

1 [Planning Code - Formula Retail and Large-Scale Retail Controls]

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3 **Ordinance amending the Planning Code to amend the definition of Formula Retail to**
4 **include businesses that have 19 or more outlets worldwide; expand the applicability of**
5 **Formula Retail controls to other types of uses; require Conditional Use authorization**
6 **for Formula Retail establishments in the C-3-G district with facades facing Market**
7 **Street, between 6th Street and the intersection of Market Street, 12th Street and**
8 **Franklin Street; delete the requirement for Conditional Use authorization when a**
9 **Formula Retail establishment changes operator but remains the same size and use**
10 **category; define intensification and abandonment for Formula Retail uses; require**
11 **Formula Retail uses to comply with performance guidelines; amend the Conditional**
12 **Use criteria for Large-Scale Retail Uses except for General and Specialty Grocery**
13 **stores, to require an economic impact study and establish new fees for said study;**
14 **amend Neighborhood Commercial Districts that required Conditional Use for Financial**
15 **and Limited Financial Services to principally permit Financial and Limited Financial**
16 **Services; delete the Conditional Use requirement for Walk-Up Facilities that are not set**
17 **back 3 feet; and adopting findings, including environmental findings, Planning Code,**
18 **Section 302 findings, and findings of consistency with the General Plan, and the eight**
19 **priority policies of Planning Code, Section 101.1.**

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

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

2 Section 1. Findings.

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

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

13 (c) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
14 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
15 in Planning Commission Resolution No. _____ and the Board incorporates such reasons
16 herein by reference.

17
18 Section 2. The Planning Code is hereby amended by moving Subsection 303(i) to new
19 Section 303.1 and amending those provisions to read as follows, and revising Section 303 to
20 read as follows:

21 **Section 303. CONDITIONAL USES.**

22 * * * *

23 **(i) Formula Retail Uses.** *See Section 303.1 for Formula Retail uses.*

24 ~~———— (1) **Formula Retail Use.** A formula retail use is hereby defined as a type of retail sales~~
25 ~~activity or retail sales establishment which has eleven or more other retail sales establishments located~~

1 *in the United States. In addition to the eleven establishments, the business maintains two or more of the*
2 *following features: a standardized array of merchandise, a standardized facade, a standardized decor*
3 *and color scheme, uniform apparel, standardized signage, a trademark or a servicemark.*

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

6 ~~————— (B) 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 source of the~~
8 ~~goods from one party from those of others.~~

9 ~~————— (C) 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 source of a~~
11 ~~service from one party from those of others.~~

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

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

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

18 ~~————— (G) 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 pins (other~~
20 ~~than name tags) as well as standardized colors of clothing.~~

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

23 ~~———— (2) "Retail Sales Activity or Retail Sales Establishment." For the purposes of~~
24 ~~subsection (i), a retail sales activity or retail sales establishment shall include the following uses, as~~
25 ~~defined in Article 7 and Article 8 of this Code: "Bar," "Drive-up Facility," "Eating and Drinking Use,"~~

1 ~~"Liquor Store," "Sales and Service, Other Retail," "Restaurant," "Limited Restaurant," "Take-Out~~
2 ~~Food," "Sales and Service, Retail," "Service, Financial," "Movie Theater," and "Amusement and Game~~
3 ~~Arcade."~~

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

7 ~~————— (A) The existing concentrations of formula retail uses within the district.~~

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 ~~(4) **Conditional Use Authorization Required.** A Conditional Use Authorization shall be~~
15 ~~required for a Formula Retail use in the following zoning districts unless explicitly exempted:~~

16 ~~————— (A) All Neighborhood Commercial Districts in Article 7;~~

17 ~~————— (B) All Mixed Use General Districts in Section 840;~~

18 ~~————— (C) All Urban Mixed Use Districts in Section 843;~~

19 ~~————— (D) All Residential-Commercial Districts as defined in Section 206.3;~~

20 ~~————— (E) Japantown Special Use District as defined in Section 249.31;~~

21 ~~————— (F) Chinatown Community Business District as defined in Section 810.1;~~

22 ~~————— (G) Chinatown Residential/Neighborhood Commercial District as defined in 812.1;~~

23 ~~————— (H) Western SoMa Planning Area Special Use District as defined in 823;~~

24 ~~————— (I) Residential Transit-Oriented Districts as defined in 206.4 and 206.5;~~

25 ~~————— (J) Limited Conforming Use/Non-Conforming Use in RH-RM-RTO and RED~~

1 *Districts:*

2 ~~———— (K) *Third Street Formula Retail Restricted Use District, as defined in Section 786.*~~

3 ~~———— (5) **Formula Retail Uses Not Permitted.** *Formula Retail Uses are not permitted in the*~~
4 ~~*following zoning districts:*~~

5 ~~———— (A) *Hayes-Gough Neighborhood Commercial Transit District;*~~

6 ~~———— (B) *North Beach Neighborhood Commercial District;*~~

7 ~~———— (C) *Chinatown Visitor Retail District;*~~

8 ~~———— (D) *Upper Fillmore District does not permit Formula Retail uses that are also*~~
9 ~~*Restaurant or Limited-Restaurant uses as defined in Section 790.90 and 790.91;*~~

10 ~~———— (E) *Broadway Neighborhood Commercial District does not permit Formula Retail*~~
11 ~~*uses that are also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and 790.91;*~~

12 ~~———— (F) *Mission Street Formula Retail Restaurant Subdistrict does not permit Formula*~~
13 ~~*Retail uses that are also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and*~~
14 ~~*790.91;*~~

15 ~~———— (G) *Geary Boulevard Formula Retail Pet Supply Store and Formula Retail Eating*~~
16 ~~*and Drinking Subdistrict does not permit Formula Retail uses that are also either a Retail Pet Supply*~~
17 ~~*Store or an Eating and Drinking use as set forth in Section 781.4;*~~

18 ~~———— (H) *Taraval Street Restaurant Subdistrict does not permit Formula Retail uses that*~~
19 ~~*are also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and 790.91;*~~

20 ~~———— (6) **Neighborhood Commercial Notification and Design Review.** *Any building permit*~~
21 ~~*application for a "formula retail use" as defined in this section and located within a Neighborhood*~~
22 ~~*Commercial District in Article 7 shall be subject to the Neighborhood Commercial Notification and*~~
23 ~~*Design Review Procedures of Section 312 of this Code.*~~

24 ~~———— (7) **Change in Use.** *A change from one formula retail use to another requires a new*~~
25 ~~*Conditional Use Authorization, whether or not a Conditional Use Authorization would otherwise be*~~

1 ~~required by the particular change in use in question. This Conditional Use Authorization requirement~~
2 ~~also applies to changes from Formula Retail operator to another within the same use category. A new~~
3 ~~Conditional Use Authorization shall not apply to a change in a formula use retailer that meets the~~
4 ~~following criteria:~~

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

7 ~~(B) the change in the formula retail use operator is the result of the business being~~
8 ~~purchased by another formula retail operator who will retain all components of the existing retailer,~~
9 ~~including but not limited to the signage for the premises, the name of the premises and the general~~
10 ~~merchandise offered on the premises.~~

11 ~~The new operator shall comply with all conditions of approval previously imposed on the~~
12 ~~existing operator, including but not limited to signage programs and hours of operation; and shall~~
13 ~~conduct the operation generally in the same manner and offer essentially the same services and/or type~~
14 ~~of merchandise; or seek and be granted a new Conditional Use Authorization.~~

15 ~~(8) **Determination of Formula Retail Use.** In those areas in which “formula retail uses~~
16 ~~are prohibited, any building permit application determined by the City to be for a “formula retail use”~~
17 ~~that does not identify the use as a “formula retail use” is incomplete and cannot be processed until the~~
18 ~~omission is corrected. Any building permit approved that is determined by the City to have been, at the~~
19 ~~time of application, for a “formula retail use” that did not identify the use as a “formula retail use” is~~
20 ~~subject to revocation at any time. If the City determines that a building permit application or building~~
21 ~~permit subject to this Section of the Code is for a “formula retail use”, the building permit application~~
22 ~~or holder bears the burden of proving to the City that the proposed or existing use is not a “formula~~
23 ~~retail use”.~~

24 **(j) Large-Scale Retail Uses.** With respect to applications for the establishment of
25 large-scale retail uses under Section 121.6, except for General or Specialty Grocery stores as

1 defined in Articles 2, 7 and 8, in addition to the criteria set forth in Subsections (c) and (d)
2 above, the Commission shall consider the following:

3 (1) The extent to which the retail use's parking is planned in a manner that
4 creates or maintains active street frontage patterns;

5 (2) The extent to which the retail use is a component of a mixed-use project or
6 is designed in a manner that encourages mixed-use building opportunities;

7 (3) The shift in traffic patterns that may result from drawing traffic to the
8 location of the proposed use; ~~and~~

9 (4) The impact that the employees at the proposed use will have on the
10 demand in the City for housing, public transit, childcare, and other social services~~;~~; and

11 (5) **An economic impact study.** The Planning Department shall prepare an economic
12 impact study using qualified city staff or shall select a consultant from a pool of pre-qualified
13 consultants to prepare the economic impact study required by this subsection. The analysis, in the form
14 of a study, shall be considered by the Planning Commission in its review of the application. The
15 applicant shall bear the cost of paying the consultant for his or her work preparing the economic
16 impact study, and any necessary documents prepared as part of that study. The applicant shall also
17 pay an administrative fee to compensate Planning Department and City staff for its time reviewing the
18 study, as set forth in Section 359 of this Code. The study shall evaluate the potential economic impact
19 of the applicant's proposed project, including:

20 (A) **Employment Analysis.** The report shall include the following employment
21 information: a projection of both construction-related and permanent employment generated by the
22 proposed project; an analysis of whether the proposed project will result in a net increase or decrease
23 in permanent employment in the impact area; and a discussion of whether the employer of the proposed
24 project will pay a living wage, inclusive of non-salary benefits expected to be provided, relative to San
25 Francisco's cost of living.

1 **(B) Fiscal Impact.** *The report shall itemize public revenue created by the*
2 *proposed project and public services needed because of the proposed project, relative to net fiscal*
3 *impacts to the General Fund. The impacts to the City's public facilities and infrastructure should be*
4 *estimated using the city's current assumptions in existing nexus studies (including area plan, transit,*
5 *open space in-lieu fee and other impact fees), and should account for any contributions the proposed*
6 *project would make through such impact fee payments.*

7 **(C) Leakage Analysis Study.** *This portion of the report shall be twofold: both*
8 *quantitative and qualitative. The quantitative portion shall provide an analysis of whether the*
9 *proposed project will result in a net increase or decrease in the capture of spending by area residents*
10 *on items that would otherwise be purchased outside the area. The area to be studied for potential*
11 *economic impacts of the proposed project shall be determined by the City in consultation with the*
12 *expert conducting the study as different sizes of study areas would be pertinent depending on a*
13 *multitude of factors including but not limited to size and type of the proposed store. This quantitative*
14 *leakage analysis should be paired with a qualitative assessment of whether the proposed use would*
15 *complement existing merchandise selection in the area by adding greater variety of merchandise,*
16 *bolstering the strength of an existing retail cluster, or matching evolving consumer preferences.*

17 * * * *

18 **SEC. 303.1. FORMULA RETAIL USES.**

19 **(a) Findings.**

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

22 (2) One of the eight Priority Policies of the City's General Plan resolves that "existing
23 neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident
24 employment in and ownership of such businesses enhanced."

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

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

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

10 (6) Notwithstanding the marketability of a retailer's goods or services or the visual
11 attractiveness of the storefront, the standardized architecture, color schemes, decor and signage of
12 many Formula Retail businesses can detract from the distinctive character and aesthetics of certain
13 Neighborhood Commercial Districts.

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

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

1 (9) Neighborhood Commercial Districts are intended to preserve the unique qualities of
2 a district while also serving the daily needs of residents living in the immediate neighborhood; however
3 community members have reported loss of daily needs uses due to inundation of formula retailers that
4 target larger citywide or regional audiences. The City strives to ensure that goods and services that
5 residents require for daily living are available within walking distance and at an affordable price.
6 Establishments that serve daily needs and formula retail establishments are neither mutually exclusive
7 nor completely overlapping.

8 (10) The San Francisco retail brokers' study of 28 neighborhood commercial districts
9 conducted in 2014 found that the healthiest and most viable retail environments offer a mix of retailers
10 who vary in size and offerings; including a mix of conventional and cutting edge retailers as well as
11 established players and newcomers.

12 (11) Formula retailers are establishments with multiple locations and standardized
13 features or a recognizable appearance. Recognition is dependent upon the repetition of the same
14 characteristics of one store in multiple locations. The sameness of Formula Retail outlets, while
15 providing clear branding for consumers, counters the general direction of certain land use controls and
16 General Plan Policies which value unique community character and therefore need controls, in certain
17 areas, to maintain neighborhood individuality.

18 (12) The homogenizing effect of Formula Retail, based on its reliance on standardized
19 branding, is greater if the size of the Formula Retail use, in number of locations or size of use or
20 branded elements, is larger. The increased level of homogeneity distracts from San Francisco's unique
21 neighborhoods, which thrive on a high level of surprise and interest maintained by a balanced mix of
22 uses and services, both independent and standardized.

23 (13) Due to the distinct impact that Formula Retail uses have on a neighborhood, these
24 uses are the evaluated for concentration as well as compatibility within a neighborhood. As
25

1 neighborhoods naturally evolve over time, changes and intensifications of Formula Retail uses should
2 also be re-evaluated for concentration and compatibility within a neighborhood.

3 (14) According to an average of ten studies done by the firm Civic Economics and
4 published by the American Independent Business Alliance in October of 2012, spending by independent
5 retailers generated 3.7 times more direct local spending than that of Formula Retail chains.

6 (15) Money earned by independent businesses is more likely to circulate within the
7 local neighborhood and City economy than the money earned by Formula Retail businesses which
8 often have corporate offices and vendors located outside of San Francisco

9 (16) According to a 2014 Study by the San Francisco Office of Economic Analysis
10 (OEA) report “Expanding Formula Retail Controls: Economic Impact Report” the uniqueness of San
11 Francisco’s neighborhoods is based on a combination of unique visual characteristics and a sense of
12 community fostered by small merchants and resident relationships. A Formula Retail establishment is
13 determined by its recognizable look which is repeated at every location, therefore, detracting from the
14 unique community character.

15 (17) The OEA Report found that in general, chain stores charge lower prices and
16 provide affordable goods, but may spend less within the local economy, and can be unpopular with
17 some residents because they can be seen to diminish the character of the neighborhood. At the same
18 time, this OEA Report found that excessively limiting chain stores can reduce commercial rents and
19 raise vacancy rates.

20 (18) Through a 2014 study commissioned by the Planning Department, titled “San
21 Francisco Formula Retail Economic Analysis,” staff and consultants conducted one-on-one interviews
22 and worked with small groups including independent retailers, small business owners, merchants
23 associations, formula retailers, commercial brokers, neighborhood representatives and other
24 stakeholders. The Study found that landlords often perceive a benefit in renting to large established
25 chains, which landlords believe typically have better credit and can sign longer leases than local,

1 independent retailers, lowering the risk that the tenant will be unable to pay its rent. The existing land
2 use controls for Formula Retail may create a disincentive for formula retailers to locate where the
3 formula retail controls apply.

4 (b) **Definition.** A Formula Retail use is hereby defined as a type of retail sales or service
5 activity or retail sales or service establishment that has nineteen or more other retail sales
6 establishments in operation, or with local land use or permit entitlements already approved, located
7 anywhere in the world. In addition to the nineteen establishments either in operation or with local land
8 use or permit entitlements approved for operation, the business maintains two or more of the following
9 features: a standardized array of merchandise, a standardized facade, a standardized decor and color
10 scheme, uniform apparel, standardized signage, a trademark or a servicemark.

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

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

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

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

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

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

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

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

6 (c) "Retail Sales or Service Activity or Retail Sales or Service Establishment." For the
7 purposes of this Section 303.1, a retail sales or service activity or retail sales or service establishment
8 shall include the following uses whether functioning as a principal or accessory use, as defined in
9 Articles 1, 2, 7, and 8 of this Code:

- 10 (1) Bar;
- 11 (2) Drive-up Facility;
- 12 (3) Eating and Drinking Use;
- 13 (4) Liquor Store;
- 14 (5) Sales and Service, Other Retail;
- 15 (6) Restaurant;
- 16 (7) Limited-Restaurant;
- 17 (8) Take-Out Food;
- 18 (9) Sales and Service, Retail;
- 19 (10) Service, Financial;
- 20 (11) Movie Theater;
- 21 (12) Amusement and Game Arcade;
- 22 (13) Service, Limited Financial, except single automated teller machines at the street
23 front that meet the Commission's adopted Performance-Based Design Guidelines and automated teller
24 machines located within another use that are not visible from the street;

1 (14) Service, Business or Professional;

2 (15) Service, Fringe Financial;.

3 (16) Tobacco Paraphernalia Establishment;

4 (17) Massage Establishment; and

5 (18) Service, Personal.

6 (d) **Conditional Use Criteria.** With regard to a conditional use authorization application for a
7 Formula Retail use, the Planning Commission shall consider, in addition to the criteria set forth in
8 Section 303, the criteria below and the Performance-Based Design Guidelines adopted by the Planning
9 Commission to implement the criteria below.

10 (1) The existing concentrations of Formula Retail uses within the district and within the
11 vicinity of the proposed project.

12 (2) The availability of other similar retail uses within the district and within the vicinity
13 of the proposed project.

14 (3) The compatibility of the proposed Formula Retail use with the existing architectural
15 and aesthetic character of the district.

16 (4) The existing retail vacancy rates within the district and within the vicinity of the
17 proposed project.

18 (5) The existing mix of Citywide-serving retail uses and daily needs-serving retail uses
19 within the district and within the vicinity of the proposed project.

20 (6) Additional relevant data and analysis set forth in the Performance-Based Design
21 Guidelines adopted by the Planning Commission.

22 (7) If required by Section 303(j) for Large Retail Uses, preparation of an economic
23 impact study.

24 (8) Notwithstanding anything to the contrary contained in Planning Code Article 6
25 limiting the Planning Department's and Planning Commission's discretion to review signs, the

1 Planning Department and Planning Commission may review and exercise discretion to require
2 changes in the time, place and manner of the proposed signage for the proposed Formula Retail use,
3 applying the Performance-Based Design Guidelines.

4 (e) **Conditional Use Authorization Required.** A Conditional Use Authorization shall be
5 required for a Formula Retail use in the following zoning districts unless explicitly exempted:

- 6 (1) All Neighborhood Commercial Districts in Article 7;
- 7 (2) All Mixed Use-General Districts in Section 840;
- 8 (3) All Urban Mixed Use Districts in Section 843;
- 9 (4) All Residential-Commercial Districts as defined in Section 206.3;
- 10 (5) Japantown Special Use District as defined in Section 249.31;
- 11 (6) Chinatown Community Business District as defined in Section 810.1;
- 12 (7) Chinatown Residential/Neighborhood Commercial District as defined in 812.1;
- 13 (8) Western SoMa Planning Area Special Use District as defined in 823;
- 14 (9) Residential Transit-Oriented Districts as defined in 206.4 and 206.5;
- 15 (10) Limited Conforming Use/Non-Conforming Use in RH-RM-RTO and RED

16 Districts;

- 17 (11) Third Street Formula Retail Restricted Use District, as defined in Section 786;
- 18 (12) The C-3-G District with frontage on Market Street, between 6th Street and the
19 intersection of Market Street, 12th Street and Franklin Street.

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

- 22 (1) Hayes-Gough Neighborhood Commercial Transit District;
- 23 (2) North Beach Neighborhood Commercial District;
- 24 (3) Chinatown Visitor Retail District;

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

3 (5) Broadway Neighborhood Commercial District does not permit Formula Retail uses
4 that are also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and 790.91;

5 (6) Mission Street Formula Retail Restaurant Subdistrict does not permit Formula
6 Retail uses that are also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and
7 790.91;

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

11 (8) Taraval Street Restaurant Subdistrict does not permit Formula Retail uses that are
12 also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and 790.91;

13 (9) Chinatown Mixed Use District does not permit Formula Retail uses that are also
14 Restaurant or Limited-Restaurant uses as defined in Section 790.90 and 790.91.

15 (g) **Neighborhood Notification and Design Review.** Any application for a Formula Retail use
16 as defined in this section shall be subject to the notification and review procedures of Section 312 of
17 this Code.

18 (h) **Determination of Formula Retail Use.** In those areas in which Formula Retail uses are
19 subject to the provisions of Subsections 303.1(d) or (e), any application for an entitlement or
20 determination determined by the City to be for a Formula Retail use that does not identify the use as a
21 Formula Retail use is incomplete and cannot be processed until the omission is corrected. Any
22 entitlement approved or determination made that is determined by the City to have been, at the time of
23 application, for a Formula Retail use that did not identify the use as a Formula Retail use is subject to
24 revocation at any time. If the City determines that an entitlement or determination, or an application

1 for the same, is for a Formula Retail use, the applicant or holder of the entitlement bears the burden of
2 proving to the City that the proposed or existing use is not a Formula Retail use.

3 (i) **Performance-Based Design Guidelines.** All new, enlarged, intensified or non-intensified
4 Formula Retail uses or establishments must comply with the Commission's adopted Performance-
5 Based Design Guidelines for Formula Retail, as directed by the Planning Department and Planning
6 Commission.

7 (j) **Change of Use.** Changes of Formula Retail establishments are generally described below,
8 except that a change of a Formula Retail use that is also a nonconforming use pursuant to Section 182
9 is prohibited. In all other instances, changes of Formula Retail establishments from one use category to
10 another, including a change from one use to another within the sub-categories of uses set forth in
11 Planning Code Section 790.102 and Section 890.102, require a new Conditional Use authorization as a
12 new Formula Retail use. Changes of Formula Retail owner or operator within the same use category
13 that are determined to be an enlargement or intensification of use pursuant to Subsection 178(c) are
14 required to obtain Conditional Use authorization and shall meet the Commission's adopted
15 Performance-Based Design Guidelines for Formula Retail. In cases determined not to be an
16 enlargement or intensification of use, the Performance-Based Design Guidelines for Formula Retail
17 may be applied and approved administratively by the Planning Department, unless the applicant
18 requests a Conditional Use Hearing at the Planning Commission. The applicant shall also pay an
19 administrative fee to compensate Planning Department and City staff for its time reviewing the project
20 under this subsection, as set forth in Section 360 of this Code.

21 (k) **Accessory uses.** Conditional use authorization shall be required for all accessory uses
22 within those use categories subject to Formula Retail controls as defined in this Section (303.1), except
23 for the following:

1 (1) Single automated teller machines falling within the definition of Limited Financial Services
2 that are located at the street front that meet the Commission’s adopted Performance-Based Design
3 Guidelines for automated teller machines;

4 (2) Automated teller machines located within another use that are not visible from the street;

5 (3) Vending machines that do not exceed 15 feet of street frontage or occupy more than 200
6 square feet of area facing a public right of way.

7 Section 3. The Planning Code is hereby amended by revising Subsection 178 to read
8 as follows:

9 **SEC. 178. CONDITIONAL USES.**

10 The following provisions shall apply to conditional uses:

11 (a) **Definition.** For the purposes of this Section, a permitted conditional use shall refer
12 to:

13 (1) Any use or feature authorized as a conditional use pursuant to Article 3 of
14 this Code, provided that such use or feature was established within the time limits specified as
15 a condition of authorization or, if no time limit was specified, within a reasonable time from the
16 date of authorization; or

17 (2) Any use or feature which is classified as a conditional use in the district in
18 which it is located and which lawfully existed either on the effective date of this Code, or on
19 the effective date of any amendment imposing new conditional use requirements upon such
20 use or feature; or

21 (3) Any use deemed to be a permitted conditional use pursuant to Section 179
22 of this Code.

23 (b) **Continuation.** Except as provided for temporary uses in Section 205 of this Code,
24 and except where time limits are otherwise specified as a condition of authorization, any
25 permitted conditional use may continue in the form in which it was authorized, or in the form in

1 which it lawfully existed either on the effective date of this Code or the effective date of any
2 amendment imposing new conditional use requirements upon such use or feature, unless
3 otherwise provided in this Section or in Article 2 of this Code.

4 (c) **Enlargements or Alteration.** A permitted conditional use may not be significantly
5 altered, enlarged, or intensified, except upon approval of a new conditional use application
6 pursuant to the provisions of Article 3 of this Code. With regard to an Internet Services
7 Exchange as defined in Section 209.6(c), any physical alteration which will enlarge or expand
8 the building for the purpose of intensifying the use shall be deemed to be significant under this
9 section, and any increase in the size of electrical service to the building which will require a
10 permit from the Department of Building Inspection shall be deemed to be significant under this
11 section.

12 With regard to Formula Retail uses, a change of owner or operator of a Formula Retail
13 establishment is determined to be an intensification of use and a new Conditional Use authorization
14 shall be required if one or more of the following occurs:

15 (1) Change of use category, including a change from one use to another within the sub-
16 categories of uses set forth in Planning Code Section 790.102 and Section 890.102;

17 (2) Expansion of use size;

18 (3) Change to a Formula Retail establishment that has more locations than the existing
19 Formula Retail establishment, which results in an increase in visual homogeneity;

20 (4) Installation of a commercial kitchen, including but not limited to: ovens, open
21 ranges or stoves, fryers, oven hoods or kitchen ventilation systems, heating stations, steam tables or
22 cabinets, cold food storage, increased food preparation areas or self-service drink dispensers.

23 (5) A pre-existing Formula Retail use that had not previously been authorized via a
24 Conditional Use from the Commission.

1 (d) **Abandonment.** A permitted conditional use which is discontinued for a period of
2 three years, or otherwise abandoned, shall not be restored, except upon approval of a new
3 conditional use application pursuant to the provisions of Article 3 of this Code. For purposes of
4 this Subsection, the period of nonuse for a permitted conditional use to be deemed
5 discontinued in the North Beach, Castro Street Neighborhood Commercial Districts, and the
6 Jackson Square Special Use District shall be eighteen (18) months, except that in the North
7 Beach Neighborhood Commercial District, the period of non_use for a Restaurant use, as
8 defined in Section 790.91, to be deemed discontinued shall be three years.

9 A permitted conditional Formula Retail use which is discontinued for a period of 18 months, or
10 otherwise abandoned, shall not be restored, except upon approval of a new conditional use application
11 pursuant to Article 3 of this Code.

12 (e) **Changes in Use.** The following provisions shall apply to permitted conditional uses
13 with respect to changes in use, except as further limited by the change of use procedures for
14 Formula Retail uses set forth in Section 303.1 of this Code:

15 (1) A permitted conditional use may be changed to another use listed in Articles
16 2, 7 or 8 of this Code as a principal use for the district in which it is located and the new use
17 may thereafter be continued as a permitted principal use.

18 (2) A permitted conditional use may be changed to another use listed in Articles
19 2, 7 or 8 of this Code as a conditional use for the district in which the property is located,
20 subject to the other applicable provisions of this Code, only upon approval of a new
21 conditional use application, pursuant to the provisions of Article 3 of this Code.

22 (3) A permitted conditional use may not be changed to another use not
23 permitted or prohibited by Articles 2, 7 or 8 of this Code. If a permitted conditional use has
24 been wrongfully changed to another use in violation of the foregoing provisions and the
25 violation is not immediately corrected when required by the Zoning Administrator, the wrongful

1 change shall be deemed to be a discontinuance or abandonment of the permitted conditional
2 use.

3 (4) Once a permitted conditional use has been changed to a principal use
4 permitted in the district in which the property is located, or brought closer in any other manner
5 to conformity with the use limitations of this Code, the use of the property may not thereafter
6 be returned to its former permitted conditional use status, except upon approval of a new
7 conditional use application pursuant to the provisions of Article 3 of this Code.

8 (5) In the North Beach Neighborhood Commercial District, any use that exceeds
9 the use size provisions of Section 121.2(a) or 121.2(b) may be changed to a new use only
10 upon approval of a new conditional use application. The Commission's approval of such
11 conditional use application shall explicitly address the use size findings of Section 303(c).

12 (6) In the Castro Street Neighborhood Commercial District, any use that
13 exceeds the use size provisions of Section 121.2(a), but is smaller than the maximum use
14 size limit of Section 121.2(b), may be changed to a new use only upon approval of a new
15 conditional use application. The Commission's approval of such conditional use application
16 shall explicitly address the use size findings of Section 303(c).

17 (f) Notwithstanding the foregoing provisions of this Section 178, a structure occupied
18 by a permitted conditional use that is damaged or destroyed by fire, or other calamity, or by
19 Act of God, or by the public enemy, may be restored to its former condition and use without
20 the approval of a new conditional use application, provided that such restoration is permitted
21 by the Building Code, and is started within 18 months and diligently pursued to completion.
22 Except as provided in Subsection (g) below, no structure occupied by a permitted conditional
23 use that is voluntarily razed or required by law to be razed by the owner thereof may
24 thereafter be restored except upon approval of a new conditional use application pursuant to
25 the provisions of Article 3 of this Code.

1 (g) None of the provisions of this Section 178 shall be construed to prevent any
2 measures of construction, alteration or demolition necessary to correct the unsafe or
3 dangerous condition of any structure, other feature, or part thereof, where such condition has
4 been declared unsafe or dangerous by the Superintendent of the Bureau of Building
5 Inspection or the Chief of the Bureau of Fire Prevention and Public Safety, and where the
6 proposed measures have been declared necessary, by such official, to correct the said
7 condition; provided, however, that only such work as is absolutely necessary to correct the
8 unsafe or dangerous condition may be performed pursuant to this Section.

9
10 Section 4. The Planning Code is hereby amended by revising Sections 182, 183 and
11 186.1 to read as follows:

12 **SEC. 182. NONCONFORMING USES: CHANGES OF USE.**

13 The following provisions shall apply to nonconforming uses with respect to changes of
14 use:

15 (a) A nonconforming use shall not be changed or modified so as to increase the
16 degree of nonconformity under the use limitations of this Code, with respect to the type of use
17 or its intensity except as provided in Section 181 for nighttime entertainment activities within
18 the RSD, MUG, MUR, or SLR Districts. The degree of nonconformity shall be deemed to be
19 increased if the new or modified use is less widely permitted by the use districts of the City
20 than the nonconforming use existing immediately prior thereto. For purposes of this section,
21 intensification of a Formula Retail use as defined in section 178(c) is determined to be a change or
22 modification that increases the degree of nonconformity of the use.

23 (b) Except as limited in this Subsection, a nonconforming use may be reduced in size,
24 extent or intensity, or changed to a use that is more widely permitted by the use districts of the
25

1 City than the existing use, subject to the other applicable provisions of this Code. Except as
2 otherwise provided herein, the new use shall still be classified as a nonconforming use.

3 (1) A nonconforming use in a Residential District (other than a Residential-
4 Commercial Combined District), which use is located more than ¼ mile from the nearest
5 Individual Area Neighborhood Commercial District or Restricted Use Subdistrict described in
6 Article 7 of this Code, may change to another use which is permitted as a principal use at the
7 first story and below in an NC-1 District, or it may change to another use which is permitted as
8 a conditional use at the first story and below in an NC-1 District only upon approval of a
9 conditional use application pursuant to the provisions of Article 3 of this Code. If the
10 nonconforming use is seeking to change in use to a retail sales activity or retail sales
11 establishment which is also a ~~F~~formula ~~R~~retail use, as defined in Section 703.3 of this Code, it
12 shall comply with the provisions of Section 703.3 of this Code. The nonconforming use shall
13 comply with other building standards and use limitations of NC-1 Districts, as set forth in
14 Sections 710.10 through 710.95 of this Code.

15 If the nonconforming use is located within ¼ mile from any Individual Area
16 Neighborhood Commercial District or Restricted Use Subdistrict described in Article 7 of this
17 Code, the nonconforming use may change to another use which is permitted as a principal
18 use at the first story and below in an NC-1 District and in the Individual Area Neighborhood
19 Commercial District or Restricted Use Subdistrict or Districts within ¼ mile of the use, or it
20 may change to another use which is permitted as a conditional use at the first story and below
21 in an NC-1 District and in the Individual Area Neighborhood Commercial District or Districts
22 within ¼ mile of the use only upon approval of a conditional use application pursuant to the
23 provisions of Article 3 of this Code. If the nonconforming use is seeking to change in use to a
24 retail sales activity or retail sales establishment which is also a ~~F~~formula ~~R~~retail use, as
25 defined in Section 703.3 of this Code, it shall comply with the provisions of Section 703.3 of

1 this Code. The nonconforming use shall comply with other building standards and use
2 limitations of NC-1 Districts and any Individual Area NC District or Districts located within ¼
3 mile of the use, as set forth in Article 7 of this Code.

4 (2) A nonconforming use in a Residential-Commercial Combined District may
5 be changed to another use listed in Articles 2 or 7 of this Code as a principal use for the
6 district in which the existing use would first be permitted as a principal or conditional use.

7 (3) A nonconforming use in a Neighborhood Commercial District may be
8 changed to another use as provided in Subsections (c) and (d) below or as provided in
9 Section 186.1 of this Code.

10 (4) A nonconforming use in any district other than a Residential, Downtown
11 Residential, or Neighborhood Commercial District may be changed to another use listed in
12 Articles 2 or 7 of this Code as a principal use for the district in which the existing use would
13 first be permitted as a principal use.

14 (5) A nonconforming use in any South of Market Mixed Use District may not be
15 changed to an office, retail, bar, restaurant, nighttime entertainment, adult entertainment,
16 hotel, motel, inn, hostel, or movie theater use in any district where such use is otherwise not
17 permitted or conditional, except as provided in Subsection (f) below.

18 (c) A nonconforming use may be changed to a use listed in Articles 2 or 7 of this Code
19 as a conditional use for the district in which the property is located, subject to the other
20 applicable provisions of this Code, without the necessity of specific authorization by the City
21 Planning Commission except where major work on a structure is involved, and the new use
22 may thereafter be continued as a permitted conditional use, subject to the limitation of Section
23 178(b) of this Code.

24 (d) A nonconforming use may be changed to a use listed in Articles 2, 7 or 8 of this
25 Code as a principal use for the district in which the property is located, subject to the other

1 applicable provisions of this Code, and the new use may thereafter be continued as a
2 permitted principal use.

3 (e) A nonconforming use in an R District subject to termination under the provisions of
4 Section 185 of this Code may be converted to a dwelling unit without regard to the
5 requirements of this Code with respect to dwelling unit density under Article 2, dimensions,
6 areas and open space under Article 1.2, or off-street parking under Article 1.5, provided the
7 nonconforming use is eliminated by such conversion, provided further that the structure is not
8 enlarged, extended or moved to another location, and provided further that the requirements
9 of the Building Code, the Housing Code and other applicable portions of the Municipal Code
10 are met.

11 (f) Once a nonconforming use has been changed to a principal or conditional use
12 permitted in the district in which the property is located, or brought closer in any other manner
13 to conformity with the use limitations of this Code, the use of the property may not thereafter
14 be returned to its former nonconforming status, except that:

15 (1) Any area which is used as a live/work unit shall be allowed to return to its
16 former nonconforming status.

17 (2) Within any South of Market Mixed Use District, any area occupied by a
18 nonconforming office use which is changed to an arts, home and/or business service use
19 falling within zoning categories 102.2 or 816.42 through 816.47 or a wholesale, storage or
20 light manufacturing use falling within zoning categories 816.64 through 816.67 shall be
21 allowed to return to its former nonconforming office use.

22 (3) Upon restoration of a previous nonconforming use as permitted by
23 Subsection (1) or (2) above, any modification, enlargement, extension, or change of use, from
24 circumstances which last lawfully existed prior to the creation of the live/work unit, or prior to
25 the change from office use, shall be subject to the provisions of this Article, and the restored

1 nonconforming use shall be considered to have existed continuously since its original
2 establishment, prior to the live/work unit or change to office use, for purposes of this Article.

3 (g) If a nonconforming use has been wrongfully changed to another use in violation of
4 any of the foregoing provisions, and the violation is not immediately corrected when required
5 by the Zoning Administrator, the wrongful change shall be deemed to be a discontinuance or
6 abandonment of the nonconforming use under Section 183 of this Code.

7 (h) If a nonconforming use is a Formula Retail use in a District that prohibits Formula Retail
8 uses, the Formula Retail use is deemed abandoned if it is discontinued for a period of 18 months or
9 more, or otherwise abandoned. The Formula Retail use shall not be restored.

10 (1) Change of one nonconforming Formula Retail use to another Formula Retail use
11 that is determined to not be an enlargement or intensification of use, as defined in Subsection 178(c), is
12 subject to the Commission’s adopted Performance-Based Design Guidelines for Formula Retail, which
13 may be applied and approved administratively by the Planning Department. Non-conformance with the
14 Performance-Based Design Guidelines for Formula Retail as required by the Department may result in
15 termination of the nonconforming Formula Retail use.

16 (2) Change of one nonconforming Formula Retail use to another Formula Retail use
17 that is determined to be an enlargement or intensification of use, as defined in Subsection 178(c), is not
18 permitted.

19
20 **SEC. 183. NONCONFORMING USES: DISCONTINUANCE AND ABANDONMENT.**

21 (a) Discontinuance and Abandonment of a Nonconforming Use, Generally. Whenever a
22 nonconforming use has been changed to a conforming use, or discontinued for a continuous
23 period of three years, or whenever there is otherwise evident a clear intent on the part of the
24 owner to abandon a nonconforming use, such use shall not after being so changed,
25 discontinued or abandoned be reestablished, and the use of the property thereafter shall be in

1 conformity with the use limitations of this Code for the district in which the property is located.
2 Where no enclosed building is involved, discontinuance of a nonconforming use for a period
3 of six months shall constitute abandonment. Where a massage establishment is
4 nonconforming for the reason that it is within 1,000 feet of another such establishment under
5 Section 218.1 of this Code or because it is no longer permitted within the district,
6 discontinuance for a continuous period of three months or change to a conforming use shall
7 constitute abandonment.

8 **(b) Discontinuance or Abandonment of a Nonconforming Formula Retail Use.**
9 Notwithstanding subsection (a) of this Section, when a nonconforming Formula Retail use has been
10 changed to a conforming use or discontinued for a period of 18 months, or whenever there is otherwise
11 evident a clear intent on the part of the owner to abandon a nonconforming Formula Retail use, such
12 use shall not be reestablished after being so changed, discontinued or abandoned, and the use of the
13 property thereafter shall be in conformity with the use limitations of this Code for the district in which
14 the property is located.

15
16 **SEC. 186.1. EXEMPTION OF NONCONFORMING USES IN NEIGHBORHOOD**
17 **COMMERCIAL DISTRICTS.**

18 The purpose of this Section is to provide for the further continuance in NC Districts of
19 nonconforming uses created by adoption of Ordinance No. 69-87, as herein described, and
20 subsequent ordinances that change the uses allowed in NC Districts, which are beneficial to,
21 or can be accommodated within the neighborhood commercial areas in which they are
22 located.

23 It is hereby found and declared that certain uses which traditionally have been
24 permitted to locate in neighborhood commercial areas can be beneficial to a neighborhood
25 commercial area in small or limited numbers, but which if allowed to proliferate, can disrupt

1 the balanced mix of neighborhood-serving retail stores and services. It is further found and
2 declared that in order to prevent undesirable over concentrations of such uses, the
3 establishment of additional such uses shall be prohibited pursuant to controls governing uses
4 in NC Districts. At the same time, however, it is desirable to provide for the further
5 continuance, expansion, enlargement, alteration, changes, discontinuance, and relocation of
6 such existing uses, which are nonconforming as a result of zoning controls governing uses in
7 NC Districts.

8 The following provisions shall govern with respect to nonconforming uses and features
9 located in Neighborhood Commercial Districts to the extent that there is a conflict between the
10 provisions of this Section and other Sections contained in this Article 1.7.

11 (a) **Expansion.** A nonconforming use may expand ~~to~~ in floor area as provided in
12 Subsection (b) below, but may not expand beyond the lot which it occupies, nor may the
13 boundaries of such lot be expanded for purposes of expanding the use; nor may the use
14 expand upward above the story or stories which it lawfully occupies, except as provided in
15 Section 186.2 below.

16 (b) **Enlargements or Alteration.**

17 (1) A nonconforming use may not be significantly altered; enlarged or
18 intensified, except upon approval of a conditional use application pursuant to the provisions
19 of Article 3 of this Code, provided that the use not have or result in a greater height, bulk or
20 floor area ratio, less required rear yard or open space, or less required off-street parking
21 space or loading space than permissible under the limitations set forth in this Code for the
22 district or districts in which such use is located.

23 (2) A nonconforming use may expand to include public sidewalk space provided
24 that such space is only occupied with tables and chairs as permitted by this Municipal Code.

1 (3) No existing use or structure which fails to meet the requirements of this
2 Code in any manner as described above in this Subsection (b) shall be constructed,
3 reconstructed, enlarged, altered or relocated so as to increase the discrepancy, or to create a
4 new discrepancy, at any level of the structure, between existing conditions on the lot and the
5 required standards for new construction set forth in this Code.

6 (c) **Changes in Use.** A nonconforming use may be changed to another use or feature
7 as described below.

8 (1) A nonconforming use may be changed to a use listed in Article 7 of this
9 Code as a principal use for the district in which the property is located, and the new use may
10 thereafter be continued as a permitted principal use.

11 (2) A nonconforming use may be changed to a use listed in Article 7 of this
12 Code as a conditional use for the district in which the use is located, only upon approval of a
13 conditional use application pursuant to the provisions of Article 3 of this Code, and the new
14 use may thereafter be continued as a permitted conditional use, subject to the provisions of
15 Section 178 of this Code.

16 (3) A nonconforming use may be changed to a use which is not permitted in
17 that Neighborhood Commercial District as described below, only upon approval of a
18 conditional use application, pursuant to the provisions of Article 3 of this Code:

19 (A) Any use described in zoning categories .41, .43 or .44, as defined in
20 Sections 790.22, 790.90 and 790.91, respectively, may change to another use described in
21 zoning categories .41 or .44, even though such other use is not permitted in that
22 Neighborhood Commercial District, unless such other use is located in an Alcohol Restricted
23 Use Subdistrict and is prohibited by the provisions governing that Alcohol Restricted Use
24 Subdistrict.

1 (B) Any use described in zoning categories .51, .52 or .53, as defined in
2 Sections 790.114, 790.116 and 790.108 respectively, may change to another use described in
3 zoning categories .51, .52 or .53, even though such other use is not permitted in that
4 Neighborhood Commercial District.

5 (C) Any use described in zoning categories .57, .58 or .59, as defined in
6 Sections 790.14, 790.17 and 790.15 respectively, may be demolished and reconstructed as
7 the same use or may change to another use described in zoning categories .57, .58 or .59,
8 even though such other use is not permitted in that Neighborhood Commercial District.

9 The new use shall still be classified as a nonconforming use.

10 The changes in use described in this Paragraph 3 shall include remodeling activities
11 involving the demolition and replacement of structures which result in a change of use.

12 (D) With regard to Formula Retail uses, a change of owner or operator of a
13 Formula Retail establishment is determined to be an intensification of use and a new Conditional Use
14 authorization shall be required if one or more of the following occur:

15 (i) Change of use category, including a change from one use to another
16 within the sub-categories of uses set forth in Planning Code Section 790.102 and Section 890.102;

17 (ii) Expansion of use size;

18 (iii) Change to a Formula Retail establishment that has more locations
19 than the existing Formula Retail establishment, which results in an increase in visual homogeneity;

20 (iv) Installation of a commercial kitchen, including but not limited to:
21 ovens, open ranges or stoves, fryers, oven hoods or kitchen ventilation systems, heating stations, steam
22 tables or cabinets, cold food storage, increased food preparation areas or self-service drink dispensers;

23 (v) A pre-existing Formula Retail use which had not previously been
24 authorized via a Conditional Use from the Commission.

1 (4) In the North Beach Neighborhood Commercial District, any use that exceeds
2 the use size provisions of Section 121.2(a) or 121.2(b) may be changed to a new use only
3 upon the approval of a new conditional use application. The Commission's approval of such
4 conditional use application shall explicitly address the use size findings of Section 303(c). In
5 the North Beach Neighborhood Commercial District, a nonconforming use cannot be changed
6 to any use which is not a permitted use under Section 722 (North Beach Controls).

7 (5) In the Castro Street Neighborhood Commercial District, any use in this
8 district that exceeds the maximum use size limit of Section 121.2(b), may be not changed to a
9 new use. The only method for changing a nonconforming use identified in this Subsection is to
10 reduce the nonconforming use:

11 (A) to a conforming use size or

12 (B) to a size specified in Subsection 121.2(a) pursuant to conditional use
13 authorization.

14 Notwithstanding the above, any use in this District that exceeds the maximum use size
15 limit of Section 121.2(b) and is categorized in the Other Retail Sales and Services zoning
16 classification, as defined in Section 790.102, may change to another use category
17 enumerated in Section 790.102 as long as the use size is not increased and the Commission
18 approves a conditional use application for such change. The Commission's approval of such
19 conditional use application shall explicitly address the use size findings of Section 303(c).

20 (d) **Discontinuance.** A nonconforming use which is discontinued for a period of three
21 years, or otherwise abandoned or changed to another use which is listed in Article 7 of this
22 Code as a principal or conditional use for the district in which the use is located shall not be
23 reestablished. For purposes of this Subsection, the period of nonuse for a nonconforming use
24 to be deemed discontinued in the North Beach and Castro Street Neighborhood Commercial
25 Districts, and in the Haight Street Neighborhood Commercial District, the Lower Haight Street

1 Tobacco Paraphernalia Restricted Use Subdistrict, and the Polk Street Neighborhood
2 Commercial District for Tobacco Paraphernalia Establishments, as defined in Sections 227(v)
3 and 790.123 of this Code, only, shall be eighteen (18) months, except in the North Beach
4 Neighborhood Commercial District, the period of non use for a Restaurant use, as defined in
5 Section 790.91, to be deemed discontinued shall be three years. For Formula Retail uses in any
6 District that prohibits or requires Conditional Use authorization for Formula Retail uses, the period of
7 non-use to be deemed discontinued is 18 months.

8 (e) **Relocation.** A nonconforming use in a Neighborhood Commercial District may be
9 reestablished at another location within that Neighborhood Commercial District only upon
10 approval of a new conditional use application pursuant to the provisions of Article 3 of this
11 Code, provided that the following conditions are met:

12 (1) The original premises shall not be occupied by an establishment of the
13 same type of use as the relocating use unless by another establishment that is relocating from
14 within the district; and

15 (2) No final permits to operate the relocated use at the new premises are
16 granted prior to the issuance of a certificate of final completion of any work to the original
17 premises which is required as conditions attached to the approval of the conditional use
18 application; and

19 (3) Deed restrictions are recorded for the original premises in the Official
20 Records of the City and County of San Francisco, which restrictions prohibit for the duration of
21 the Code sections prohibiting the use for the district in which the use is located, the
22 establishment and operation of a new use of the same type of use as the relocated use,
23 unless such new use is relocating from within the district.

24
25

1 Section 5. The Planning Code is hereby amended by revising Sections 710, 711, 712, 713,
 2 714, 715, 716, 717, 718, 719, 720, 721, 723, 724, 725, 726, 727, 728, 729, 730, 731,
 3 732,733, 733A, 734, 735, 736, 737, 738, 739, 740, 741, 742, 742, and 745 and Tables 743
 4 and 744 to read as follows:

5 **SEC. 710. NEIGHBORHOOD COMMERCIAL CLUSTER DISTRICT NC-1**
 6 **ZONING CONTROL TABLE**

			NC-1
No.	Zoning Category	§ References	Controls
****	****	****	****
710.26	Walk-Up Facility	§ 790.140	<i>P if recessed 3 ft.;</i> <i>C if not recessed</i> <i>§ 145.2(b)</i>
****	****	****	****

18 **SEC. 711. SMALL-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT NC-2**
 19 **ZONING CONTROL TABLE**

			NC-2
No.	Zoning Category	§ References	Controls
****	****	****	****
711.26	Walk-Up	§ 790.140	<i>P if recessed 3 ft.;</i>

	Facility		<i>C if not recessed</i> <i>§ 145.2(b)</i>
* * * *	* * * *	* * * *	* * * *

**SEC. 712. MODERATE-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT NC-3
ZONING CONTROL TABLE**

			NC-3
No.	Zoning Category	§ References	Controls
* * * *	* * * *	* * * *	* * * *
712.26	Walk-Up Facility	§ 790.140	<i>P if recessed 3 ft.;</i> <i>C if not recessed</i> <i>§ 145.2(b)</i>
* * * *	* * * *	* * * *	* * * *

**SEC. 713. NEIGHBORHOOD COMMERCIAL SHOPPING CENTER DISTRICT NC-S
ZONING CONTROL TABLE**

			NC-S
No.	Zoning Category	§ References	Controls
* * * *	* * * *	* * * *	* * * *
713.26	Walk-Up Facility	§ 790.140	<i>P if recessed 3 ft.;</i> <i>C if not recessed</i> <i>§ 145.2(b)</i>

****	****	****	****
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**SEC. 714. BROADWAY NEIGHBORHOOD COMMERCIAL DISTRICT
ZONING CONTROL TABLE**

				Broadway	
No.	Zoning Category	§ References	Controls		
****	****	****	****		
714.26	Walk-Up Facility	§ 790.140	<i>P if recessed 3 ft.; C if not recessed § 145.2(b)</i>		
****	****	****	****		

No.	Zoning Category	§ References	Broadway		
			Controls by Story		
		§ 790.118	1st	2nd	3rd+
****	****	****	****	****	****
714.49	Financial Service	§ 790.110	<i>CP</i>		
714.50	Limited Financial Service	§ 790.112	<i>CP</i>		
****	****	****	****	****	****

1 **SEC. 715. CASTRO STREET NEIGHBORHOOD COMMERCIAL DISTRICT**

2 **ZONING CONTROL TABLE**

3

			Castro Street
No.	Zoning Category	§ References	Controls
****	****	****	****
715.26	Walk-Up Facility	§ 790.140	<i>P if recessed 3 ft.;</i> <i>C if not recessed</i> <i>§ 145.2(b)</i>
****	****	****	****

13

No.	Zoning Category	§ References	Castro Street		
			Controls by Story		
			1st	2nd	3rd+
		§ 790.118			
****	****	****	****	****	****
715.49	Financial Service	§ 790.110	<u>PC</u>	C	

1		Limited			
2	715.50	Financial	§ 790.112	<u>PC</u>	
3		Service			
4	* * * *	* * * *	* * * *	* * * *	* * * *
5					

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7 **SEC. 716. INNER CLEMENT STREET NEIGHBORHOOD COMMERCIAL DISTRICT**

8 **ZONING CONTROL TABLE**

9

			Inner Clement Street
No.	Zoning Category	§ References	Controls
* * * *	* * * *	* * * *	* * * *
716.2 6	Walk-Up Facility	§ 790.140	<i>P if recessed 3 ft.;</i> <i>C if not recessed</i> <i>§ 145.2(b)</i>
* * * *	* * * *	* * * *	* * * *

No.	Zoning Category	§ References	Castro Street		
			Controls by Story		
		§ 790.118	1st	2nd	3rd+
* * * *	* * * *	* * * *	* * * *		

1	716.50	Limited Financial Service	§ 790.112	<u>PC</u>		
2						
3	*****	*****	*****	*****	*****	*****
4						

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6 **SEC. 717. OUTER CLEMENT STREET NEIGHBORHOOD COMMERCIAL DISTRICT**

7 **ZONING CONTROL TABLE**

8

			Inner Clement Street
No.	Zoning Category	§ References	Controls
9	*****	*****	*****
10	717.2	Walk-Up Facility § 790.140	<i>P if recessed 3 ft.;</i> <i>C if not recessed</i> <i>§ 145.2(b)</i>
11	6		
12	*****	*****	*****

No.	Zoning Category	§ References	Castro Street		
			Controls by Story		
		§ 790.118	1st	2nd	3rd+
21	*****	*****	*****	*****	*****
22	717.49	Financial Service § 790.110	<u>PC</u>		
23	717.50	Limited Financial § 790.112	<u>PC</u>		

	Service				
****	****	****	****	****	****

**SEC. 718. UPPER FILLMORE STREET NEIGHBORHOOD COMMERCIAL DISTRICT
ZONING CONTROL TABLE**

			Upper Fillmore Street
No.	Zoning Category	§ References	Controls
****	****	****	****
718.2 6	Walk-Up Facility	§ 790.140	<i>P if recessed 3 ft.;</i> <i>C if not recessed</i> <i>§ 145.2(b)</i>
****	****	****	****

No.	Zoning Category	§ References	Upper Fillmore Street		
			Controls by Story		
		§ 790.118	1st	2nd	3rd+
****	****	****	****	****	****
718.49	Financial Service	§ 790.110	<i>PC</i>		
718.50	Limited Financial Service	§ 790.112	<i>PC</i>		
****	****	****	****	****	****

1 **SEC. 719. HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT**

2 **ZONING CONTROL TABLE**

3

			Haight Street
No.	Zoning Category	§ References	Controls
****	****	****	****
719.26	Walk-Up Facility	§ 790.140	P <i>if recessed 3 ft.;</i> C <i>if not recessed</i> § 145.2(b)
****	****	****	****

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9 **SEC. 720. HAYES-GOUGH NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT**

10 **ZONING CONTROL TABLE**

11

			Hayes-Gough Transit
No.	Zoning Category	§ References	Controls
****	****	****	****
720.26	Walk-Up Facility	§ 790.140	P <i>if recessed 3 ft.;</i> C <i>if not recessed</i> § 145.2(b)
****	****	****	****

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17 **SEC. 721. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL DISTRICT**

18 **ZONING CONTROL TABLE**

19

			Upper Market Street
No.	Zoning Category	§ References	Controls
****	****	****	****
721.26	Walk-Up Facility	§ 790.140	P <i>if recessed 3 ft.;</i> C <i>if not recessed</i> § 145.2(b)
****	****	****	****

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No.	Zoning Category	§ References	Upper Market Street		
			Controls by Story		
		§ 790.118	1st	2nd	3rd+
****	****	****	****	****	****
721.49	Financial Service	§ 790.110	PC	C	
****	****	****	****	****	****

**SEC. 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT
ZONING CONTROL TABLE**

No.	Zoning Category	§ References	Polk Street
			Controls
****	****	****	****
723.26	Walk-Up Facility	§ 790.140	P-if recessed 3 ft.; C-if not recessed § 145.2(b)
****	****	****	****

No.	Zoning Category	§ References	Polk Street		
			Controls by Story		
		§ 790.118	1st	2nd	3rd+
****	****	****	****	****	****
723.49	Financial Service	§ 790.110	PC	C	
****	****	****	****	****	****

**SEC. 724. SACRAMENTO STREET NEIGHBORHOOD COMMERCIAL DISTRICT
ZONING CONTROL TABLE**

No.	Zoning Category	§ References	Sacramento Street
			Controls
****	****	****	****
724.26	Walk-Up Facility	§ 790.140	P-if recessed 3 ft.; C-if not recessed § 145.2(b)
****	****	****	****

No.	Zoning Category	§ References	Sacramento Street		
			Controls by Story		
		§ 790.118	1st	2nd	3rd+
****	****	****	****	****	****
724.49	Financial Service	§ 790.110	<u>PC</u>		
724.50	Limited Financial Service	§ 790.112	<u>PC</u>		
****	****	****	****	****	****

**SEC. 725. UNION STREET NEIGHBORHOOD COMMERCIAL DISTRICT
ZONING CONTROL TABLE**

No.	Zoning Category	§ References	Union Street
			Controls
****	****	****	****
725.26	Walk-Up Facility	§ 790.140	<i>P-if recessed 3 ft.;</i> <i>C-if not recessed</i> <i>§ 145.2(b)</i>
****	****	****	****

No.	Zoning Category	§ References	Union Street		
			Controls by Story		
		§ 790.118	1st	2nd	3rd+
****	****	****	****	****	****
725.49	Financial Service	§ 790.110	<u>PC</u>	C	
****	****	****	****	****	****

**SEC. 726. VALENCIA STREET NEIGHBORHOOD COMMERCIAL TRANSIT
DISTRICT ZONING CONTROL TABLE**

			Valencia Street Transit
No.	Zoning Category	§ References	Controls
* * * *	* * * *	* * * *	* * * *
726.26	Walk-Up Facility	§ 790.140	<i>P if recessed 3 ft.;</i> <i>C if not recessed</i> <i>§ 145.2(b)</i>
* * * *	* * * *	* * * *	* * * *

**SEC. 727. 24TH STREET – MISSION NEIGHBORHOOD COMMERCIAL TRANSIT
DISTRICT ZONING CONTROL TABLE**

			24th Street – Mission Transit
No.	Zoning Category	§ References	Controls
* * * *	* * * *	* * * *	* * * *
727.26	Walk-Up Facility	§ 790.140	<i>P if recessed 3 ft.;</i> <i>C if not recessed</i> <i>§ 145.2 (b)</i>
* * * *	* * * *	* * * *	* * * *

**SEC. 728. 24TH STREET – NOE VALLEY NEIGHBORHOOD COMMERCIAL DISTRICT
ZONING CONTROL TABLE**

			24th Street – Noe Valley
No.	Zoning Category	§ References	Controls
* * * *	* * * *	* * * *	* * * *
728.2 6	Walk-Up Facility	§ 790.140	<i>P if recessed 3 ft.;</i> <i>C if not recessed</i> <i>§ 145.2(b)</i>
* * * *	* * * *	* * * *	* * * *

No.	Zoning Category	§ References	24th Street – Noe Valley		
			Controls by Story		
		§ 790.118	1st	2nd	3rd+
****	****	****	****	****	****
728.49	Financial Service	§ 790.110	<u>PC</u>		
728.50	Limited Financial Service	§ 790.112	<u>PC</u>		
****	****	****	****	****	****

**SEC. 729. WEST PORTAL AVENUE NEIGHBORHOOD COMMERCIAL DISTRICT
ZONING CONTROL TABLE**

No.	Zoning Category	§ References	West Portal Avenue
			Controls
****	****	****	****
729.26	Walk-Up Facility	§ 790.140	<i>P if recessed 3 ft., C if not recessed § 145.2(b)</i>
****	****	****	****

No.	Zoning Category	§ References	West Portal Avenue		
			Controls by Story		
		§ 790.118	1st	2nd	3rd+
****	****	****	****	****	****
729.50	Limited Financial Service	§ 790.112	<u>PC</u>		
****	****	****	****	****	****

1 **SEC. 730. INNER SUNSET NEIGHBORHOOD COMMERCIAL DISTRICT**

2 **ZONING CONTROL TABLE**

3

			Inner Sunset
No.	Zoning Category	§ References	Controls
* * * *	* * * *	* * * *	* * * *
730.26	Walk-Up Facility	§ 790.140	<i>P if recessed 3 ft.;</i> <i>C if not recessed</i> <i>§ 145.2(b)</i>
* * * *	* * * *	* * * *	* * * *

9 **SEC. 731. MODERATE-SCALE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT**

10 **NCT-3 ZONING CONTROL TABLE**

11

			NCT-3
No.	Zoning Category	§ References	Controls
* * * *	* * * *	* * * *	* * * *
731.26	Walk-Up Facility	§ 790.140	<i>P if recessed 3 ft.;</i> <i>C if not recessed</i> <i>§ 145.2(b)</i>
* * * *	* * * *	* * * *	* * * *

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13 **SEC. 732. PACIFIC AVENUE NEIGHBORHOOD COMMERCIAL DISTRICT**

14 **ZONING CONTROL TABLE**

15

			Pacific Avenue
No.	Zoning Category	§ References	Controls
* * * *	* * * *	* * * *	* * * *
732.26	Walk-Up Facility	§ 790.140	<i>P if recessed 3 ft.;</i> <i>C if not recessed</i> <i>§ 145.2(b)</i>
* * * *	* * * *	* * * *	* * * *

No.	Zoning Category	§References	Pacific Avenue		
			Controls by Story		
		§ 790.118	1st	2nd	3rd+
****	****	****	****	****	****
732.49	Financial Service	§ 790.110	<u>PE</u>		
****	****	****	****	****	****

**SEC. 733. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT
DISTRICT ZONING CONTROL TABLE**

No.	Zoning Category	§ References	Upper Market Street Transit Controls
****	****	****	****
733.26	Walk-Up Facility	§ 790.140	<i>P if recessed 3 ft.; C if not recessed § 145.2(b)</i>
****	****	****	****

No.	Zoning Category	§ References	Upper Market Street Transit		
			Controls by Story		
		§ 790.118	1st	2nd	3rd+
****	****	****	****	****	****
733.49	Financial Service	§ 790.110	<u>PE</u>	C	-
****	****	****	****	****	****

1 **SEC. 735. SOMA NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT**

2 **ZONING CONTROL TABLE**

3

			SoMa Transit
No.	Zoning Category	§ References	Controls
****	****	****	****
735.26	Walk-Up Facility	§ 790.140	<i>P if recessed 3 ft.;</i> <i>C if not recessed</i> <i>§ 145.2(b)</i>
****	****	****	****

9

10 **SEC. 736. MISSION NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT**

11 **ZONING CONTROL TABLE**

12

			Mission Street Transit
No.	Zoning Category	§ References	Controls
****	****	****	****
736.26	Walk-Up Facility	§ 790.140	<i>P if recessed 3 ft.;</i> <i>C if not recessed</i> <i>§ 145.2(b)</i>
****	****	****	****

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20 **SEC. 737. OCEAN AVENUE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT**

21 **ZONING CONTROL TABLE**

22

			Ocean Avenue Transit
No.	Zoning Category	§ Referenc es	Controls
****	****	****	****

23

24

25

737.26	Walk-Up Facility	§ 790.140	<i>P-if recessed 3 ft.;</i> <i>C-if not recessed</i> <i>§ 145.2(b)</i>
* * * *	* * * *	* * * *	* * * *

SEC. 738. GLEN PARK NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT ZONING CONTROL TABLE

			<i>Glen Park Transit</i>
No.	Zoning Category	§ References	Controls
* * * *	* * * *	* * * *	* * * *
738.26	Walk-Up Facility	§ 790.140	<i>P-if recessed 3 ft.;</i> <i>C-if not recessed</i> <i>§ 145.2(b)</i>
* * * *	* * * *	* * * *	* * * *

SEC. 739. NORIEGA STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE

			<i>Noriega Street</i>
No.	Zoning Category	§ References	Controls
* * * *	* * * *	* * * *	* * * *
739.26	Walk-Up Facility	§ 790.140	<i>P-if recessed 3 ft.;</i> <i>C-if not recessed</i> <i>§ 145.2(b)</i>
* * * *	* * * *	* * * *	* * * *

1 **SEC. 740. IRVING STREET NEIGHBORHOOD COMMERCIAL DISTRICT**

2 **ZONING CONTROL TABLE**

3

			<i>Irving Street</i>
No.	Zoning Category	§ References	Controls
****	****	****	****
740.26	Walk-Up Facility	§ 790.140	<i>P-if recessed 3 ft.;</i> <i>C-if not recessed</i> <i>§ 145.2(b)</i>
****	****	****	****

9

10 **SEC. 741. TARAVAL STREET NEIGHBORHOOD COMMERCIAL DISTRICT**

11 **ZONING CONTROL TABLE**

12

			<i>Taraval Street</i>
No.	Zoning Category	§ References	Controls
****	****	****	****
741.26	Walk-Up Facility	§ 790.140	<i>P-if recessed 3 ft.;</i> <i>C-if not recessed</i> <i>§ 145.2(b)</i>
****	****	****	****

1 **SEC. 742. JUDAH STREET NEIGHBORHOOD COMMERCIAL DISTRICT**

2 **ZONING CONTROL TABLE**

3

			<i>Judah Street</i>
No.	Zoning Category	§ References	Controls
****	****	****	****
742.26	Walk-Up Facility	§ 790.140	<i>P-if recessed 3 ft.;</i> <i>C-if not recessed</i> <i>§ 145.2(b)</i>
****	****	****	****

9 **Table 743**

10 **FOLSOM STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT**

11 **ZONING CONTROL TABLE**

12

			<i>Folsom Street</i>
No.	Zoning Category	§ References	Controls
****	****	****	****
743.26	Walk-Up Facility	§§ 145.2(b), 790.140	<i>P-if recessed 3</i> <i>ft.;</i> <i>C-if not recessed)</i>
****	****	****	****

19 **Table 744**

20 **REGIONAL COMMERCIAL DISTRICT ZONING CONTROL TABLE**

21

			<i>Regional Commercial</i>
No.	Zoning Category	§ References	Controls

****	****	****	****
744.26	Walk-Up Facility	§§ 145.2(b), 790.140	P-if recessed 3 ft.; C-if not recessed
****	****	****	****

SEC. 745. EXCELSIOR OUTER MISSION STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE

			<i>Excelsior Outer Mission Street</i>
No.	Zoning Category	§ References	Controls
****	****	****	****
745.26	Walk-Up Facility	§§ 145.2(b), 790.140	P-if recessed 3 ft.; C-if not recessed
****	****	****	****

Section 6. The Planning Code is hereby amended by revising Section 145.2 to read as follows:

SEC. 145.2. OUTDOOR ACTIVITY AREAS ~~AND WALK-UP FACILITIES~~ IN NC DISTRICTS.

The following provisions governing outdoor activity areas ~~and walk-up facilities~~ shall apply in NC Districts.

~~(a) Outdoor Activity Areas.~~ In order to provide for limited commercial outdoor activity areas, which promote active street life, but do not detract from the livability of surrounding uses, outdoor activity areas, as defined in Section 790.70 of this Code, in NC Districts shall be regulated below, except in the Outer Clement Street Neighborhood Commercial District, where outdoor activity areas shall be a principal permitted use if they existed prior to 1985.

1 These provisions shall not apply to those uses excepted from the requirement for location in
2 an enclosed building, as set forth in Section 703.2(b) of this Code.

3 ~~(a) — (1)~~ An outdoor activity area operated by a commercial use is permitted as a
4 principal use if located outside a building and contiguous to the front property line of the lot on
5 which the commercial use is located.

6 In NC-S Districts, an outdoor activity area is permitted as a principal use if located
7 within the boundaries of the property and in front of the primary facades which contain
8 customer entrances and if it does not obstruct pedestrian traffic flow between store entrances
9 and parking facilities.

10 ~~(b) — (2)~~ An outdoor activity area which does not comply with the provisions of
11 Paragraph 1 of this Subsection is permitted as a conditional use, subject to the provisions set
12 forth in Sections 316 through 316.8 of this Code.

13 In addition to the criteria of Section 303(c) of this Code, the City Planning Commission
14 shall find that:

15 ~~(1) — (A)~~ The nature of the activity operated in the outdoor activity area is
16 compatible with surrounding uses;

17 ~~(2) — (B)~~ The operation and design of the outdoor activity area does not
18 significantly disturb the privacy or affect the livability of adjoining or surrounding residences;

19 ~~(3) — (C)~~ The hours of operation of the activity operated in the outdoor
20 activity area are limited so that the activity does not disrupt the viability of surrounding uses.

21 ~~(b) **Walk-up Facilities.** In order to maintain free flows of pedestrian circulation in the~~
22 ~~Neighborhood Commercial Districts, walk-up facilities, as defined in Section 790.140 of this Code,~~
23 ~~shall be regulated in all NC Districts as provided below:~~

24 ~~(1) A walk-up facility operated by a commercial use is permitted as a principal use if:~~

1 ~~——(A) Recessed at least three feet from the property line of the lot on which the commercial use is~~
2 ~~located; and~~

3 ~~——(B) Where a vehicular circulation area or parking area separates the building from the property~~
4 ~~line, the walk-up facility is designed and located so that the users of the facility do not impede~~
5 ~~pedestrian circulation on the lot nor create conflicts between pedestrian and vehicular circulation~~
6 ~~flows; or~~

7 ~~——(C) The proposed walk-up facility is located on a block frontage which is totally in a~~
8 ~~Neighborhood Commercial District.~~

9 ~~——(2) A walk-up facility which does not comply with the provisions of Paragraph 1 of this Subsection~~
10 ~~is permitted only upon approval of a conditional use application pursuant to the provisions set forth in~~
11 ~~Sections 316 through 316.8 of this Code.~~

12
13 Section 7. The Planning Code is hereby amended by moving the Findings in Section
14 703.3 to new Section 303.1 and amending those Findings, and amending Section 703.3 to
15 read as follows:

16 **SEC. 703.3. FORMULA RETAIL USES.**

17 (a) **Findings.** The findings for Formula Retail controls are set forth in Section 303.1.

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

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

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

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

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

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

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

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

21 ~~—— (9) The increase of formula retail businesses in the City's neighborhood commercial~~
22 ~~areas, if not monitored and regulated, will hamper the City's goal of a diverse retail base with distinct~~
23 ~~neighborhood retailing personalities comprised of a mix of businesses. Specifically, the unregulated~~
24 ~~and unmonitored establishment of additional formula retail uses may unduly limit or eliminate business~~
25 ~~establishment opportunities for smaller or medium-sized businesses, many of which tend to be non-~~

1 ~~traditional or unique, and unduly skew the mix of businesses towards national retailers in lieu of local~~
2 ~~or regional retailers, thereby decreasing the diversity of merchandise available to residents and~~
3 ~~visitors and the diversity of purveyors of merchandise.~~

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

8 (b) **Formula Retail Use.** Formula retail use is ~~hereby defined in Section 303.1. as a type~~
9 ~~of retail sales activity or retail sales establishment which, along with eleven or more other retail sales~~
10 ~~establishments located, maintains two or more of the following features: a standardized array of~~
11 ~~merchandise, a standardized facade, a standardized decor and color scheme, a uniform apparel,~~
12 ~~standardized signage, a trademark or a servicemark.~~

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

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

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

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

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

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

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

6 ~~—— (8) — Signage shall be defined as business sign pursuant to Section 602.3 of the Planning~~
7 ~~Code.~~

8 ~~(c) "Retail Sales Activity or Retail Sales Establishment" shall include the uses defined in Section~~
9 ~~303(i)(2) of this Code.~~

10 ~~(d) Formula Retail Uses Permitted. Any use permitted in certain districts defined in Section~~
11 ~~303(i)(5)(A), which is also a "formula retail use" as defined in this Section, is hereby permitted.~~

12 ~~(e) Formula Retail Use Prohibited. Notwithstanding subsection (d), certain districts may~~
13 ~~prohibit formula retail uses or a subset of formula retail uses as described in Section 303(i)(5).~~

14 ~~(f) Conditional Uses. Notwithstanding subsections (d) or (e), a Conditional Use Authorization~~
15 ~~shall be required for a formula retail use in the zoning districts listed in Section 303(i)(4) unless~~
16 ~~explicitly exempted. Additional criteria to be used by the Planning Commission when considering~~
17 ~~granting conditional use permits to formula retail uses in these districts are listed in Section 303(i).~~

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

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

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

3 ~~—— (2) Availability of other similar retail uses within the Neighborhood Commercial~~
4 ~~District.~~

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

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

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

10 ~~(i) Determination of Formula Retail Use. After the effective date of this Ordinance, in those~~
11 ~~areas in which "formula retail uses" are prohibited, any building permit application determined by the~~
12 ~~City to be for a "formula retail use" that does not identify the use as a "formula retail use" is~~
13 ~~incomplete and cannot be processed until the omission is corrected. Any building permit approved~~
14 ~~after the effective date of this Ordinance that is determined by the City to have been, at the time of~~
15 ~~application, for a "formula retail use" that did not identify the use as a "formula retail use" is subject~~
16 ~~to revocation at any time.~~

17 ~~After the effective date of this Ordinance, in those areas in which "formula retail uses" are~~
18 ~~subject to the Neighborhood Commercial Notification and Design Review provisions of subsection (g),~~
19 ~~any building permit application determined by the City to be for a "formula retail use" that does not~~
20 ~~identify the use as a "formula retail use" is incomplete and cannot be processed until the omission is~~
21 ~~corrected. After the effective date of this Ordinance, any building permit approved that is determined~~
22 ~~by the City to be for a "formula retail use" that does not identify the use as a "formula retail use" must~~
23 ~~complete the Neighborhood Commercial Notification and Design Review required in subsection (g).~~

1 *If the City determines that a building permit application or building permit subject to this*
2 *Section of the Code is for a "formula retail use," the building permit applicant or holder bears the*
3 *burden of proving to the City that the proposed or existing use is not a "formula retail use."*
4

5 Section 8. The Planning Code is hereby amended by revising Section 803.6 to read as
6 follows:

7 **SEC. 803.6. FORMULA RETAIL USES IN ARTICLE 8 DISTRICTS~~THE MUG~~**
8 **~~DISTRICT, UMU DISTRICT, CHINATOWN MIXED USE DISTRICTS AND IN THE WESTERN~~**
9 **~~SOMA SPECIAL USE DISTRICT.~~**

10 (a) **Findings.** *The findings for Formula Retail controls are set forth in Section 303.1.*

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

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

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

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

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

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

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

10 —(8)— *Notwithstanding the marketability of a retailer's goods or services or the visual*
11 *attractiveness of the storefront, the standardized architecture, color schemes, decor and signage of*
12 *many formula retail businesses can detract from the distinctive character of certain neighborhood*
13 *commercial and mixed use districts.*

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

22 **(b) Formula Retail Uses.**

23 **(1) Formula Retail Uses Permitted as a Conditional Use.** *Section 303.1 sets*
24 *forth the requirements for conditional use authorization for Formula Retail uses within Article 8*
25 *districts. are permitted in the MUG District, UMU District, Western SoMA Special Use District, the*

1 *Chinatown Community Business District and the Chinatown Residential Neighborhood Commercial*
2 *District only as a conditional use. When considering an application for a conditional use permit under*
3 *this Section, the Planning Commission shall consider the criteria defined in Section 303(i) of this Code.*

4 (2) **Formula Retail Uses Prohibited.** The establishment of new Formula Retail
5 uses within Article 8 districts may be prohibited, as set forth in Section 303.1. ~~in the Chinatown~~
6 ~~Visitor Retail District is prohibited. The establishment of new Restaurant or Limited-Restaurant uses~~
7 ~~that are also defined as formula retail in any Chinatown Mixed Use Districts is prohibited.~~

8 (c) **Formula Retail Use Defined.** Formula retail use is hereby defined in Section 303.1.
9 ~~as a type of retail sales activity or retail sales establishment which, along with eleven or more other~~
10 ~~retail sales establishments located in the United States, maintains two or more of the following~~
11 ~~features: a standardized array of merchandise, a standardized façade, a standardized décor and color~~
12 ~~scheme, a uniform apparel, standardized signage, a trademark or a servicemark.~~

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

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

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

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

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

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

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

6 ~~—— (8) — Signage shall be defined as business sign pursuant to Section 602.3 of the Planning~~
7 ~~Code.~~

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

10 (d) **Determination of Formula Retail Use.** Section 303.1 establishes the process for
11 correcting omissions on any application for an entitlement, permit or other action determined by the
12 City to be a Formula Retail use that does not identify the use as a Formula Retail use. If the City
13 determines that a building permit application or building permit subject to this section of the Code is
14 for a "formula retail use," the building permit applicant or holder bears the burden of proving to the
15 City that the proposed or existing use is not a "formula retail use."

16 ~~—— (e) — **Permit Application Processing.** After the effective date of this ordinance, any building~~
17 ~~permit application determined by the City to be for a "formula retail use" that does not identify the use~~
18 ~~as a "formula retail use" is incomplete and cannot be processed until the omission is corrected.~~

19
20 Section 9. The Planning Code is amended by revising Section 350(g) to read as
21 follows:

22 **SEC. 350. FEES, GENERAL**

23 Fees shall be imposed in order to compensate the Planning Department for the cost of
24 processing applications and for the development and revision of land use controls. Fees shall

1 be charged and collected as indicated for each class of application, permit, filing request or
2 activity listed in Sections 351 through ~~358~~360 below.

3 * * * *

4 (g) **Fee Adjustments.**

5 (1) The Controller will annually adjust the fee amounts specified in Sections 350-
6 ~~358~~360 by the two-year average consumer price index (CPI) change for the San
7 Francisco/San Jose Primary Metropolitan Statistical Area (PMSA). For a listing of the
8 Department's current fees inclusive of annual indexing for inflation, reference the Schedule of
9 Application Fees available on the Department website.

10 * * * *

11
12 Section 10. The Planning Code is amended by adding new Sections 359 and 360 to
13 read as follows:

14 **SEC. 359. ECONOMIC IMPACT STUDY FOR LARGE SCALE RETAIL USE.**

15 *The fee to review an economic impact study, as required by Section 303(j), shall be \$3,500.00,*
16 *plus any additional time and materials as set forth in Section 350.*

17
18 **SEC. 360. PERFORMANCE REVIEW FOR FORMULA RETAIL USE.**

19 *The fee to provide performance review for Formula Retail uses as required by Section 303.1,*
20 *shall be the standard building permit fee, plus time and materials as set forth in Section 350(c).*

1 Section 11. The Planning Code is amended by revising Section 209.8 to read as
 2 follows:

3 **SEC. 209.8. COMMERCIAL ESTABLISHMENTS IN R DISTRICTS.**

RH -1 (D)	RH -1	RH -1 (S)	RH -2	RH -3	RM -1	RM -2	RM -3	RM -4	RTO	RTO -M	RC -3	RC -4	
											P	P	<p>SEC. 209.8. COMMERCIAL ESTABLISHMENTS.</p> <p>(a) Except for massage establishments as noted in Section 218.1, retail, personal service or other commercial establishment is permitted as a principal use on the ground floor or below of a building if permitted as a principal use on the ground floor in an NC-3 District, unless otherwise specified in this Code.</p>
											C	C	<p>(b) Except for massage establishments as noted in Section 218.1, retail, personal service or other commercial establishment is permitted as a conditional use on the ground floor or below of a building if permitted as a conditional use on the ground floor in an NC-3 District, unless otherwise specified in this Code.</p>

1 frontage faces a street 40 feet or more in width;

2 (B) On building frontages facing Destination Alleyways, as defined in the
3 Downtown Streetscape Plan;

4 (C) Along any street frontage facing Market Street in all C-3 Districts
5 except the Van Ness and Market Downtown Residential Special Use District.

6 (3) **Controls.**

7 (A) **Ground Story.** Permitted uses listed in Sections 218 and 221 shall
8 be located facing such street in the ground story of any building. At least 1/2 the total width of
9 any new or reconstructed building, parallel to and facing such street, shall be devoted at the
10 ground story to entrances, show windows or other displays of such uses.

11 (B) **All Levels.** All other permitted uses shall be located either on stories
12 above or below the ground story or at a distance of not less than 20 feet behind each street
13 frontage at the ground story. No more than 1/3 the width of any lot, parallel to and facing such
14 street, shall be devoted to entrances to such other permitted uses.

15 (d) **Hazardous, Noxious, or Offensive Uses Prohibited.** No use listed as permitted
16 in any C District or M-1 District shall include any use that is hazardous, noxious or offensive
17 for reasons described in Section 202(c) of this Code.

18 (e) **Formula Retail Uses.** Formula Retail uses, as defined in Section 303.1, with frontage on
19 Market Street between 6th Street and the intersection of Market Street and the intersection of Market
20 Street, 12th Street and Franklin Street, are subject to Conditional Use authorization as specified in
21 Sections 303 and 303.1

Section 13. The Planning Code is amended by revising Section 218 to read as follows:

SEC. 218. RETAIL SALES AND PERSONAL SERVICES.

C-2	C-3-O	C-3-O (SD)	C-3-R	C-3-G	C-3-S	C-M	M-1	M-2	PDR-1-G	PDR-1-D	PDR-1-B	PDR-2	
													SEC. 218. RETAIL SALES AND PERSONAL SERVICES.
													The uses specified in this Section shall not include any use first specifically listed in a subsequent Section of this Code.
P	P	P	P	P,#	P	P	P	P	P, under 2,500 gsf per lot; C above for Grocery stores, as defined in Section 790.102 (a) and Health club, fitness, gymna-	P, under 5,000 gsf per lot; C above for Grocery stores, as defined in Section 790.102 (a) and Health club, fitness,	P, under 2,500 gsf	P, under 2,500 gsf per lot*#	(a) Retail business or personal service establishment. *Subject to the limitations of Section <u>121.6 and 121.8</u> <i>#C for the establishment of new Formula Retail use, as described in</i>

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											landmark building. P in designated landmark buildings.	landmark building. P in designated landmark buildings.	gsf *#	gsf *#	above the ground floor. In the C-3-R District, in addition to the criteria set forth in Section 303, approval shall be given upon a determination that the use will not detract from the district's primary function as an area for comparison shopper retailing and direct consumer services.
P	P	C	C	#	C	C	P	P	P		NP, unless in a designated landmark building. P in designated landmark buildings.	NP, unless in a designated landmark building. P in designated landmark buildings.	P under 5,000 gsf *#	P under 5,000 gsf *#	(d) Other professional and business offices, as defined in 890.70 at or below the ground floor.
															Subject to limitations of Section 121.8. <i>#C for the establishment of new Formula Retail use, as described in Section 303.1, with frontage on Market Street between 6th Street and the intersection of Market Street and the intersection of Market Street, 12th Street and Franklin Street.</i>

Section 15. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

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 16. 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 By: _____
14 VICTORIA WONG
15 Deputy City Attorney
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