



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: AUGUST 1, 2013

Project Name: Formula Retail Use for Hayes-Gough NCT District
Case Number: 2013.0860T [Board File No. 130486]
Initiated by: Supervisor Breed/ Introduced May 21, 2013
Staff Contact: Aaron Starr, Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation: **Recommend Continuance**

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code, Section 703.3, to expand the definition of Formula Retail uses in the Hayes-Gough Neighborhood Commercial Transit District; and making environmental findings, Planning Code, Section 302, findings, and findings of consistency with the General Plan and the priority policies of Planning Code, Section 101.1.

The Way It Is Now:

- Formula Retail uses are currently prohibited in the Hayes-Gough Neighborhood Commercial Transit (hereinafter NCT) District.
- Formula Retail is defined as a type of retail sales activity or retail sales establishment which, along with eleven or more other retail sales establishments located in the United States, maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, a uniform apparel, standardized signage, a trademark or a service mark.

The Way It Would Be:

The proposed legislation would:

- Maintain the prohibition on all Formula Retail in the Hayes Gough NCT District.
- Modify the definition of Formula Retail for the Hayes-Gough NCT only, to include formula retail that is a type of retail sales activity or retail sales establishment and has eleven or more other retail sales establishments located anywhere in the world. The definition of formula retail would also include a type of retail sales activity or retail sales establishment where fifty percent (50%) or more of the stock, shares, or any similar ownership interest of such establishment is owned by a formula retail use, or a subsidiary, affiliate, or parent of a formula retail use, even if the

establishment itself may have fewer than eleven retail sales establishments located anywhere in the world.

ISSUES AND CONSIDERATIONS

Current Formula Retail Controls

Formula Retail is currently defined as a type of retail sales activity or retail sales establishment which has eleven or more other retail sales establishments located in the United States. In addition to the eleven establishments, the business maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, uniform apparel, standardized signage, a trademark or a service mark.

Retail sales establishments include "Bar," "Drive-up Facility," "Eating and Drinking Use," "Liquor Store," "Sales and Service, Other Retail," "Restaurant," "Limited-Restaurant," "Take-Out Food," "Sales and Service, Retail," "Service, Financial," "Movie Theater," and "Amusement and Game Arcade."

The Planning Commission is required to consider the following criteria in addition to the standard CU criteria for Formula Retail applications:

1. The existing concentrations of Formula Retail uses within the district.
2. The availability of other similar retail uses within the district.
3. The compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the district.
4. The existing retail vacancy rates within the district.
5. The existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the district.

As mentioned above, current Formula Retail controls cover retailers that have eleven or more outlets in the United States. What that leaves out are international Formula Retail businesses with fewer than 11 stores in the US (e.g. Uniqlo) and new retail concepts that are owned and operated by nation chains (e.g. Jake Spade, which is owned by Kate Spade, an international clothing retailer). It also leaves out national and international brands that are currently only sold by third party retailers such as department stores. For example, Gant Rugger is a well-established national brand that makes American sportswear; however because Gant Rugger is mainly sold online or at large department stores and it has fewer than 11 of its own retail locations in the United States it is not considered Formula Retail per the Planning Code. A Gant Rugger store recently opened in Hayes Valley where Formula Retail is banned. One could argue that the impacts of this type of business are the same as Formula Retail because the store sells products that can be found anywhere and the store has a homogenized aesthetic that identifies it as a national chain.

Other Pending Proposals

In addition to this Ordinance, there are seven other proposals or pending modifications Formula Retail controls in the City. In response to this increased interest and concern with Formula Retail controls, the Department is in the process of reassessing our Formula Retail controls in order to propose a more holistic approach. This report will come to the Planning Commission in the fall. The following are a summary of active Formula Retail control proposals:

1. **Commission Policy for Upper Market.** This policy provides the first quantitative measure for concentration. Under the law, concentration is to be considered but without guidance concentration levels have been interpreted differently. Under this enacted policy, the Department recommends disapproval if certain concentrations are reached.
2. **Supervisor Breed** would create the Fillmore and Divisadero NCDs which, among other controls, would she originally sought to prohibit new formula retail uses. Her new proposal would seek to weight the community voice over other considerations (including staff recommendation); generally weight the hearing towards disapproval; legislate a requirement for pre-application meeting; and codify our current FR policy for Fillmore and Divisadero. While the commission recommended not codifying the FR policy and not deferring the commission recommendation to community groups, it is unclear if the Supervisor will accept the Commission's recommendations.
3. **Supervisor Kim** announced at the June 25th, 2013 Board hearing that she has asked the City Attorney to draft interim controls to require CU for certain Formula Retail uses in the Mid-Market area.
4. **Implications from recent Board of Appeals hearing.** The Board of Appeals recently ruled that if a company has signed a lease for a location (even if the location is not yet occupied) we should count that towards the 11 needed to become formula retail. The Board discussed but did not act on web-based establishments.
5. **Mobile Food Facilities.** Supervisor Wiener's recently approved ordinance amended the DPW code (BF 120193) that would restrict food trucks in the public right of way that are associated with formula retail. The change of note is that for this restriction, the formula retail definition includes "affiliates" of formula retail restaurants, which includes an entity that is owned by or has a financial or contractual agreement with a formula retail use.
6. **Interim Controls in Upper Market.** On June 25, 2013, Supervisor Wiener introduced interim controls for Upper Market (BF 130677). Although not specifically related to formula retail this resolution seeks to require CU for uses that are not currently regulated by formula retail controls but that have been suggested for inclusion in formula retail definition in the same way that financial services were recently added to the definition. Centers around 16th and Market would require a CU for limited financial and business services for 18 months.
7. **Expanding the Definition of Formula Retail in the Upper Fillmore NCD.** On July 16, 2013, Supervisor Farrell introduced an Ordinance (BF 130735) that would modify the definition of formula retail for the Upper Fillmore Street NCD, to include formula retail that is a type of retail sales activity or retail sales establishment and has eleven or more other retail sales establishments located anywhere in the world. The definition of formula retail would also include a type of retail sales activity or retail sales establishment where fifty percent (50%) or more of the stock, shares, or any similar ownership interest of such establishment is owned by a formula retail use, or a subsidiary, affiliate, or parent of a formula retail use, even if the establishment itself may have

fewer than eleven retail sales establishments located anywhere in the world.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department's recommends that the Commission request Supervisor Breed hold off on the proposed Ordinance until the Department has developed a more comprehensive package of changes to the City's Formula Retail controls, and adopt the attached Draft Resolution to that effect.

Should the Supervisor feel the need to proceed with the proposed Ordinance prior to this, the Department would recommend the following modifications:

1. Make any structural changes to Formula Retail controls on a citywide basis, rather than only for the Hayes Valley NCT District.
2. Remove the provisions that would tie Formula Retail status to ownership structure.

BASIS FOR RECOMMENDATION

Primary Recommendation

Formula Retail controls in San Francisco have evolved over the last nine years, and as indicated by the diversity of pending legislative proposals, many elected officials believe the controls need updating. As the issues and implications are numerous, the Department recommends that changes be made based upon data and sound research. To assist with this effort, the Director has asked staff to seek consultant assistance on a study of the issues early this fall. Therefor the Department is recommending that any proposed changes to Formula Retail definition wait until the consultant's report is complete and until the Department and Planning Commission have had a chance analyze the information and develop a comprehensive proposal for changes to the Formula Retail definition.

Recommendation #1: Make structural changes to Formula Retail controls on citywide basis.

The Department wants to avoid a patchwork of different Formula Retail controls throughout the City; this recommendation is geared toward that aim. While the Department recognizes the benefit of tailored controls for individual neighborhood commercial districts, we strongly recommend against creating different definitions for the same use in different zoning districts. Defining Formula Retail differently in the Hayes-Gough NCT creates unnecessary complexity, which is confusing for the public and impedes the Department's ability to efficiently and consistently implement the Planning Code. Formula Retail controls were enacted to preserve the unique character of all of San Francisco's neighborhood commercial districts. If a proposed change to the Formula Retail definition will help better preserve the uniqueness of one district it stands to reason that it may be appropriate for other districts as well. In fact, Supervisor Farrell recently introduced a similar Ordinance that would expand the proposed Formula Retail controls in this Ordinance to the Upper Fillmore NCD (see "Other Pending Proposals" #7) and Supervisor Mar is working on an Ordinance that would extend similar controls City-wide.

Recommendation #2: Remove the provisions that would tie Formula Retail status to ownership structure.

The Department understands the Supervisor's desire to expand the definition of Formula Retail to include national and international brands or off-shoots of existing brands; however, the Department does not have the expertise to verify the ownership structure of public companies, and it is nearly impossible to determine the ownership structure of privately owned companies. The only way the Department could enforce this provision is by requiring a sworn affidavit from the applicant, but if that affidavit was ever challenged by a member of the public the Department would not have the expertise or resources to verify its accuracy. Further, current Formula Retail controls focus on land use impacts, mainly aesthetic, as a determining factor for subjecting a business to additional review and oversight. The proposed Ordinance would add a business's ownership structure as a determining factor for additional review and oversight. The Department has never considered the ownership structure of a company when making land use decisions, and is reluctant to start.

ENVIRONMENTAL REVIEW

The proposal ordinance would result in no physical impact on the environment. The Project was determined to be exempt from the California Environmental Quality Act ("CEQA") under a Non-Physical Exemption (CEQA Guidelines Section 15060(c)(2)) as described in the determination contained in the Planning Department files for this Project.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any comments about the proposed Ordinance

RECOMMENDATION:	Recommendation of Approval with Modification
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Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 130486



SAN FRANCISCO PLANNING DEPARTMENT

Draft Planning Commission Resolution

HEARING DATE: AUGUST 1, 2013

Project Name: **Formula Retail Use for Hayes-Gough NCT District**
Case Number: 2013.0860T [Board File No. 130486]
Initiated by: Supervisor Breed/ Introduced May 21, 2013
Staff Contact: Aaron Starr, Legislative Affairs
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Reviewed by: AnMarie Rodgers, Manager Legislative Affairs
anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation: **Postpone Adoption of Proposed Ordinance**

1650 Mission St.
Suite 400
San Francisco,
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415.558.6378

Fax:
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RECOMMENDING THAT THE BOARD OF SUPERVISORS POSTPONE ADOPTION OF A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE, SECTION 703.3, TO EXPAND THE DEFINITION OF FORMULA RETAIL USES IN THE HAYES-GOUGH NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT; AND MAKING ENVIRONMENTAL FINDINGS, PLANNING CODE, SECTION 302, FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1.

PREAMBLE

Whereas, on May 21, 2013, Supervisor Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 130486, which would amend the Planning Code, Section 703.3, to expand the definition of Formula Retail uses in the Hayes-Gough Neighborhood Commercial Transit District;); and

Whereas, on August 1, 2013, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act, Non-Physical Exemption, Section 15060(c)(2); and

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Planning Department (hereinafter Department) staff, and other interested parties; and

Whereas, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

Whereas, the Commission has reviewed the proposed Ordinance; and

MOVED, that the Commission hereby recommend that the Board of Supervisor *Postpone Review and Adoption of the Proposed Ordinance* until the Department has developed a more comprehensive package of changes to the City's Formula Retail controls, and adopts this Draft Resolution to that effect.

However, should the Board of Supervisor find it necessary to proceed with the proposed Ordinance prior to the Department developing a more comprehensive package of changes to the City's Formula Retail controls, the Commission would recommend *approval of the proposed Ordinance with the following modifications*:

1. Make any structural changes to Formula Retail controls on a citywide basis, rather than only for the Hayes Valley NCT District.
2. Remove the provisions that would tie Formula Retail status to ownership structure.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. As indicated by the number and diversity of pending legislative proposals to modify the City's Formula Retail Controls, several Supervisors believe these controls need updating. As the issues and implications are numerous, the Commission recommends that changes be made based upon data and sound research. To assist with this effort, Department Staff was instructed to seek consultant assistance on a study of the issues, which should be completed early this fall. Therefore, the Commission is recommending that any proposed changes to Formula Retail definition wait until the consultant's report is complete and until the Department and Commission have had a chance analyze the information and develop a comprehensive proposal for changes to the Formula Retail definition.
2. The Commission wants to avoid a patchwork of different Formula Retail controls throughout the City. Defining Formula Retail differently in the Hayes-Gough NCT creates unnecessary complexity, which is confusing for the public and impedes the Department's ability to efficiently and consistently implement the Planning Code.
3. Formula Retail controls were enacted to preserve the unique character of all of San Francisco's neighborhood commercial districts. If a proposed change to the Formula Retail definition will help better preserve the uniqueness of one district it stands to reason that it may be appropriate for other districts as well.
4. The Department does not have the expertise to verify the ownership structure of public companies, and it is nearly impossible to determine the ownership structure of privately owned companies. The only way the Department could enforce the ownership provision proposed in this Ordinance is by requiring a sworn affidavit from the applicant, but if that affidavit was ever challenged the Department would not have the expertise or resources to verify its accuracy.

5. Current Formula Retail controls focus on land use impacts, mainly aesthetic, as a determining factor for subjecting a business to additional review and oversight. The proposed Ordinance would add a business's ownership structure as a determining factor for additional review and oversight. The Department has never considered the ownership structure of a company when making land use decisions, and the Commission is reluctant to have the Department start.
1. General Plan Compliance. The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

I. COMMERCE & INDUSTRY ELEMENT

THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN SETS FORTH OBJECTIVES AND POLICIES THAT ADDRESS THE BROAD RANGE OF ECONOMIC ACTIVITIES, FACILITIES, AND SUPPORT SYSTEMS THAT CONSTITUTE SAN FRANCISCO'S EMPLOYMENT AND SERVICE BASE.

OBJECTIVE 4

IMPROVE THE VIABILITY OF EXISTING INDUSTRY IN THE CITY AND THE ATTRACTIVENESS OF THE CITY AS A LOCATION FOR NEW INDUSTRY.

Policy 6.2

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

As amended, the proposed legislation would help protect the City's neighborhood commercial districts by expanding the definition of Formula Retail to include Formal Retail chains with 11 or more locations in the world rather than just in the United States. Formula retail businesses can have a competitive advantage over independent operators because they are typically better capitalized and can absorb larger startup costs, pay more for lease space, and commit to longer lease contracts. This can put pressure on existing businesses and potentially price out new startup independent businesses.

2. The proposed project is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:
 - A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed Ordinance will help to preserve neighborhood-serving retail uses by expanding the definition of Formula Retail. Formula Retail businesses can have a competitive advantage over independent operators because they are typically better capitalized and can absorb larger startup costs, pay more for lease space, and commit to longer lease contracts. This can put pressure on existing businesses and potentially price out new startup independent businesses.
 - B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed Ordinance will not displace existing housing nor will it have a negative effect on existing neighborhood character.

- C) The City's supply of affordable housing will be preserved and enhanced:

The proposed Ordinance will not adversely affect the City's supply of affordable housing.

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

Preparedness against injury and loss of life in an earthquake is unaffected by the proposed Ordinance. Any new construction or alteration associated with this Ordinance would be executed in compliance with all applicable construction and safety measures.

- G) That landmark and historic buildings will be preserved:

Landmarks and historic buildings would be unaffected by the proposed Ordinance.

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed Ordinance. It is not anticipated that permits would be such that sunlight access, to public or private property, would be adversely impacted.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on August 1, 2013.

Jonas P Ionin
Acting Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: August 1, 2013

1 [Planning Code - Formula Retail Use for Hayes-Gough Neighborhood Commercial Transit District]

2

3 **Ordinance amending the Planning Code, Section 703.3, to expand the definition of**
4 **formula retail uses in the Hayes-Gough Neighborhood Commercial Transit District;**
5 **making environmental findings, Planning Code, Section 302, findings, and findings of**
6 **consistency with the General Plan and the priority policies of Planning Code, Section**
7 **101.1.**

8

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

10

11

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

13 Section 1. Findings. The Board of Supervisors finds and declares as follows:

14 (a) The Planning Department has determined that the actions contemplated in this
15 Ordinance are in compliance with the California Environmental Quality Act (California Public
16 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the
17 Board of Supervisors in File No. _____, and is incorporated herein by reference.

18 (b) On _____, 2013, the Planning Commission, in Resolution No. _____, approved
19 and recommended for adoption by the Board this legislation and adopted findings that it is
20 consistent, on balance, with the City's General Plan and eight priority policies of Planning
21 Code Section 101.1. The Board adopts these findings as its own. A copy of said Resolution is
22 on file with the Clerk of the Board of Supervisors in File No. _____, and is incorporated
23 herein by reference.

24 (c) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this
25 legislation will serve the public necessity, convenience, and welfare for the reasons set forth in

1 Planning Commission Resolution No. _____, and incorporates such reasons herein by
2 reference.

3 Section 2. The San Francisco Planning Code is hereby amended by amending Section
4 703.3, to read as follows:

5 **SEC. 703.3. FORMULA RETAIL USES.**

6 (a) **Findings.**

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

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

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

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

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

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

25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) "**Retail Sales Activity or Retail Sales Establishment**" shall include the uses
23 defined in Section 303(i)(2) of this Code.

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

4 (e) **Formula Retail Use Prohibited.** Notwithstanding subsection (d), certain districts
5 may prohibit formula retail uses or a subset of formula retail uses as described in Section
6 303(i)(~~5~~).

7 (f) **Conditional Uses.** Notwithstanding subsections (d) or (e), a Conditional Use
8 Authorization shall be required for a formula retail use in the zoning districts listed in Section
9 303(i)(~~4~~) unless explicitly exempted. Additional criteria to be used by the Planning
10 Commission when considering granting conditional use permits to formula retail uses in these
11 districts are listed in Section 303(i).

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

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

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

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

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

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

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

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

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

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

22 **(j) Formula Retail Uses in the Hayes-Gough Neighborhood Commercial Transit District.**

23 The Hayes-Gough NCT is a special neighborhood in which housing, shops, work places, parks and
24 civic facilities intimately co-exist to create a strong identifiable neighborhood, which attracts tourists
25 and City residents from outside Hayes Valley. In addition, the neighborhood invites walking and

1 bicycling and the mix of unique small businesses contributes to a strong sense of neighborhood
2 community. Hayes Valley is part of a global economy, attracting businesses and visitors from around
3 the world. Therefore, the neighborhood is particularly sensitive to incursions from formula retail,
4 whether it is an international, national or local formula retail business. In addition, affiliates that are
5 owned by a business defined as formula retail will have impacts on the Hayes-Gough NCT that are
6 similar to the impacts caused by formula retail outlets themselves, as described in Planning Code
7 Section 703.3(a). Hayes Valley must protect its vibrant and expanding small business sector, and
8 maintain its supportive environment for new small business innovations. Accordingly, additional
9 restrictions on formula retail uses are necessary and desirable for the Hayes-Gough NCT.

10 In the Hayes-Gough NCT, formula retail shall be defined as set forth in Planning Code Sections
11 303(i) and 703.3(b), except as specifically modified below:

12 (1) A formula retail use is hereby defined as a type of retail sales activity or retail sales
13 establishment which, along with eleven or more other retail sales establishments located anywhere in
14 the world, maintains an establishment with two or more of the following features: a standardized array
15 of merchandise, a standardized facade, a standardized decor and color scheme, a uniform apparel,
16 standardized signage, a trademark or a servicemark.

17 (2) A formula retail use is hereby defined as a type of retail sales activity or retail sales
18 establishment where fifty percent (50%) or more of the stock, shares, or any similar ownership interest
19 of such establishment is owned by a formula retail use, or a subsidiary, affiliate, or parent of a formula
20 retail use, even if the establishment itself may have fewer than eleven other retail sales establishments
21 permitted or located in the world.

22 Section 3. Effective Date. This ordinance shall become effective 30 days from the
23 date of passage.

24 Section 4. This section is uncodified. In enacting this Ordinance, the Board intends to
25 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,

1 punctuation, charts, diagrams, or any other constituent part of the Planning Code that are
2 explicitly shown in this legislation as additions, deletions, Board amendment additions, and
3 Board amendment deletions in accordance with the "Note" that appears under the official title
4 of the legislation.

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6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8 By: _____
9 KATE H. STACY
10 Deputy City Attorney

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