

1 [Planning Code - Definition of Formula Retail Use for Upper Fillmore Street Neighborhood
2 Commercial District]

3 **Ordinance amending the Planning Code, Section 703.3, to expand the definition of**
4 **formula retail uses in the Upper Fillmore Street Neighborhood Commercial 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 to Codes are in *single-underline italics Times New Roman font*.
9 Deletions to Codes are in ~~*italics Times New Roman font*~~.
10 Board amendment additions are in Arial font.
11 Board amendment deletions are in ~~Arial font~~.

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

13
14 Section 1. Findings

15 (a) The Planning Department has determined that the actions contemplated in this
16 ordinance comply with the California Environmental Quality Act (California Public Resources
17 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
18 Supervisors in File No. _____ and is incorporated herein by reference.

19 (b) On _____, the Planning Commission, in Resolution No. _____,
20 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
21 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
22 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
23 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

1 (c) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this
2 legislation will serve the public necessity, convenience, and welfare for the reasons set forth in
3 Planning Commission Resolution No. _____, and incorporates such reasons herein
4 by reference.

5 Section 2. The Planning Code is hereby amended by revising Section 703.3, to read
6 as follows:
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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 part
11 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 enhances."
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18 (3) Retail uses are the land uses most critical to the success of the City's commercial
19 districts.

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

22 (5) Money earned by independent businesses is more likely to circulate within the local
23 neighborhood and City economy than the money earned by formula retail businesses which
24 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~~ *larger, more familiar and commonplace* retailers in lieu of *less*
21 *conventional*, local or regional retailers, thereby decreasing the diversity of merchandise
22 available to residents and visitors and the diversity of purveyors 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, looking
21 onto a street or an open space.

22 (7) Uniform Apparel shall be defined as standardized items of clothing including but not
23 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 uses
4 defined in Section 303(i)(2) of this Code.

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

8 (e) **Formula Retail Use Prohibited.** Notwithstanding subsection (d), certain districts
9 may prohibit formula retail uses or a subset of formula retail uses as described in Section
10 303(i)~~(5)~~.

11 (f) **Conditional Uses.** Notwithstanding subsections (d) or (e), a Conditional Use
12 Authorization shall be required for a formula retail use in the zoning districts listed in Section
13 303(i)~~(4)~~ unless explicitly exempted. Additional criteria to be used by the Planning
14 Commission when considering granting conditional use permits to formula retail uses in these
15 districts are listed in Section 303(i).

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

21 (h) **Discretionary Review Guidelines.** The Planning Commission shall develop and
22 adopt guidelines which it shall employ when considering any request for discretionary review
23 made pursuant to this Section. These guidelines shall include but are not limited to
24 consideration of the following factors:
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1 (1) Existing concentrations of formula retail uses within the Neighborhood Commercial
2 District.

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

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

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

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

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

16 After the effective date of this Ordinance, in those areas in which "formula retail uses"
17 are subject to the Neighborhood Commercial Notification and Design Review provisions of
18 subsection (g), any building permit application determined by the City to be for a "formula
19 retail use" that does not identify the use as a "formula retail use" is incomplete and cannot be
20 processed until the omission is corrected. After the effective date of this Ordinance, any
21 building permit approved that is determined by the City to be for a "formula retail use" that
22 does not identify the use as a "formula retail use" must complete the Neighborhood
23 Commercial Notification and Design Review required in subsection (g). If the City determines
24 that a building permit application or building permit subject to this Section of the Code is for a
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1 "formula retail use," the building permit applicant or holder bears the burden of proving to the
2 City that the proposed or existing use is not a "formula retail use."

3 **(j) Formula Retail Uses in the Upper Fillmore Street Neighborhood Commercial District.**

4 The Upper Fillmore Street NCD is a special neighborhood in which residences, retail uses, work
5 places, parks and institutional uses intimately co-exist to create a strong identifiable neighborhood,
6 which attracts tourists and City residents from outside the Upper Fillmore Street NCD. In addition, the
7 neighborhood invites walking and bicycling, and the mix of unique small businesses contributes to a
8 strong sense of neighborhood community. The Upper Fillmore Street NCD is part of a global
9 economy, attracting businesses and visitors from around the world. Therefore, the neighborhood is
10 particularly sensitive to new formula retail uses, including international, national or local formula
11 retail businesses. In addition, affiliates that are owned by a business defined as formula retail will
12 have impacts on the Upper Fillmore Street NCD that are similar to the impacts caused by formula
13 retail outlets themselves, as described in Planning Code Section 703.3(a). The Upper Fillmore Street
14 NCD must protect its vibrant and expanding small business sector, and maintain its supportive
15 environment for new small businesses. Thus, additional restrictions on formula retail uses are
16 necessary and desirable for the Upper Fillmore Street NCD.

17 In the Upper Fillmore Street NCD, formula retail shall be defined as set forth in Planning Code
18 Sections 303(i) and 703.3(b), except as specifically modified below:

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

24 (2) A formula retail use is hereby defined as a type of retail sales activity or retail sales
25 establishment where fifty percent (50%) or more of the stock, shares, or any similar ownership interest

1 of such establishment is owned by a formula retail use, or a subsidiary, affiliate, or parent of a formula
2 retail use, even if the establishment itself may have fewer than eleven other retail sales establishments
3 permitted or located in the world.

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5 Section 3. Effective Date. This ordinance shall become effective 30 days after
6 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
7 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
8 of Supervisors overrides the Mayor's veto of the ordinance.

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10 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
11 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
12 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
13 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
14 additions, and Board amendment deletions in accordance with the "Note" that appears under
15 the official title of the ordinance. This Ordinance shall not be construed to effectuate any
16 unintended amendments. Any additions or deletions not explicitly shown as described above,
17 omissions, or other technical and non-substantive differences between this Ordinance and the
18 Planning Code that are contained in this legislation are purely accidental and shall not
19 effectuate an amendment to the Planning Code. The Board hereby authorizes the City
20 Attorney, in consultation with the Clerk and other affected City departments, to make those
21 necessary adjustments to the published Planning Code, including non-substantive changes
22 such as renumbering or relettering, to ensure that the published version of the Planning Code
23 is consistent with the laws that this Board enacts. Specifically, the Board of Supervisors
24 recognizes that one other pending ordinance in File No. 130486 amends the same section of
25 the Planning Code. The Board intends that, if adopted, the Board amendment additions, and

1 Board amendment deletions shown in both Ordinances be given effect so that the substance
2 of each ordinance be given full force and effect. To this end, the Board directs the City
3 Attorney's office and the publisher to harmonize the provisions of each ordinance.
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5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By: _____
8 KATE H. STACY
9 Deputy City Attorney

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