

[Planning Code - Formula Retail]

**Ordinance amending the Planning Code to reduce restrictions on Formula Retail uses by 1) modifying the definition of a Formula Retail use; 2) eliminating the Conditional Use Authorization requirement for Formula Retail Accessory Uses, Formula Retail Temporary Uses, and certain changes of use for Formula Retail uses; 3) eliminating the prohibition on changes of use for non-conforming Formula Retail uses; 4) eliminating the requirement for an economic impact study for specified large Formula Retail uses; 5) eliminating the restrictions regarding Formula Retail use concentration in the Upper Market Street Neighborhood Commercial District; 6) allowing one or more Formula Retail Restaurants or Limited Restaurants inside a General Grocery store under a single Conditional Use authorization; and 7) principally permitting Formula Retail uses in spaces larger than 10,000 square feet in the RC (Residential-Commercial) and RTO (Residential Transit Oriented) Districts; and 8) to eliminate use size limits for Retail Sales and Service uses, other than Gyms, in the Potrero Center Mixed-Use Special Use District; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302.**

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

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

1           Section 1. Environmental and Land Use Findings.

2           (a) The Planning Department has determined that the actions contemplated in this  
3 ordinance comply with the California Environmental Quality Act (California Public Resources  
4 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
5 Supervisors in File No. 250816 and is incorporated herein by reference. The Board affirms  
6 this determination.

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

12           (c) Pursuant to Planning Code Section 302, this Board finds that this ordinance will  
13 serve the public necessity, convenience, and welfare for the reasons set forth in Planning  
14 Commission Resolution No. \_\_\_\_\_, and incorporates such reasons by this reference  
15 thereto. A copy of said resolution is on file with the Clerk of the Board of Supervisors in File  
16 No. \_\_\_\_\_.

17  
18           Section 2. General Findings.

19           (a) Formula retailers, or chain stores, are businesses with multiple locations that  
20 share standardized features or a recognizable appearance.

21           (b) While Formula Retail provides clear branding, it can conflict with General Plan  
22 Policies that prioritize preserving and enhancing unique community identity.

23           (c) To preserve neighborhood individuality, certain zoning districts restrict or prohibit  
24 Formula Retail stores.

1 (d) The City's Formula Retail controls have evolved through various ordinances  
2 over the last two decades and have broadened the definition of Formula Retail, extended  
3 restrictions to more areas, and lowered the threshold for businesses to be considered  
4 Formula Retail.

5 (e) Currently, a business is subject to the City's Formula Retail controls if it has  
6 certain standardized features, such as a signage, uniform apparel, or color scheme; has 11 or  
7 more locations worldwide; and is one of several enumerated uses.

8 (f) The City first adopted Formula Retail controls in 2004 with Ordinance No. 62-04,  
9 which defined Formula Retail as, "a type of retail sales activity or retail sales establishment  
10 which, along with 11 or more other retail sales establishments located in the United States,  
11 maintains two or more of the following features: a standardized array of merchandise, a  
12 standardized facade, a standardized decor and color scheme, a uniform apparel,  
13 standardized signage, a trademark or a servicemark."

14 (g) Ordinance No. 62-04 also provided that a "retail sales activity or retail sales  
15 establishment" subject to the Formula Retail controls included the following uses, as defined  
16 in Article 7 of the Planning Code: bar, drive-up facility, eating and drinking uses, liquor store,  
17 restaurant, large fast food, small self-service restaurant, full-service restaurant, other retail  
18 sales and service, retail sales and service, movie theatre, video store, amusement and game  
19 arcade, and take-out food.

20 (h) In 2006, San Francisco voters passed Proposition G, which required that  
21 Formula Retail controls, including Conditional Use authorization, be applied in all  
22 Neighborhood Commercial Districts.

23 (i) Over time, the Formula Retail controls were adjusted, including changes to  
24 make the controls more restrictive, add specificity to the existing requirements, add to the list  
25 of covered uses, or conform to other updates to the Planning Code, such as reorganizations.

1 (j) For example, Financial Service was added to the list of covered uses in 2012  
2 pursuant to Ordinance No. 106-12, and new uses like Tobacco Paraphernalia Establishment  
3 and Cannabis Retail were added after the City adopted new use definitions.

4 (k) In 2014, the City adopted Ordinance No. 235-14, substantially reorganizing the  
5 Formula Retail controls and making them more restrictive.

6 (l) Economic impact studies conducted by several City agencies accompanied  
7 many of the legislative efforts over the years; many reports found that over-restriction of  
8 Formula Retail uses could have unintended negative consequences. For example, a June  
9 2014 report produced for the Planning Department found that:

10 (1) Nearly 85% of San Francisco's Formula Retail businesses occupy spaces  
11 larger than 3,000 square feet, while 80% of independent retailers operate in smaller spaces,  
12 suggesting that small local businesses are less likely to seek the larger spaces;

13 (2) In general, pharmacies, grocery stores, banks, and other uses that serve  
14 residents' daily needs account for much of the Formula Retail in districts where Formula Retail  
15 is subject to additional controls;

16 (3) There does not appear to be a consistent relationship between new  
17 Formula Retail establishments and the subsequent direction of local rents and vacancies; and

18 (4) While Formula Retail businesses could potentially afford to pay higher  
19 rents in some individual transactions, retail market trends over time are primarily related to  
20 regional and national economic cycles.

21 (m) These findings highlight the complexity of Formula Retail regulations and their  
22 broader economic implications; while restrictions aim to support local businesses, overly  
23 limiting Formula Retail may unintentionally hinder commercial vitality and access to essential  
24 services.

1           (n)     The expanded retail controls may have avoided potential overconcentration of  
2     Formula Retail, but were developed at a time when San Francisco had one of the lowest retail  
3     vacancy rates in the United States (4.5% in 2013), and there were legitimate concerns that  
4     the continual expansion of Formula Retail would negatively impact the character of many  
5     neighborhoods, displacing businesses and residents.

6           (o)     Today, San Francisco's economic recovery is sluggish, including a retail  
7     vacancy rate of approximately 8%, resulting from pandemic-era economic harm, as well as  
8     the ever-increasing popularity of online retail.

9           (p)     While some neighborhood commercial corridors have fared better with  
10    vacancies, many of the storefronts exceeding 5,000 square feet that were previously occupied  
11    by Formula Retail businesses like pharmacies, grocery stores, and banks have been difficult  
12    to fill. Large, longer-term vacancies can negatively impact a corridor and drive down economic  
13    activity for all the businesses in the vicinity and result in vandalism or blight. Successful  
14    shopping districts are often anchored by a large retailer that drives foot traffic and business to  
15    smaller, local shops and restaurants.

16          (q)     Many businesses have reported finding it cost-prohibitive to open brick-and-  
17    mortar stores in San Francisco; allowing more flexibility and certainty will reduce the barriers  
18    to entry and could help fill or prevent longer-term vacancies, especially for larger spaces.

19          (r)     By reverting the Formula Retail definition back to 11 stores nationwide, as  
20    opposed to worldwide, San Francisco can also be more competitive in attracting global brands  
21    that are seeking to establish their flagship in the United States, while also supporting  
22    homegrown, local businesses in expanding before reaching the 11-store threshold.

23  
24          Section 3. Articles 1.7, 2, and 3 of the Planning Code are hereby amended by revising  
25    Sections 178, 182, 202.2, 205, 209.3, 209.4, 249.40, 303, and 303.1, to read as follows:

1           **SEC. 178. CONDITIONAL USES.**

2           \*   \*   \*   \*

3           **(c) Enlargement, Alteration, or Intensification.**

4           \*   \*   \*   \*

5                       (3) **Formula Retail.** With regard to Formula Retail uses, a change of owner or  
6 operator of a Formula Retail establishment is determined to be an intensification of use and a  
7 new Conditional Use authorization shall be required if one or more of the following occurs:

8                       ~~(A) A change of use from one use to another, including but not limited to a~~  
9 ~~change from one use to another within the use category Retail Sales and Service, and within the sub-~~  
10 ~~categories of uses in the definition of General Retail Sales and Service in Section 102 and Other Retail~~  
11 ~~Sales and Service in and Section 890.102 of this Code;~~

12                      ~~(BA)~~ Expansion of ~~use size;~~ Non-Residential Use Size by more than 20% of  
13 Gross Floor Area.

14                      ~~(CB)~~ Change to a Formula Retail establishment that has more locations  
15 in the United States than the existing Formula Retail establishment, with the exception of a change  
16 to a General Grocery or Pharmacy Use.

17                      ~~(D) Installation of a commercial kitchen, including but not limited to: ovens,~~  
18 ~~open ranges or stoves, fryers, oven hoods or kitchen ventilation systems, heating stations, steam tables~~  
19 ~~or cabinets, cold food storage, increased food preparation areas or self-service drink dispensers.~~

20           \*   \*   \*   \*

21  
22           **SEC. 182. NONCONFORMING USES: CHANGES OF USE.**

23           The following provisions shall apply to nonconforming uses with respect to changes of  
24 use:

25           \*   \*   \*   \*

(h) If a nonconforming use is a Formula Retail use in a District that prohibits Formula Retail uses, the Formula Retail use is deemed abandoned if it is discontinued for a period of 18 months or more, or otherwise abandoned. The Formula Retail use shall not be restored. ~~(I)~~ Change of one nonconforming Formula Retail use to another Formula Retail use that is determined to not be an enlargement or intensification of use, as defined in Subsection 178(c), is subject to the Commission's adopted Performance-Based Design Guidelines for Formula Retail, which may be applied and approved administratively by the Planning Department. Non-conformance with the Performance-Based Design Guidelines for Formula Retail as required by the Department may result in termination of the nonconforming Formula Retail use.

~~(2) Change of one nonconforming Formula Retail use to another Formula Retail use that is determined to be an enlargement or intensification of use, as defined in Subsection 178(c), is not permitted.~~

## **SEC. 202.2. LOCATION AND OPERATING CONDITIONS.**

(a) **Retail Sales and Service Uses.** The Retail Sales and Service Uses listed below shall be subject to the corresponding conditions:

\* \* \* \*

(9) Food Halls within General Grocery Uses. A General Grocery Use may co-locate on one Lot with a food hall consisting of one or more Restaurants or Limited Restaurants ("Food Hall"), pursuant to Section 202.2(j). Where the Food Hall is located within the General Grocery Use's Gross Floor Area and comprises no more than 49% of the General Grocery Use's Gross Floor Area, the Food Hall may contain one or more Formula Retail Restaurants or Limited Restaurants, subject to Conditional Use authorization for the Formula Retail use. The Conditional Use authorization for the Formula Retail use, and for the Use if required by the zoning controls for the District, shall be

1 applicable to the entire Food Hall. Each Restaurant or Limited Restaurant is not required to obtain a  
2 separate Conditional Use authorization for the Use or the Formula Retail use. The Food Hall shall be  
3 treated as one singular business for the purposes of signage allowance.

4 (b) **Automotive Uses.** The Automotive Uses listed below shall be subject to the  
5 corresponding conditions:

6 \* \* \* \*

7 (j) **Multiple Uses.** Multiple Uses may exist simultaneously on one Lot or in one  
8 Structure. If there are two or more Uses on a Lot, any Use classified under this Code as an  
9 Accessory Use will be subject to applicable provisions concerning Accessory Uses. Any Use  
10 not classified as an Accessory Use will be considered separately as an independent Principal,  
11 Conditional, or temporary Use, subject to applicable provisions of this Code concerning each  
12 independent Use.

## 14 **SEC. 205. TEMPORARY USES, GENERAL.**

15 \* \* \* \*

16 (b) **Temporary Uses Authorized.** The authorized temporary uses listed in Sections  
17 205 et seq. may be authorized as provided herein, up to the time limits indicated. In the event  
18 of a conflict between the controls in Sections 205 et seq. and the controls of the applicable  
19 District, ~~excluding~~ *including* any voter initiative, Sections 205 et seq. shall apply; provided that,  
20 pursuant to Section 703.4, Formula Retail uses ~~are not permitted as Temporary Uses~~ in  
21 Neighborhood Commercial Districts shall comply with the controls of the applicable District,  
22 including any voter initiative.

23 \* \* \* \*

24 (h) **Additional Permits.** Authorization of a temporary use under Sections 205 et seq.  
25 does not waive the requirement to obtain any additional authorization that may be required by



the San Francisco municipal Code, including but not limited to permits required by the Health Code or Building Code.

*(i) **Formula Retail.** Temporary uses authorized as provided in Section 205 et seq. that are Formula Retail uses shall not require Conditional Use authorization; provided that, pursuant to Section 703.4, in Neighborhood Commercial Districts, the Use shall comply with the controls of the applicable District, including any voter initiative.*

**SEC. 209.3. RC (RESIDENTIAL-COMMERCIAL) DISTRICTS.**

\* \* \* \*

**Table 209.3**

**ZONING CONTROL TABLE FOR RESIDENTIAL-COMMERCIAL DISTRICTS**

Zoning Category	§ References	RC-3	RC-4
* * * *			
<b>NON-RESIDENTIAL STANDARDS AND USES</b>			
* * * *			
<b><u>Commercial</u> Use Characteristics</b>			
* * * *			
Formula Retail	§§ 102, 303.1	C (14) <u>up to 10,000 square feet; P 10,001 square feet and above</u>	C (14) <u>up to 10,000 square feet; P 10,001 square feet and above</u>
* * * *			

\* \* \* \*

**SEC. 209.4. RTO (RESIDENTIAL TRANSIT ORIENTED) DISTRICTS.**

\* \* \* \*

**Table 209.4**

**ZONING CONTROL TABLE FOR RTO DISTRICTS**

Zoning Category	§ References	RTO	RTO-M
* * * *			
<b>NON-RESIDENTIAL STANDARDS AND USES</b>			
* * * *			
<b>Commercial Use Characteristics</b>			
<u>Formula Retail</u>	<u>§§ 102, 303.1</u>	<u>C up to 10,000 square feet; P 10,001 square feet and above</u>	
Hours of Operation	§§ 102, 186, 231	For Limited Corner Commercial Uses under § 231 and limited commercial uses under § 186: P 6:00 a.m. to 10:00 p.m.; C 10:00 p.m. to 12:00 a.m.; NP 12:00 a.m. to 6:00 a.m.	
* * * *			

\* \* \* \*

#### **SEC. 249.40. POTRERO CENTER MIXED-USE SPECIAL USE DISTRICT.**

(a) **Purpose.** The Potrero Center Mixed-Use Special Use District is intended to facilitate the continued operation of the shopping center located at 2300 16th Street, which is characterized by large formula retail sales and services, while providing an appropriate regulatory scheme for a potential phased mixed-use redevelopment of the shopping center in the future.

\* \* \* \*

(c) **Controls.** All provisions of the Planning Code shall continue to apply, except for the following:

\* \* \* \*

(2) **Use Size Limitations for Retail Sales and Services and Gyms.** The use size limitations and ratio requirements applicable to Retail Sales and Service ~~Uses~~ and Gym ~~Uses~~ of Sections 121.6(a), 803.9(g), ~~843.45~~ and ~~843.51~~ 838 shall not apply. Retail Sales and

1 Service ~~Use~~ and Gym ~~Use~~ are principally permitted, and the replacement of one such  
2 ~~Use~~ or tenant by another such ~~Use~~ or tenant in an existing store or gym, regardless of its  
3 size, is permitted. Newly constructed space for ~~Retail Sales and Service uses or~~ Gym ~~Use~~  
4 larger than 25,000 gross square feet per use or the expansion of an existing ~~Retail Sales and~~  
5 ~~Services use or~~ Gym use by more than 25,000 new gross square feet per ~~Use~~ shall require  
6 ~~e~~Conditional ~~Use~~ authorization pursuant to the provisions of Section 303.

7 (3) **Formula Retail.** The Formula Retail requirements of Sections 303.1 and  
8 ~~843.46-838~~ shall not apply. Formula Retail uses shall be permitted, ~~unless the use is otherwise~~  
9 ~~and shall not require Conditional Use authorization for the Formula Retail use; provided that, the Use~~  
10 ~~may be~~ prohibited or requires ~~e~~Conditional ~~Use~~ authorization pursuant to ~~other subsections the~~  
11 ~~zoning controls~~ of Section ~~843-838~~.

12 \* \* \* \*

### 14 SEC. 303. CONDITIONAL USES.

15 \* \* \* \*

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

19 (1) The extent to which the retail use's parking is planned in a manner that creates  
20 or maintains active street frontage patterns;

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

23 (3) The shift in traffic patterns that may result from drawing traffic to the location of  
24 the proposed use; and

1 (4) The impact that the employees at the proposed ~~#U~~se will have on the demand  
2 in the City for housing, public transit, childcare, and other social services, ~~and~~

3 ~~(5) **An economic impact study.** The Planning Department shall prepare an economic~~  
4 ~~impact study using qualified City staff or shall select a consultant from a pool of pre-qualified~~  
5 ~~consultants to prepare the economic impact study required by this subsection (i)(5). The analysis, in the~~  
6 ~~form of a study, shall be considered by the Planning Commission in its review of the application. The~~  
7 ~~applicant shall bear the cost of paying the consultant for the consultant's work preparing the economic~~  
8 ~~impact study, and any necessary documents prepared as part of that study. The study shall evaluate the~~  
9 ~~potential economic impact of the applicant's proposed project, including:~~

10 ~~(A) **Employment Analysis.** The report shall include the following employment~~  
11 ~~information: a projection of both construction-related and permanent employment generated by the~~  
12 ~~proposed project, and a discussion of whether the employer of the proposed project will pay a living~~  
13 ~~wage, inclusive of non-salary benefits expected to be provided, relative to San Francisco's cost of~~  
14 ~~living.~~

15 ~~(B) **Fiscal Impact.** The report shall itemize public revenue created by the proposed~~  
16 ~~project and public services needed because of the proposed project, relative to net fiscal impacts to the~~  
17 ~~General Fund. The impacts to the City's public facilities and infrastructure shall be estimated using the~~  
18 ~~City's current assumptions in existing nexus studies (including area plan, transit, open space in-lieu fee~~  
19 ~~and other impact fees), and should account for any contributions the proposed project would make~~  
20 ~~through such impact fee payments.~~

21 ~~(C) **Leakage Analysis Study.** This portion of the report shall be twofold: both~~  
22 ~~quantitative and qualitative. The quantitative portion shall provide an analysis of whether the proposed~~  
23 ~~project will result in a net increase or decrease in the capture of spending by area residents on items~~  
24 ~~that would otherwise be purchased outside the area. The area to be studied for potential economic~~  
25 ~~impacts of the proposed project shall be determined by the City in consultation with the expert~~

conducting the study as different sizes of study areas would be pertinent depending on a multitude of factors, including but not limited to, size and type of the proposed store. This quantitative leakage analysis should be paired with a qualitative assessment of whether the proposed use would complement existing merchandise selection in the area by adding greater variety of merchandise, bolstering the strength of an existing retail cluster, or matching evolving consumer preferences.

\* \* \* \*

### SEC. 303.1. FORMULA RETAIL USES.

\* \* \* \*

(b) **Definition.** A Formula Retail use is hereby defined as a type of retail sales or service activity or retail sales or service establishment that has ~~eleven~~ 11 or more other retail sales establishments ~~in operation, or with local land use or permit entitlements already approved,~~ located ~~anywhere in the world~~ in the United States and. ~~In addition to the eleven establishments either in operation or with local land use or permit entitlements approved for operation, the business~~ maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, uniform apparel, standardized signage, a trademark or a servicemark.

\* \* \* \*

#### (c) “Retail Sales or Service Activity or Retail Sales or Service Establishment.”

For the purposes of this Section 303.1, a retail sales or service activity or retail sales or service establishment shall include the ~~following~~ uses listed in this subsection (c), whether functioning as a Principal or Accessory Use, as defined in Articles 1, ~~2, 7,~~ and 8 of this Code.

Amusement Game Arcade (a General Entertainment use)

Bar

Cannabis Retail

- 1        Drive-up Facility
- 2        Eating and Drinking Use
- 3        Gift Store-Tourist Oriented
- 4        Grocery, General
- 5        Grocery, Specialty
- 6        Gym
- 7        Jewelry Store
- 8        Laundromat
- 9        Liquor Store
- 10       Massage Establishment
- 11       Movie Theater
- 12       Non-Auto Vehicle Sales or Rental
- 13       Pharmacy
- 14       Restaurant
- 15       Restaurant, Limited
- 16       Retail Sales and Service, General and Sales and Service, Other Retail
- 17       Sales and Service, Retail
- 18       Service, Fringe Financial
- 19       Service, Personal
- 20       Tobacco Paraphernalia Establishment
- 21       Video Store (a General Retail Sales and Service use)
- 22       ~~—Bar § 102;~~
- 23       ~~—Drive-up Facility §§ 102, 890.30;~~
- 24       ~~—Eating and Drinking Use § 102;~~
- 25       ~~—Liquor Store § 102;~~

~~—Sales and Service, Other Retail § 890.102 and Retail Sales and Service, General;~~  
~~—Restaurant § 102;~~  
~~—Limited Restaurant § 102;~~  
~~—Sales and Service, Retail §§ 102, 890.104;~~  
~~—Service, Financial §§ 102, 890.110;~~  
~~—Movie Theater §§ 102, 890.64;~~  
~~—Amusement Game Arcade § 890.4;~~  
~~—Service, Limited Financial, except single automated teller machines at the street front that~~  
~~meet the Commission’s adopted Performance-Based Design Guidelines and automated teller machines~~  
~~located within another use that are not visible from the street § 102;~~  
~~—Service, Fringe Financial §§ 102, 890.113;~~  
~~—Tobacco Paraphernalia Establishment §§ 102, 890.123;~~  
~~—Massage Establishment §§ 102, 890.60;~~  
~~—Service, Personal §§ 102, 890.116~~  
~~—Service, Instructional § 102;~~  
~~—Gym; § 102~~  
~~—General Grocery § 102;~~  
~~—Specialty Grocery § 102;~~  
~~—Pharmacy § 102;~~  
~~—Jewelry Store §§ 102, 890.51;~~  
~~—Tourist Oriented Gift Store §§ 102, 890.39;~~  
~~—Non-Auto Vehicle Sales or Rental §§ 102, 890.69; and~~  
~~—Cannabis Retail §§ 102, 890.125.~~

(d) **Conditional Use Criteria.** With regard to a Conditional Use authorization application for a Formula Retail use, the Planning Commission shall consider, in addition to

1 the criteria set forth in Section 303, the criteria below and the Performance-Based Design  
2 Guidelines adopted by the Planning Commission to implement the criteria below.

3 (1) The existing concentrations of Formula Retail uses within the district and  
4 within the vicinity of the proposed project. To determine the existing concentration, the  
5 Planning Commission shall consider the percentage of the total linear street frontage within a  
6 300-foot radius or a quarter of a mile radius, at the Planning Department's discretion, from the  
7 subject property that is occupied by Formula Retail and non-Formula Retail businesses. The  
8 Department's review shall include all parcels that are wholly or partially located within the 300-  
9 foot radius or quarter-mile radius. If the subject property is a corner parcel, the 300-foot radius  
10 or quarter mile radius shall include all corner parcels at the subject intersection. For each  
11 property, the Planning Department shall divide the total linear frontage of the lot facing a  
12 public-right of way by the number of storefronts, and then calculate the percentage of the total  
13 linear frontage for Formula Retail and non-Formula Retail. Half percentage points shall be  
14 rounded up.

15 ~~For the Upper Market Street Neighborhood Commercial District only, if the application would~~  
16 ~~bring the formula retail concentration within a 300 foot radius to a concentration of 20% or above,~~  
17 ~~Planning Department staff shall recommend disapproval of the application to the Planning~~  
18 ~~Commission. If the application would not bring the formula retail concentration within the 300 foot~~  
19 ~~radius to a concentration of 20% or above, Planning Department staff shall assess the application~~  
20 ~~according to all the other criteria listed in this Subsection 303.1(d), and recommend approval or~~  
21 ~~disapproval to the Planning Commission, according to its discretion and professional judgment. In~~  
22 ~~either case, the Planning Commission may approve or reject the application, considering all the~~  
23 ~~criteria listed in this Subsection 303.1(d).~~

24 \* \* \* \*



1                   ~~(7) For Formula Retail uses of 20,000 gross square feet or more, except for General or~~  
2 ~~Specialty Grocery stores as defined in Articles 2, 7 and 8 of this Code, the contents of an economic~~  
3 ~~impact study prepared pursuant to Section 303(i) of this Code.~~

4                   (8Z) Notwithstanding anything to the contrary contained in Planning Code  
5 Article 6 limiting the Planning Department's and Planning Commission's discretion to review  
6 signs, the Planning Department and Planning Commission may review and exercise  
7 discretion to require changes in the time, place and manner of the proposed signage for the  
8 proposed Formula Retail use, applying the Performance-Based Design Guidelines.

9                   \* \* \* \*

10                  (j) **Change of Use.** ~~Changes of Formula Retail establishments are generally described~~  
11 ~~below, except that a change of a Formula Retail use that is also a nonconforming use pursuant to~~  
12 ~~Section 182 is prohibited. In all other instances, changes of Formula Retail establishments from one~~  
13 ~~use category to another, including a change from one use to another within the sub-categories of uses~~  
14 ~~set forth in the definition of Retail Sales and Services in Section 102 and in Section 890.102 for Mixed~~  
15 ~~Use Districts, require a new Conditional Use authorization as a new Formula Retail use. Changes of~~  
16 ~~Formula Retail owner or operator within the same use category that are determined to be an An~~  
17 enlargement or intensification of a Formula Retail use pursuant to subsection 178(c) ~~are is~~  
18 required to obtain Conditional Use authorization and shall meet the Commission's adopted  
19 Performance-Based Design Guidelines for Formula Retail. In cases determined not to be an  
20 enlargement or intensification of use, the Performance-Based Design Guidelines for Formula  
21 Retail may be applied and approved administratively by the Planning Department, unless the  
22 applicant requests a Conditional Use hearing at the Planning Commission. The applicant shall  
23 also pay an administrative fee to compensate Planning Department and City staff for its time  
24 reviewing the project under this subsection (j), ~~as set forth in Section 360 of this Code. The fee to~~  
25 provide performance review for Formula Retail uses as required by Section 303.1 shall be the standard

1 building permit fee or the Project Application (PRJ) fee, as applicable, plus time and materials as set  
2 forth in Section 350(g).

3 (k) **Accessory Uses.** Formula Retail uses that are Accessory Uses to a Principally  
4 Permitted Use or a Conditional Use that is a Formula Retail use shall not require separate Conditional  
5 Use authorization for the Formula Retail Accessory Use. ~~Conditional Use authorization shall be~~  
6 ~~required for all Accessory Uses within those use categories subject to Formula Retail controls as~~  
7 ~~defined in this Section 303.1, except for the following:~~

8 ~~(1) Single automated teller machines falling within the definition of Limited Financial~~  
9 ~~Services that are located at the street front that meet the Commission's adopted Performance-Based~~  
10 ~~Design Guidelines for automated teller machines;~~

11 ~~(2) Automated teller machines located within another use that are not visible from the~~  
12 ~~street;~~

13 ~~(3) Vending machines that do not exceed 15 feet of street frontage or occupy more than~~  
14 ~~200 square feet of area facing a public right of way.~~

15  
16 Section 4. Effective Date. This ordinance shall become effective 30 days after  
17 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
18 ordinance unsigned or does not sign the ordinance within 10 days of receiving it, or the Board  
19 of Supervisors overrides the Mayor's veto of the ordinance.

20  
21 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
22 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
23 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
24 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
25

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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5 APPROVED AS TO FORM:  
6 DAVID CHIU, City Attorney

7 By: /s/ HEATHER GOODMAN  
8 HEATHER GOODMAN  
Deputy City Attorney

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