

Agenda:

Formula Retail Subsidiary Working Group

February 25, 2015 | 3:30 PM | City Hall Room 278 | Office of Supervisor Mar & Planning Department

Facilitator: Lynn Sedway, Sedway Consulting

Draft Ground Rules

1. **Formula Retail is newly regulated.** This group is not trying to change Formula Retail controls.
2. **Subsidiaries are not currently regulated.** This group is exploring if such regulation would be appropriate.
3. **Today we're learning from each other--** as such we ask for all to engage in open listening while others are sharing. Today is not a day to make decisions but is a day for openness to learning and empathy.
4. **Commit to work outside the group meetings.** Our work ahead is great and can best be tackled if we explore the issue and further our thinking in our time outside of the group meeting. Along these lines, we're asking that you consider the scope of the problem from your perspective. Which & how many categories of businesses currently are not considered formula retail? What problems, if any, are raised by this omission? What would you like to address?
5. **Be mindful of three legal concepts that may apply:**
 - a. Restrictions should regulate the use, not the user. Land use regulations should "run with the land" and should be focused on the land use, not on the user or the holder of the land use entitlement. Any proposed formula retail regulations should be able to be characterized as regulating a land use, not the user itself.
 - b. Government regulation should not be used solely or primarily to suppress economic competition. While government regulation may have incidental anti-competitive effects, if the primary purpose of the government regulation is an anti-competitive one, courts will scrutinize the regulations very carefully.
 - c. Commerce Clause Concerns: Under the Commerce Clause of the United States Constitution, local governments may not inhibit interstate commerce by prohibiting non-local businesses, or by using regulations to make it more difficult for non-local businesses to locate or do business in an area. Any legislation should not, on its face, discriminate against out-of-state businesses, or "local" vs. "non-local" businesses.
6. **Public Comment.** Public comment will occur at the end of the meeting. Each speaker will be allotted a three minute maximum comment time, with a maximum public comment of 20 minutes. Comments shall pertain to the topic of subsidiaries.

Meeting Outline

This meeting is dedicated to providing a platform for the members to share their experience and perspective. At the start of the meeting, we will seek consensus on the ground rules. The majority of

the meeting will be to hear and discuss presentations from group members. The length of the presentations will be 5-10 minutes, depending on number of presentations. Potential topics include: how are subsidiaries different from and similar to formula retail? How are subsidiaries harmful or not to neighborhoods? Is the question of subsidiaries different from or similar to those companies who try to evade FR regulation? How large or small is the problem? Presenters will share independent research, anecdotal stories, and publications. Dialog, questions, and answers.

To date, the following folks have volunteered to share:

- Ilene Dick and Dee Dee Workman—Exploring definitions: what is a subsidiary?
- Peter Cohen & Paul Wermer—Exploring a path towards regulation.
- Miriam Zouzounis—Experience of independent businesses.

Information on Previous & Remaining Meetings:

This draft schedule intends to quickly explore the topic and produce recommendations for San Francisco's policy-makers by Spring 2015.

1. **Summary of January 28 Meeting.** At our meeting last week, we heard overview presentations by Supervisor Mar, the Planning Department, City Attorney's Office, and Economic Analysts. The group discussed the goals: some are ready to test ideas to regulate subsidiaries and some would still like to discuss whether FR should be regulated. The group confirmed the draft meeting schedule and tentative topics outlined below. As the group explores the topic, we're interested in benefiting from the experience of the group's members.
2. **February 25, 3:30PM. Exploration Meeting.** Hear and discuss presentations from group members. Potential topics include: how are subsidiaries different from and similar to formula retail? Should subsidiaries be regulated? How are subsidiaries harmful to neighborhoods? Is the question of subsidiaries different from or similar to those companies who try to evade FR regulation? Presenters will share independent research, anecdotal stories, and publications. Dialog, questions, and answers.
3. **March 11, 3:30PM. Idea Testing Meeting.** Group problem-solving, suggesting and summarizing potential solutions. Our first task this day will be seeking consensus on the definition of "subsidiary". Which businesses are subsidiaries and which are not? From there, we will look for common ground in identification of issues that may result from the current regulatory structure where subsidiaries are not regulated. The group will then discuss the significance of the issues and whether regulations could assist. A range of solutions will be identified for consideration. If time allows, the group will rank potential solutions in their order of preference.
4. **March 25, 3:30PM. Consensus Meeting.** The group will seek consensus on potential solutions to be presented to the Planning Commission, the Small Business Commission, and the Board of Supervisors. Prior to the meeting, Planning Staff will draft and distribute the ideas from the previous meeting to all members of the group. The consensus meeting may result in the recommendation of a preferred approach, or if consensus is not reached, there could be a) an analysis weighing

the pros and cons of 2-3 potential solutions; b) a report discussing the full range of ideas discussed by the group without recommendation; or c) a majority and minority recommendation.

Depending on the results of the meeting, Supervisor Mar and the Planning Department may take additional actions. Supervisor Mar may draft a preferred alternative into legislation for consideration by the Commissions. Similarly, the Planning Department may prepare analysis for the Planning Commission.

5. **April T.B.A. Commission Hearings.**

Both the Planning Commission and the Small Business Commission will hold a hearing on the recommendations of the working group. If Supervisor Mar has prepared companion legislation, that would be reviewed at the same hearing.

6. **May T.B.A. Board of Supervisor Hearings.**

The Board's Land Use Committee will hold a hearing on the recommendations of the working group, the Planning Commission, and the Small Business Commission.