Resolution imposing interim zoning controls for an 18-month period in the Castro Street Neighborhood Commercial District to require a Conditional Use authorization by the Planning Commission under Planning Code, Section 303(i), for a proposed use that has been determined to be Formula Retail even if a project sponsor subsequently removes one or more distinguishing Formula Retail Use features from the project proposal; and making environmental findings, and findings of consistency with the General Plan, and with the eight priority policies of Planning Code, Section 101.1.

WHEREAS, Planning Code, Section 306.7, permits the imposition of interim zoning controls that promote the public interest, including but not limited to (a) development and conservation of the City's commerce and industry to maintain the City's economic vitality and maintain adequate services for its residents, visitors, businesses and institutions, and (b) preservation of neighborhoods and areas of mixed residential and commercial uses and their existing character; and

WHEREAS, Planning Code, Section 703.3(b), defines a “Formula Retail Use” as “a type of retail sales activity or retail sales establishment which, along with eleven or more other retail sales establishments located in the United States, maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark,” which features are also defined in Section 703.3(b); and

WHEREAS, Formula Retail Uses in specified zoning districts are either permitted, prohibited, or require a Conditional Use authorization from the Planning Commission; and
WHEREAS, These interim zoning controls furthers the City’s interests set forth in Planning Code, Section 703.3(a); and

WHEREAS, Planning Code, Section 303(i), establishes criteria for the Planning Commission to consider when hearing requests for Conditional Use authorization for a Formula Retail Use, which include: the existing concentrations of Formula Retail Uses within the district; the availability of other similar retail uses within the district; the compatibility of the proposed Formula Retail Use with the existing architectural and aesthetic character of the district; the existing retail vacancy rates within the district; and the existing mix of Citywide retail uses and neighborhood-serving retail uses within the district; and

WHEREAS, The Castro Street Neighborhood Commercial District (NCO), established in Planning Code, Section 715.1, has special controls that are designed, among other things, to promote a balanced mix of uses and to preserve the existing equilibrium of neighborhood-serving convenience and specialty commercial uses; and

WHEREAS, The City is currently investing considerable capital resources in improving Castro Street included within the NCO area in order to enhance pedestrian activities; and

WHEREAS, The Castro Street NCO requires a Conditional Use authorization for Formula Retail Uses; and

WHEREAS, Both Planning Code, Section 703.3(i), and Planning Code, Section 303(i)(8), provide that if the City determines that a building permit application or building permit subject to the Formula Retail Use controls of the Planning 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; and

WHEREAS, A problem in San Francisco’s Citywide Formula Retail Use controls has been identified in the Castro Street (NCO) in that, despite the fact that once the City has determined that a proposed use is a Formula Retail Use the Planning Code puts the burden
on a project sponsor to prove that it is not, a project sponsor can easily manipulate the
Formula Retail Use features to evade the Conditional Use authorization requirement; and,

WHEREAS, The Planning Commission is in the process of considering updates to the
Formula Retail Use controls that would apply Citywide; and

WHEREAS, Any Planning Commission recommendation for updates to the Citywide
Formula Retail controls is likely months away; and

WHEREAS, Any recommendation on the imposition, on a Citywide basis, of these
interim controls proposed herein for the Castro Street NCO is best handled by the Planning
Commission as part of its larger, comprehensive analysis; yet there is an urgent need to
address this problem for the Castro Street NCO; and

WHEREAS, These interim controls proposed herein for the Castro Street NCO will
allow time for the orderly completion of a planning study and for the adoption of appropriate
legislation; and

WHEREAS, The Board of Supervisors ("Board") has considered the impact on the
public health, safety, peace and general welfare if the interim controls proposed herein for the
Castro Street NCO are not imposed; and

WHEREAS, The Board has determined that the public interest will best be served by
imposition of these interim controls for the Castro Street NCO in order to ensure that the
comprehensive legislative scheme that may be ultimately adopted is not undermined during
the planning and legislative process for permanent controls; and

WHEREAS, The Board makes the following findings of consistency with the Priority
Policies set forth in Planning Code, Section 101.1: By adding additional criteria for defining a
Formula Retail Use in the Castro Street NCO, these interim controls advance Priority Policy 1
that existing neighborhood-serving retail uses be preserved and enhanced and Priority Policy
2 that existing housing and neighborhood character be conserved and protected to preserve
the cultural and economic diversity of our neighborhoods; further, these interim controls do not conflict with the other Priority Policies of Section 101.1; and

WHEREAS, The Planning Department has determined that the actions contemplated in this Resolution are in compliance with the California Environmental Quality Act (California Public Resources Code sections 21000 et seq.) and the Board hereby affirms that determination. Said determination is on file with the Clerk of the Board of Supervisors in File No. 140736 and is incorporated herein by reference; now, therefore, be it

RESOLVED, That in the Castro Street NCO, a Conditional Use authorization by the Planning Commission is required under Planning Code, Section 303(i), in circumstances where there has been a determination by Department staff or a City board, commission, or agency that a proposed project is a Formula Retail Use and the project sponsor subsequently removes one or more of the Formula Retail Use features listed in Planning Code, Sections 703.3(b) and 303(i), as defining a Formula Retail Use; and, be it

FURTHER RESOLVED, That any proposed use in the Castro Street NCO within the scope of these interim controls that has not received a final decision on any required approval action by any City department, board, commission, or agency shall be covered by these interim controls; and, be it

FURTHER RESOLVED, That upon imposition of these interim controls for the Castro Street NCO, the Planning Department shall conduct a study of the contemplated zoning proposal and propose permanent legislation to address the issues of manipulation of the Formula Retail Use features and disagreements between the Planning Department and project sponsors as to whether a proposed use is a Formula Retail Use; and, be it

FURTHER RESOLVED, That these interim controls for the Castro Street NCO shall remain in effect for a period of 18 months unless extended in accordance with Planning Code, Section 306.7(h), or until permanent controls are adopted; and, be it

Supervisors Wiener, Campos and Mar
BOARD OF SUPERVISORS
FURTHER RESOLVED, That the Planning Department shall provide reports to the Board pursuant to Planning Code, Section 306.7(i).

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: JUDITH A. BOYAJIAN
   Deputy City Attorney
Resolution imposing interim zoning controls for an 18-month period in the Castro Street Neighborhood Commercial District to require a Conditional Use authorization by the Planning Commission under Planning Code, Section 303(i), for a proposed use that has been determined to be Formula Retail even if a project sponsor subsequently removes one or more distinguishing Formula Retail Use features from the project proposal; and making environmental findings, and findings of consistency with the General Plan, and with the eight priority policies of Planning Code, Section 101.1.

July 07, 2014 Land Use and Economic Development Committee - RECOMMENDED AS COMMITTEE REPORT

July 08, 2014 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 140736

I hereby certify that the foregoing Resolution was ADOPTED on 7/8/2014 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

Date Approved

7/18/14