

1 [Findings for the need to regulate formula retail uses; enacting regulations for the Hayes-  
2 Gough Neighborhood Commercial District, and the Neighborhood Commercial Cluster  
3 Districts at Cole and Carl and Parnassus and Stanyan; related regulations.]

4 **Ordinance to amend the Planning Code by adding section 703.3 and by amending**  
5 **section 182, and section 303 to make findings as to the need to regulate formula retail**  
6 **uses, to define formula retail uses, prohibit formula retail uses in the Hayes-Gough**  
7 **Neighborhood Commercial District, designate formula retail uses as a conditional use**  
8 **in the Neighborhood Commercial Cluster Districts at Cole and Carl Streets and**  
9 **Parnassus and Stanyan Streets, to require any building permit application for a formula**  
10 **retail use to comply with the notice and design review procedures of section 312 of the**  
11 **Planning Code, to require adoption by the Planning Commission of discretionary**  
12 **review guidelines for evaluating proposed formula retail uses, to provide additional**  
13 **conditional use criteria for evaluating proposed formula retail uses, to provide that the**  
14 **burden to prove that a use is not a formula retail use rests with the building permit**  
15 **applicant or holder, and to provide that nonconforming uses in Residential Districts**  
16 **which are seeking to change in use to retail sales activity or retail sales establishment**  
17 **which is also a formula retail use must comply with the provisions of Section 703.3,**  
18 **and making findings of consistency with the priority policies of Planning Code Section**  
19 **101.1 and the General Plan.**

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

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

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

SUPERVISOR GONZALEZ , DALY, AMMIANO  
BOARD OF SUPERVISORS

1 (a) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this  
2 ordinance will serve the public necessity, convenience and welfare.

3 (b) Pursuant to Planning Code Section 101.1, the Board of Supervisors finds that this  
4 ordinance is consistent with the Priority Policies of Section 101.1(b) of the Planning Code and  
5 with the General Plan and hereby incorporates a report containing those findings as if fully set  
6 forth herein. A copy of said report is on file with the Clerk of the Board of Supervisors in File  
7 No. 031501.

8 Section 2. The San Francisco Planning Code is hereby amended by adding Section  
9 703.3, to read as follows:

10 **Sec. 703.3 Formula Retail Uses**

11 **(a) Findings**

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

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

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

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

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

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

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

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

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

22          (10) If, in the future, neighborhoods determine that the needs of their neighborhood  
23 commercial districts are better served by eliminating the notice requirements for proposed formula  
24 retail uses, by converting formula retail uses into conditional uses in their district, or by prohibiting  
25 formula retail uses in their district, they can propose legislation to do so.

1           **(b) Formula Retail Use**

2           Formula retail use is hereby defined as a type of retail sales activity or retail sales  
3 establishment which, along with eleven or more other retail sales establishments located in the  
4 United States, maintains two or more of the following features: a standardized array of merchandise,  
5 a standardized façade, a standardized décor and color scheme, a uniform apparel, standardized  
6 signage, a trademark or a servicemark.

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

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

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

15           (4) Décor shall be defined as the style of interior finishings, which may include  
16 but is not limited to, style of furniture, wallcoverings or permanent fixtures.

17           (5) Color Scheme shall be defined as selection of colors used throughout, such as on the  
18 furnishings, permanent fixtures, and wallcoverings, or as used on the façade.

19           (6) Façade shall be defined as the face or front of a building, including awnings, looking  
20 onto a street or an open space.

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

24           (8) Signage shall be defined as business sign pursuant to Section 602.3 of the Planning  
25 Code.

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

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

8           (e) **Formula Retail Uses Prohibited.** Notwithstanding subsection (d), any use permitted in  
9 the Hayes-Gough Neighborhood Commercial District, which is also a “formula retail use” as defined  
10 in this section, is hereby prohibited.

11           (f) **Conditional Uses.** Notwithstanding subsections (d) or (e), any use permitted in the  
12 Neighborhood Commercial Cluster Districts located at Cole and Carl Streets (Block 1267, Lot 9, Block  
13 1268, Lots 26, 27, 29, and 29, Block 1271, Lots 24, 24A, 24B, 25 and 26, Block 1272, Lots 1, 2, 3, 4,  
14 and 5, Block 1278, Lot 22), and at Parnassus and Stanyan Streets (Block 1276, Lot 21), which is also a  
15 “formula retail use” as defined in this section, is hereby permitted only as a conditional use.  
16 Additional criteria to be used by the Planning Commission when considering granting conditional use  
17 permits to formula retail uses in these districts are listed in Section 303(i.)

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

22           (h) **Discretionary Review Guidelines.** The Planning Commission shall develop and adopt  
23 guidelines which it shall employ when considering any request for discretionary review made pursuant  
24 to this section. These guidelines shall include but are not limited to consideration of the following  
25 factors:

1           (1) Existing concentrations of formula retail uses within the neighborhood commercial  
2 district.

3           (2) Availability of other similar retail uses within the neighborhood commercial district.

4           (3) Compatibility of the proposed formula retail use with the existing architectural and  
5 aesthetic character of the neighborhood commercial district.

6           (4) Existing retail vacancy rates within the neighborhood commercial district.

7           (5) Existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within  
8 the neighborhood commercial district.

9           (i) Determination of Formula Retail Use. After the effective date of this ordinance, in  
10 those areas in which "formula retail uses" are prohibited, any building permit application determined  
11 by the City to be for a "formula retail use" that does not identify the use as a "formula retail use" is  
12 incomplete and cannot be processed until the omission is corrected. Any building permit approved  
13 after the effective date of this ordinance that is determined by the City to have been, at the time of  
14 application, for a "formula retail use" that did not identify the use as a "formula retail use" is subject  
15 to revocation at any time.

16           After the effective date of this ordinance, in those areas in which "formula retail uses" are  
17 subject to the Neighborhood Commercial Notification and Design Review provisions of subsection (e),  
18 any building permit application determined by the City to be for a "formula retail use" that does not  
19 identify the use as a "formula retail use" is incomplete and cannot be processed until the omission is  
20 corrected. After the effective date of this ordinance, any building permit approved that is determined  
21 by the City to be for a "formula retail use" that does not identify the use as a "formula retail use" must  
22 complete the Neighborhood Commercial Notification and Design Review required in subsection (e).

23           If the City determines that a building permit application or building permit subject to this  
24 section of the Code is for a "formula retail use," the building permit applicant or holder bears the  
25 burden of proving to the City that the proposed or existing use is not a "formula retail use."

1  
2 Section 3. The San Francisco Planning Code is hereby amended by amending Section  
3 182, to read as follows:

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

5 The following provisions shall apply to nonconforming uses with respect to changes of  
6 use:

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

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

19 (1) A nonconforming use in a Residential District (other than a Residential-  
20 Commercial Combined District or an RED District), which use is located more than ¼ mile  
21 from the nearest Individual Area Neighborhood Commercial District or Restricted Use  
22 Subdistrict described in Article 7 of this Code, may change to another use which is permitted  
23 as a principal use at the first story and below in an NC-1 District, or it may change to another  
24 use which is permitted as a conditional use at the first story and below in an NC-1 District only  
25 upon approval of a conditional use application pursuant to the provisions of Article 3 of this

1 Code. If the nonconforming use is seeking to change in use to a retail sales activity or retail sales  
2 establishment which is also a formula retail use, as defined in Section 703.3 of this Code, it shall  
3 comply with the provisions of Section 703.3 of this Code. The nonconforming use shall comply  
4 with other building standards and use limitations of NC-1 Districts, as set forth in Sections  
5 710.10 through 710.95 of this Code.

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

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

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



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

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

10 (c) A nonconforming use may be changed to a use listed in Articles 2 or 7 of this  
11 Code as a conditional use for the district in which the property is located, subject to the other  
12 applicable provisions of this Code, without the necessity of specific authorization by the City  
13 Planning Commission except where major work on a structure is involved, and the new use  
14 may thereafter be continued as a permitted conditional use, subject to the limitation of Section  
15 178(b) of this Code.

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

20 (e) A nonconforming use in an R District subject to termination under the provisions  
21 of Section 185 of this Code may be converted to a dwelling unit without regard to the  
22 requirements of this Code with respect to dwelling unit density under Article 2, dimensions,  
23 areas and open space under Article 1.2, or off-street parking under Article 1.5, provided the  
24 nonconforming use is eliminated by such conversion, provided further that the structure is not  
25 enlarged, extended or moved to another location, and provided further that the requirements

1 of the Building Code, the Housing Code and other applicable portions of the Municipal Code  
2 are met.

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

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

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

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

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

24 (h) If a nonconforming use has been wrongfully changed to another use in violation  
25 of any of the fore-going provisions, and the violation is not immediately corrected when

1 required by the Zoning Administrator, the wrongful change shall be deemed to be a  
2 discontinuance or abandonment of the nonconforming use under Section 183 of this Code.

3  
4 Section 4. The San Francisco Planning Code is hereby amended by amending Section  
5 303, to read as follows:

6 Section 303. **CONDITIONAL USES.**

7 (a) General. The City Planning Commission shall hear and make determinations  
8 regarding applications for the authorization of conditional uses in the specific situations in  
9 which such authorization is provided for elsewhere in this Code. The procedures for  
10 conditional uses shall be as specified in this Section and in Sections 306 through 306.6,  
11 except that Planned Unit Developments shall in addition be subject to Section 304, medical  
12 institutions and post-secondary educational institutions shall in addition be subject to the  
13 institutional master plan requirements of Section 304.5, and conditional use and Planned Unit  
14 Development applications filed pursuant to Article 7, or otherwise required by this Code for  
15 uses or features in Neighborhood Commercial Districts, and conditional use applications  
16 within South of Market Districts, shall be subject to the provisions set forth in Sections 316  
17 through 316.8 of this Code, in lieu of those provided for in Sections 306.2 and 306.3 of this  
18 Code, with respect to scheduling and notice of hearings, and in addition to those provided for  
19 in Sections 306.4 and 306.5 of this Code, with respect to conduct of hearings and  
20 reconsideration.

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

23 (c) Determination. After its hearing on the application, or upon the recommendation  
24 of the Director of Planning if the application is filed pursuant to Sections 316 through 316.8 of  
25

1 this Code and no hearing is required, the City Planning Commission shall approve the  
2 application and authorize a conditional use if the facts presented are such to establish:

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

6 (A) In Neighborhood Commercial Districts, if the proposed use is to be located at a  
7 location in which the square footage exceeds the limitations found in Planning Code §  
8 121.2(a) or 121.2(b), the following shall be considered:

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

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

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

16 (2) That such use or feature as proposed will not be detrimental to the health,  
17 safety, convenience or general welfare of persons residing or working in the vicinity, or  
18 injurious to property, improvements or potential development in the vicinity, with respect to  
19 aspects including but not limited to the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (d) Conditions. When considering an application for a conditional use as provided  
17 herein with respect to applications for development of "dwellings" as defined in Chapter 87 of  
18 the San Francisco Administrative Code, the Commission shall comply with that Chapter which  
19 requires, among other things, that the Commission not base any decision regarding the  
20 development of "dwellings" in which "protected class" members are likely to reside on  
21 information which may be discriminatory to any member of a "protected class" (as all such  
22 terms are defined in Chapter 87 of the San Francisco Administrative Code). In addition, when  
23 authorizing a conditional use as provided herein, the City Planning Commission, or the Board  
24 of Supervisors on appeal, shall prescribe such additional conditions, beyond those specified in  
25 this Code, as are in its opinion necessary to secure the objectives of the Code. Once any

1 portion of the conditional use authorization is utilized, all such conditions pertaining to such  
2 authorization shall become immediately operative. The violation of any condition so imposed  
3 shall constitute a violation of this Code and may constitute grounds for revocation of the  
4 conditional use authorization. Such conditions may include time limits for exercise of the  
5 conditional use authorization; otherwise, any exercise of such authorization must commence  
6 within a reasonable time.

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

12 (f) Conditional Use Abatement. The Planning Commission may consider the  
13 possible revocation of a conditional use or the possible modification of or placement of  
14 additional conditions on a conditional use when the Planning Commission determines, based  
15 upon substantial evidence, that the applicant for the conditional use had submitted false or  
16 misleading information in the application process that could have reasonably had a substantial  
17 effect upon the decision of the Commission or the conditional use is not in compliance with a  
18 condition of approval, is in violation of law if the violation is within the subject matter  
19 jurisdiction of the Planning Commission or operates in such a manner as to create hazardous,  
20 noxious or offensive conditions enumerated in Section 202(c) if the violation is within the  
21 subject matter jurisdiction of the Planning Commission and these circumstances have not  
22 been abated through administrative action of the Director, the Zoning Administrator or other  
23 City authority. Such consideration shall be the subject of a public hearing before the Planning  
24 Commission but no fee shall be required of the applicant or the subject conditional use  
25 operator.

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

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

13 (3) In considering a conditional use revocation, the Commission shall consider  
14 whether and how the false or misleading information submitted by the applicant could have  
15 reasonably had a substantial effect upon the decision of the Commission, or the Board of  
16 Supervisors on appeal, to authorize the conditional use, substantial evidence of how any  
17 required condition has been violated or not implemented or how the conditional use is in  
18 violation of the law if the violation is within the subject matter jurisdiction of the Planning  
19 Commission or operates in such a manner as to create hazardous, noxious or offensive  
20 conditions enumerated in Section 202(c) if the violation is within the subject matter jurisdiction  
21 of the Planning Commission. As an alternative to revocation, the Commission may consider  
22 how the use can be required to meet the law or the conditions of approval, how the  
23 hazardous, noxious or offensive conditions can be abated, or how the criteria of Section  
24 303(c) can be met by modifying existing conditions or by adding new conditions which could  
25 remedy a violation.



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

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

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

16 (B) There is substantial new evidence about the same conditional use abatement  
17 issue considered in the earlier abatement proceeding, this new evidence was not or could not  
18 be reasonably available at the time of the earlier abatement proceeding, and that new  
19 evidence indicates that the Commission's decision in the earlier proceeding ha not been  
20 implemented within a reasonable time or raises significant new issues not previously  
21 considered by the Planning Commission. The decision of the Director of Planning regarding  
22 the sufficiency and adequacy of evidence to allow the reconsideration of a conditional use  
23 abatement issue within a period of one year from the effective date of final action on the  
24 earlier abatement proceeding shall be final.

25 (g) Hotels and Motels.

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

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

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

10 (C) The market demand for a hotel or motel of the type proposed.

11 (2) Notwithstanding the provisions of Sub-sections (f)(1) above, the Planning  
12 Commission shall not consider the impact of the employees of a proposed hotel or motel  
13 project on the demand in the City for housing where:

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

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

18 (3) Notwithstanding the provisions of Subsection (f)(1) above, with respect to the  
19 conversion of residential units to tourist hotel or motel use pursuant to an application filed on  
20 or before June 1, 1990 under the provisions of Chapter 41 of the San Francisco  
21 Administrative Code, the Planning Commission shall not consider the criteria contained in  
22 Subsection (f)(1) above; provided, however, that the Planning Commission shall consider the  
23 criteria contained in Subsection (f)(1)(B) at a separate public hearing if the applicant applies  
24 for a permit for new construction or alteration where the cost of such construction or alteration  
25 exceeds \$100,000. Furthermore, no change in classification from principal permitted use to

1 conditional use in Section 216(b)(i) of this Code shall apply to hotels or motels that have filed  
2 applications on or before June 1, 1990 to convert residential units to tourist units pursuant to  
3 Chapter 41 of the San Francisco Administrative Code.

4 (h) Internet Services Exchange.

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

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

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

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

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

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

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

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

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

3 (2) As a condition of approval, and so long as the use remains an Internet Services  
4 Exchange, the project sponsor shall submit to the Planning Department on an annual basis  
5 power use statements for the previous twelve-month period as provided by all suppliers of  
6 utilities and shall submit a written annual report to the Department of Environment and the  
7 Planning Department which shall state: (a) the annual energy consumption and fuel  
8 consumption of all tenants and occupants of the Internet Services Exchange; (b) the number  
9 of all diesel generators located at the site and the hours of usage, including usage for testing  
10 purposes; (c) evidence that diesel generators at the site are in compliance with all applicable  
11 local, regional, state and federal permits, regulations and laws; and (d) such other information  
12 as the Planning Commission may require.

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

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

18 (B) Upon the effective date of the requirement of a conditional use permit for an  
19 Internet Services Exchange, the Planning Department shall submit to the Board of  
20 Supervisors and to the Director of the Department of Building Inspection a written report  
21 covering all existing Internet Services Exchanges and those Internet Services Exchanges  
22 seeking to obtain a conditional use permit, which report shall state the address, assessor's  
23 block and lot, zoning classification, square footage of the Internet Services Exchange  
24 constructed or to be constructed, a list of permits previously issued by the Planning and/or  
25 Building Inspection Departments concerning the Internet Services Exchange, the date of

1 issuance of such permits, and the status of any outstanding requests for permits from the  
2 Planning and/or Building Inspection Departments concerning Internet Services Exchange; and

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

11 (i) Formula Retail Uses

12 (1) With respect to an application for a formula retail use as defined in Section 703.3,  
13 whenever a conditional use permit is required per Section 703.3(f), the Planning Commission shall  
14 consider, in addition to the criteria set forth in Subsection (c) above:

15 (A) The existing concentrations of formula retail uses within the neighborhood commercial  
16 district.

17 (B) The availability of other similar retail uses within the neighborhood commercial district.


18 (C) The compatibility of the proposed formula retail use with the existing architectural and  
19 aesthetic character of the neighborhood commercial district.

20 (D) The existing retail vacancy rates within the neighborhood commercial district.

21 (E) The existing mix of Citywide-serving retail uses and neighborhood-serving retail uses  
22 within the neighborhood commercial district.

1 Section 5. The Planning Department concluded environmental review of this ordinance  
2 pursuant to the California Environmental Quality Act. Documentation of that review is on file  
3 with the Clerk of the Board of Supervisors in File No. 031501.

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

7 By:   
8 Sarah Ellen Owsowitz  
9 Deputy City Attorney



# City and County of San Francisco

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

## Tails

### Ordinance

---

**File Number:** 031501

**Date Passed:**

Ordinance to amend the Planning Code by adding Section 703.3 and by amending Section 182, and Section 303 to make findings as to the need to regulate formula retail uses, to define formula retail uses, prohibit formula retail uses in the Hayes-Gough Neighborhood Commercial District, designate formula retail uses as a conditional use in the Neighborhood Commercial Cluster Districts at Cole and Carl Streets and Parnassus and Stanyan Streets, to require any building permit application for a formula retail use to comply with the notice and design review procedures of Section 312 of the Planning Code, to require adoption by the Planning Commission of discretionary review guidelines for evaluating proposed formula retail uses, to provide additional conditional use criteria for evaluating proposed formula retail uses, to provide that the burden to prove that a use is not a formula retail use rests with the building permit applicant or holder, and to provide that nonconforming uses in Residential Districts which are seeking to change in use to retail sales activity or retail sales establishment which is also a formula retail use must comply with the provisions of Section 703.3, and making findings of consistency with the priority policies of Planning Code Section 101.1 and the General Plan.

---

December 9, 2003 Board of Supervisors — SUBSTITUTED

January 27, 2004 Board of Supervisors — SUBSTITUTED

March 23, 2004 Board of Supervisors — PASSED ON FIRST READING

Ayes: 8 - Ammiano, Daly, Dufty, Gonzalez, Maxwell, McGoldrick, Peskin,  
Sandoval

Noes: 3 - Alioto-Pier, Hall, Ma

March 30, 2004 Board of Supervisors — FINALLY PASSED

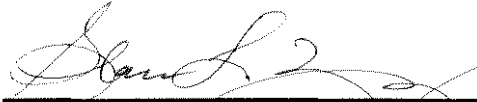
Ayes: 7 - Ammiano, Dufty, Gonzalez, Maxwell, McGoldrick, Peskin, Sandoval

Noes: 3 - Alioto-Pier, Hall, Ma

Absent: 1 - Daly

File No. 031501

I hereby certify that the foregoing Ordinance was FINALLY PASSED on March 30, 2004 by the Board of Supervisors of the City and County of San Francisco.



Gloria L. Young  
Clerk of the Board

---

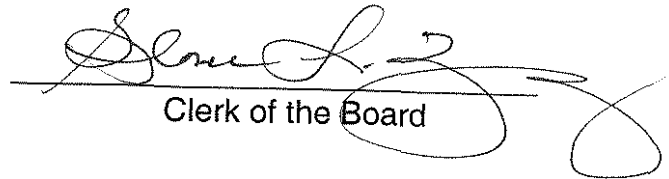
Date Approved

---

Mayor Gavin Newsom

Date: April 12, 2004

I hereby certify that the foregoing ordinance, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter.



Clerk of the Board

File No.  
031501

File No. 031501