

1 [Zoning – Large-scale Retail Use.]

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3 **Ordinance amending the Planning Code to add section 121.6 to impose a City-wide**
 4 **conditional use requirement for large-scale retail uses in excess of 50,000 gross square**
 5 **feet, to prohibit such uses if they are in excess of 120,000 gross square feet in any**
 6 **zone other than the C-3 zones, and to prohibit specified large-scale retail uses in**
 7 **excess of 120,000 gross square feet in the C-3 zones; amending Planning Code section**
 8 **303 to add findings for the abovementioned uses concerning active street frontage**
 9 **patterns and, mixed-use building opportunities, and other criteria set forth herein; making**
 10 **findings of consistency with the General Plan and Planning Code section 101.1(b); and**
 11 **exempting from this legislation those uses for which the City received a building site**
 12 **permit application prior to the date of this ordinance's introduction July 15, 2003.**

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.
 Board amendment deletions are ~~strikethrough normal~~.

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

17 Section 1. Findings.

18 (a) The primary purpose of this ordinance is to reduce or prevent the negative
 19 impacts of large-scale retail businesses on traffic circulation, land use patterns, and the
 20 economic and social health of neighborhood commercial districts and other land use districts
 21 throughout the City. Many of these impacts are analyzed in reports and other documents
 22 contained in the Board of Supervisors files on this legislation. Copies of this information are in
 23 Clerk of the Board of Supervisors File No. 031463.

24 (b) Large-scale retail uses that exceed of 120,000 gross square feet are
 25 aesthetically incompatible with the neighborhood character of San Francisco outside of its

1 downtown districts and are expected to negatively impact the vitality of neighborhood
2 commercial districts. These uses also are expected to generate greater traffic volumes than
3 small-scale uses due to their regional draw of consumers

4 (c) The impacts of certain large-scale retail uses that exceed 120,000 gross square
5 feet and devote a considerable portion of their sale to non-taxable merchandise are likely to
6 be especially severe.

7 (d) Such uses are expected to generate greater traffic volumes than general retail
8 stores or supermarkets because the bulk of non-taxable items such as groceries purchased in
9 large quantities generally require an automobile for transport. The automobile-oriented nature
10 of these uses is incompatible with the planning goals of the downtown area that call for
11 increased transit usage. Large-scale retail uses selling non-taxable goods also negatively
12 impact the vitality of supermarkets located in neighborhood commercial districts.
13 Supermarkets represent an important component to maintaining viable community retail
14 districts. Negatively impacting these neighborhood supermarkets also will likely generate
15 increased traffic as consumers must travel farther distances to purchase goods.

16 (e) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this
17 ordinance will serve the public necessity, convenience and welfare for the reasons specified in
18 this legislation.

19 (f) On November 20, 2003, the Planning Commission considered two legislative
20 proposals concerning large retail uses. Copies of such proposals are on file with the Clerk of
21 the Board of Supervisors File Nos. 031463 and 031239 and are incorporated herein by
22 reference. On said date, the Planning Commission, in Resolutions Nos. 16689 and 16690,
23 disapproved the legislative proposals as drafted, but recommended that the proposals be
24 combined as a single piece of legislation containing specified requirements. Copies of the
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1 Planning Commission Resolutions are on file with the Clerk of the Board of Supervisors in File
2 Nos. 031463 and 031239.

3 (g) In response to the Planning Commission's recommendation, the legislative
4 sponsors of the initial ordinances have agreed to co-sponsor amended legislation that reflects
5 the recommended changes.

6 (h) Pursuant to Planning Code Section 101.1, this Board of Supervisors finds that this
7 amended ordinance is consistent with the priority policies of Section 101.1(b) of the Planning
8 Code and the General Plan hereby adopts as its own the findings of the Planning
9 Commission, as set forth in Planning Commission Resolutions Nos. 16689 and 16690, and
10 incorporates said findings by reference herein as though set forth fully.

11 Section 2. The San Francisco Planning Code is hereby amended by adding Section
12 121.6, to read as follows:

13 Sec. 121.6. Large-Scale Retail Uses.

14 (a) Notwithstanding any other provision of this Code, establishment of a single retail use in
15 excess of 50,000 gross square feet shall require conditional use authorization pursuant to Section 303
16 unless such use already is prohibited. This Subsection shall apply to the establishment of a new
17 use, expansion of an existing use, or change in use from one retail category to another.

18 (b) Notwithstanding any other provision of this Code, establishment of a single retail use in
19 excess of 120,00 gross square feet is prohibited in any zoning district other than a C-3 zoning district.
20 This Subsection shall apply to the establishment of a new use, expansion of an existing use,
21 or change in use from one retail category to another.

22 (c) Notwithstanding any other provision of this Code, establishment of a single retail use in
23 excess of 120,000 gross square feet in a C-3 zoning district shall be prohibited if it would sell ~~food,~~
24 ~~beverages, or groceries;~~ contain more than 20,000 Stockkeeping Units (SKUs); and devote more than
25

1 five percent (5%) of its total sales floor area to the sale of non-taxable merchandise. This Subsection
2 shall apply only to the establishment of a new use.

3 ~~(d) This Section shall apply to the establishment of a new use, expansion of an~~
4 ~~existing use, or change in use from one retail category to another.~~

5 ~~(e) — For purposes of this Section:~~

6 ~~(1) “sales floor area” includes only interior building space devoted to the sale of~~
7 ~~merchandise, and does not include restrooms, office space, storage space, automobile service areas, or~~
8 ~~open-air garden sales space.~~

9 ~~(2) “non-taxable merchandise” includes only grocery products, commodities, or other~~
10 ~~items not subject to California State sales tax.~~

11 Section 3. The San Francisco Planning Code is hereby amended by amending Section
12 303, to read as follows:

13 SEC. 303. CONDITIONAL USES.

14 (a) General. The City Planning Commission shall hear and make
15 determinations regarding applications for the authorization of conditional uses in the specific
16 situations in which such authorization is provided for elsewhere in this Code. The procedures
17 for conditional uses shall be as specified in this Section and in Sections 306 through 306.6,
18 except that Planned Unit Developments shall in addition be subject to Section 304, medical
19 institutions and post-secondary educational institutions shall in addition be subject to the
20 institutional master plan requirements of Section 304.5, and conditional use and Planned Unit
21 Development applications filed pursuant to Article 7, or otherwise required by this Code for
22 uses or features in Neighborhood Commercial Districts, and conditional use applications
23 within South of Market Districts, shall be subject to the provisions set forth in Sections 316
24 through 316.8 of this Code, in lieu of those provided for in Sections 306.2 and 306.3 of this
25 Code, with respect to scheduling and notice of hearings, and in addition to those provided for

1 in Sections 306.4 and 306.5 of this Code, with respect to conduct of hearings and
2 reconsideration.

3 (b) Initiation. A conditional use action may be initiated by application of the
4 owner, or authorized agent for the owner, of the property for which the conditional use is
5 sought.

6 (c) Determination. After its hearing on the application, or upon the
7 recommendation of the Director of Planning if the application is filed pursuant to Sections 316
8 through 316.8 of this Code and no hearing is required, the City Planning Commission shall
9 approve the application and authorize a conditional use if the facts presented are such to
10 establish:

11 (1) That the proposed use or feature, at the size and intensity contemplated
12 and at the proposed location, will provide a development that is necessary or desirable for,
13 and compatible with, the neighborhood or the community

14 (A) In Neighborhood Commercial Districts, if the proposed use is to be
15 located at a location in which the square footage exceeds the limitations found in Planning
16 Code § 121.2(a) or 121.2(b), the following shall be considered:

17 (i) The intensity of activity in the district is not such that allowing the larger
18 use will be likely to foreclose the location of other needed neighborhood-servicing uses in the
19 area; and

20 (ii) The proposed use will serve the neighborhood, in whole or in significant
21 part, and the nature of the use requires a larger size in order to function; and

22 (iii) The building in which the use is to be located is designed in discrete
23 elements which respect the scale of development in the district; and

24 (2) That such use or feature as proposed will not be detrimental to the health,
25 safety, convenience or general welfare of persons residing or working in the vicinity, or

1 injurious to property, improvements or potential development in the vicinity, with respect to
2 aspects including but not limited to the following:

3 (A) The nature of the proposed site, including its size and shape, and the
4 proposed size, shape and arrangement of structures;

5 (B) The accessibility and traffic patterns for persons and vehicles, the type
6 and volume of such traffic, and the adequacy of proposed off-street parking and loading;

7 (C) The safeguards afforded to prevent noxious or offensive emissions such
8 as noise, glare, dust and odor;

9 (D) Treatment given, as appropriate, to such aspects as landscaping,
10 screening, open spaces, parking and loading areas, service areas, lighting and signs; and

11 (3) That such use or feature as proposed will comply with the applicable
12 provisions of this Code and will not adversely affect the Master Plan; and

13 (4) With respect to applications filed pursuant to Article 7 of this Code, that
14 such use or feature as proposed will provide development that is in conformity with the stated
15 purpose of the applicable Neighborhood Commercial District, as set forth in zoning control
16 category .1 of Sections 710 through 729 of this Code; and

17 (5)(A) With respect to applications filed pursuant to Article 7, Section 703.2(a),
18 zoning categories .46, .47, and .48, in addition to the criteria set forth above in Section
19 303(c)(1—4), that such use or feature will:

20 (i) Not be located within 1,000 feet of another such use, if the proposed use
21 or feature is included in zoning category .47, as defined by Section 790.36 of this Code;
22 and/or

23 (ii) Not be open between two a.m. and six a.m.; and

24 (iii) Not use electronic amplification between midnight and six a.m.; and

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1 (iv) Be adequately soundproofed or insulated for noise and operated so that
2 incidental noise shall not be audible beyond the premises or in other sections of the building
3 and fixed-source equipment noise shall not exceed the decibel levels specified in the San
4 Francisco Noise Control Ordinance.

5 (B) Notwithstanding the above, the City Planning Commission may authorize
6 a conditional use which does not satisfy the criteria set forth in (5)(A)(ii) and/or (5)(A)(iii)
7 above, if facts presented are such to establish that the use will be operated in such a way as
8 to minimize disruption to residences in and around the district with respect to noise and crowd
9 control.

10 (C) The action of the Planning Commission approving a conditional use does
11 not take effect until the appeal period is over or while the approval is under appeal.

12 (6) With respect to applications for live/work units in RH and RM Districts
13 filed pursuant to Section 209.9(f) or 209.9(h) of this Code, that:

14 (A) Each live/work unit is within a building envelope in existence on the
15 effective date of Ordinance No. 412-88 (effective October 10, 1988) and also within a portion
16 of the building which lawfully contains at the time of application a nonconforming,
17 nonresidential use;

18 (B) There shall be no more than one live/work unit for each 1,000 gross
19 square feet of floor area devoted to live/work units within the subject structure; and

20 (C) The project sponsor will provide any off-street parking, in addition to that
21 otherwise required by this Code, needed to satisfy the reasonably anticipated auto usage by
22 residents of and visitors to the project.

23 Such action of the City Planning Commission, in either approving or
24 disapproving the application, shall be final except upon the filing of a valid appeal to the Board
25 of Supervisors as provided in Section 308.1.

1 (d) Conditions. When considering an application for a conditional use as
2 provided herein with respect to applications for development of "dwellings" as defined in
3 Chapter 87 of the San Francisco Administrative Code, the Commission shall comply with that
4 Chapter which requires, among other things, that the Commission not base any decision
5 regarding the development of "dwellings" in which "protected class" members are likely to
6 reside on information which may be discriminatory to any member of a "protected class" (as
7 all such terms are defined in Chapter 87 of the San Francisco Administrative Code). In
8 addition, when authorizing a conditional use as provided herein, the City Planning
9 Commission, or the Board of Supervisors on appeal, shall prescribe such additional
10 conditions, beyond those specified in this Code, as are in its opinion necessary to secure the
11 objectives of the Code. Once any portion of the conditional use authorization is utilized, all
12 such conditions pertaining to such authorization shall become immediately operative. The
13 violation of any condition so imposed shall constitute a violation of this Code and may
14 constitute grounds for revocation of the conditional use authorization. Such conditions may
15 include time limits for exercise of the conditional use authorization; otherwise, any exercise of
16 such authorization must commence within a reasonable time.

17 (e) Modification of Conditions. Authorization of a change in any condition
18 previously imposed in the authorization of a conditional use shall be subject to the same
19 procedures as a new conditional use. Such procedures shall also apply to applications for
20 modification or waiver of conditions set forth in prior stipulations and covenants relative
21 thereto continued in effect by the provisions of Section 174 of this Code.

22 (f) Conditional Use Abatement. The Planning Commission may consider the
23 possible revocation of a conditional use or the possible modification of or placement of
24 additional conditions on a conditional use when the Planning Commission determines, based
25 upon substantial evidence, that the applicant for the conditional use had submitted false or

1 misleading information in the application process that could have reasonably had a substantial
2 effect upon the decision of the Commission or the conditional use is not in compliance with a
3 condition of approval, is in violation of law if the violation is within the subject matter
4 jurisdiction of the Planning Commission or operates in such a manner as to create hazardous,
5 noxious or offensive conditions enumerated in Section 202(c) if the violation is within the
6 subject matter jurisdiction of the Planning Commission and these circumstances have not
7 been abated through administrative action of the Director, the Zoning Administrator or other
8 City authority. Such consideration shall be the subject of a public hearing before the Planning
9 Commission but no fee shall be required of the applicant or the subject conditional use
10 operator.

11 (1) The Director of Planning or the Planning Commission may seek a public
12 hearing on conditional use abatement when the Director or Commission has substantial
13 evidence submitted within one year of the effective date of the Conditional Use authorization
14 that the applicant for the conditional use had submitted false or misleading information in the
15 application process that could have reasonably had a substantial effect upon the decision of
16 the Commission or substantial evidence of a violation of conditions of approval, a violation of
17 law, or operation which creates hazardous, noxious or offensive conditions enumerated in
18 Section 202(c).

19 (2) The notice for the public hearing on a conditional use abatement shall be
20 subject to the notification procedure as described in Sections 306.3 and 306.8 except that
21 notice to the property owner and the operator of the subject establishment or use shall be
22 mailed by regular and certified mail.

23 (3) In considering a conditional use revocation, the Commission shall
24 consider whether and how the false or misleading information submitted by the applicant
25 could have reasonably had a substantial effect upon the decision of the Commission, or the

1 Board of Supervisors on appeal, to authorize the conditional use, substantial evidence of how
2 any required condition has been violated or not implemented or how the conditional use is in
3 violation of the law if the violation is within the subject matter jurisdiction of the Planning
4 Commission or operates in such a manner as to create hazardous, noxious or offensive
5 conditions enumerated in Section 202(c) if the violation is within the subject matter jurisdiction
6 of the Planning Commission. As an alternative to revocation, the Commission may consider
7 how the use can be required to meet the law or the conditions of approval, how the
8 hazardous, noxious or offensive conditions can be abated, or how the criteria of Section
9 303(c) can be met by modifying existing conditions or by adding new conditions which could
10 remedy a violation.

11 (4) Appeals. A decision by the Planning Commission to revoke a conditional
12 use, to modify conditions or to place additional conditions on a conditional use or a decision
13 by the Planning Commission refusing to revoke or amend a conditional use, may be appealed
14 to the Board of Supervisors within 30 days after the date of action by the Planning
15 Commission pursuant to the provisions of Section 308.1(b) The Board of Supervisors may
16 disapprove the action of the Planning Commission in an abatement matter by the same vote
17 necessary to overturn the Commission's approval or denial of a conditional use. The Planning
18 Commission's action on a conditional use abatement issue shall take effect when the appeal
19 period is over or, upon appeal, when there is final action on the appeal.

20 (5) Reconsideration. The decision by the Planning Commission with regards
21 to a conditional use abatement issue or by the Board of Supervisors on appeal shall be final
22 and not subject to reconsideration within a period of one year from the effective date of final
23 action upon the earlier abatement proceeding, unless the Director of Planning determines
24 that:

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1 (A) There is substantial new evidence of a new conditional use abatement
2 issue that is significantly different than the issue previously considered by the Planning
3 Commission; or

4 (B) There is substantial new evidence about the same conditional use
5 abatement issue considered in the earlier abatement proceeding, this new evidence was not
6 or could not be reasonably available at the time of the earlier abatement proceeding, and that
7 new evidence indicates that the Commission's decision in the earlier proceeding ha not been
8 implemented within a reasonable time or raises significant new issues not previously
9 considered by the Planning Commission. The decision of the Director of Planning regarding
10 the sufficiency and adequacy of evidence to allow the reconsideration of a conditional use
11 abatement issue within a period of one year from the effective date of final action on the
12 earlier abatement proceeding shall be final.

13 (g) Hotels and Motels.

14 (1) With respect to applications for development of tourist hotels and motels,
15 the Planning Commission shall consider, in addition to the criteria set forth in Subsections (c)
16 and (d) above:

17 (A) The impact of the employees of the hotel or motel on the demand in the
18 City for housing, public transit, childcare, and other social services. To the extent relevant, the
19 Commission shall also consider the seasonal and part-time nature of employment in the hotel
20 or motel;

21 (B) The measures that will be taken by the project sponsor to employ
22 residents of San Francisco in order to minimize increased demand for regional transportation;
23 and

24 (C) The market demand for a hotel or motel of the type proposed.
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1 (2) Notwithstanding the provisions of Sub-sections (f)(1) above, the Planning
2 Commission shall not consider the impact of the employees of a proposed hotel or motel
3 project on the demand in the City for housing where:

4 (A) The proposed project would be located on property under the jurisdiction
5 of the San Francisco Port Commission; and

6 (B) The sponsor of the proposed project has been granted exclusive rights to
7 propose the project by the San Francisco Port Commission prior to June 1, 1991.

8 (3) Notwithstanding the provisions of Subsection (f)(1) above, with respect to
9 the conversion of residential units to tourist hotel or motel use pursuant to an application filed
10 on or before June 1, 1990 under the provisions of Chapter 41 of the San Francisco
11 Administrative Code, the Planning Commission shall not consider the criteria contained in
12 Subsection (f)(1) above; provided, however, that the Planning Commission shall consider the
13 criteria contained in Subsection (f)(1)(B) at a separate public hearing if the applicant applies
14 for a permit for new construction or alteration where the cost of such construction or alteration
15 exceeds \$100,000. Furthermore, no change in classification from principal permitted use to
16 conditional use in Section 216(b)(i) of this Code shall apply to hotels or motels that have filed
17 applications on or before June 1, 1990 to convert residential units to tourist units pursuant to
18 Chapter 41 of the San Francisco Administrative Code.

19 (h) Internet Services Exchange.

20 (1) With respect to application for development of Internet Services
21 Exchange as defined in Section 209.6(c), the Planning Commission shall, in addition to the
22 criteria set forth in Subsection (c) above, find that:

23 (A) The intensity of the use at this location and in the surrounding
24 neighborhood is not such that allowing the use will likely foreclose the location of other
25 needed neighborhood-serving uses in the area;

1 (B) The building in which the use is located is designed in discrete elements,
2 which respect the scale of development in adjacent blocks, particularly any existing residential
3 uses;

4 (C) Rooftop equipment on the building in which the use is located is screened
5 appropriately.

6 (D) The back-up power system for the proposed use will comply with all
7 applicable federal state, regional and local air pollution controls.

8 (E) Fixed-source equipment noise does not exceed the decibel levels
9 specified in the San Francisco Noise Control Ordinance.

10 (F) The building is designed to minimize energy consumption, such as
11 through the use of energy-efficient technology, including without limitation, heating, ventilating
12 and air conditioning systems, lighting controls, natural ventilation and recapturing waste heat,
13 and as such commercially available technology evolves;

14 (G) The project sponsor has examined the feasibility of supplying and, to the
15 extent feasible, will supply all or a portion of the building's power needs through on-site power
16 generation, such as through the use of fuel cells or co-generation;

17 (H) The project sponsor shall have submitted design capacity and projected
18 power use of the building as part of the conditional use application; and

19 (2) As a condition of approval, and so long as the use remains an Internet
20 Services Exchange, the project sponsor shall submit to the Planning Department on an
21 annual basis power use statements for the previous twelve-month period as provided by all
22 suppliers of utilities and shall submit a written annual report to the Department of Environment
23 and the Planning Department which shall state: (a) the annual energy consumption and fuel
24 consumption of all tenants and occupants of the Internet Services Exchange; (b) the number
25 of all diesel generators located at the site and the hours of usage, including usage for testing

1 purposes; (c) evidence that diesel generators at the site are in compliance with all applicable
2 local, regional, state and federal permits, regulations and laws; and (d) such other information
3 as the Planning Commission may require.

4 (3) The Planning Department shall have the following responsibilities
5 regarding Internet Services Exchanges:

6 (A) Upon the effective date of the requirement of a conditional use permit for
7 an Internet Services Exchange, the Planning Department shall notify property owners of all
8 existing Internet Services Exchanges that the use has been reclassified as a conditional use;

9 (B) Upon the effective date of the requirement of a conditional use permit for
10 an Internet Services Exchange, the Planning Department shall submit to the Board of
11 Supervisors and to the Director of the Department of Building Inspection a written report
12 covering all existing Internet Services Exchanges and those Internet Services Exchanges
13 seeking to obtain a conditional use permit, which report shall state the address, assessor's
14 block and lot, zoning classification, square footage of the Internet Services Exchange
15 constructed or to be constructed, a list of permits previously issued by the Planning and/or
16 Building Inspection Departments concerning the Internet Services Exchange, the date of
17 issuance of such permits, and the status of any outstanding requests for permits from the
18 Planning and/or Building Inspection Departments concerning Internet Services Exchange; and

19 (C) Within three years from the effective date of the requirement of a
20 conditional use permit for an Internet Services Exchange, the Planning Department, in
21 consultation with the Department of Environment, shall submit to the Board of Supervisors a
22 written report, which report shall contain the Planning Commission's evaluation of the
23 effectiveness of the conditions imposed on Internet Services Exchanges, and whether it
24 recommends additional or modified conditions to reduce energy and fuel consumption, limit air
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1 pollutant emissions, and enhance the compatibility of industrial uses, such as Internet
2 Services Exchanges, located near or in residential or commercial districts.

3 (i) Large-Scale Retail Uses. With respect to applications for the establishment of large-
4 scale retail uses under Section 121.6, in addition to the criteria set forth in Subsections (c) and (d)
5 above, the Commission shall consider the following:

6 (A) The extent to which the retail use's parking is planned in a manner that
7 creates or maintains active street frontage patterns; and

8 (B) The extent to which the retail use is a component of a mixed-use project
9 or is designed in a manner that encourages mixed-use building opportunities;

10 (C) The market demand for the proposed use and the extent to which
11 the proposed use may result in the displacement or closure of similar retail uses in
12 neighborhood commercial districts and elsewhere in the City;

13 (D) The shift in traffic patterns that may result from drawing traffic to
14 the location of the proposed use; and,

15 (E) The impact that the employees at the proposed use will have on the
16 demand in the City for housing, public transit, childcare, and other social services.

17 Section 4. This is an uncodified section of the legislation. The provisions of this
18 legislation shall not apply to those uses for which the City received a building site permit
19 application prior to July 15, 2003, the introduction date of ~~this ordinance's introduction~~
20 superceded legislation in Clerk of the Board of Supervisors File No. 031239.

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

23 By: _____
24 John D. Malamut
25 Deputy City Attorney

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