

1 [Interim Zoning Controls - Formula Retail Uses in the Castro Street Neighborhood
2 Commercial District]

3 **Resolution imposing interim zoning controls for an 18-month period in the Castro**
4 **Street Neighborhood Commercial District to require a Conditional Use authorization by**
5 **the Planning Commission under Planning Code, Section 303(i), for a proposed use that**
6 **has been determined to be Formula Retail even if a project sponsor subsequently**
7 **removes one or more distinguishing Formula Retail Use features from the project**
8 **proposal; and making environmental findings, and findings of consistency with the**
9 **General Plan, and with the eight priority policies of Planning Code, Section 101.1.**

10
11 WHEREAS, Planning Code, Section 306.7, permits the imposition of interim zoning
12 controls that promote the public interest, including but not limited to (a) development and
13 conservation of the City’s commerce and industry to maintain the City’s economic vitality and
14 maintain adequate services for its residents, visitors, businesses and institutions, and (b)
15 preservation of neighborhoods and areas of mixed residential and commercial uses and their
16 existing character; and

17 WHEREAS, Planning Code, Section 703.3(b), defines a “Formula Retail Use” as “a
18 type of retail sales activity or retail sales establishment which, along with eleven or more other
19 retail sales establishments located in the United States, maintains two or more of the following
20 features: a standardized array of merchandise, a standardized facade, a standardized decor
21 and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark,”
22 which features are also defined in Section 703.3(b); and

23 WHEREAS, Formula Retail Uses in specified zoning districts are either permitted,
24 prohibited, or require a Conditional Use authorization from the Planning Commission; and

1 WHEREAS, These interim zoning controls furthers the City’s interests set forth in
2 Planning Code, Section 703.3(a); and

3 WHEREAS, Planning Code, Section 303(i), establishes criteria for the Planning
4 Commission to consider when hearing requests for Conditional Use authorization for a
5 Formula Retail Use, which include: the existing concentrations of Formula Retail Uses within
6 the district; the availability of other similar retail uses within the district; the compatibility of the
7 proposed Formula Retail Use with the existing architectural and aesthetic character of the
8 district; the existing retail vacancy rates within the district; and the existing mix of Citywide
9 retail uses and neighborhood-serving retail uses within the district; and

10 WHEREAS, The Castro Street Neighborhood Commercial District (NCD), established
11 in Planning Code, Section 715.1, has special controls that are designed, among other things,
12 to promote a balanced mix of uses and to preserve the existing equilibrium of neighborhood-
13 serving convenience and specialty commercial uses; and

14 WHEREAS, The City is currently investing considerable capital resources in improving
15 Castro Street included within the NCD area in order to enhance pedestrian activities; and

16 WHEREAS, The Castro Street NCD requires a Conditional Use authorization for
17 Formula Retail Uses; and

18 WHEREAS, Both Planning Code, Section 703.3(i), and Planning Code, Section
19 303(i)(8), provide that if the City determines that a building permit application or building
20 permit subject to the Formula Retail Use controls of the Planning Code is for a Formula Retail
21 Use, the building permit applicant or holder bears the burden of proving to the City that the
22 proposed or existing use is not a Formula Retail Use; and

23 WHEREAS, A problem in San Francisco’s Citywide Formula Retail Use controls has
24 been identified in the Castro Street (NCD) in that, despite the fact that once the City has
25 determined that a proposed use is a Formula Retail Use the Planning Code puts the burden

1 on a project sponsor to prove that it is not, a project sponsor can easily manipulate the
2 Formula Retail Use features to evade the Conditional Use authorization requirement; and,

3 WHEREAS, The Planning Commission is in the process of considering updates to the
4 Formula Retail Use controls that would apply Citywide; and

5 WHEREAS, Any Planning Commission recommendation for updates to the Citywide
6 Formula Retail controls is likely months away; and

7 WHEREAS, Any recommendation on the imposition, on a Citywide basis, of these
8 interim controls proposed herein for the Castro Street NCD is best handled by the Planning
9 Commission as part of its larger, comprehensive analysis; yet there is an urgent need to
10 address this problem for the Castro Street NCD; and

11 WHEREAS, These interim controls proposed herein for the Castro Street NCD will
12 allow time for the orderly completion of a planning study and for the adoption of appropriate
13 legislation; and

14 WHEREAS, The Board of Supervisors (“Board”) has considered the impact on the
15 public health, safety, peace and general welfare if the interim controls proposed herein for the
16 Castro Street NCD are not imposed; and

17 WHEREAS, The Board has determined that the public interest will best be served by
18 imposition of these interim controls for the Castro Street NCD in order to ensure that the
19 comprehensive legislative scheme that may be ultimately adopted is not undermined during
20 the planning and legislative process for permanent controls; and

21 WHEREAS, The Board makes the following findings of consistency with the Priority
22 Policies set forth in Planning Code, Section 101.1: By adding additional criteria for defining a
23 Formula Retail Use in the Castro Street NCD, these interim controls advance Priority Policy 1
24 that existing neighborhood-serving retail uses be preserved and enhanced and Priority Policy
25 2 that existing housing and neighborhood character be conserved and protected to preserve

1 the cultural and economic diversity of our neighborhoods; further, these interim controls do not
2 conflict with the other Priority Policies of Section 101.1; and

3 WHEREAS, The Planning Department has determined that the actions contemplated in
4 this Resolution are in compliance with the California Environmental Quality Act (California
5 Public Resources Code sections 21000 et seq.) and the Board hereby affirms that
6 determination. Said determination is on file with the Clerk of the Board of Supervisors in File
7 No. _____ and is incorporated herein by reference; now, therefore, be it

8 RESOLVED, That in the Castro Street NCD, a Conditional Use authorization by the
9 Planning Commission is required under Planning Code, Section 303(i), in circumstances
10 where there has been a determination by Department staff or a City board, commission, or
11 agency that a proposed project is a Formula Retail Use and the project sponsor subsequently
12 removes one or more of the Formula Retail Use features listed in Planning Code, Sections
13 703.3(b) and 303(i), as defining a Formula Retail Use; and, be it

14 FURTHER RESOLVED, That any proposed use in the Castro Street NCD within the
15 scope of these interim controls that has not received a final decision on any required approval
16 action by any City department, board, commission, or agency shall be covered by these
17 interim controls; and, be it

18 FURTHER RESOLVED, That upon imposition of these interim controls for the Castro
19 Street NCD, the Planning Department shall conduct a study of the contemplated zoning
20 proposal and propose permanent legislation to address the issues of manipulation of the
21 Formula Retail Use features and disagreements between the Planning Department and
22 project sponsors as to whether a proposed use is a Formula Retail Use; and, be it

23 FURTHER RESOLVED, That these interim controls for the Castro Street NCD shall
24 remain in effect for a period of 18 months unless extended in accordance with Planning Code,
25 Section 306.7(h), or until permanent controls are adopted; and, be it

1 FURTHER RESOLVED, That the Planning Department shall provide reports to the
2 Board pursuant to Planning Code, Section 306.7(i).

3
4 APPROVED AS TO FORM:

5 DENNIS J. HERRERA, City Attorney

6
7 By: _____
8 JUDITH A. BOYAJIAN
9 Deputy City Attorney

10 n:\land\as2014\1400604\00934965.doc