

1 [Planning Code - Expanding Formula Retail Controls]

2

3 **Ordinance amending the Planning Code to expand the definition of formula retail to**
 4 **include businesses that have eleven or more outlets worldwide, and to include**
 5 **businesses 50% or more owned by formula retail businesses; expand the applicability**
 6 **of formula retail controls to other types of retail uses; expand the notification**
 7 **procedures for formula retail applications; require an economic impact report as part of**
 8 **the formula retail conditional use application; and making environmental findings and**
 9 **findings of consistency with the General Plan and the eight priority policies of Planning**
 10 **Code, Section 101.1.**

11 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
 12 **Additions to Codes** are in *single-underline italics Times New Roman font*.
 13 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
 14 **Board amendment additions** are in double-underlined Arial font.
 15 **Board amendment deletions** are in ~~strikethrough Arial font~~.
 16 **Asterisks (* * * *)** indicate the omission of unchanged Code
 17 subsections or parts of tables.

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

17 Section 1. Findings.

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

22 (b) On _____, the Planning Commission, in Resolution No. _____, adopted
 23 findings that the actions contemplated in this ordinance are consistent, on balance, with the
 24 City’s General Plan and eight priority policies of Planning Code Section 101.1. The Board
 25

1 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
2 Board of Supervisors in File No. _____, and is incorporated herein by reference.

3
4 Section 2. The Planning Code is hereby amended by revising Section 303(i), to read
5 as follows:

6 * * * *

7 (i) Formula Retail Uses.

8 (1) Formula Retail Use. A formula retail use is hereby defined as a type of
9 retail sales activity or retail sales establishment which has eleven or more other retail sales
10 establishments located ~~in the United States~~ anywhere in the world. In addition to the eleven
11 establishments, the business maintains two or more of the following features: a standardized
12 array of merchandise, a standardized facade, a standardized decor and color scheme,
13 uniform apparel, standardized signage, a trademark or a servicemark; or a type of retail sales
14 activity or retail sales establishment where fifty percent (50%) or more of the stock, shares, or any
15 similar ownership interest of such establishment is owned by a formula retail use, or a subsidiary,
16 affiliate, or parent of a formula retail use, even if the establishment itself may have fewer than eleven
17 other retail sales establishments permitted or located in the world.

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

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

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

1 (D) Decor shall be defined as the style of interior furnishings, which may
2 include but is not limited to, style of furniture, wall coverings or permanent fixtures.

3 (E) Color Scheme shall be defined as selection of colors used throughout,
4 such as on the furnishings, permanent fixtures, and wall coverings, or as used on the facade.

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

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

10 (H) Signage shall be defined as business sign pursuant to Section 602.3 of
11 the Planning Code.

12 (2) "Retail Sales Activity or Retail Sales Establishment." For the purposes of
13 subsection (i), a retail sales activity or retail sales establishment shall include the following
14 uses, as defined in Article 1, 7, and Article and 8 of this Code: "Bar," "Drive-up Facility,"
15 "Eating and Drinking Use," "Liquor Store," "Sales and Service, Other Retail," "Restaurant,"
16 "Limited-Restaurant," "Take-Out Food," "Sales and Service, Retail," "Service, Financial,"
17 "Movie Theater," ~~and~~ "Amusement and Game Arcade," "Entertainment, Adult," "Entertainment,
18 Other," "Service, Limited Financial," "Service, Medical," "Service, Personal," "Service, Business or
19 Professional," "Massage Establishment," "Hotel, Tourist," "Automobile Parking," "Automotive Gas
20 Station," "Automotive Service Station," "Automotive Repair," "Automotive Wash," "Automobile Sale
21 or Rental," "Animal Hospital," "Ambulance Service," "Mortuary," "Trade Shop," "Storage,"
22 "Service, Fringe Financial," "Tobacco Paraphernalia Establishments," "Neighborhood Agriculture,"
23 "Large-Scale Urban Agriculture," "Gift Store, Tourist Oriented," "Jewelry Store" "Service,
24 Administrative," and "Light Manufacturing, Wholesale Sales, Storage."

1 (3) Conditional Use Criteria. With regard to a conditional use authorization
2 application for a formula retail use, the Planning Commission shall consider, in addition to the
3 criteria set forth in Subsection (c) above:

4 (A) The existing concentrations of formula retail uses within the district. To
5 determine the existing concentration, the Planning Commission shall consider the percentage of the
6 total linear street frontage within a 300-foot radius of the property that is occupied by formula retail
7 and non-formula retail businesses.

8 (B) The availability of other similar retail uses within the district.

9 (C) The compatibility of the proposed formula retail use with the existing
10 architectural and aesthetic character of the district.

11 (D) The existing retail vacancy rates within the district.

12 (E) The existing mix of Citywide-serving retail uses and neighborhood-
13 serving retail uses within the district.

14 (F) The impact of the proposed formula retail use on other businesses in the area,
15 as shown in an economic impact report prepared at the request of the applicant by an independent
16 professional and submitted as part of the Conditional Use Application.

17 (4) Conditional Use Authorization Required. A Conditional Use Authorization
18 shall be required for a formula retail use in the following zoning districts unless explicitly
19 exempted:

- 20 (A) All Neighborhood Commercial Districts in Article 7;
- 21 (B) All Mixed Use-General Districts in Section 840;
- 22 (C) All Urban Mixed Use Districts in Section 843;
- 23 (D) All Residential-Commercial Districts as defined in Section 206.3;
- 24 (E) Japantown Special Use District as defined in Section 249.31;
- 25 (F) Chinatown Community Business District as defined in Section 810.1;

- 1 (G) Chinatown Residential/Neighborhood Commercial District as defined in
2 812.1;
- 3 (H) Western SoMa Planning Area Special Use District as defined in 823;
- 4 (I) Residential Transit-Oriented Districts as defined in 206.4 and 206.5;
- 5 (J) Limited Conforming Use/Non-Conforming Use in RH-RM-RTO and RED
6 Districts.

7 (5) Formula Retail Uses Not Permitted. Formula Retail Uses are not permitted
8 in the following zoning districts:

- 9 (A) Hayes-Gough Neighborhood Commercial Transit District;
- 10 (B) North Beach Neighborhood Commercial District;
- 11 (C) Chinatown Visitor Retail District;
- 12 (D) Upper Fillmore District does not permit Formula Retail uses that are
13 also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and 790.91;
- 14 (E) Broadway Neighborhood Commercial District does not permit Formula
15 Retail uses that are also Restaurant or Limited-Restaurant uses as defined in Section 790.90
16 and 790.91;
- 17 (F) Mission Street Formula Retail Restaurant Subdistrict does not permit
18 Formula Retail uses that are also Restaurant or Limited-Restaurant uses as defined in
19 Section 790.90 and 790.91;
- 20 (G) Geary Boulevard Formula Retail Pet Supply Store and Formula Retail
21 Eating and Drinking Subdistrict does not permit Formula Retail uses that are also either a
22 Retail Pet Supply Store or an Eating and Drinking use as set forth in Section 781.4;
- 23 (H) Taraval Street Restaurant Subdistrict does not permit Formula Retail
24 uses that are also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and
25 790.91;

1 (6) Neighborhood Commercial Notification and Design Review. Any building
2 permit application for a "formula retail use" as defined in this section ~~and located within a~~
3 ~~Neighborhood Commercial District in Article 7~~ shall be subject to the ~~Neighborhood Commercial~~
4 ~~Notification and~~ Design Review Procedures of Section 312 of this Code. and to the following
5 notice procedures. Upon determination that an application is in compliance with the standards set
6 forth in this Section, the Planning Department shall give notice of the application as follows:

7 (A) Written notice:

8 (i) The Planning Department shall provide written notice of the
9 proposed formula retail use. The notice shall include a description of the proposal compared to any
10 existing improvements on the site with dimensions of the basic features, elevations and site plan of the
11 proposed project including the position of any adjacent buildings, exterior dimensions and finishes, a
12 graphic reference scale, existing and proposed uses and commercial or institutional business name, if
13 known. The notice shall also include the name of the proposed formula retail business and its
14 corporate parent name(s), if any, and a map of the notification area, showing the location of proposed
15 use and existing adjacent businesses/uses. The notice shall describe the project review process and
16 shall set forth the mailing date of the notice and the expiration date of the notification period.

17 (ii) The written notice shall be mailed to the notification group, which
18 shall include the applicant, tenants of the subject property, relevant neighborhood organizations as
19 described in Subparagraph 312(d)(2)(C), all individuals having made a written request for notification,
20 and all owners of property and tenants within the notification area.

21 (iii) The notification area shall be all properties within 300 feet of the
22 subject lot in the same Assessor's Block and on the block face across from the subject lot. When the
23 subject lot is a corner lot, the notification area shall further include all property on both block faces
24 across from the subject lot, and the corner property diagonally across the street.

1 (iv) Notification period. All building permit applications shall be held
2 for a period of 45 calendar days from the date of the mailed notice to allow review by residents,
3 occupants, owners of neighboring properties and by neighborhood groups.

4 (B) Posted Notice. The notice shall also be posted at the project site with a 18”
5 x 24” poster-size orange-colored paper.

6 (C) Internet Notice. The notice shall also be posted in the Planning
7 Department’s website.

8 (D) In addition, the Staff Report and Recommendation shall be available at the
9 Planning Department and at the Planning Department’s website two weeks prior to the Planning
10 Commission hearing at which the Conditional Use permit would be considered.

11 (7) Change in Use. A change from one formula retail use to another requires a
12 new Conditional Use Authorization, whether or not a Conditional Use Authorization would
13 otherwise be required by the particular change in use in question. This Conditional Use
14 Authorization requirement also applies in changes from one Formula Retail operator to
15 another within the same use category. A new Conditional Use Authorization shall not apply to
16 a change in a formula use retailer that meets the following criteria:

17 (A) the formula use operation remains the same in terms of its size,
18 function and general merchandise offering as determined by the Zoning Administrator, and

19 (B) the change in the formula retail use operator is the result of the
20 business being purchased by another formula retail operator who will retain all components of
21 the existing retailer and make minor alterations to the establishment(s) such as signage and
22 branding.

23 The new operator shall comply with all conditions of approval previously
24 imposed on the existing operator, including but not limited to signage programs and hours of
25 operation; and shall conduct the operation generally in the same manner and offer essentially

1 the same services and/or type of merchandise; or seek and be granted a new Conditional Use
2 Authorization.

3 (8) Determination of Formula Retail Use. In those areas in which "formula
4 retail uses" are prohibited, any building permit application determined by the City to be for a
5 "formula retail use" that does not identify the use as a "formula retail use" is incomplete and
6 cannot be processed until the omission is corrected. Any building permit approved that is
7 determined by the City to have been, at the time of application, for a "formula retail use" that
8 did not identify the use as a "formula retail use" is subject to revocation at any time. If the City
9 determines that a building permit application or building permit subject to this Section of the
10 Code is for a "formula retail use," the building permit application or holder bears the burden of
11 proving to the City that the proposed or existing use is not a "formula retail use."

12 * * * *

13
14 Section 3. The Planning Code is hereby amended by revising Section 703.3,
15 subsections (b) and (g), to read as follows:

16 * * * *

17 (b) Formula Retail Use. Formula retail use is hereby defined as a type of retail sales
18 activity or retail sales establishment which, along with eleven or more other retail sales
19 establishments located ~~in the United States~~ anywhere in the world, maintains two or more of the
20 following features: a standardized array of merchandise, a standardized facade, a
21 standardized decor and color scheme, a uniform apparel, standardized signage, a trademark
22 or a servicemark-; or a type of retail sales activity or retail sales establishment where fifty percent
23 (50%) or more of the stock, shares, or any similar ownership interest of such establishment is owned by
24 a formula retail use, or a subsidiary, affiliate, or parent of a formula retail use, even if the
25

1 establishment itself may have fewer than eleven other retail sales establishments permitted or located
2 in the world.

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

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

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

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

13 (5) Color Scheme shall be defined as selection of colors used throughout,
14 such as on 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
16 awnings, looking onto a street or an open space.

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

23 (g) Neighborhood Commercial Notification and Design Review. After the
24 effective date of this Ordinance, any building permit application for a use permitted in a
25 Neighborhood Commercial District which is also a "formula retail use" as defined in this

1 section shall be subject to the ~~Neighborhood Commercial Notification and~~ Design Review
2 Procedures of Section 312 of this Code: and the notification procedures set forth in Section 303(i).

3
4 Section 4. The Planning Code is hereby amended by revising Section 803.6,
5 subsections (b) and (c) to read as follows:

6 * * * *

7 (b) Formula Retail Uses.

8 (1) Formula Retail Uses Permitted as a Conditional Use. Formula retail uses
9 are permitted in the MUG District, UMU District, Western SoMA Special Use District, the
10 Chinatown Community Business District and the Chinatown Residential Neighborhood
11 Commercial District only as a conditional use. When considering an application for a
12 conditional use permit under this Section, the Planning Commission shall consider the criteria
13 defined in Section 303(i) of this Code.

14 (2) Formula Retail Uses Prohibited. The establishment of new formula retail
15 uses in the Chinatown Visitor Retail District is prohibited. The establishment of new
16 Restaurant or Limited-Restaurant uses that are also defined as formula retail in any
17 Chinatown Mixed Use Districts is prohibited.

18 . . .

19 (c) Formula Retail Use Defined. Formula retail use is hereby defined as a type of
20 retail sales activity or retail sales establishment which, along with eleven or more other retail
21 sales establishments located ~~in the United States~~ anywhere in the world, maintains two or more
22 of the following features: a standardized array of merchandise, a standardized façade, a
23 standardized décor and color scheme, a uniform apparel, standardized signage, a trademark
24 or a servicemark; or a type of retail sales activity or retail sales establishment where fifty percent
25 (50%) or more of the stock, shares, or any similar ownership interest of such establishment is owned by

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

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

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

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

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

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

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

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

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

23 (9) "Retail Sales Activity or Retail Sales Establishment" shall include the uses
24 defined in Section 303(i)(2).

25

1 Section 5. The Planning Code is amended by adding subsection 803.6(f), to read as
2 follows:

3 * * * *

4 (f) Neighborhood Commercial Notification. After the effective date of this Ordinance, any
5 building permit application for a use permitted in a MUG District, UMU District, Chinatown Mixed
6 Use District, and the Western Soma Special Use District which is also a "formula retail use" as defined
7 in this section shall be subject to the notification procedures set forth in Section 303(i).

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

13
14 Section 7. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
18 additions, and Board amendment deletions in accordance with the "Note" that appears under
19 the official title of the ordinance.

20
21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: _____
24 ANDREA RUIZ-ESQUIDE
25 Deputy City Attorney

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