

San Francisco Planning Code.

FOR HAYES VALLEY COMMERCIAL DISTRICT, PLEASE PAY SPECIAL ATTENTION TO:

SECTION (f) Hayes-Gough Neighborhood Commercial Transit District → Formula Retail Not Permitted

SEC. 303.1. FORMULA RETAIL USES.

(a) **Findings.**

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

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

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

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

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

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

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

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

(9) Neighborhood Commercial Districts are intended to preserve the unique qualities of a district while also serving the daily needs of residents living in the immediate neighborhood; however community members have reported loss of daily needs uses due to inundation of formula retailers that target larger citywide or regional audiences. The

City strives to ensure that goods and services that residents require for daily living are available within walking distance and at an affordable price. Establishments that serve daily needs and formula retail establishments are neither mutually exclusive nor completely overlapping.

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

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

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

(13) Due to the distinct impact that Formula Retail uses have on a neighborhood, these uses are evaluated for concentration as well as compatibility within a neighborhood. As neighborhoods naturally evolve over time, changes and intensifications of Formula Retail uses should also be re-evaluated for concentration and compatibility within a neighborhood.

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

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

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

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

(18) Through a 2014 study commissioned by the Planning Department, titled "San Francisco Formula Retail Economic Analysis," staff and consultants conducted one-on-one interviews and worked with small groups including independent retailers, small business owners, merchants associations, formula retailers, commercial brokers, neighborhood representatives and other stakeholders. The Study found that landlords often perceive a benefit in renting to large established chains, which landlords believe typically have better credit and can sign longer leases than local, independent retailers, lowering the risk that the tenant will be unable to pay its rent. The existing land use controls for Formula Retail may create a disincentive for formula retailers to locate where the formula retail controls apply.

(b) **Definition.** A Formula Retail use is hereby defined as a type of retail sales or service activity or retail sales or service establishment that has eleven or more other retail sales establishments in operation, or with local land use or permit entitlements already approved, located anywhere in the world. In addition to the eleven establishments either in operation or with local land use or permit entitlements approved for operation, 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 servicemark.

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

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

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

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

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

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

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

(8) Signage shall be defined as business sign pursuant to Section [602.3](#) of the Planning Code.

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

- (1) Bar;
- (2) Drive-up Facility;
- (3) Eating and Drinking Use;
- (4) Liquor Store;
- (5) Sales and Service, Other Retail;

- (6) Restaurant;
- (7) Limited-Restaurant;
- (8) Take-Out Food;
- (9) Sales and Service, Retail;
- (10) Service, Financial;
- (11) Movie Theater;
- (12) Amusement and Game Arcade;
- (13) Service, Limited Financial, except single automated teller machines at the street front that meet the Commission's adopted Performance-Based Design Guidelines and automated teller machines located within another use that are not visible from the street;
- (14) Service, Fringe Financial;
- (15) Tobacco Paraphernalia Establishment;
- (16) Massage Establishment;
- (17) Service, Personal;
- (18) Service, Instructional; and
- (19) Gym.

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

(1) The existing concentrations of Formula Retail uses within the district and within the vicinity of the proposed project. To determine the existing concentration, the Planning Commission shall consider the percentage of the total linear street frontage within a 300-foot radius or a quarter of a mile radius, at the Planning Department's discretion, from the subject property that is occupied by Formula Retail and non-Formula Retail businesses. The Department's review shall include all parcels that are wholly or partially located within the 300-foot radius or quarter-mile radius. If the subject property is a corner parcel, the 300-foot radius or quarter mile radius shall include all corner parcels at the subject intersection. For each property, the Planning Department shall divide the total linear frontage of the lot facing a public-right of way by the number of storefronts, and then calculate the percentage of the total linear frontage for Formula Retail and non-Formula Retail. Half percentage points shall be rounded up.

For the Upper Market Street Neighborhood Commercial District only, if the application would bring the formula retail concentration within a 300-foot radius to a concentration of 20% or above, Planning Department staff shall recommend disapproval of the application to the Planning Commission. If the application would not bring the formula retail concentration within the 300-foot radius to a concentration of 20% or above, Planning Department staff shall assess the application according to all the other criteria listed in this Subsection [303.1\(d\)](#), and recommend approval or disapproval to the Planning Commission, according to its discretion and professional judgment. In either case, the Planning Commission may approve or reject the application, considering all the criteria listed in this Subsection [303.1\(d\)](#).

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

(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 and within the vicinity of the proposed project.

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

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

(7) For Formula Retail uses of 20,000 gross square feet or more, except for General or Specialty Grocery stores as defined in Articles [2](#), [7](#) and [8](#) of this Code, the contents of an economic impact study prepared pursuant to Section [303\(i\)](#) of this Code.

(8) Notwithstanding anything to the contrary contained in Planning Code Article [6](#) limiting the Planning Department's and Planning Commission's discretion to review signs, the Planning Department and Planning Commission may review and exercise discretion to require changes in the time, place and manner of the proposed signage for the proposed Formula Retail use, applying the Performance-Based Design Guidelines.

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

- (1) All Neighborhood Commercial Districts in Article [7](#);
- (2) All Mixed Use-General Districts in Section [840](#);
- (3) All Urban Mixed Use Districts in Section [843](#);
- (4) All Residential-Commercial Districts as defined in Section [206.3](#);
- (5) Japantown Special Use District as defined in Section [249.31](#);
- (6) Chinatown Community Business District as defined in Section [810.1](#);
- (7) Chinatown Residential/Neighborhood Commercial District as defined in [812.1](#);
- (8) Western SoMa Planning Area Special Use District as defined in [823](#);
- (9) Residential Transit-Oriented Districts as defined in [206.4](#) and [206.5](#);
- (10) Limited Conforming Use/Non-Conforming Use in RH-RM-RTO and RED Districts;
- (11) Third Street Formula Retail Restricted Use District, as defined in Section [786](#);
- (12) The C-3-G District with frontage on Market Street, between 6th Street and the intersection of Market Street, 12th Street and Franklin Street.

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

- (1) Hayes-Gough Neighborhood Commercial Transit District;
- (2) North Beach Neighborhood Commercial District;
- (3) Chinatown Visitor Retail District;
- (4) Upper Fillmore District does not permit Formula Retail uses that are also Restaurant or Limited-Restaurant uses as defined in Sections [790.90](#) and [790.91](#);
- (5) Broadway Neighborhood Commercial District does not permit Formula Retail uses that are also Restaurant or Limited-Restaurant uses as defined in Sections [790.90](#) and [790.91](#);
- (6) Mission Street Formula Retail Restaurant Subdistrict does not permit Formula Retail uses that are also Restaurant or Limited-Restaurant uses as defined in Sections [790.90](#) and [790.91](#);

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

(8) Taraval Street Restaurant Subdistrict does not permit Formula Retail uses that are also Restaurant or Limited-Restaurant uses as defined in Sections [790.90](#) and [790.91](#);

(9) Chinatown Mixed Use Districts do not permit Formula Retail uses that are also Restaurant or Limited-Restaurant uses as defined in Sections [790.90](#) and [790.91](#).

(g) **Neighborhood Notification and Design Review.** Any application for a Formula Retail use as defined in this section shall be subject to the notification and review procedures of Subsections [312](#)(d) and (e) of this Code. A conditional use hearing on an application for a Formula Retail use may not be held less than 30 calendar days after the date of mailed notice.

(h) **Determination of Formula Retail Use.** In those areas in which Formula Retail uses are prohibited or subject to the provisions of Subsections [303.1](#)(d) or (e), any application for an entitlement or determination determined by the City to be for a Formula Retail use that does not identify the use as a Formula Retail use is incomplete and cannot be processed until the omission is corrected. Any entitlement approved or determination made that is determined by the City to have been, at the time of application, for a Formula Retail use that did not identify the use as a Formula Retail use is subject to revocation at any time. If the City determines that an entitlement or determination, or an application for the same, is for a Formula Retail use, the applicant or holder of the entitlement bears the burden of proving to the City that the proposed or existing use is not a Formula Retail use.

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

(j) **Change of Use.** Changes of Formula Retail establishments are generally described below, except that a change of a Formula Retail use that is also a nonconforming use pursuant to Section [182](#) is prohibited. In all other instances, changes of Formula Retail establishments from one use category to another, including a change from one use to another within the sub-categories of uses set forth in Planning Code Section [790.102](#) and Section [890.102](#), require a new Conditional Use authorization as a new Formula Retail use. Changes of Formula Retail owner or operator within the same use category that are determined to be an enlargement or intensification of use pursuant to Subsection [178](#)(c) are required to obtain Conditional Use authorization and shall meet the Commission's adopted Performance-Based Design Guidelines for Formula Retail.

In cases determined not to be an enlargement or intensification of use, the Performance-Based Design Guidelines for Formula Retail may be applied and approved administratively by the Planning Department, unless the applicant requests a Conditional Use Hearing at the Planning Commission. The applicant shall also pay an administrative fee to compensate Planning Department and City staff for its time reviewing the project under this Subsection, as set forth in Section [360](#) of this Code.

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

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

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

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

(Added by Ord. [235-14](#), File No. 140844, App. 11/26/2014, Eff. 12/26/2014; amended by Ord. [22-15](#), File No. 141253, App. 2/20/2015, Eff. 3/22/2015)

AMENDMENT HISTORY

Divisions (c)(18) and (19) added; Ord. [22-15](#), Eff. 3/22/2015.