

1 [Planning Code - Formula Retail Use for Hayes-Gough Neighborhood Commercial Transit  
2 District]

3 **Ordinance amending the Planning Code, Section 703.3, to expand the definition of**  
4 **formula retail uses in the Hayes-Gough Neighborhood Commercial Transit District; and**  
5 **making environmental findings, Planning Code, Section 302, findings, and findings of**  
6 **consistency with the General Plan and the priority policies of Planning Code, Section**  
7 **101.1.**

8 NOTE: Additions are *single-underline italics Times New Roman*;  
9 deletions are ~~*strike-through italics Times New Roman*~~.  
10 Board amendment additions are double-underlined;  
11 Board amendment deletions are ~~strike-through normal~~.

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

13 Section 1. Findings. The Board of Supervisors finds and declares as follows:

14 (a) The Planning Department has determined that the actions contemplated in this  
15 Ordinance are in compliance with the California Environmental Quality Act (California Public  
16 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the  
17 Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

18 (b) On \_\_\_\_\_, 2013, the Planning Commission, in Resolution No. \_\_\_\_\_,  
19 approved and recommended for adoption by the Board this legislation and adopted findings  
20 that it is consistent, on balance, with the City's General Plan and eight priority policies of  
21 Planning Code Section 101.1. The Board adopts these findings as its own. A copy of said  
22 Resolution is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and is  
23 incorporated herein by reference.

24 (c) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this  
25 legislation will serve the public necessity, convenience, and welfare for the reasons set forth in

1 Planning Commission Resolution No. \_\_\_\_\_, and incorporates such reasons herein by  
2 reference.

3 Section 2. The San Francisco Planning Code is hereby amended by amending Section  
4 703.3, to read as follows:

5 **SEC. 703.3. FORMULA RETAIL USES.**

6 (a) **Findings.**

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

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

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

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

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

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

25

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

6 (8) Notwithstanding the marketability of a retailer's goods or services or the visual  
7 attractiveness of the storefront, the standardized architecture, color schemes, decor and  
8 signage of many formula retail businesses can detract from the distinctive character of certain  
9 Neighborhood Commercial Districts.

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

19 (10) If, in the future, neighborhoods determine that the needs of their Neighborhood  
20 Commercial Districts are better served by eliminating the notice requirements for proposed  
21 formula retail uses, by converting formula retail uses into conditional uses in their district, or  
22 by prohibiting formula retail uses in their district, they can propose legislation to do so.

23 (b) **Formula Retail Use.** Formula retail use is hereby defined as a type of retail sales  
24 activity or retail sales establishment which, along with eleven or more other retail sales  
25 establishments located in the United States, maintains two or more of the following features: a

1 standardized array of merchandise, a standardized facade, a standardized decor and color  
2 scheme, a uniform apparel, standardized signage, a trademark or a servicemark.

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

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

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

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

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

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

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

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

22 (c) "**Retail Sales Activity or Retail Sales Establishment**" shall include the uses  
23 defined in Section 303(i)(2) of this Code.

1 (d) **Formula Retail Uses Permitted.** Any use permitted in certain districts defined in  
2 Section 303(i)(~~5~~)(A), which is also a "formula retail use" as defined in this Section, is hereby  
3 permitted.

4 (e) **Formula Retail Use Prohibited.** Notwithstanding subsection (d), certain districts  
5 may prohibit formula retail uses or a subset of formula retail uses as described in Section  
6 303(i)(~~5~~).

7 (f) **Conditional Uses.** Notwithstanding subsections (d) or (e), a Conditional Use  
8 Authorization shall be required for a formula retail use in the zoning districts listed in Section  
9 303(i)(~~4~~) unless explicitly exempted. Additional criteria to be used by the Planning  
10 Commission when considering granting conditional use permits to formula retail uses in these  
11 districts are 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  
16 Section 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 Commercial  
22 District.

23 (2) Availability of other similar retail uses within the Neighborhood Commercial District.

24 (3) Compatibility of the proposed formula retail use with the existing architectural and  
25 aesthetic character of the Neighborhood Commercial District.

1 (4) Existing retail vacancy rates within the Neighborhood Commercial District.

2 (5) Existing mix of Citywide-serving retail uses and neighborhood-serving retail uses  
3 within the Neighborhood Commercial District.

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

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

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

22 **(j) Formula Retail Uses in the Hayes-Gough Neighborhood Commercial Transit District.**

23 The Hayes-Gough NCT is a special neighborhood in which housing, shops, work places, parks and  
24 civic facilities intimately co-exist to create a strong identifiable neighborhood, which attracts tourists  
25 and City residents from outside Hayes Valley. In addition, the neighborhood invites walking and

1 bicycling and the mix of unique small businesses contributes to a strong sense of neighborhood  
2 community. Hayes Valley is part of a global economy, attracting businesses and visitors from around  
3 the world. Therefore, the neighborhood is particularly sensitive to incursions from formula retail,  
4 whether it is an international, national or local formula retail business. In addition, affiliates that are  
5 owned by a business defined as formula retail will have impacts on the Hayes-Gough NCT that are  
6 similar to the impacts caused by formula retail outlets themselves, as described in Planning Code  
7 Section 703.3(a). Hayes Valley must protect its vibrant and expanding small business sector, and  
8 maintain its supportive environment for new small business innovations. Accordingly, additional  
9 restrictions on formula retail uses are necessary and desirable for the Hayes-Gough NCT.

10 In the Hayes-Gough NCT, formula retail shall be defined as set forth in Planning Code Sections  
11 303(i) and 703.3(b), except as specifically modified below:

12 (1) A formula retail use is hereby defined as a type of retail sales activity or retail sales  
13 establishment which, along with eleven or more other retail sales establishments located anywhere in  
14 the world, maintains an establishment with two or more of the following features: a standardized array  
15 of merchandise, a standardized facade, a standardized decor and color scheme, a uniform apparel,  
16 standardized signage, a trademark or a servicemark.

17 (2) A formula retail use is hereby defined as a type of retail sales activity or retail sales  
18 establishment where fifty percent (50%) or more of the stock, shares, or any similar ownership interest  
19 of such establishment is owned by a formula retail use, or a subsidiary, affiliate, or parent of a formula  
20 retail use, even if the establishment itself may have fewer than eleven other retail sales establishments  
21 permitted or located in the world.

22 Section 3. Effective Date. This ordinance shall become effective 30 days from the  
23 date of passage.

24 Section 4. This section is uncodified. In enacting this Ordinance, the Board intends to  
25 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,

1 punctuation, charts, diagrams, or any other constituent part of the Planning Code that are  
2 explicitly shown in this legislation as additions, deletions, Board amendment additions, and  
3 Board amendment deletions in accordance with the "Note" that appears under the official title  
4 of the legislation.

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

8 By: \_\_\_\_\_  
9 KATE H. STACY  
Deputy City Attorney

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