

SEC. 703.3. FORMULA RETAIL USES.

(a) Findings.

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

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

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

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

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

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

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

(8) Notwithstanding the marketability of a retailer's goods or services or the visual attractiveness of the storefront, the standardized architecture, color schemes, decor and signage of many formula retail businesses can detract from the distinctive character of certain Neighborhood Commercial Districts.

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

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

(b) **Formula Retail Use.** Formula retail use is hereby defined as a type of retail sales activity or retail sales establishment which, along with eleven or more other retail sales establishments located in the United States, maintains two or more of the following

features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark.

- (1) Standardized array of merchandise shall be defined as 50% or more of in-stock merchandise from a single distributor bearing uniform markings.
- (2) Trademark shall be defined as a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of the goods from one party from those of others.
- (3) Servicemark shall be defined as word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of a service from one party from those of others.
- (4) Decor shall be defined as the style of interior finishings, which may include but is not limited to, style of furniture, wallcoverings or permanent fixtures.
- (5) Color Scheme shall be defined as selection of colors used throughout, such as on the furnishings, permanent fixtures, and wallcoverings, or as used on the facade.
- (6) Facade shall be defined as the face or front of a building, including awnings, looking onto a street or an open space.
- (7) Uniform Apparel shall be defined as standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hat, and pins (other than name tags) as well as standardized colors of clothing.
- (8) Signage shall be defined as business sign pursuant to Section 602.3 of the Planning Code.

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

(d) **Formula Retail Uses Permitted.** Any use permitted in a Neighborhood Commercial District, which is all a "formula retail use" as defined in this Section, is hereby permitted.

(e) **Formula Retail Use Prohibited.** Notwithstanding subsection (d), any use permitted in the Hayes-Gough Neighborhood Commercial District, or the North Beach Neighborhood Commercial District, which is also a "formula retail use" as defined in this Section, is hereby prohibited.

(f) **Conditional Uses.** Notwithstanding subsections (d) or (e), any use permitted in the Haight Street Neighborhood Commercial District, the Japantown Special Use District as defined in Section 249.31, or in the Small-Scale Neighborhood Commercial District along Divisadero Street, bounded by Haight Street to the south and Turk Street to the north (Block 1128, Lot 20, Block 1129, Lots 93--106, Block 1153, Lots 1--4, 6, and 21--22 Block 1154, Lots 13--17B and 35--40, Block 1155, Lots 16--21, Lots 23, 24, and 36--38, Block 1156, Lots 4--6, 8, 38 and 40--41, Block 1179, Lots 1--1C, 27, and 28, Block 1180, Lots 12--17, Block 1181, Lots 14--9, Block 1182, Lots 2--6, 8, 22--23, 30--60, Block 1201, Lots 1--4, 8--10, 39--54 and 57--61, Block 1202, Lots 2A, 2B, 2J and 7, Block 1203, Lots 17--22, 24 and 37, Block 1204, Lots 1--11A, Block 1215, Lots 8--16, Block 1216, Lots 5, 1 and 17--18, Block 1217, Lots 20--29, Block 1218, Lots 1--8, 29, 32, and 50, Block 1237, Lots 1--7, Block 1238, Lots 21--27, Block 1239, Lot 27, Block 1240, Lot 1), or in the Neighborhood Commercial Cluster Districts located at Cole and

Carl Streets (Block 1267, Lot 9, Block 1268, Lots 26, 27, 28 and 29, Block 1271, Lots 24, 24A, 24B, 25 and 26, Block 1272, Lots 1, 2, 3, 4, and 5, Block 1278, Lot 22), and at Parnassus and Stanyan Streets (Block 1276, Lot 21), which is also a "formula retail use" as defined in this Section, is hereby permitted only as a conditional use. Additional criteria to be used by the Planning Commission when considering granting conditional use permits to formula retail uses in these districts are listed in Section 303(i).

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

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

(1) Existing concentrations of formula retail uses within the Neighborhood Commercial District.

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

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

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

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

(i) Determination of Formula Retail Use. After the effective date of this Ordinance, in those areas in which "formula retail uses" are prohibited, any building permit application determined by the City to be for a "formula retail use" that does not identify the use as a "formula retail use" is incomplete and cannot be processed until the omission is corrected. Any building permit approved after the effective date of this Ordinance that is determined by the City to have been, at the time of application, for a "formula retail use" that did not identify the use as a "formula retail use" is subject to revocation at any time. After the effective date of this Ordinance, in those areas in which "formula retail uses" are subject to the Neighborhood Commercial Notification and Design Review provisions of subsection (e), any building permit application determined by the City to be for a "formula retail use" that does not identify the use as a "formula retail use" is incomplete and cannot be processed until the omission is corrected. After the effective date of this Ordinance, any building permit approved that is determined by the City to be for a "formula retail use" that does not identify the use as a "formula retail use" must complete the Neighborhood Commercial Notification and Design Review required in subsection (e).

If the City determines that a building permit application or building permit subject to this Section of the Code is for a "formula retail use," the building permit applicant or holder bears the burden of proving to the City that the proposed or existing use is not a "formula retail use."

(Added by Ord. 62-04, File No. 031501, App. 4/9/2004; amended by Ord. 8-05, File No. 041067, App. 1/8/2005; Ord. 65-05, File No. 041071, App. 4/1/2005; Ord. 173-05, File

No. 050254, App. 7/29/2005; Ord. 180-06, File No. 060266, App. 7/14/2006; Ord. 245-08, File No. 080696)

SEC. 703.4. CONDITIONAL USE AUTHORIZATION FOR FORMULA RETAIL USES.

- (a) This Ordinance shall be known as the Small Business Protection Act.
 - (b) Notwithstanding Section 703.3(d) and except for Section 703.3(e), establishment of a formula retail use, as defined in Section 703.3, in any Neighborhood Commercial District, as identified in Article 7, shall require conditional use authorization pursuant to the criteria of Sections 303(c) and 303(i) and be subject to the terms of Sections 703.3(g) and (i).
 - (c) Nothing herein shall preclude the Board of Supervisors from adopting more restrictive provisions for conditional use authorization of formula retail use or prohibiting formula retail use in any Neighborhood Commercial District.
- (Added by Proposition G, § 2, 11/7/2007)