

BOARD of SUPERVISORS



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August 5, 2019

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On July 30, 2019, Supervisor Brown submitted the following proposed legislation:

File No. 190839

Ordinance amending the Planning Code to allow a grocery store use that is a formula retail use in the Fulton Street Grocery Store Special Use District ("District"), on Fulton Street between Laguna and Octavia Streets, subject to conditional use authorization, and adding criteria for such authorization; clarify the definition of a grocery store use within the District; eliminate square footage requirements for commercial uses in the District other than a grocery store and for subsequent uses in a location previously approved for a grocery store; extend the time period for effectiveness of controls for the District to five years from the effective date of the Ordinance; 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 proposed ordinance is being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

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

- c: John Rahaim, Director
Scott Sanchez, Acting Deputy Zoning Administrator
Corey Teague, Zoning Administrator
Lisa Gibson, Environmental Review Officer
Devyani Jain, Deputy Environmental Review Officer
AnMarie Rodgers, Director of Citywide Planning
Dan Sider, Director of Executive Programs
Aaron Starr, Manager of Legislative Affairs
Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

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

2
3 **Ordinance amending the Planning Code to allow a grocery store use that is a formula**
4 **retail use in the Fulton Street Grocery Store Special Use District (“District”), on Fulton**
5 **Street between Laguna and Octavia Streets, subject to conditional use authorization,**
6 **and adding criteria for such authorization; clarify the definition of a grocery store use**
7 **within the District; eliminate square footage requirements for commercial uses in the**
8 **District other than a grocery store and for subsequent uses in a location previously**
9 **approved for a grocery store; extend the time period for effectiveness of controls for**
10 **the District to five years from the effective date of the Ordinance; and making**
11 **environmental findings, findings of consistency with the General Plan, and the eight**
12 **priority policies of Planning Code, Section 101.1, and findings of public necessity,**
13 **convenience, and welfare under Planning Code, Section 302.**

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

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

22 Section 1. Environmental and Land Use Findings.

23 (a) The Planning Department has determined that the actions contemplated in this
24 ordinance comply with the California Environmental Quality Act (California Public Resources
25 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of

1 Supervisors in File No. ____ and is incorporated herein by reference. The Board affirms this
2 determination.

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

8 (c) Pursuant to Planning Code Section 302, the Board finds that this Planning Code
9 amendment will serve the public necessity, convenience, and welfare for the reasons set forth
10 in Planning Commission Resolution No. _____ and the Board incorporates such reasons
11 herein by reference. A copy of Planning Commission Resolution No. _____ is on file with
12 the Clerk of the Board of Supervisors in File No. _____.

13
14 Section 2. Article 2 of the Planning Code is hereby amended by revising Section
15 249.35A, to read as follows:

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

17 (a) **Purpose.** In order to provide for the consideration of a neighborhood-serving
18 grocery store of moderate size in a location accessible to the Hayes Valley and Western
19 Addition neighborhoods, there shall be a Fulton Street Grocery Store Special Use District,
20 consisting of Lots 001, 015, and 028 of Assessor's Block 0794, between Laguna and Octavia
21 Streets, as designated on Sectional Map 2SU of the Zoning Map. This Special Use District
22 would enable the consideration of a project containing a grocery store in a district that does
23 not permit such uses ~~and of a building height not permitted by the established height limitations in~~
24 ~~the surrounding NCT district.~~ This Special Use District would conditionally permit a grocery store
25 that is a formula retail use, in order to allow consideration of a grocery store that is affordable to the

1 neighborhood. A non-formula retail grocery store may be less affordable, and this one-time lift of the
2 ban on formula retail is intended to support an affordable grocery store that is committed to serving
3 and hiring from the neighborhood. According to the U.S. Census Bureau's 2017 American Community
4 Survey, the median household income in the surrounding neighborhood is \$24,041, and over one-third
5 of residents in the neighborhood live below the poverty line.

6 (b) **Definition.** "Grocery Store" shall mean a retail use that provides fresh produce and
7 other unprepared perishable food products (such as dairy, fish, grains), in addition to other
8 general groceries, personal items, household goods, and similar goods. The term "Grocery
9 Store" includes General Grocery and Specialty Grocery uses.

10 (c) **Application.** This ~~s~~Special ~~u~~Use ~~d~~District shall apply only to projects that meet all
11 of the following standards:

12 (1) The pProject is mixed-use, with both commercial and residential uses;

13 (2) Commercial uses include a ~~g~~Grocery ~~s~~Store larger than 15,000 square feet
14 of gross occupied floor area; and

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

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

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

22 (2) Any commercial uses in addition to the grocery store may not exceed 3,000 square
23 feet of occupied floor area per use. All formula retail uses are prohibited, except for a Grocery Store,
24 which may be permitted as a formula retail use, as defined in Section 303.1, through Conditional Use
25 Authorization pursuant to Section 303.1. Pursuant to the Planning Code, any such formula retail

1 Grocery Store shall be subject to all provisions of Section 303.1, including but not limited to subsection
2 (j) of Section 303.1.

3 (3) Accessory off-street parking shall not be permitted for any commercial use
4 except the ~~g~~Grocery ~~s~~Store.

5 (4) All subsequent changes of use shall require Conditional Use authorization
6 from the Planning Commission. The only Non-Residential Uses that may be permitted in the
7 space initially approved for a ~~g~~Grocery ~~s~~Store shall include Trade Shop, and Institutional Uses,
8 excluding Medical Cannabis Dispensaries, Hospitals, and Philanthropic Administrative
9 Services, except that General Retail Sales and Services, Pharmacy, or General or Specialty
10 Grocery uses may be permitted ~~provided that no individual tenant occupies more than 3,000 square~~
11 ~~feet of Gross Floor Area.~~

12 (5) In addition to the standard criteria for Conditional Use authorization, as set forth in
13 Sections 303 and, if applicable, 303.1, a project sponsor proposing a Grocery Store shall also present
14 information about the affordability of food for the Commission's consideration. The Commission shall
15 consider such information, as well as whether the project sponsor can demonstrate that the proposed
16 Grocery Store will accept payment assistance, as set forth below.

17 (A) Acceptance of Payment Assistance. The project sponsor shall describe the
18 proposed Grocery Store's commitment to accept payment from individuals through assistance
19 programs including but not limited to the United States Department of Agriculture's (USDA)
20 Supplemental Nutritional Assistance Program (SNAP), the Special Supplemental Nutrition Program for
21 Women, Infants, and Children (WIC), and other similar public assistance programs.

22 (B) Food Affordability Projection. The project sponsor shall prepare a
23 projection of food affordability at the proposed location and submit it for review by the Planning
24 Commission. The projection shall consist of current retail pricing for a sampling of everyday grocery
25

1 items that represent all categories within the market basket of foods maintained by the USDA's Center
2 for Nutrition Policy and Promotion for their Official USDA Food Plans.

3 (C) **Periodic Reporting Requirement.** In addition to the other requirements of
4 this subsection (d)(5), a project sponsor shall submit for review by the Commission the information
5 required in subsections (A) and (B) of this subsection (d)(5), updated to reflect current conditions,
6 within five years after the last submission of such information, upon a change of ownership of the
7 Grocery Store site, or upon the operation of a new Grocery Store at the site, whichever is earliest.

8 (56) Signs shall be subject to the requirements of Article 6 of this Code, except
9 that allowable business signs for the ~~g~~Grocery ~~s~~Store shall be limited to the following:

10 (A) **Window Signs.** The total area of all window signs, as set forth in
11 Section 602.1(b), shall not exceed 10% of the area of the window on or in which the signs are
12 located. Such signs may be non-illuminated.

13 (B) **Wall Signs.** The total area of all wall signs shall not exceed 40
14 square feet on the Fulton Street frontage occupied by the use, and 40 square feet on the
15 Laguna Street frontage occupied by the use. The height of any wall sign shall not exceed 24
16 feet, or the height of the wall to which it is attached, or the height of the lowest of any
17 residential windowsill on the wall to which the sign is attached, whichever is lower. Such signs
18 may be non-illuminated or indirectly illuminated.

19 (C) **Projecting Signs.** The number of projecting signs shall not exceed
20 one per business. The area of such sign, as set forth in Section 602.1(a), shall not exceed 24
21 square feet. The height of such sign shall not exceed 24 feet, or the height of the wall to which
22 it is attached, or the height of the lowest of any residential windowsill on the wall to which the
23 sign is attached, whichever is lower. No part of the sign shall project more than 75% percent of
24 the horizontal distance from the street property line to the curblineline, or six feet six inches,
25 whichever is less. Such signs may be non-illuminated or indirectly illuminated.

1 (D) **Signs on Awnings and Marquees.** Sign copy may be located on
2 permitted awnings or marquees in lieu of wall signs. The area of such sign copy as set forth in
3 Section 602.1(c) shall not exceed 40 square feet on the Fulton Street frontage occupied by
4 the use, and 40 square feet on the Laguna Street frontage occupied by the use. Such sign
5 copy may be non-illuminated or indirectly illuminated.

6 (E) **Freestanding Signs and Sign Towers.** Freestanding signs or sign
7 towers per lot shall not be permitted.

8 (e) **Effectiveness of Controls in this ~~Ordinance~~ Special Use District.** The controls of
9 this Section 249.35A shall apply only to a ~~g~~Grocery ~~s~~Store that the Planning Commission
10 approves pursuant to the requirements of this Section 249.35A ~~between May 4, 2008 and~~
11 ~~January 1, 2019~~within 5 years of the effective date of the ordinance in Board File No. _____,
12 amending this Section.

13
14 Section 3. Effective Date. This ordinance shall become effective 30 days after
15 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
16 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
17 of Supervisors overrides the Mayor's veto of the ordinance.

18
19 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
20 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
21 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
22 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment

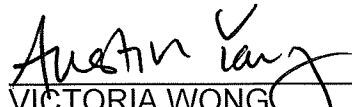
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1 additions, and Board amendment deletions in accordance with the "Note" that appears under
2 the official title of the ordinance.

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4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: 
7 VICTORIA WONG
8 Deputy City Attorney

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LEGISLATIVE DIGEST

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

Ordinance amending the Planning Code to allow a grocery store use that is a formula retail use in the Fulton Street Grocery Store Special Use District (“District”), on Fulton Street between Laguna and Octavia Streets, subject to conditional use authorization, and adding criteria for such authorization; clarify the definition of a grocery store use within the District; eliminate square footage requirements for commercial uses in the District other than a grocery store and for subsequent uses in a location previously approved for a grocery store; extend the time period for effectiveness of controls for the District to five years from the effective date of the Ordinance; 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

Grocery stores are permitted in the Fulton Street Grocery Store Special Use District (SUD), pursuant to Planning Code Section 249.35A, but existing law does not allow for a formula retail grocery store. Section 249.35A also requires that any commercial use in the SUD in addition to the grocery store, and any use that replaces the grocery store, occupy a maximum of 3000 square feet of floor area.

Amendments to Current Law

This ordinance would allow conditional use authorization for a formula retail grocery store in the SUD, and would clarify the definition of a Grocery Store within the SUD. It would also require, as part of the conditional use authorization requirement, that the project sponsor of a formula retail grocery store provide information to the Planning Commission regarding its commitment to accept payments from individuals through assistance programs such as the U.S. Department of Agriculture’s Supplemental Nutritional Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and other similar assistance programs. The ordinance would also require the project sponsor to prepare a projection of food affordability at the proposed location and submit it for review by the Planning Commission as part of the conditional use authorization.

In addition, the ordinance would eliminate the maximum square foot requirement for other commercial uses in the SUD, including those that may be subsequent to the grocery store use.

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The ordinance would also limit applicability of the SUD controls to a grocery store approved by the Planning Commission within 5 years of the effective date of the ordinance.

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