

File No. 160434

Committee Item No. \_\_\_\_\_

Board Item No. 38

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: \_\_\_\_\_

Date: \_\_\_\_\_

Board of Supervisors Meeting

Date: May 3, 2016

#### Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

#### OTHER

- Ordinance Version 1 - File No. 160102
- Legislative Digest Version 1 - File No. 160102
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Prepared by: Brent Jalipa

Date: April 28, 2016

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Approval of a 90-Day Extension for Planning Commission Review of an Ordinance  
2 Prohibiting Formula Retail in the Polk Street Neighborhood Commercial District (File No.  
3 160102)]

4 **Resolution extending by 90 days the prescribed time within which the Planning**  
5 **Commission may render its decision on an Ordinance (File No. 160102) amending the**  
6 **Planning Code to prohibit formula retail in the Polk Street Neighborhood Commercial**  
7 **District; affirming the Planning Department's determination under the California**  
8 **Environmental Quality Act; and making findings, including findings of public necessity,**  
9 **convenience, and welfare under Planning Code, Section 302, and findings of**  
10 **consistency with the General Plan, and the eight priority policies of Planning Code,**  
11 **Section 101.1.**

12  
13 WHEREAS, On February 2, 2016, Supervisor Aaron Peskin introduced legislation  
14 amending the Planning Code to prohibit formula retail in the Polk Street Neighborhood  
15 Commercial District; affirming the Planning Department's determination under the California  
16 Environmental Quality Act; and making findings, including findings of public necessity,  
17 convenience, and welfare under Planning Code, Section 302, and findings of consistency with  
18 the General Plan, and the eight priority policies of Planning Code, Section 101.1; and

19 WHEREAS, On February 9, 2016, the Clerk of the Board of Supervisors referred the  
20 proposed ordinance to the Planning Commission; and

21 WHEREAS, The Planning Commission shall, in accordance with Planning Code,  
22 Section 306.4(d), render a decision on the proposed Ordinance within 90 days from the date  
23 of referral of the proposed amendment or modification by the Board to the Commission; and

24 WHEREAS, Failure of the Commission to act within 90 days shall be deemed to  
25 constitute disapproval; and

1           WHEREAS, The Board, in accordance with Planning Code, Section 306.4(d), may, by  
2 Resolution, extend the prescribed time within which the Planning Commission is to render its  
3 decision on proposed amendments to the Planning Code that the Board of Supervisors  
4 initiates; and

5           WHEREAS, Supervisor Aaron Peskin has requested additional time for community  
6 members to offer input on the proposed legislation, for Planning Department staff to assess  
7 the proposed Ordinance and for the Planning Commission to review the proposed Ordinance;  
8 and

9           WHEREAS, The Board deems it appropriate in this instance to grant to the Planning  
10 Commission additional time to review the proposed Ordinance and render its decision; now,  
11 therefore, be it

12           RESOLVED, That by this Resolution, the Board hereby extends the prescribed time  
13 within which the Planning Commission may render its decision on the proposed Ordinance for  
14 approximately 90 additional days, until July 30, 2016.

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1 [Planning Code - Prohibiting Formula Retail in Polk Street Neighborhood Commercial District]  
 2  
 3 **Ordinance amending the Planning Code to prohibit formula retail in the Polk Street**  
 4 **Neighborhood Commercial District; affirming the Planning Department's determination**  
 5 **under the California Environmental Quality Act; and making findings, including**  
 6 **findings of public necessity, convenience, and welfare under Planning Code, Section**  
 7 **302, and findings of consistency with the General Plan, and the eight priority policies of**  
 8 **Planning Code, Section 101.1.**

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

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

17 Section 1. Environmental and Planning Code 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. 160102 and is incorporated herein by reference. The Board affirms  
 22 this determination.

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

1 (c) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_,  
2 approved this ordinance, recommended it for adoption by the Board of Supervisors, and  
3 adopted findings that it will serve the public necessity, convenience, and welfare. Pursuant to  
4 Planning Code Section 302, the Board adopts these findings as its own. A copy of said  
5 Resolution is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and is  
6 incorporated by reference herein.

7 Section 2. Specific Findings.

8 (a) As described more fully in Section 723 of the Planning Code, the Polk Street  
9 Neighborhood Commercial District, located in the village-like gulch between Nob and Russian  
10 Hills and Pacific Heights, extends for about one mile, and includes a portion of Larkin Street  
11 between Post and California Streets.

12 (b) The District's dense mixed-use character consists of buildings with residential  
13 units above ground-story commercial use with unique signage and street improvements  
14 designed to highlight the pedestrian scale of the corridor, including bulbouts and parklets.

15 (c) The district has a distinctive, active, and continuous commercial frontage along  
16 Polk Street, providing convenience goods and services to the residential communities in the  
17 Polk Gulch neighborhood and to the residents in Nob and Russian Hills. It has many apparel  
18 and specialty boutiques, movie theaters, restaurants, cafes and bars, as well as some  
19 automobile uses, which serve a broader trade area. Other non-residential uses include  
20 offices, as well as several small schools and churches.

21 (d) Prior to 1970, the area neighborhood was the main gay neighborhood in San  
22 Francisco, and several gay, lesbian, and transgender bars and entertainment venues remain  
23 historic neighborhood institutions in the district.

24 (e) The district has a significant number of formula retail stores, as that term is defined  
25 in Section 303.1 of the Planning Code.

1 (f) The Board of Supervisors finds that formula retail can detract from the distinctive  
2 character and aesthetics of the district, as well as discourage the preservation and  
3 architecture of one-of-a-kind spaces, and therefore it would be desirable in maintaining the  
4 district's distinctive and historic features to prohibit new formula retail from opening in the  
5 district.

6 Section 3. The Planning Code is hereby amended by revising Section 303.1, to read  
7 as follows:

8 **SEC. 303.1. FORMULA RETAIL USES.**

9 \* \* \* \*

10 (f) **Formula Retail Uses Not Permitted.** Formula Retail uses are not permitted in the  
11 following zoning districts:

12 (1) Hayes-Gough Neighborhood Commercial Transit District;

13 (2) North Beach Neighborhood Commercial District;

14 (3) Chinatown Visitor Retail District;

15 (4) Upper Fillmore District does not permit Formula Retail uses that are also  
16 Restaurant or Limited-Restaurant uses as defined in Sections 790.90 and 790.91;

17 (5) Broadway Neighborhood Commercial District does not permit Formula  
18 Retail uses that are also Restaurant or Limited-Restaurant uses as defined in Sections 790.90  
19 and 790.91;

20 (6) Mission Street Formula Retail Restaurant Subdistrict does not permit  
21 Formula Retail uses that are also Restaurant or Limited-Restaurant uses as defined in  
22 Sections 790.90 and 790.91;

23 (7) Geary Boulevard Formula Retail Pet Supply Store and Formula Retail  
24 Eating and Drinking Subdistrict does not permit Formula Retail uses that are also either a  
25 Retail Pet Supply Store or an Eating and Drinking use as set forth in Section 781.4;

1 (8) Taraval Street Restaurant Subdistrict does not permit Formula Retail uses  
2 that are also Restaurant or Limited-Restaurant uses as defined in Sections 790.90 and  
3 790.91;

4 (9) Chinatown Mixed Use Districts do not permit Formula Retail uses that are  
5 also Restaurant or Limited-Restaurant uses as defined in Sections 790.90 and 790.91.; and

6 (10) Polk Street Neighborhood Commercial District.

7 \* \* \* \*

8 Section 4. Effective Date. This ordinance shall become effective 30 days after  
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
11 of Supervisors overrides the Mayor's veto of the ordinance.

12 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
13 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
14 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
15 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
16 additions, and Board amendment deletions in accordance with the "Note" that appears under  
17 the official title of the ordinance.

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

21 By: \_\_\_\_\_  
22 ANDREA RUIZ-ESQUIDE  
23 Deputy City Attorney

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**LEGISLATIVE DIGEST**

[Planning Code - Prohibiting Formula Retail in Polk Street Neighborhood Commercial District]

**Ordinance amending the Planning Code to prohibit formula retail in the Polk Street Neighborhood Commercial District; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings, including findings of public necessity, convenience, and welfare under Planning Code, Section 302, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

Existing Law

Planning Code Section 303.1 currently defines Formula Retail use as a type of retail sales or service activity or establishment that has 11 or more other retail sales establishments in operation, or with local land use or permit entitlements already approved, located anywhere in the world. In addition to the 11 establishments either in operation or with local land use or permit entitlements approved for operation, the business maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, uniform apparel, standardized signage, a trademark or a servicemark.

In most areas of the City, a Formula Retail use needs to obtain a Conditional Use in order to be approved. However, some areas, like the Hayes-Gough Neighborhood Commercial Transit District; the North Beach Neighborhood Commercial District; and the Chinatown Visitor Retail District, prohibit Formula Retail altogether. (See Planning Code Section 303.1(f).)

Amendments to Current Law

This Ordinance would prohibit Formula Retail in the Polk Street Neighborhood Commercial District, which is located in the village-like gulch between Nob and Russian Hills and Pacific Heights, extends for about a mile on Polk Street and includes a portion of Larkin Street between Post and California Streets.

The Ordinance contains uncodified findings, which explain that, by prohibiting Formula Retail from the district, it aims to further the goals of Section 303.1, and preserve neighborhood character.

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# Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED IN  
BOARD  
1-26-16  
[Signature]  
Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Reactivate File No. [ ]
- 10. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission     Youth Commission     Ethics Commission
- Planning Commission     Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.**

**Sponsor(s):**

Supervisor Aaron Peskin

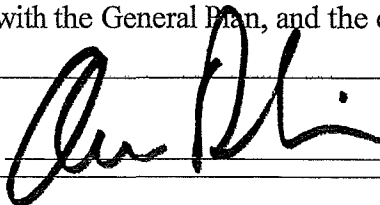
**Subject:**

[Resolution Approving a 90-Day Extension for Planning Commission Review of an Ordinance Prohibiting Formula Retail in the Polk Street Neighborhood Commercial District (File No. 160102)]

**The text is listed below or attached:**

Resolution extending by 90 days the prescribed time within which the Planning Commission may render its decision on an Ordinance (File No. 160102) amending the Planning Code to prohibit formula retail in the Polk Street Neighborhood Commercial District; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings, including findings of public necessity, convenience, and welfare under Planning Code, Section 302, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Signature of Sponsoring Supervisor:



For Clerk's Use Only:

