

BOARD of SUPERVISORS



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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: *EL* Erica Major, Assistant Clerk
bm Land Use and Transportation Committee

DATE: June 13, 2017

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following substitute legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 170514-2

Ordinance amending the Planning Code to allow a grocery store that may be defined as a formula retail use in the Fulton Street Grocery Store Special Use District, and adding criteria for approval; extending the duration of the controls; and making environmental findings, findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

_____ No Comment

_____ Recommendation Attached

Chairperson, Small Business Commission

c: Menaka Mahajan, Small Business Commission

[Planning Code - Fulton Street Grocery Store Special Use District]

Ordinance amending the Planning Code to allow a grocery store that may be defined as a formula retail use in the Fulton Street Grocery Store Special Use District, and adding criteria for approval; extending the duration of the controls; and making environmental findings, findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

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

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

Section 1. Findings.

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

(b) Pursuant to Planning Code Section 302, this Board finds that this Planning Code amendment will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. 18990 and the Board incorporates such reasons herein by reference. A copy of Planning Commission Resolution No. 18990 is on file with the Clerk of the Board of Supervisors in File No. _____.

1 (c) On September 26, 2013, the Planning Commission, in Resolution No. 18990,
2 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
3 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
4 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
5 the Board of Supervisors in File No. _____, and is incorporated herein by reference.
6

7 Section 2. The Planning Code is hereby amended by revising Section 249.35A to read
8 as follows:

9 **SEC. 249.35A. FULTON STREET GROCERY STORE SPECIAL USE DISTRICT.**

10 (a) **Purpose.** In order to provide for the consideration of a neighborhood-serving
11 grocery store of moderate size in a location accessible to the Hayes Valley and Western
12 Addition neighborhoods, there shall be a Fulton Street Grocery Store Special Use District,
13 consisting of Lots 001, 015, and 028 of Assessor's Block 0794 as designated on Sectional
14 Map 2SU of the Zoning Map. This Special Use District would enable the consideration of a
15 project containing a grocery store in a district that does not permit such uses and of a building
16 height not permitted by the established height limitations in the surrounding NCT district. *This*
17 *Special Use District would conditionally permit a grocery store that may be defined as a formula retail*
18 *use for a specified period of time, in order to allow consideration of a grocery store that is affordable*
19 *to the neighborhood. A non-formula retail grocery store may be less affordable, and this one-time lift*
20 *of the ban on formula retail is intended to support an affordable grocery store that is committed to*
21 *serving and hiring from the neighborhood. According to a 2013 census, income in the neighborhood*
22 *adjacent to this site can be as low as \$16,136.*

23 (b) **Definition.** "Grocery Store" shall mean a retail use that provides fresh produce
24 and other unprepared perishable food products (such as dairy, fish, grains), in addition to
25 other general groceries, personal items, household goods, and similar goods.

1 (c) **Application.** This special use district shall apply only to projects that meet all of the
2 following standards:

- 3 (1) Project is mixed-use, with both commercial and residential uses;
4 (2) Commercial uses include a grocery store larger than 15,000 square feet of
5 gross occupied floor area; and
6 (3) Residential uses achieve a density of not less than 1 unit per 600 square
7 feet of lot area.

8 (d) **Controls.** The following controls apply to projects meeting the criteria of subsection
9 (c) and to any subsequent alterations or changes of use in a building approved under this
10 Section 249.35A.

11 (1) The controls of the Hayes-Gough NCT apply in their entirety, except as
12 specified in this Section.

13 (2) A grocery store may be permitted as a formula retail use, as defined in Section
14 303.1, through Conditional Use Authorization pursuant to Section 303.1. All other formula retail uses
15 shall be prohibited.

16 ~~(2) Any commercial uses in addition to the grocery store may not exceed 3,000 square~~
17 ~~feet of occupied floor area per use.~~

18 (3) Accessory off-street parking shall not be permitted for any commercial use
19 except the grocery store.

20 (4) All subsequent changes of use shall require Conditional Use authorization
21 from the Planning Commission. The only non-residential uses ~~which~~ that may be permitted in
22 the space initially approved for a grocery store shall include Trade Shop (Planning Code
23 Section 790.124), Other Institutions, Large (Planning Code Section 790.50), Other Institutions,
24 Small (Planning Code Section 790.51), and Public Use (Planning Code Section 790.80),
25 except that Other Retail Sales and Services (Planning Code Section 790.102) may be

1 permitted provided that no individual tenant occupies more than 3,000 square feet of gross
2 floor area.

3 (5) In addition to the standard criteria for Conditional Use authorization, as outlined in
4 Section 303, a project sponsor proposing either a grocery store or a specialty grocery shall also
5 present information about the affordability of food for the Commission's consideration. The
6 Commission shall consider whether the project sponsor can demonstrate that the proposed grocery
7 store will accept payment assistance, as set forth below.

8 (A) Acceptance of Payment Assistance. The project sponsor shall describe the
9 proposed grocery store's commitment to accept payment from individuals through assistance programs
10 including but not limited to the United States Department of Agriculture's (USDA) Supplemental
11 Nutritional Assistance Program (SNAP); the Special Supplemental Nutrition Program for Women,
12 Infants, and Children (WIC), or other similar assistance programs.

13 (B) Food Affordability Projection. The project sponsor shall prepare a
14 projection of food affordability at the proposed location and submit it for review by the Planning
15 Commission. The projection shall consist of current retail pricing for a sampling of everyday grocery
16 items that represent all categories within the market basket of foods maintained by the USDA's Center
17 for Nutrition Policy and Promotion for their Official USDA Food Plans.

18 (6) Signs shall be subject to the requirements of Article 6 of this Code, except
19 that allowable business signs for the grocery store shall be limited to the following:

20 (A) Window Signs. The total area of all window signs, as set forth in
21 Section 602.1(b), shall not exceed 10% of the area of the window on or in which the signs are
22 located. Such signs may be nonilluminated.

23 (B) Wall Signs. The area of all wall signs shall not exceed 40 square feet
24 on the Fulton Street frontage occupied by the use, and 40 square feet on the Laguna Street
25 frontage occupied by the use. The height of any wall sign shall not exceed 24 feet, or the

1 height of the wall to which it is attached, or the height of the lowest of any residential
2 windowsill on the wall to which the sign is attached, whichever is lower. Such signs may be
3 nonilluminated or indirectly illuminated.

4 (C) Projecting Signs. The number of projecting signs shall not exceed
5 one per business. The area of such sign, as set forth in Section 602.1(a), shall not exceed 24
6 square feet. The height of such sign shall not exceed 24 feet, or the height of the wall to which
7 it is attached, or the height of the lowest of any residential windowsill on the wall to which the
8 sign is attached, whichever is lower. No part of the sign shall project more than 75% percent of
9 the horizontal distance from the street property line to the curblin, or six feet six inches,
10 whichever is less. Such signs may be nonilluminated or indirectly illuminated.

11 (D) Signs on Awnings and Marquees. Sign copy may be located on
12 permitted awnings or marquees in lieu of wall signs. The area of such sign copy as set forth in
13 Section 602.1(c) shall not exceed 40 square feet on the Fulton Street frontage occupied by
14 the use, and 40 square feet on the Laguna Street frontage occupied by the use. Such sign
15 copy may be nonilluminated or indirectly illuminated.

16 (E) Freestanding Signs and Sign Towers. Freestanding signs or sign
17 towers per lot shall not be permitted.

18 (e) **Effectiveness of Controls in this Ordinance.** The controls of this Section
19 249.35A shall apply only to a grocery store that the Planning Commission approves pursuant
20 to the requirements of this Section 249.35A within five years of the effective date of the ordinance
21 in Board File No. _____ between May 4, 2008 and January 1, 2019.

22
23 Section 3. Effective Date. This ordinance shall become effective 30 days after
24 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
25

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
2 of Supervisors overrides the Mayor's veto of the ordinance.

3
4 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
6 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
7 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
8 additions, and Board amendment deletions in accordance with the "Note" that appears under
9 the official title of the ordinance.

10
11 APPROVED AS TO FORM:
12 DENNIS J. HERRERA, City Attorney

13
14 By:


15 KATE HERRMANN STACY
16 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST
(Substituted, 6/6/2017)

[Planning Code - Fulton Street Grocery Store Special Use District]

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Existing Law

Formula Retail uses generally are prohibited in the Hayes Gough Neighborhood Commercial Transit District, and the controls of the Hayes Gough Neighborhood Commercial Transit District apply to this special use district. Planning Code Section 249.35A allows a grocery store meeting certain criteria to be approved through the conditional use permit process if it is approved between May 4, 2008 and January 1, 2019.

Amendments to Current Law

The Amendment would allow a formula retail grocery store to be approved through the conditional use permit process if it is approved within 5 years of the effective date of the Amendment. The Amendment would add a requirement that the proposed grocery store provide information about affordability of its groceries, including its willingness to accept payment from individuals through assistance programs, as well as a projection of the affordability of food sold at the grocery store.

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