

1 [Prohibiting formula retail in the Mission/Bernal Formula Retail Restricted Use Subdistrict.]

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3 **Ordinance amending the San Francisco Planning Code by adding Section 785 to**
4 **establish the Mission/Bernal Formula Retail Restricted Use Subdistrict; amending**
5 **Planning Code Section 703.3 to prohibit formula retail uses in the Mission/Bernal**
6 **Formula Retail Restricted Use Subdistrict; amending Sectional Maps SU 07 and SU 11**
7 **of the Zoning Map of the City and County of San Francisco to establish the boundaries**
8 **of the Mission/Bernal Formula Retail Restricted Use Subdistrict; adopting findings,**
9 **including environmental findings and findings of consistency with the priority policies**
10 **of Planning Code Section 101.1 and the General Plan.**

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

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

15 Section 1. Findings. The Board of Supervisors of the City and County of San
16 Francisco hereby find and determine that:

17 (a) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
18 ordinance will serve the public necessity, convenience and welfare, for the reasons set forth in
19 Planning Commission Resolution No. _____, and incorporates such reasons by this
20 reference thereto. A copy of said resolution is on file with the Clerk of the Board of
21 Supervisors in File No. _____.

22 (b) Pursuant to Planning Code Section 101.1, the Board of Supervisors finds that the
23 ordinance is consistent with the Priority Policies of Section 101.1(b) of the Planning Code and
24 with the General Plan and hereby incorporates a report containing those findings as if fully set
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1 forth herein. A copy of said report is on file with the Clerk of the Board of Supervisors in File
2 No. _____.

3 (c) The Planning Department concluded environmental review of this ordinance
4 pursuant to the California Environmental Quality Act, Public Resources Code Section 2100 et
5 seq. Documentation of that review is on file with the Clerk of the Board of Supervisors in File
6 No. _____.

7 Section 2. The San Francisco Planning Code is hereby amended by adding Section
8 785, to read as follows:

9 Sec. 785. Mission/Bernal Formula Retail Restricted Use Subdistrict.

10 a) Mission/Bernal Formula Retail Subdistrict.

11 In order to preserve the vibrant small businesses that characterize the Mission and Bernal
12 neighborhoods and prevent the elimination of these businesses by formula retail establishments, as
13 defined in Section 703.3 of this Code, which is hereby incorporated by reference, there shall be a
14 Mission/Bernal Formula Retail Restricted Use Subdistrict, applicable to areas designated as
15 Neighborhood Commercial, on Mission Street, generally bounded by 13th Street to the North and I-280
16 Freeway/Aleman Street to the South; Valencia Street, generally bounded by Duboce Avenue to the
17 North and Mission Street to the South; 16th Street, generally bounded by South Van Ness Avenue to the
18 East and Guerrero Street to the West; 24th Street, generally bounded by Potrero Avenue to the East and
19 Bartlett Street to the West; and Cortland Avenue, between Bayshore Boulevard to the East and Mission
20 Street to the West.

21 b) New Formula Retail Uses Prohibited. With the exception specified in subsection c), below,
22 establishment of a new formula retail use in the Mission/Bernal Formula Retail Restricted Use
23 Subdistrict shall be prohibited, as set forth in Section 703.3(e).

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1 c) Exception. A new formula retail use can be established at the site where a formula retail use
2 was in operation as of the effective date of this legislation, provided that the established formula retail
3 use has not been discontinued or otherwise abandoned for a continuous period of three years. The
4 establishment of a new formula retail use under this subsection shall require conditional use
5 authorization, as provided in Section 703.4 of this Code.

6 Section 3. 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 large
11 part by the character of their commercial areas.

12 (2) San Francisco needs to protect its vibrant small business sector and create a
13 supportive environment for new small business innovations. One of the eight Priority Policies
14 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 commercial
18 districts.

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

21 (5) Money earned by independent businesses is more likely to circulate within the
22 local neighborhood and City economy than the money earned by formula retail businesses
23 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 independent
2 operators because they are typically better capitalized and can absorb larger startup costs,
3 pay more for lease space, and commit to longer lease contracts. This can put pressure on
4 existing businesses and 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
6 housing, shops, work places, schools, parks and civic facilities intimately co-exist to create
7 strong identifiable neighborhoods. The neighborhood streets invite walking and bicycling and
8 the City's mix of architecture contributes to a strong sense of neighborhood community within
9 the larger City 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
12 signage of many formula retail businesses can detract from the distinctive character of certain
13 Neighborhood Commercial Districts.

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (e) Formula Retail Use Prohibited. Notwithstanding subsection (d), any use permitted
11 in the Hayes-Gough Neighborhood Commercial District, *in the Mission/Bernal Formula Retail*
12 *Restricted Use District*, or the North Beach Neighborhood Commercial District, which is also a
13 "formula retail use" as defined in this Section, is hereby prohibited.

14 (f) Conditional Uses. Notwithstanding subsections (d) or (e), any use permitted in the
15 Haight Street Neighborhood Commercial District, the Japantown Special Use District as
16 defined in Section 249.31, or in the Small-Scale Neighborhood Commercial District along
17 Divisadero Street, bounded by Haight Street to the south and Turk Street to the north (Block
18 1128, Lot 20, Block 1129, Lots 93--106, Block 1153, Lots 1--4, 6, and 21--22 Block 1154, Lots
19 13--17B and 35--40, Block 1155, Lots 16--21, Lots 23, 24, and 36--38, Block 1156, Lots 4--6,
20 8, 38 and 40--41, Block 1179, Lots 1--1C, 27, and 28, Block 1180, Lots 12--17, Block 1181,
21 Lots 14--9, Block 1182, Lots 2--6, 8, 22--23, 30--60, Block 1201, Lots 1--4, 8--10, 39--54 and
22 57--61, Block 1202, Lots 2A, 2B, 2J and 7, Block 1203, Lots 17--22, 24 and 37, Block 1204,
23 Lots 1--11A, Block 1215, Lots 8--16, Block 1216, Lots 5, 1 and 17--18, Block 1217, Lots 20--
24 29, Block 1218, Lots 1--8, 29, 32, and 50, Block 1237, Lots 1--7, Block 1238, Lots 21--27,

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1 Block 1239, Lot 27, Block 1240, Lot 1), or in the Neighborhood Commercial Cluster Districts
2 located at Cole and Carl Streets (Block 1267, Lot 9, Block 1268, Lots 26, 27, 28 and 29, Block
3 1271, Lots 24, 24A, 24B, 25 and 26, Block 1272, Lots 1, 2, 3, 4, and 5, Block 1278, Lot 22),
4 and at Parnassus and Stanyan Streets (Block 1276, Lot 21), and any exception to the prohibition
5 on formula retail uses in the Mission/Bernal Formula Retail Restricted Use District pursuant to Section
6 785(c) of this Code, which is also a "formula retail use" as defined in this Section, is hereby
7 permitted only as a conditional use. Additional criteria to be used by the Planning Commission
8 when considering granting conditional use permits to formula retail uses in these districts are
9 listed in Section 303(i).

10 (g) Neighborhood Commercial Notification and Design Review. After the effective date
11 of this Ordinance, any building permit application for a use permitted in a Neighborhood
12 Commercial District which is also a "formula retail use" as defined in this section shall be
13 subject to the Neighborhood Commercial Notification and Design Review Procedures of
14 Section 312 of this Code.

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

19 (1) Existing concentrations of formula retail uses within the Neighborhood Commercial
20 District.

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

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

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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 (e), 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 (e).

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 Section 4. In accordance with Planning Code Section 106 and 302, the following
23 change is hereby adopted as an amendment to Sectional Maps SU 7 and SU 11 of the Zoning
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1 Map of the City and County of San Francisco to reflect the Mission/Bernal Formula Retail
2 Restricted Use Subdistrict as established in Section 785:

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4 Description of Property

5 Blocks and Lots:

6 Block 3352, Lots 074-087; Block 3546, Lots 001, 031-36; Block 3547, Lots 002-003,
7 005-010, 013, 016-022, 027, 033-041; Block 3548, Lots 032-033, 035-38, 042; Block 3590,
8 Lots 019-027; Block 3696, Lots 082-083, 087-092, 097-103, 109-114; Block 3615, Lots 016-
9 016, 018-028; Block 3553, Lots 021-023, 025-026; Block 3589, Lots 092, 095-99, 108-109;
10 Block 3608, Lots 096-099; Block 3609, Lots 001-007, 014-018, 022-023, 025-029, 031-39,
11 041-042, 044-046; Block 3553, Lots 052, 063-087; Block 3554, Lots 001-003A, 005-008, 010,
12 012, 013, 015-016, 018-020, 025, 027, 029, 053, 056-075; Block 3555, Lots 001-002, 004,
13 009, 015-018, 021-029, 039-040, 056-057, 062-063; Block 3568, Lots 001-015, 059, 061-067;
14 Block 3569, Lots 001, 004-009, 011-018, 022, 028; Block 3569, Lots 001, 038-051, 075-078,
15 081, 085-088, 093-133, 136-158; Block 3570, Lots 016-018, 020, 022-023, 028, 030, 031A,
16 039, 048-049; Block 3575, Lots 029-030, 035-038, 044, 048-049, 091-092, 107-116; Block
17 3576, Lots 001-004, 006-012, 014-015, 018-022, 055, 061-062, 078, 083-084, 086-087A,
18 090-113, 117-126, 128-152; Block 3577, Lots 001-002, 004-005, 007, 009-011, 060, 064,
19 074-075; Block 3589, Lots 001-002, 004-008, 011-016, 018-021, 034-035, 082-085, 088;
20 Block 3588, Lots 001-012; Block 3590, Lots 028-035; Block 3595, Lots 018-021, 024-025,
21 027-031, 049-055, 069-070; Block 3596, Lots 001-012, 014-016, 019, 051-054A, 115-120;
22 Block 3597, Lots 001, 006, 009, 011-012, 071-073; Block 3608, Lots 002, 005, 007-010, 072-
23 073, 075, 094-095; Block 3609, Lots 078-083, 114-115, 118-119, 123-131; Block 3610, Lots
24 018-029; Block 3615, Lots 031B, 031C, 070-071; Block 3616, Lots 001-003, 005, 007-009,
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1 013-020, 022-025, 027-028, 048, 056-059, 061-063; Block 3617, Lots 001, 003-006, 008-
2 008B, 011-012, 070-079, 085; Block 3635, Lots 001-005, 008-014; Block 3636, Lots 001-006,
3 008-009, 011-013, 024-032, 034-036, 048, 050-062; Block 3637, Lots 019C-019D, 020-029,
4 069; Block 3640, Lots 011-014, 016A, 017, 019, 023, 066, 070-071, 078-079; Block 3641,
5 Lots 010C, 014-023, 068-069; Block 3642, Lots 011A, 013-021, 024-025, 027-032, 049, 068-
6 069; Block 3643, Lots 010A, 011-013, 050-051; Block 3643, Lots 002-010, 015-019, 048-049,
7 052-053; Block 3644, Lots 002-007, 009, 018-022, 026-027.

8 Block 4206, Lots 015-018, 038-040; Block 4207, Lots 014B, 015-016, 019-020, 038;
9 Block 4208, Lots 017-022; Block 4209, Lots 014, 016-017, 039-040; Block 4210, Lots 014-
10 020; Block 4211, Lots 016-017, 034-035; Block 4266, Lots 001, 035-036; Block 4267, Lot 001,
11 030-033; Block 4268, Lots 001, 031-032, 035, 042-051; Block 4269, Lots 015-017, 021, 023-
12 024; Block 4270, Lots 001, 033-037.

13 Block 5501, Lots 034, 051, 050, 045-048, 044A; Block 5518, Lots 016-019; Block 5596,
14 Lot 038; Block 5609, Lots 015-017, 028, 012, 029; Block 5615, Lots 049-053, 082-098, 033-
15 042, 078, 102-108, 070-072, 028, 099-101, 080; Block 5642 Lots 050, 049, 063, 028, 027,
16 020; Block 5657, Lots 009D, 008C, 008B, 0052; Block 5659, Lots 017A; Block 5660, Lots
17 038-040, 016-020; Block 5661, Lots 017-022; Block 5662, Lots 017, 017A, 017B; Block 5663,
18 Lots 017, 017A, 038, 019, 019A; Block 5680, Lots 008, 006A, 009, 010, 001; Block 5664, Lots
19 016-019; Block 5665, Lots 016-021; Block 5666, Lots 016-018, 034; Block 5668, Lots 017-
20 020; Block 5667; Block 5669, Lots 014; Lots 013-018; Block 5673, Lots 040, 039, 037, 018-
21 025; Block 5677, Lots 022, 001; Block 5678, Lots 022-031, 001; Block 5682, Lots 009, 011,
22 002, 001; Block 5683, Lots 010-012, 001; Block 5684, Lots 018, Block 5691, Lots 040; Block
23 5693, Lot 003A; Block 5712, Lot 045; Block 5713, Lot 013; Block 5719, Lots 001, 001A, 001B,
24 002, 005, 022, 015-019; Block 5746, Lots 018-022, 025; Block 5802, Lots 044, 020.

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1 Block 6514, Lots 001-010, 030-037; Block 6515, Lots 015, 020-025, 037; Block 6516,
2 Lots 001A, 001B, 005-007, 009, 023-025, 026-28; Block 6517, Lots 018, 021-032, 036-37,
3 039; Block 6518, Lots 001, 027-029; Block 6519, Lots 001, 040-045; Block 6520, Lots 001,
4 034-036, 038-040; Block 6521, Lots 001, 040; Block 6522, 001, 040-041; Block 6528, Lots
5 022-029, 032, 032A, 037-053; Block 6529, Lots 001-003, 005-010, 027-033; Block 6530, Lots
6 013-018, 021-028; Block 6531, Lots 001, 004-007, 009-014, 016-017, 029-030; Block 6535,
7 Lots 001, 054, 003, 055, 057; Block 6568, Lot 029; Block 6569, Lots 001-004, 009B, 013;
8 031, 031A, 035-036; Block 6570, Lots 001-007, 013; Block 6572, Lots 014-018; Block 6574,
9 Lots 001A, 001B, 005-007, 011-013, 016-023, 039-042; Block 6660, Lots 060, 005-013, 050,
10 028B, 028A, 061, 015, 016, 023, 058; Block 6687, Lot 008; Block 6688, Lots 039-042, 045,
11 008; Block 6691, Lots 001-008; Block 6692, Lots 001-008; Block 6720, Lots 068, 003, 004;
12 Block 6721, Lots 001, 002; Block 6748, Lots 002, 001.

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14 Special Use District To Be Approved – Mission/Bernal Formula Retail Restricted Use
15 District.

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

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20 By: _____
 Andrea Ruiz-Esquide
 Deputy City Attorney

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