this prohibition and conditional use requirement, and adopting findings, including environmental findings and findings of consistency with the priority policies of Planning Code Section 101.1 and the General Plan.

November 4, 2008 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

November 18, 2008 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

File No. 081234

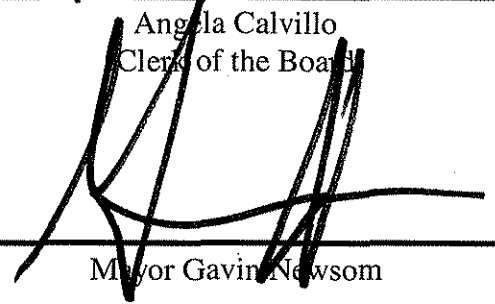
I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on November 18, 2008 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo
Clerk of the Board

11/25/2008

Date Approved



Mayor Gavin Newsom