

1 [Make findings as to the need to regulate formula retail uses, define and prohibit formula retail  
 2 uses in the Hayes-Gough Neighborhood Commercial District and in the Neighborhood  
 3 Commercial Cluster Districts at Cole and Carl Streets and Parnassus and Stanyon Streets,  
 4 require notice and design review to be provided for any building permit application for a  
 5 formula retail use, require adoption of discretionary review guidelines by the Planning  
 6 Commission for evaluating proposed formula retail uses, provide that the burden to prove that  
 a use is not a formula retail use rests with the building permit applicant or holder, and provide  
 that nonconforming uses in Residential Districts which are seeking to change in use to retail  
 sales activity or retail sales establishment which are also a formula retail use must comply  
 with the provisions regarding formula retail uses.]

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

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

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

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

3 (a) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this  
4 ordinance will serve the public necessity, convenience and welfare for the reasons set forth in  
5 Planning Commission Resolution No. \_\_\_\_\_ recommending approval of this Planning Code  
6 Amendment, and incorporates such reasons by this reference thereto. A copy of said  
7 resolution is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_.

8 (b) Pursuant to Planning Code Section 101.1, this Board of Supervisors finds that this  
9 ordinance is in consistent with the Priority Policies of Section 101.1(b) of the Planning Code  
10 and with the General Plan and hereby adopts the findings of the Planning Commission, as set  
11 forth in Planning Commission Resolution No. \_\_\_\_\_, and incorporates said findings by this  
12 reference thereto.

13 Section 2. The San Francisco Planning Code is hereby amended by adding Section  
14 703.3, to read as follows:

15 **Sec. 703.3 Formula Retail Uses**

16 **(a) Findings**

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

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

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

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

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

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

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

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

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

3 **(b) Formula Retail Use**

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

8 (1) Standardized array of merchandise shall be defined as merchandise from a single  
9 distributor and bearing uniform markings which comprises 50% or more of the merchandise offered for  
10 sale.

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

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

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

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

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

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

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

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

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

10          (e) **Formula Retail Uses Prohibited.** Notwithstanding subsection (c), any use permitted in  
11 the Hayes-Gough Neighborhood Commercial District, or in the Neighborhood Commercial Cluster  
12 Districts located at Cole and Carl Streets (Block 1267, Lot 9, Block 1268, Lots 26, 27, 29, and 29,  
13 Block 1271, Lots 24, 24A, 24B, 25 and 26, Block 1272, Lots 1, 2, 3, 4, and 5, Block 1278, Lot 22), and  
14 at Parnassus and Stanyon Streets (Block 1276, Lot 21), which is also a "formula retail use" as defined  
15 in this section, is hereby prohibited.

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

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

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

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

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

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

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

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

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

20           If the City determines that a building permit application or building permit subject to this  
21 section of the Code is for a “formula retail use,” the building permit applicant or holder bears the  
22 burden of proving to the City that the proposed or existing use is not a “formula retail use.”

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24           Section 3. The San Francisco Planning Code is hereby amended by amending Section  
25 182, to read as follows:

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

2 The following provisions shall apply to nonconforming uses with respect to changes of  
3 use:

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

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

16 (1) A nonconforming use in a Residential District (other than a Residential-  
17 Commercial Combined District or an RED District), which use is located more than ¼ mile  
18 from the nearest Individual Area Neighborhood Commercial District or Restricted Use  
19 Subdistrict described in Article 7 of this Code, may change to another use which is permitted  
20 as a principal use at the first story and below in an NC-1 District, or it may change to another  
21 use which is permitted as a conditional use at the first story and below in an NC-1 District only  
22 upon approval of a conditional use application pursuant to the provisions of Article 3 of this  
23 Code. If the nonconforming use is seeking to change in use to a retail sales activity or retail sales  
24 establishment which is also a formula retail use, as defined in Section 703.3 of this Code, it shall  
25 comply with the provisions of Section 703.3 of this Code. The nonconforming use shall comply

1 with other building standards and use limitations of NC-1 Districts, as set forth in Sections  
2 710.10 through 710.95 of this Code.

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

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

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

23 (4) A nonconforming use in any district other than a Residential or Neighborhood  
24 Commercial District may be changed to another use listed in Articles 2 or 7 of this Code as a  
25 principal use for the district in which the existing use would first be permitted as a principal



1 use. This provision shall not apply in the Residential Subdistrict of the Rincon Hill Special Use  
2 District.

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

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

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

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

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

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

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

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

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

22 (h) If a nonconforming use has been wrongfully changed to another use in violation  
23 of any of the fore-going provisions, and the violation is not immediately corrected when  
24 required by the Zoning Administrator, the wrongful change shall be deemed to be a  
25 discontinuance or abandonment of the nonconforming use under Section 183 of this Code.

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Section 4. The Planning Department concluded environmental review of this ordinance pursuant to the California Environmental Quality Act. Documentation of that review is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_.

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

By: \_\_\_\_\_  
Sarah Ellen Owsowitz  
Deputy City Attorney