

1 [Planning Code - Zoning - Upper Fillmore Neighborhood Commercial District]

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3 **Ordinance amending the San Francisco Planning Code by amending Sections 703.3**
4 **and 718.1 and the Zoning Control Table for the Upper Fillmore NCD to: 1) allow as a**
5 **conditional use on the first floor a new full-service restaurant, large fast food**
6 **restaurant, small self-service restaurant or self-service specialty food establishment**
7 **that is not defined as a formula retail use; and 2) add Specific Provisions to the Zoning**
8 **Control Table to allow a bar associated with a full-service restaurant as a conditional**
9 **use and require the Planning Commission to consider daytime usage on the block in**
10 **conditionally approving a new restaurant; adopting findings, including environmental**
11 **findings, Planning Code Section 302 findings, and findings of consistency with the**
12 **General Plan and the Priority Policies of Planning Code Section 101.1.**

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14 NOTE: Additions are *single-underline italics Times New Roman*;
15 deletions are ~~*strike-through italics Times New Roman*~~.
16 Board amendment additions are double-underlined;
17 Board amendment deletions are ~~strike-through normal~~.

16

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

18

19 Section 1. Findings.

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21 (a) The Planning Department has determined that the actions contemplated in this
22 ordinance comply with the California Environmental Quality Act (California Public Resources
23 Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of
24 Supervisors in File No. 110070 and is incorporated herein by reference.

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(b) These Planning Code amendments will serve the public necessity, convenience,
and welfare for the reasons set forth in Planning Commission Resolution No. 18251 and the

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1 Board incorporates those reasons herein by reference. A copy of Planning Commission
2 Resolution No. 18251 is on file with the Clerk of the Board of Supervisors in File No. 110070.

3 (c) These Planning Code amendments are consistent with the General Plan and
4 with the Priority Policies of Planning Code Section 101.1 for the reasons set forth in Planning
5 Commission Resolution No. 18251, and the Board incorporates those reasons herein by
6 reference.

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8 Section 2. The San Francisco Planning Code is hereby amended by amending
9 Sections 703 and 718.1, to read as follows:

10 **SEC. 703.3. FORMULA RETAIL USES.**

11 (a) **Findings.**

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

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

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

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

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

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
25

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
4 sales 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
11 combination of words, phrases, symbols or designs that identifies and distinguishes the
12 source of the goods from one party from those of others.

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

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
4 uses, as defined in Article 7 of this Code: "bar," "drive-up facility," "eating and drinking use,"
5 "liquor store," "restaurant, large fast-food," "restaurant, small self-service," "restaurant, full-
6 service," "sales and service, other retail," "sales and service, retail," "movie theatre," "video
7 store," "amusement and game arcade," "take-out food," and "specialty food, self-service."

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

11 (e) **Formula Retail Use Prohibited.** Notwithstanding subsection (d), any use
12 permitted in the Hayes-Gough Neighborhood Commercial District, or the North Beach
13 Neighborhood Commercial District, which is also a "formula retail use" as defined in this
14 Section, is hereby prohibited. Any full-service restaurant, large fast food restaurant, small self-
15 service restaurant or self-service specialty food store permitted in the Upper Fillmore Neighborhood
16 Commercial District which is also a "formula retail use" as defined in this Section is hereby prohibited.

17 (f) **Conditional Uses.** Notwithstanding subsections (d) or (e), any use permitted in
18 the Haight Street Neighborhood Commercial District, the Japantown Special Use District as
19 defined in Section 249.31, or in the Small-Scale Neighborhood Commercial District along
20 Divisadero Street, bounded by Haight Street to the south and Turk Street to the north (Block
21 1128, Lot 20, Block 1129, Lots 93—106, Block 1153, Lots 1—4, 6, and 21—22 Block 1154,
22 Lots 13—17B and 35—40, Block 1155, Lots 16—21, Lots 23, 24, and 36—38, Block 1156,
23 Lots 4—6, 8, 38 and 40—41, Block 1179, Lots 1—1C, 27, and 28, Block 1180, Lots 12—17,
24 Block 1181, Lots 14—9, Block 1182, Lots 2—6, 8, 22—23, 30—60, Block 1201, Lots 1—4,
25 8—10, 39—54 and 57—61, Block 1202, Lots 2A, 2B, 2J and 7, Block 1203, Lots 17—22, 24

1 and 37, Block 1204, Lots 1—11A, Block 1215, Lots 8—16, Block 1216, Lots 5, 1 and 17—18,
2 Block 1217, Lots 20—29, Block 1218, Lots 1—8, 29, 32, and 50, Block 1237, Lots 1—7, Block
3 1238, Lots 21—27, Block 1239, Lot 27, Block 1240, Lot 1), or in the Neighborhood
4 Commercial Cluster Districts located at Cole and Carl Streets (Block 1267, Lot 9, Block 1268,
5 Lots 26, 27, 28 and 29, Block 1271, Lots 24, 24A, 24B, 25 and 26, Block 1272, Lots 1, 2, 3, 4,
6 and 5, Block 1278, Lot 22), and at Parnassus and Stanyan Streets (Block 1276, Lot 21),
7 which is also a "formula retail use" as defined in this Section, is hereby permitted only as a
8 conditional use. Additional criteria to be used by the Planning Commission when considering
9 granting conditional use permits to formula retail uses in these districts are listed in Section
10 303(i).

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

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

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

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

24 (3) Compatibility of the proposed formula retail use with the existing architectural
25 and 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
5 Ordinance, in those areas in which "formula retail uses" are prohibited, any building permit
6 application determined by the City to be for a "formula retail use" that does not identify the use
7 as a "formula retail use" is incomplete and cannot be processed until the omission is
8 corrected. Any building permit approved after the effective date of this Ordinance that is
9 determined by the City to have been, at the time of application, for a "formula retail use" that
10 did not identify 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) ~~(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 (g) ~~(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

23 **SEC. 718.1. UPPER FILLMORE STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

24 The Upper Fillmore Street Neighborhood Commercial District is situated in the south-
25 central portion of Pacific Heights. It runs north-south along Fillmore Street from Jackson to

1 Bush and extends west one block along California and Pine Streets. This medium-scaled,
 2 multi-purpose commercial district provides convenience goods to its immediate neighborhood
 3 as well as comparison shopping goods and services on a specialized basis to a wider trade
 4 area. Commercial businesses are active during both day and evening and include a number
 5 of bars, restaurants, specialty groceries, and specialty clothing stores.

6 The Upper Fillmore District controls are designed to protect the existing building scale
 7 and promote new mixed-use development which is in character with adjacent buildings.
 8 Building standards regulate large lot and use development and protect rear yards above the
 9 ground story and at residential levels. Most commercial uses are permitted at the first two
 10 stories of new buildings. Special controls are designed to preserve the existing equilibrium of
 11 neighborhood-serving convenience and specialty commercial uses. In order to maintain
 12 convenience stores and protect adjacent livability, additional bars not associated with (unless
 13 part of a full-service a restaurant) and formula retail establishments are prohibited, other eating and
 14 drinking establishments and self-service specialty foods require conditional use authorization are
 15 prohibited and ground-story entertainment and financial service uses are limited. In order to
 16 promote continuous retail frontage, drive-up and most automobile uses are prohibited.

17 Housing development in new buildings is encouraged above the second story. Existing
 18 residential units are protected by limitations on demolitions and upper-story conversions.

19
 20 Section 3. The San Francisco Planning Code is hereby amended by amending the
 21 Zoning Control Table, to read as follows:

22 **SEC.718. UPPER FILLMORE STREET NEIGHBORHOOD COMMERCIAL DISTRICT**
 23 **ZONING CONTROL TABLE.**

			Upper Fillmore Street
No.	Zoning Category	§ References	Controls

BUILDING STANDARDS			
718.10	Height and Bulk Limit	§§ 102.12, 105, 106, 250—252, 260, 270, 271	40-X
718.11	Lot Size [Per Development]	§§ 790.56, 121.1	P up to 4,999 sq. ft.; C 5,000 sq. ft. & above § 121.1
718.12	Rear Yard	§§ 130, 134, 136	Required at the second story and above and at all residential levels § 134(a) (e)
718.13	Street Frontage		Required § 145.1
718.14	Awning	§ 790.20	P § 136.1(a)
718.15	Canopy	§ 790.26	P § 136.1(b)
718.16	Marquee	§ 790.58	P § 136.1(c)
718.17	Street Trees		Required § 143
COMMERCIAL AND INSTITUTIONAL STANDARDS AND USES			
718.20	Floor Area Ratio	§§ 102.9, 102.11, 123	2.5 to 1 § 124(a) (b)
718.21	Use Size [Non-Residential]	§ 790.130	P up to 2,499 sq. ft.; C 2,500 sq. ft. & above § 121.2
718.22	Off-Street Parking, Commercial/Institutional	§§ 150, 153—157, 159— 160, 204.5	Generally, none required if occupied floor area is less than 5,000 sq. ft. §§ 151, 161(g)
718.23	Off-Street Freight Loading	§§ 150, 153—155, 204.5	Generally, none required if gross floor area is less than 10,000 sq. ft. §§ 152, 161(b)
718.24	Outdoor Activity Area	§ 790.70	P if located in front; C if located elsewhere § 145.2(a)
718.25	Drive-Up Facility	§ 790.30	
718.26	Walk-Up Facility	§ 790.140	P if recessed 3 ft.; C if not recessed § 145.2(b)
718.27	Hours of Operation	§ 790.48	P 6 a.m.—2 a.m.; C 2 a.m.—6 a.m.

1	718.30	General Advertising Sign	§§ 262, 602—604, 608, 609	
2	718.31	Business Sign	§§ 262, 602—604, 608, 609	P § 607.1(f) 2
3	718.32	Other Signs	§§ 262, 602—604, 608, 609	P § 607.1(c) (d) (g)

No.	Zoning Category	§ References	Upper Fillmore Street Controls by Story		
			1st	2nd	3rd+
		§ 790.118			
718.38	Residential Conversion	§ 790.84	P	C	
718.39	Residential Demolition	§ 790.86	P	C	C
Retail Sales and Services					
718.40	Other Retail Sales and Services [Not Listed Below]	§ 790.102	P	P	
718.41	Bar	§ 790.22	<u>C#</u>		
718.42	Full-Service Restaurant	§ 790.92	<u>C#</u>		
718.43	Large Fast Food Restaurant	§ 790.90	<u>C#</u>		
718.44	Small Self-Service Restaurant	§ 790.91	<u>C#</u>		
718.45	Liquor Store	§ 790.55	C		
718.46	Movie Theater	§ 790.64	P		
718.47	Adult Entertainment	§ 790.36			
718.48	Other Entertainment	§ 790.38	C		
718.49	Financial Service	§ 790.110	C		
718.50	Limited Financial Service	§ 790.112	C		
718.51	Medical Service	§ 790.114	P	P	
718.52	Personal Service	§ 790.116	P	P	
718.53	Business or Professional Service	§ 790.108	P	P	
718.54	Massage Establishment	§ 790.60, § 1900 Health Code	C		
718.55	Tourist Hotel	§ 790.46	C	C	C
718.56	Automobile Parking	§§ 790.8, 156, 160	C	C	C
718.57	Automotive Gas Station	§ 790.14			
718.58	Automotive Service Station	§ 790.17			
718.59	Automotive Repair	§ 790.15			

1	718.60	Automotive Wash	§ 790.18			
	718.61	Automobile Sale or Rental	§ 790.12			
2	718.62	Animal Hospital	§ 790.6	C		
3	718.63	Ambulance Service	§ 790.2			
4	718.64	Mortuary	§ 790.62			
	718.65	Trade Shop	§ 790.124	P		
5	718.66	Storage	§ 790.117			
6	718.67	Video Store	§ 790.135	C	C	
7	718.68	Fringe Financial Service	§ 790.111			
8	718.69	Tobacco Paraphernalia Establishments	§ 790.123	C		
9	718.69A	Self-Service Specialty Food	§ 790.93	<u>C#</u>		
10	718.69B	Amusement Game Arcade (Mechanical Amusement Devices)	§ 790.04			
Institutions and Non-Retail Sales and Services						
11	718.70	Administrative Service	§ 790.106			
12	718.80	Hospital or Medical Center	§ 790.44			
13	718.81	Other Institutions, Large	§ 790.50	P	C	C
	718.82	Other Institutions, Small	§ 790.51	P	P	P
14	718.83	Public Use	§ 790.80	C	C	C
15	718.84	Medical Cannabis Dispensary	§ 790.141	P		
16	718.85	Philanthropic Administrative Services	§ 790.107	P	P	P
RESIDENTIAL STANDARDS AND USES						
17	718.90	Residential Use	§ 790.88	P	P	P
18	718.91	Residential Density, Dwelling Units	§§ 207, 207.1, 790.88(a)	Generally, 1 unit per 600 sq. ft. lot area § 207.4		
19	718.92	Residential Density, Group Housing	§§ 207.1, 790.88(b)	Generally, 1 bedroom per 210 sq. ft. lot area § 208		
20	718.93	Usable Open Space [Per Residential Unit]	§§ 135, 136	Generally, either 80 sq. ft. if private, or 100 sq. ft. if common § 135(d)		
21	718.94	Off-Street Parking, Residential	§§ 150, 153—157, 159—160, 204.5	Generally, 1 space for each dwelling unit §§ 151, 161(a) (g)		
22	718.95	Community Residential Parking	§ 790.10	C	C	C

1 **SPECIFIC PROVISIONS FOR THE UPPER FILLMORE**

2 **NEIGHBORHOOD COMMERCIAL DISTRICT**

3 **Article 7**

Other Code

4 **Code Section**

Section

Zoning Controls

5 § 718.41

§ 790.22

Boundaries: Applicable for the Upper Fillmore NCD.

6 **Controls: A new bar will be allowed with a conditional**
7 **use authorization from the Planning Commission only**
8 **in conjunction with a full-service restaurant use.**

10 §§ 718.42

§ 790.92

In considering a conditional use for a full-service,

11 **718.43 and**

§ 790.90

large fast food, or small self-service restaurant, the

12 **718.44**

§ 790.91

13 **Planning Commission shall consider whether the use**
14 **proposes lunch service or other daytime usage in order to**
15 **limit the number of such establishments on the block that**
16 **have no daytime activity.**

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

19 By:

20 JUDITH A. BOYAJIAN
21 Deputy City Attorney