

1 [Replacement of a general grocery store with the same use is not formula retail.]

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3 **Ordinance amending Planning Code Section 703.3 so that the formula retail**
4 **requirements are not triggered when a general grocery store replaces a general**
5 **grocery store, regardless of whether the former use is currently operating; and making**
6 **environmental findings and findings of consistency with the General Plan and priority**
7 **policies of the Planning Code Section 101.1.**

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Note: Additions are *single-underline italics Times New Roman*;
9 deletions are ~~*strikethrough italics Times New Roman*~~.
Board amendment additions are double underlined.
10 Board amendment deletions are ~~strikethrough normal~~.

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

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Section 1. Findings.

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The Board of Supervisors of the City and County of San Francisco hereby finds and

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determines that:

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(a) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this

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ordinance will serve the public necessity, convenience and welfare for the reasons set forth in

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Planning Commission Resolution No. _____ recommending approval of this

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Planning Code Amendment, and incorporates such reasons by this reference thereto. A copy

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of said Resolution is on file with the Clerk of the Board of Supervisors in File No. _____.

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(b) Pursuant to Planning Code Section 101.1, this Board of Supervisors finds that this

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ordinance is consistent with the Priority Policies of Section 101.1(b) of the Planning Code and

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with the General Plan and hereby adopts the findings of the Planning Commission, as set

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forth in Planning Commission Resolution No. _____, and incorporates said findings

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by this reference thereto.

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1 (c) Environmental Findings. The Planning Department has determined that the actions
2 contemplated in this Ordinance are in compliance with the California Environmental Quality
3 Act (California Public Resources Code sections 21000 et seq.). Said determination is on file
4 with the Clerk of the Board of Supervisors in File No. _____ and is incorporated
5 herein by reference.

6 Section 2. The San Francisco Planning Code is hereby amended by amending Section
7 703.3, to read as follows:

8 Sec. 703.3 Formula Retail Uses.

9 (a) Findings.

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

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

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

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

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

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

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

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

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

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

6 (b) Formula Retail Use. Formula retail use is hereby defined as a type of retail
7 sales activity or retail sales establishment which, along with eleven or more other retail sales
8 establishments located in the United States, maintains two or more of the following features:
9 a standardized array of merchandise, a standardized façade, a standardized décor and color
10 scheme, a uniform apparel, standardized signage, a trademark or a servicemark.

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

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

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

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

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

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

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

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

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

11 (d) Formula Retail Uses Permitted. Any use permitted in a Neighborhood
12 Commercial District, which is all a "formula retail use" as defined in this section, is hereby
13 permitted.

14 (e) Formula Retail Use Prohibited. Notwithstanding subsection (d), any use
15 permitted in the Hayes-Gough Neighborhood Commercial District, or the North Beach
16 Neighborhood Commercial District, which is also a "formula retail use" as defined in this
17 section, is hereby prohibited.

18 (f) Conditional Uses. Notwithstanding subsections (d) or (e), any use permitted in
19 the Haight Street Neighborhood Commercial District or in the Small-Scale Neighborhood
20 Commercial District along Divisadero Street, bounded by Haight Street to the south and Turk
21 Street to the north (Block 1128, Lot 20, Block 1129, Lots 93 - 106, Block 1153, Lots 1 - 4, 6,
22 and 21 - 22 Block 1154, Lots 13 - 17B and 35 - 40, Block 1155, Lots 16 - 21, Lots 23, 24, and
23 36 - 38, Block 1156, Lots 4 - 6, 8, 38 and 40 - 41, Block 1179, Lots 1 - 1C, 27, and 28, Block
24 1180, Lots 12 - 17, Block 1181, Lots 14 - 19, Block 1182, Lots 2 - 6, 8, 22 - 23, 30 - 60, Block
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1 1201, Lots 1 - 4, 8 - 10, 39 - 54 and 57 - 61, Block 1202, Lots 2A, 2B, 2J and 7, Block 1203,
2 Lots 17 - 22, 24 and 37, Block 1204, Lots 1 - 11A, Block 1215, Lots 8 - 16, Block 1216, Lots 5,
3 1 and 17 - 18, Block 1217, Lots 20 - 29, Block 1218, Lots 1 - 8, 29, 32, and 50, Block 1237,
4 Lots 1 - 7, Block 1238, Lots 21 - 27, Block 1239, Lot 27, Block 1240, Lot 1), or in the
5 Neighborhood Commercial Cluster Districts located at Cole and Carl Streets (Block 1267, Lot
6 9, Block 1268, Lots 26, 27, 28 and 29, Block 1271, Lots 24, 24A, 24B, 25 and 26, Block 1272,
7 Lots 1, 2, 3, 4, and 5, Block 1278, Lot 22), and at Parnassus and Stanyan Streets (Block
8 1276, Lot 21), which is also a "formula retail use" as defined in this section, is hereby
9 permitted only as a conditional use. Additional criteria to be used by the Planning Commission
10 when considering granting conditional use permits to formula retail uses in these districts are
11 listed in Section 303(i).

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

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

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

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

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

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

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

6 (i) Determination of Formula Retail Use. After the effective date of this ordinance,
7 in those areas in which "formula retail uses" are prohibited, any building permit application
8 determined by the City to be for a "formula retail use" that does not identify the use as a
9 "formula retail use" is incomplete and cannot be processed until the omission is corrected.
10 Any building permit approved after the effective date of this ordinance that is determined by
11 the City to have been, at the time of application, for a "formula retail use" that did not identify
12 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
14 uses" are subject to the Neighborhood Commercial Notification and Design Review provisions
15 of subsection (e), any building permit application determined by the City to be for a "formula
16 retail use" that does not identify the use as a "formula retail use" is incomplete and cannot be
17 processed until the omission is corrected. After the effective date of this ordinance, any
18 building permit approved that is determined by the City to be for a "formula retail use" that
19 does not identify the use as a "formula retail use" must complete the Neighborhood
20 Commercial Notification and Design Review required in subsection (e).

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

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1 (j) Notwithstanding the foregoing provisions of this Section 703.3, formula retail use shall
2 not include a general grocery store, as defined in Planning Code Section 790.102(a), when that use is
3 proposed to be located in a space that contains a general grocery store, regardless of whether the
4 former use is currently operating, if the former general grocery store was a formula retail use.

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

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9 By: _____
10 John D. Malamut
11 Deputy City Attorney

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