

1 [Planning Code, Zoning Map - Third Street Formula Retail Restricted Use District]

2

3 **Ordinance amending the Planning Code to create the Third Street Formula Retail**  
4 **Restricted Use District; amending Zoning Map Sheet SU10, for property located on**  
5 **Third Street between Williams Avenue and Egbert Avenue; and making findings,**  
6 **including environmental findings pursuant to the California Environmental Quality Act,**  
7 **findings of consistency with the General Plan and the priority policies of Planning**  
8 **Code, Section 101.1.**

9 NOTE: Additions are *single-underline italics Times New Roman*;  
10 deletions are ~~*strike-through italics Times New Roman*~~.  
11 Board amendment additions are double-underlined;  
12 Board amendment deletions are ~~strike-through normal~~.

12

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

14

Section 1. Findings.

15

(a) The Planning Department has determined that the actions contemplated in this  
16 ordinance comply with the California Environmental Quality Act (California Public Resources  
17 Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of  
18 Supervisors in File No. 130372 and is incorporated herein by reference.

19

(b) Pursuant to Planning Code Section 302, this Board finds that these Planning Code  
20 Amendments will serve the public necessity, convenience, and welfare for the reasons set  
21 forth in Planning Commission Resolution No. 18932 and the Board incorporates such reasons  
22 herein by reference. A copy of Planning Commission Resolution No. 18932 is on file with the  
23 Board of Supervisors in File No. 130372.

24

(c) This Board finds that these Planning Code amendments are consistent with the  
25 General plan and with the Priority Policies of Planning Code Section 101.1 for the reasons set

1 forth in Planning Commission Resolution No. 18932 and the Board hereby incorporates such  
2 reasons herein by reference.

3 Section 2. The San Francisco Planning Code is hereby amended by adding Section  
4 786 thereto, to read as follows:

5 **SEC. 786. THIRD STREET FORMULA RETAIL RESTRICTED USE DISTRICT.**

6 (a) Findings.

7 (1) San Francisco is a city of diverse and distinct neighborhoods identified in large part  
8 by the character of their commercial corridors.

9 (2) San Francisco must create a supportive environment for small businesses in order  
10 to preserve the unique character of the City and foster a vibrant commercial sector.

11 (3) One of the eight Priority Policies of the City's General Plan resolves that "existing  
12 neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident  
13 employment in and ownership of such businesses enhanced."

14 (4) The Bayview neighborhood is home to a diverse array of businesses including  
15 neighborhood commercial and industrial businesses that serve the working class community. The Third  
16 Street Corridor has served as the main merchant corridor for this neighborhood and is receiving  
17 significant investment of City resources to revitalize, grow and expand local business opportunities.

18 (5) As development in San Francisco continues, neighborhoods, including residential  
19 and commercial areas in the Bayview area, will be subject to change, and new businesses may wish to  
20 locate in the Bayview area, particularly along the Third Street Corridor.

21 (6) The Third Street Corridor presently has a mix of businesses, housing, shops, work  
22 places, community serving uses, religious institutions, parks and civic facilities that create an  
23 identifiable neighborhood.

24 (7) An influx of formula retail businesses can put pressure on existing businesses and  
25 potentially price out existing and new independent businesses.

1                   (8) Bayview's mix of businesses, uses and architecture contributes to a strong sense of  
2 neighborhood community. The Third Street Corridor is generally of small scale, with buildings that  
3 have been identified as potential historic resources or have been landmarked as historic places. There  
4 is both architectural variety and variety in the types of goods and services offered on the Third Street  
5 Corridor. Additionally the majority of businesses on the Third Street Corridor are locally-owned,  
6 many for generations, and some have historically served the diverse ethnic communities of the  
7 Bayview.

8                   (9) Standardized architecture, color schemes, décor and signage of many formula retail  
9 businesses can detract from the distinctive character of the Bayview neighborhood community.

10                   (10) The increase of formula retail businesses in the Third Street Corridor, if not  
11 monitored and regulated, will hamper the City's goal of a diverse retail base within distinct  
12 neighborhood communities.

13                   (11) In 2004 the Board of Supervisors adopted a redevelopment plan (“Redevelopment  
14 Plan”) for the Bayview Hunters Point Project Area, which was subsequently amended in 2010. The  
15 Redevelopment Plan was the result of years of community based planning efforts with the goal of  
16 revitalizing the area to create new parks and open space, retail opportunities, affordable housing and  
17 other community benefits. Three of the objectives outlined in the Redevelopment Plan are focused on  
18 supporting the commercial activities of the Third Street Corridor. Specifically, Section 1.2.1 lists these  
19 objectives as: strengthening the economic base of the Project Area and the community by strengthening  
20 retail and other commercial functions within the Project Area, retaining existing residents and existing  
21 cultural diversity to the extent feasible, and supporting locally-owned small businesses and local  
22 entrepreneurship.

23                   (12) One of the goals of the Redevelopment Plan was to provide structure and  
24 limitations to the development of the Bayview to encourage uses that would benefit the neighborhood,  
25 create new economic development opportunities and draw more residents and patrons to the Third

1 Street Corridor. By establishing a Conditional Use process, both the City and the community have an  
2 opportunity to review and provide comments on any proposed location, expansion or alteration of  
3 formula retail uses to ensure that they meet the objectives of the Redevelopment Plan.

4 (13) The unregulated and unmonitored establishment of additional formula retail uses  
5 may unduly limit or eliminate business establishment opportunities for non-traditional or unique  
6 businesses, thereby decreasing the diversity of merchandise and merchants along the Third Street  
7 corridor.

8 (14) The public welfare of the Bayview residential, retail and business community is  
9 served by the monitoring and regulating of formula retail businesses on Third Street, for these reasons  
10 and the reasons set forth in Planning Code Section 703.3.

11 (b) Boundaries. The Third Street Formula Retail Restricted Use District shall regulate all  
12 properties fronting Third Street between Williams Avenue and Egbert Avenue. The following  
13 restrictions shall apply within the district.

14 (c) Conditional Use Authorization Required. A Conditional Use Authorization shall be  
15 required for any new formula retail use, as defined in Planning Code Section 303(i)(1), in the Third  
16 Street Formula Retail Restricted Use District.

17 (d) Change in Use. Notwithstanding the provisions of Planning Code Section 303(i), any  
18 change from one formula retail use to another requires Conditional Use Authorization, when the  
19 existing formula retail use has not procured a conditional use permit for the formula retail use that  
20 existed prior to the effective date of this Ordinance, and any City permits are required for any physical  
21 change to the premises for the new formula retail business.

22 (e) Conditional Use Criteria. With regard to Conditional Use Permit applications for formula  
23 retail uses within the Third Street Formula Retail Restricted Use District, the Planning Commission  
24 shall consider the criteria set forth in Planning Code Sections 303(c) and 303(i)(3). The procedures  
25

1 and requirements of Planning Code Section 303 shall apply to Formula Retail Uses in the Third Street  
2 Formula Retail Restricted Use District, except as explicitly modified in this Section 786.

3 (f) Prohibition of Expansion of Existing Formula Retail Uses. Any formula retail use that  
4 lawfully exists prior to the effective date of this ordinance may continue in existence, provided that it  
5 does not expand the square footage devoted to formula retail uses, intensify the formula retail use or  
6 alter the structure. Any prior non-conforming formula retail shall apply for a Conditional Use  
7 Authorization in order to change, expand or intensify the use or expand the structure.

8 Section 3. The San Francisco Planning Code is hereby amended by amending Section  
9 303, to read as follows:

10 \* \* \*

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

12 **(1) Formula Retail Use.** A formula retail use is hereby defined as a type of retail  
13 sales activity or retail sales establishment which has eleven or more other retail sales  
14 establishments located in the United States. In addition to the eleven establishments, the  
15 business maintains two or more of the following features: a standardized array of  
16 merchandise, a standardized facade, a standardized decor and color scheme, a uniform  
17 apparel, standardized signage, a trademark or a servicemark.

18 (A) Standardized array of merchandise shall be defined as 50% or more  
19 of 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  
11 of the Planning Code.

12 (2) **"Retail Sales Activity or Retail Sales Establishment."** For the  
13 purposes of subsection (i), a retail sales activity or retail sales establishment shall include the  
14 following uses, as defined in Article 7 and Article 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."

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

21 (A) The existing concentrations of formula retail uses within the district.

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

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

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

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

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

- 6 (A) All Neighborhood Commercial Districts in Article 7;
- 7 (B) All Mixed Use-General Districts in Section 840;
- 8 (C) All Urban Mixed Use Districts in Section 843;
- 9 (D) All Residential-Commercial Districts as defined in Section 206.3;
- 10 (E) Japantown Special Use District as defined in Section 249.31;
- 11 (F) Chinatown Community Business District as defined in Section

12 810.1;

13 (G) Chinatown Residential/Neighborhood Commercial District as  
14 defined in Section 812.1;

15 (H) Western SoMa Planning Area Special Use District as defined in  
16 Section 823;

17 (I) Residential Transit-Oriented Districts as defined in Sections 206.4  
18 and 206.5;

19 (J) Limited Conforming Use /Non-Conforming Use in RH-RM-RTO  
20 and RED Districts.

21 (K) Third Street Formula Retail Restricted Use District, as defined in Section  
22 786.

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

- 25 (A) Hayes-Gough Neighborhood Commercial Transit District;

1 (B) North Beach Neighborhood Commercial District;

2 (C) Chinatown Visitor Retail District.

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

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

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

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

14 (H) Taraval Street Restaurant Subdistrict does not permit Formula Retail  
15 uses that are also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and  
16 790.91;

17 (6) **Neighborhood Commercial Notification and Design Review.** Any building  
18 permit application for a "formula retail use" as defined in this section and located within a  
19 Neighborhood Commercial District in Article 7 shall be subject to the Neighborhood  
20 Commercial Notification and Design Review Procedures of Section 312 of this Code.

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



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 imposed on  
10 the existing operator, including but not limited to signage programs and hours of operation;  
11 and shall conduct the operation generally in the same manner and offer essentially the same  
12 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 retail  
15 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 Section 4. The San Francisco Planning Code is hereby amended by amending  
25 Sectional Map SU10 of the Zoning Map of the City and County of San Francisco, as follows:

Description of Property	Use District Hereby Approved
Assessor's Block 4881, Lots 002 and 012; Assessor's Block 5387, Lots 010, 022, 026 – 033; Assessor's Block 5413, Lot 017; Assessor's Block 5414, Lot 031; Assessor's Block 5419, Lots 006, 007, 007B, 007C, 009, 015 – 018, and 023; Assessor's Block 5420, Lot 001; Assessor's Block 5421, Lots 013, 138 – 142; Assessor's Block 5429, Lot 002; Assessor's Block 5431A, Lots 001V and 043; Assessor's Block 5431B, Lots 001 – 142; Assessor's Block 5881, Lots 024 – 032.	Third Street Formula Retail Restricted Use District

Section 5. Effective Date. This ordinance shall become effective 30 days from the date of passage.

Section 6. This section is uncodified. In enacting this Ordinance, the Board intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams, or any other constituent part of the Planning Code that are explicitly shown in this legislation as additions, deletions, Board amendment additions, and

//

//

//

//

1 Board amendment deletions in accordance with the "Note" that appears under the official title  
2 of the legislation.

3 APPROVED AS TO FORM:

4 DENNIS J. HERRERA,  
5 City Attorney

6

7 By: \_\_\_\_\_  
8 KATE HERRMANN STACY  
9 Deputy City Attorney

9

10 n:\legana\as2013\1300390\ord 1.docx

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25