

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

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

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. 130372 and is incorporated herein by reference.

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

1 (c) This Board finds that these Planning Code amendments are consistent with the
2 General Plan and with the Priority Policies of Planning Code Section 101.1 for the reasons set
3 forth in Planning Commission Resolution No. 18932 and the Board hereby incorporates such
4 reasons herein by reference.

5
6 Section 2. The ~~San Francisco~~ Planning Code is hereby amended by adding Section
7 786 thereto, to read as follows:

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

9 **(a) Findings.**

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

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

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

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

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

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

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

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

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

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

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

1 cultural diversity to the extent feasible, and supporting locally-owned small businesses and local
2 entrepreneurship.

3 (12) One of the goals of the Redevelopment Plan was to provide structure and
4 limitations to the development of the Bayview to encourage uses that would benefit the neighborhood,
5 create new economic development opportunities and draw more residents and patrons to the Third
6 Street Corridor. By establishing a Conditional Use process, both the City and the community have an
7 opportunity to review and provide comments on any proposed location, expansion or alteration of
8 formula retail uses to ensure that they meet the objectives of the Redevelopment Plan.

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

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

16 (b) Boundaries. The Third Street Formula Retail Restricted Use District shall regulate all
17 properties fronting Third Street between Williams Avenue and ~~Egbert Avenue~~ Paul Street. The
18 following restrictions shall apply within the district.

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

22 (d) Change in Use. ~~Notwithstanding the provisions of Planning Code Section 303(i) shall~~
23 apply to any changes in a formula retail use in the Third Street Formula Retail Restricted Use
24 District. ~~, any change from one formula retail use to another requires Conditional Use~~
25 Authorization, when the existing formula retail use has not procured a conditional use permit

1 for the formula retail use that existed prior to the effective date of this Ordinance, and any City
2 permits are required for any physical change to the premises for the new formula retail
3 business.

4 (e) Conditional Use Criteria. With regard to Conditional Use Permit applications for formula
5 retail uses within the Third Street Formula Retail Restricted Use District, the Planning Commission
6 shall consider the criteria set forth in Planning Code Sections 303(c) and 303(i)(3). The procedures
7 and requirements of Planning Code Section 303 shall apply to Formula Retail Uses in the Third Street
8 Formula Retail Restricted Use District, except as explicitly modified in this Section 786.

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

15 Section 3. The San Francisco Planning Code is hereby amended by amending Section
16 303, to read as follows:

17 * * *

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

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

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

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

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

9 (D) Decor shall be defined as the style of interior furnishings, which may
10 include but is not limited to, style of furniture, wall coverings or permanent fixtures.

11 (E) Color Scheme shall be defined as selection of colors used throughout,
12 such as on the furnishings, permanent fixtures, and wall coverings, or as used on the facade.

13 (F) Facade shall be defined as the face or front of a building, including
14 awnings, looking onto a street or an open space.

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

18 (H) Signage shall be defined as business sign pursuant to Section 602.3
19 of the Planning Code.

20 (2) **"Retail Sales Activity or Retail Sales Establishment."** For the
21 purposes of subsection (i), a retail sales activity or retail sales establishment shall include the
22 following uses, as defined in Article 7 and Article 8 of this Code: "Bar," "Drive-up Facility,"
23 "Eating and Drinking Use," "Liquor Store," "Sales and Service, Other Retail," "Restaurant,"
24 "Limited-Restaurant," "Take-Out Food," "Sales and Service, Retail," "Service, Financial,"
25 "Movie Theater," and "Amusement and Game Arcade."

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

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

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

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

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

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

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

14 (A) All Neighborhood Commercial Districts in Article 7;

15 (B) All Mixed Use-General Districts in Section 840;

16 (C) All Urban Mixed Use Districts in Section 843;

17 (D) All Residential-Commercial Districts as defined in Section 206.3;

18 (E) Japantown Special Use District as defined in Section 249.31;

19 (F) Chinatown Community Business District as defined in Section
20 810.1;

21 (G) Chinatown Residential/Neighborhood Commercial District as
22 defined in Section 812.1;

23 (H) Western SoMa Planning Area Special Use District as defined in

24 Section 823;

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

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

5 (K) Third Street Formula Retail Restricted Use District, as defined in Section
6 786.

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

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

10 (B) North Beach Neighborhood Commercial District;

11 (C) Chinatown Visitor Retail District.

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

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

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

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

23 (H) Taraval Street Restaurant Subdistrict does not permit Formula Retail
24 uses that are also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and
25 790.91;

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

5 **(7) Change in Use.** A change from one formula retail use to another requires a
6 new Conditional Use Authorization, whether or not a Conditional Use Authorization would
7 otherwise be required by the particular change in use in question. This Conditional Use
8 Authorization requirement also applies in changes from one Formula Retail operator to
9 another within the same use category. A new Conditional Use Authorization shall not apply to
10 a change in a formula use retailer that meets the following criteria:

11 (A) the formula use operation remains the same in terms of its size,
12 function and general merchandise offering as determined by the Zoning Administrator, and

13 (B) the change in the formula retail use operator is the result of the
14 business being purchased by another formula retail operator who will retain all components of
15 the existing retailer, including but not limited to the signage for the premises, the name of the
16 premises and the general merchandise offered on the premises ~~and make minor alterations to~~
17 ~~the establishment(s) such as signage and branding.~~

18 The new operator shall comply with all conditions of approval previously imposed on
19 the existing operator, including but not limited to signage programs and hours of operation;
20 and shall conduct the operation generally in the same manner and offer essentially the same
21 services and/or type of merchandise; or seek and be granted a new Conditional Use
22 Authorization.

23 **(8) Determination of Formula Retail Use.** In those areas in which "formula retail
24 uses" are prohibited, any building permit application determined by the City to be for a
25 "formula retail use" that does not identify the use as a "formula retail use" is incomplete and

cannot be processed until the omission is corrected. Any building permit approved that is determined by the City to have been, at the time of application, for a "formula retail use" that did not identify the use as a "formula retail use" is subject to revocation at any time. If the City determines that a building permit application or building permit subject to this Section of the Code is for a "formula retail use," the building permit application or holder bears the burden of proving to the City that the proposed or existing use is not a "formula retail use."

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Section 4. The San Francisco Planning Code is hereby amended by amending 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 <u>012, 022 and 025</u> ; <u>Assessor's Block 4912, Lot 006; Assessor's Block 4940, Lots 012A, 012B, and 024</u> ; Assessor's Block 5387, Lots 010, 022, 026 – 033 ; Assessor's Block 5413, Lot 017 ; Assessor's Block 5414, <u>Lots 005 – 008, 028, 030 and Lot 031</u> ; 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 <u>001M</u> ,	Third Street Formula Retail Restricted Use District

1 001U, 001V, 004 and 043; Assessor's
2 Block 5431B, Lots 001 – 142;
3 Assessor's Block 5881, Lots 024 –
4 032.

5
6 Section 5. Effective Date. This ordinance shall become effective 30 days from the
7 date of passage. Enactment occurs when the Mayor signs the ordinance, the Mayor returns
8 the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the
9 Board of Supervisors overrides the Mayor's veto of the ordinance.

10 Section 6. Scope of Ordinance. ~~This section is uncodified~~ In enacting this Ordinance,
11 the Board intends to amend only those words, phrases, paragraphs, subsections, sections,
12 articles, numbers, punctuation, charts, diagrams, or any other constituent part of the Planning
13 Code that are explicitly shown in this legislation as additions, deletions, Board amendment
14 additions, and Board amendment deletions in accordance with the "Note" that appears under
15 the official title of the legislation.

16
17 APPROVED AS TO FORM:
18 DENNIS J. HERRERA, City Attorney

19 By: _____
20 KATE H. STACY
21 Deputy City Attorney

22 N:LEGANA/AS2013/1300390/00838444
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