Amendment of the Whole
June 28, 2006.

FILE NO. 060482
ORDINANCE NO. 204-06

[Formula Retail Use; Public Notice – Western SoMa Planning Area SUD.]

Ordinance amending the San Francisco Planning Code by adding Section 803.6 to
designate formula retail as a conditional use in the Western SoMa Planning Area
Special Use District and by adding Section 803.7 to require public noticing
requirements for building permit applications in that Special Use District; adopting
findings including environmental findings and findings of consistency with the General
Plan and with the Priority Policies of Planning Code Section 101.1.

Note: Additions are single-underline italics Times New Roman;
deletions are strike-through italics Times New Roman.
Board amendment additions are double underlined.
Board amendment deletions are strike-through normal.

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

Section 1. Findings. (a) Pursuant to Planning Code Section 302, this Board of
Supervisors finds that this ordinance will serve the public necessity, convenience and welfare
for the reasons set forth in Planning Commission Resolution No. 17261, and
incorporates those reasons herein by reference. A copy of said Planning Commission
resolution is on file with the Clerk of the Board of Supervisors in File No.
060482.

(b) The Board of Supervisors finds that this ordinance is consistent with the General
Plan and the Priority Policies of Planning Code Section 101.1(b) for the reasons set forth in
Planning Commission Resolution No. 17261, and incorporates
those reasons herein by reference.

(c) The Planning Department has completed environmental review of this ordinance
pursuant to the California Environmental Quality Act ("CEQA"), the CEQA Guidelines, and
Chapter 31 of the San Francisco Administrative Code. Documentation of that review is on file with the Clerk of the Board of Supervisors in File No. 060482.

Section 2. The San Francisco Planning Code is hereby amended by adding Section 803.6, to read as follows:

SEC. 803.6. Formula Retail Uses in the Western SoMa Planning Area Special Use District.

(a) Findings.

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

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

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

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

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

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

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

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

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

(b) Formula Retail Uses; Permitted as a Conditional Use. Formula retail uses are permitted in the Western SoMa Planning Area Special Use District only as a conditional use.

(c) Formula Retail Use Defined. Formula retail use is hereby defined as a type of retail sales activity or retail sales establishment which, along with eleven or more other retail sales establishments located in the United States, maintains two or more of the following features: a standardized array of merchandise, a standardized façade, a standardized décor and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark.
(1) Standardized array of merchandise shall be defined as 50% or more of in-stock merchandise from a single distributor bearing uniform markings.

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

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

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

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

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

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

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

(9) "Retail sales activity or retail sales establishment" shall include the following uses, as defined in Article 8 of this code: "bar," "drive-up facility," "eating and drinking use," "restaurant, large fast-food," "restaurant, small fast-food," "restaurant, full-service," "sales and services, other retail," "sales and services, nonretail," "movie theater," "amusement game arcade," and "take-out food."
(d) Determination of Formula Retail Use. If the City determines that a building permit application or building permit subject to this section of the Code is for a "formula retail use," the building permit applicant or holder bears the burden of proving to the City that the proposed or existing use is not a "formula retail use."

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

(f) Discretionary Review Guidelines. When considering any request for discretionary review made pursuant to this subsection, the Planning Commission shall apply the guidelines established by or pursuant to Section 703.3(h) of this Code.

Section 3. The San Francisco Planning Code is hereby amended by adding Section 803.7, to read as follows:

SEC. 803.7. Permit Review Procedures in the Western SoMa Planning Area Special Use District established pursuant to Section 823 of this Code. All building permit applications for demolition, new construction, alterations which expand the exterior dimensions of a building, or changes in use to a formula retail use as defined in Section 803.6 of this Code, a bar as defined in Section 890.22, a walk-up facility as defined in Section 890.14, other institution as defined in Section 890.50, a full-service restaurant as defined in Section 890.92, a large fast-food restaurant as defined in Section 890.91, a small fast-food restaurant as defined in Section 890.90, a massage establishment as defined in Section 890.60, an outdoor activity area as defined in Section 890.71, or an adult or other
entertainment use as defined in Sections 890.36 and 890.37, respectively, shall be subject to the
notification and review procedures required by Section 312 of this Code.

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

By: JUDITH A. BOYAJIAN
Deputy City Attorney
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July 11, 2006  Board of Supervisors — PASSED ON FIRST READING
Ayes: 9 - Ammiano, Daly, Duffy, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
Noes: 2 - Alioto-Pier, Elsbemnd

July 18, 2006  Board of Supervisors — FINALLY PASSED
Ayes: 11 - Alioto-Pier, Ammiano, Daly, Duffy, Elsbemnd, Ma, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval
I hereby certify that the foregoing Ordinance was FINALLY PASSED on July 18, 2006 by the Board of Supervisors of the City and County of San Francisco.

7/25/2006
Date Approved

Gloria L. Young
Clerk of the Board

Mayor Gavin Newsom