

Amendment of the Whole  
July 6, 2005.

FILE NO. 050254

ORDINANCE NO.

1 [Amending Planning Code Section 703.3 to designate formula retail uses as a conditional use  
2 in the Small-Scale Neighborhood Commercial District along Divisadero Street from Haight to  
3 Turk Streets.]

4 **Ordinance to amend the Planning Code by amending section 703.3 to designate**  
5 **formula retail uses as a conditional use in the Small-Scale Neighborhood Commercial**  
6 **District along Divisadero Street from Haight to Turk Streets and making findings of**  
7 **consistency with the priority policies of Planning Code Section 101.1 and the General**  
8 **Plan.**

9 Note: Additions are *single-underline italics Times New Roman*;  
10 deletions are ~~*strikethrough italics Times New Roman*~~.  
11 Board amendment additions are double underlined.  
12 Board amendment deletions are ~~strikethrough normal~~.

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

14 Section 1. Findings. The Board of Supervisors of the City and County of San Francisco  
15 hereby finds and determines that:

16 (a) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this  
17 ordinance will serve the public necessity, convenience and welfare.

18 (b) Pursuant to Planning Code Section 101.1, the Board of Supervisors finds that this  
19 ordinance is consistent with the Priority Policies of Section 101.1(b) of the Planning Code and  
20 with the General Plan and hereby incorporates a report containing those findings as if fully set  
21 forth herein. A copy of said report is on file with the Clerk of the Board of Supervisors in File  
22 No. 050254.

23 Section 2. The San Francisco Planning Code is hereby amended by amending Section  
24 703.3, to read as follows:

25 Sec. 703.3 Formula Retail Uses

(a) Findings

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

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

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

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

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

15          (6)     Formula retail businesses can have a competitive advantage over independent  
16 operators because they are typically better capitalized and can absorb larger startup costs,  
17 pay more for lease space, and commit to longer lease contracts. This can put pressure on  
18 existing businesses and potentially price out new startup independent businesses.

19          (7)     San Francisco is one of a very few major urban centers in the state in which  
20 housing, shops, work places, schools, parks and civic facilities intimately co-exist to create  
21 strong identifiable neighborhoods. The neighborhood streets invite walking and bicycling and  
22 the City's mix of architecture contributes to a strong sense of neighborhood community within  
23 the larger City community.

24          (8)     Notwithstanding the marketability of a retailer's goods or services or the visual  
25 attractiveness of the storefront, the standardized architecture, color schemes, decor and

1 signage of many formula retail businesses can detract from the distinctive character of certain  
2 neighborhood commercial districts.

3 (9) The increase of formula retail businesses in the City's neighborhood commercial  
4 areas, if not monitored and regulated, will hamper the City's goal of a diverse retail base with  
5 distinct neighborhood retailing personalities comprised of a mix of businesses. Specifically,  
6 the unregulated and unmonitored establishment of additional formula retail uses may unduly  
7 limit or eliminate business establishment opportunities for smaller or medium-sized  
8 businesses, many of which tend to be non-traditional or unique, and unduly skew the mix of  
9 businesses towards national retailers in lieu of local or regional retailers, thereby decreasing  
10 the diversity of merchandise available to residents and visitors and the diversity of purveyors  
11 of merchandise.

12 (10) If, in the future, neighborhoods determine that the needs of their neighborhood  
13 commercial districts are better served by eliminating the notice requirements for proposed  
14 formula retail uses, by converting formula retail uses into conditional uses in their district, or  
15 by prohibiting formula retail uses in their district, they can propose legislation to do so.

16 (b) Formula Retail Use

17 Formula retail use is hereby defined as a type of retail sales activity or retail sales  
18 establishment which, along with eleven or more other retail sales establishments located in  
19 the United States, maintains two or more of the following features: a standardized array of  
20 merchandise, a standardized façade, a standardized décor and color scheme, a uniform  
21 apparel, standardized signage, a trademark or a servicemark.

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

24

25

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

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

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

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

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

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

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

18 (c) "Retail sales activity or retail sales establishment" shall include the following  
19 uses, as defined in Article 7 of this code: "bar," "drive-up facility," "eating and drinking use,"  
20 "liquor store," "restaurant, large fast-food," "restaurant, small self-service," "restaurant, full-  
21 service," "sales and service, other retail," "sales and service, retail," "movie theatre," "video  
22 store," "amusement and game arcade," and "take-out food."

23 (d) Formula Retail Uses Permitted. Any use permitted in a Neighborhood  
24 Commercial District, which is also a "formula retail use" as defined in this section, is hereby  
25 permitted.

1 (e) Formula Retail Uses Prohibited. Notwithstanding subsection (d), any use  
2 permitted in the Hayes-Gough Neighborhood Commercial District, which is also a “formula  
3 retail use” as defined in this section, is hereby prohibited.

4 (f) Conditional Uses. Notwithstanding subsections (d) or (e), any use permitted in  
5 the Haight Street Neighborhood Commercial District or *in the Small-Scale Neighborhood*  
6 *Commercial District along Divisadero Street, bounded by Haight Street to the south and Turk Street to*  
7 *the north* (Block 1128, Lot 20, Block 1129, Lots 93 - 106, Block 1153, Lots 1-4, 6 and 21-22,  
8 Block 1154, Lots 13 - 17B and 35 – 40, Block 1155, Lots 16 – 21, Lots 23, 24, and 36 – 38,  
9 Block 1156, Lots 4 – 6, 8, 38 and 40-41, Block 1179, Lots 1 – 1C, 27, and 29 – 53, Block  
10 1180, Lots 12 - 17, Block 1181, Lots 14 – 19, Block 1182, Lots 2 – 6, 8, 22 – 23, 30 – 60,  
11 Block 1201, Lots 1 – 4, 8 – 10, 39 –54 and 57 – 61, Block 1202, Lots 2A, 2B, 2J and 7, Block  
12 1203, Lots 17 – 22, 24 and 37, Block 1204, Lots 1 – 11A, Block 1215, Lots 8 – 16, Block  
13 1216, Lots 5, 1, and 17 – 18, Block 1217, Lots 20 – 29, Block 1218, Lots 1 – 8, 29, 32, and  
14 50, Block 1237, Lots 1 –7, Block 1238, Lots 21 – 27, Block 1239, Lot 27 and Block 1240, Lot  
15 1), *or* in the Neighborhood Commercial Cluster Districts located at Cole and Carl Streets  
16 (Block 1267, Lot 9, Block 1268, Lots 26, 27, 29, and 29, Block 1271, Lots 24, 24A, 24B, 25  
17 and 26, Block 1272, Lots 1, 2, 3, 4, and 5, Block 1278, Lot 22), and at Parnassus and Stanyan  
18 Streets (Block 1276, Lot 21), which is also a “formula retail use” as defined in this section, is  
19 hereby permitted only as a conditional use. Additional criteria to be used by the Planning  
20 Commission when considering granting conditional use permits to formula retail uses in these  
21 districts are listed in Section 303(i.)

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

1 subject to the neighborhood commercial notification and design review procedures of Section  
2 312 of this Code.

3 (h) Discretionary Review Guidelines. The Planning Commission shall develop and  
4 adopt guidelines which it shall employ when considering any request for discretionary review  
5 made pursuant to this section. These guidelines shall include but are not limited to  
6 consideration of the following factors:

7 (1) Existing concentrations of formula retail uses within the neighborhood  
8 commercial district.

9 (2) Availability of other similar retail uses within the neighborhood commercial  
10 district.

11 (3) Compatibility of the proposed formula retail use with the existing architectural  
12 and aesthetic character of the neighborhood commercial district.

13 (4) Existing retail vacancy rates within the neighborhood commercial district.

14 (5) Existing mix of Citywide-serving retail uses and neighborhood-serving retail uses  
15 within the neighborhood commercial district.

16 (i) Determination of Formula Retail Use. After the effective date of this ordinance,  
17 in those areas in which “formula retail uses” are prohibited, any building permit application  
18 determined by the City to be for a “formula retail use” that does not identify the use as a  
19 “formula retail use” is incomplete and cannot be processed until the omission is corrected.  
20 Any building permit approved after the effective date of this ordinance that is determined by  
21 the City to have been, at the time of application, for a “formula retail use” that did not identify  
22 the use as a “formula retail use” is subject to revocation at any time.

23 After the effective date of this ordinance, in those areas in which “formula retail uses”  
24 are subject to the Neighborhood Commercial Notification and Design Review provisions of  
25 subsection (e), any building permit application determined by the City to be for a “formula

1 retail use” that does not identify the use as a “formula retail use” is incomplete and cannot be  
2 processed until the omission is corrected. After the effective date of this ordinance, any  
3 building permit approved that is determined by the City to be for a “formula retail use” that  
4 does not identify the use as a “formula retail use” must complete the Neighborhood  
5 Commercial Notification and Design Review required in subsection (e).

6 If the City determines that a building permit application or building permit subject to this  
7 section of the Code is for a “formula retail use,” the building permit applicant or holder bears  
8 the burden of proving to the City that the proposed or existing use is not a “formula retail use.”

9 Section 3. The Planning Department concluded environmental review of this ordinance  
10 pursuant to the California Environmental Quality Act. Documentation of that review is on file  
11 with the Clerk of the Board of Supervisors in File No. 050254.

12

13 APPROVED AS TO FORM:  
14 DENNIS J. HERRERA, City Attorney

15

16 By: \_\_\_\_\_  
17 Sarah Ellen Owsowitz  
18 Deputy City Attorney

19

20

21

22

23

24

25