

1 [Make findings as to the need to regulate formula retail uses, define and prohibit formula retail
 2 uses in the Hayes-Gough Neighborhood Commercial District and in the Neighborhood
 3 Commercial Cluster Districts at Cole and Carl Streets and Parnassus and Stanyon Streets,
 4 require notice and design review to be provided for any building permit application for a
 5 formula retail use, provide that the burden to prove that a use is not a formula retail use rests
 6 with the building permit applicant or holder, and provide that nonconforming uses in
 7 Residential Districts which are seeking to change in use to retail sales activity or retail sales
 8 establishment which are also a formula retail use must comply with the provisions regarding
 9 formula retail uses.]

10 **Ordinance to amend the Planning Code by adding section 703.3 and by amending**
 11 **section 182 to make findings as to the need to regulate formula retail uses, to define**
 12 **formula retail uses, prohibit formula retail uses in the Hayes-Gough Neighborhood**
 13 **Commercial District and in the Neighborhood Commercial Cluster Districts at Cole and**
 14 **Carl Streets and Parnassus and Stanyon Streets, to require any building permit**
 15 **application for a formula retail use to comply with the notice and design review**
 16 **procedures of section 312 of the Planning Code, to provide that the burden to prove**
 17 **that a use is not a formula retail use rests with the building permit applicant or holder,**
 18 **and to provide that nonconforming uses in Residential Districts which are seeking to**
 19 **change in use to retail sales activity or retail sales establishment which is also a**
 20 **formula retail use must comply with the provisions of Section 703.3, and making**
 21 **findings of consistency with the priority policies of Planning Code Section 101.1 and**
 22 **the General Plan.**

23 Note: Additions are single-underline italics Times New Roman;
 24 deletions are ~~strikethrough italics Times New Roman~~.
 25 Board amendment additions are double underlined.
 Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. Findings. The Board of Supervisors of the City and County of San Francisco
 hereby finds and determines that:

1 (a) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this
2 ordinance will serve the public necessity, convenience and welfare for the reasons set forth in
3 Planning Commission Resolution No. _____ recommending approval of this Planning Code
4 Amendment, and incorporates such reasons by this reference thereto. A copy of said
5 resolution is on file with the Clerk of the Board of Supervisors in File No. _____.

6 (b) Pursuant to Planning Code Section 101.1, this Board of Supervisors finds that this
7 ordinance is in consistent with the Priority Policies of Section 101.1(b) of the Planning Code
8 and with the General Plan and hereby adopts the findings of the Planning Commission, as set
9 forth in Planning Commission Resolution No. _____, and incorporates said findings by this
10 reference thereto.

11 Section 2. The San Francisco Planning Code is hereby amended by adding Section
12 703.3, to read as follows:

13 **Sec. 703.3 Formula Retail Uses**

14 **(a) Findings**

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

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

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

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

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

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

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

13 (8) Notwithstanding the marketability of a retailer's goods or services or the visual
14 attractiveness of the storefront, the standardized architecture, color schemes, decor and signage of
15 many formula retail businesses can detract from the distinctive character of certain neighborhood
16 commercial districts.

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

1 **(b) Formula Retail Use.** *Formula retail use is hereby defined as a type of retail sales*
2 *activity or retail sales establishment which, along with four or more other retail sales establishments, is*
3 *required by contractual or other arrangement to maintain any of the following standardized*
4 *characteristics: array of services and/or merchandize, trademark, service mark, décor, architecture,*
5 *uniform apparel, color scheme, signage, or similar standardized feature.*

6 *“Retail sales activity or retail sales establishment” shall include the following uses, as defined*
7 *in Article 7 of this code: “bar,” “drive-up facility,” “eating and drinking use,” “liquor store,”*
8 *“restaurant, large fast-food,” “restaurant, small self-service,” “restaurant, full-service,” “sales and*
9 *service, other retail,” “sales and service, retail,” “movie theatre,” “video store,” “amusement and*
10 *game arcade,” and “take-out food.”*

11 **(c) Formula Retail Uses Permitted.** *Any use permitted in a Neighborhood Commercial*
12 *District, which is also a “formula retail use” as defined in this section, is hereby permitted.*

13 **(d) Formula Retail Uses Prohibited.** *Notwithstanding subsection (c), any use permitted in*
14 *the Hayes-Gough Neighborhood Commercial District, or in the Neighborhood Commercial Cluster*
15 *Districts located at Cole and Carl Streets and at Parnassus and Stanyon Streets, which is also a*
16 *“formula retail use” as defined in this section, is hereby prohibited.*

17 **(e) Neighborhood Commercial Notification and Design Review.** *After the effective date of*
18 *this ordinance, any building permit application for a use permitted in a Neighborhood Commercial*
19 *District which is also a “formula retail use” as defined in this section shall be subject to the*
20 *neighborhood commercial notification and design review procedures of Section 312 of this Code.*

21 **(f) Determination of Formula Retail Use.** *After the effective date of this ordinance, in*
22 *those areas in which “formula retail uses” are prohibited, any building permit application determined*
23 *by the City to be for a “formula retail use” that does not identify the use as a “formula retail use” is*
24 *incomplete and cannot be processed until the omission is corrected. Any building permit approved*
25

1 after the effective date of this ordinance that is determined by the City to be for a “formula retail use”
2 that does not identify the use as a “formula retail use” is subject to revocation at any time.

3 After the effective date of this ordinance, in those areas in which “formula retail uses” are
4 subject to the Neighborhood Commercial Notification and Design Review provisions of subsection (e),
5 any building permit application determined by the City to be for a “formula retail use” that does not
6 identify the use as a “formula retail use” is incomplete and cannot be processed until the omission is
7 corrected. After the effective date of this ordinance, any building permit approved that is determined
8 by the City to be for a “formula retail use” that does not identify the use as a “formula retail use” must
9 complete the Neighborhood Commercial Notification and Design Review required in subsection (e).

10 If the City determines that a building permit application or building permit subject to this
11 section of the Code is for a “formula retail use,” the building permit applicant or holder bears the
12 burden of proving to the City that the proposed or existing use is not a “formula retail use.”

13
14 Section 3. The San Francisco Planning Code is hereby amended by amending Section
15 182, to read as follows:

16 SEC. 182. NONCONFORMING USES: CHANGES OF USE.

17 The following provisions shall apply to nonconforming uses with respect to changes of
18 use:

19 (a) A nonconforming use shall not be changed or modified so as to increase the
20 degree of nonconformity under the use limitations of this Code, with respect to the type of use
21 or its intensity except as provided in Section 181 for nighttime entertainment activities within
22 the South of Market RSD or SLR Districts and in Subsection (f) below. The degree of
23 nonconformity shall be deemed to be increased if the new or modified use is less widely
24 permitted by the use districts of the City than the nonconforming use existing immediately
25 prior thereto.

1 (b) Except as limited in this Subsection, a nonconforming use may be reduced in
2 size, extent or intensity, or changed to a use that is more widely permitted by the use districts
3 of the City than the existing use, subject to the other applicable provisions of this Code.
4 Except as otherwise provided herein, the new use shall still be classified as a nonconforming
5 use.

6 (1) A nonconforming use in a Residential District (other than a Residential-
7 Commercial Combined District or an RED District), which use is located more than ¼ mile
8 from the nearest Individual Area Neighborhood Commercial District or Restricted Use
9 Subdistrict described in Article 7 of this Code, may change to another use which is permitted
10 as a principal use at the first story and below in an NC-1 District, or it may change to another
11 use which is permitted as a conditional use at the first story and below in an NC-1 District only
12 upon approval of a conditional use application pursuant to the provisions of Article 3 of this
13 Code. If the nonconforming use is seeking to change in use to a retail sales activity or retail sales
14 establishment which is also a formula retail use, as defined in Section 703.3 of this Code, it shall
15 comply with the provisions of Section 703.3 of this Code. The nonconforming use shall comply
16 with other building standards and use limitations of NC-1 Districts, as set forth in Sections
17 710.10 through 710.95 of this Code.

18 If the nonconforming use is located within ¼ mile from any Individual Area
19 Neighborhood Commercial District or Restricted Use Subdistrict described in Article 7 of this
20 Code, the nonconforming use may change to another use which is permitted as a principal
21 use at the first story and below in an NC-1 District and in the Individual Area Neighborhood
22 Commercial District or Restricted Use Subdistrict or Districts within ¼ mile of the use, or it
23 may change to another use which is permitted as a conditional use at the first story and below
24 in an NC-1 District and in the Individual Area Neighborhood Commercial District or Districts
25 within ¼ mile of the use only upon approval of a conditional use application pursuant to the

1 provisions of Article 3 of this Code. If the nonconforming use is seeking to change in use to a retail
2 sales activity or retail sales establishment which is also a formula retail use, as defined in Section
3 703.3 of this Code, it shall comply with the provisions of Section 703.3 of this Code. The
4 nonconforming use shall comply with other building standards and use limitations of NC-1
5 Districts and any Individual Area NC District or Districts located within ¼ mile of the use, as
6 set forth in Article 7 of this Code.

7 (2) A nonconforming use in a Residential-Commercial Combined District may be
8 changed to another use listed in Articles 2 or 7 of this Code as a principal use for the district in
9 which the existing use would first be permitted as a principal or conditional use.

10 (3) A nonconforming use in a Neighborhood Commercial District may be changed to
11 another use as provided in Subsections (c) and (d) below or as provided in Section 186.1 of
12 this Code.

13 (4) A nonconforming use in any district other than a Residential or Neighborhood
14 Commercial District may be changed to another use listed in Articles 2 or 7 of this Code as a
15 principal use for the district in which the existing use would first be permitted as a principal
16 use. This provision shall not apply in the Residential Subdistrict of the Rincon Hill Special Use
17 District.

18 (5) A nonconforming use in any South of Market District may not be changed to an
19 office, retail, bar, restaurant, nighttime entertainment, adult entertainment, hotel, motel, inn,
20 hostel, or movie theater use in any district where such use is otherwise not permitted or
21 conditional, except as provided in Subsection (g) below.

22 (c) A nonconforming use may be changed to a use listed in Articles 2 or 7 of this
23 Code as a conditional use for the district in which the property is located, subject to the other
24 applicable provisions of this Code, without the necessity of specific authorization by the City
25 Planning Commission except where major work on a structure is involved, and the new use

1 may thereafter be continued as a permitted conditional use, subject to the limitation of Section
2 178(b) of this Code.

3 (d) A nonconforming use may be changed to a use listed in Articles 2, 7 or 8 of this
4 Code as a principal use for the district in which the property is located, subject to the other
5 applicable provisions of this Code, and the new use may thereafter be continued as a
6 permitted principal use.

7 (e) A nonconforming use in an R District subject to termination under the provisions
8 of Section 185 of this Code may be converted to a dwelling unit without regard to the
9 requirements of this Code with respect to dwelling unit density under Article 2, dimensions,
10 areas and open space under Article 1.2, or off-street parking under Article 1.5, provided the
11 nonconforming use is eliminated by such conversion, provided further that the structure is not
12 enlarged, extended or moved to another location, and provided further that the requirements
13 of the Building Code, the Housing Code and other applicable portions of the Municipal Code
14 are met.

15 (f) Any nonconforming use in an RED District may change to any use falling within
16 zoning categories 816.36, 816.42 through 816.47, 816.55, or 816.64 through 816.67, subject
17 to the applicable provisions of this Code other than those controlling uses, and the new use
18 may thereafter continue as a nonconforming use.

19 (g) Once a nonconforming use has been changed to a principal or conditional use
20 permitted in the district in which the property is located, or brought closer in any other manner
21 to conformity with the use limitations of this Code, the use of the property may not thereafter
22 be returned to its former nonconforming status, except that:

23 (1) Any area which is used as a live/work unit shall be allowed to return to its former
24 nonconforming status.

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1 (2) Within any South of Market District, any area occupied by a nonconforming
2 office use which is changed to an arts, home and/or business service use falling within zoning
3 categories 102.2 or 816.42 through 816.47 or a wholesale, storage or light manufacturing use
4 falling within zoning categories 816.64 through 816.67 shall be allowed to return to its former
5 nonconforming office use.

6 (3) Upon restoration of a previous nonconforming use as permitted by Subsection
7 (1) or (2) above, any modification, enlargement, extension, or change of use, from
8 circumstances which last lawfully existed prior to the creation of the live/work unit, or prior to
9 the change from office use, shall be subject to the provisions of this Article, and the restored
10 non-conforming use shall be considered to have existed continuously since its original
11 establishment, prior to the live/work unit or change to office use, for purposes of this Article.

12 (h) If a nonconforming use has been wrongfully changed to another use in violation
13 of any of the fore-going provisions, and the violation is not immediately corrected when
14 required by the Zoning Administrator, the wrongful change shall be deemed to be a
15 discontinuance or abandonment of the nonconforming use under Section 183 of this Code.
16

17 Section 4. The Planning Department concluded environmental review of this ordinance
18 pursuant to the California Environmental Quality Act. Documentation of that review is on file
19 with the Clerk of the Board of Supervisors in File No. _____.

20
21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: _____
24 Sarah Ellen Owsowitz
25 Deputy City Attorney