



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Policy Discussion and Initiation of Planning Code Text Changes

HEARING DATE: MAY 22, 2014

*Project Name:* **Formula Retail and Large Controls**  
*Case Number:* **2013.0936UT**  
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### Proposed Policy Changes and Planning Code Amendments

#### The Way It Is Now:

**Definition:** The Planning Code includes an identical definition of "Formula Retail"<sup>1</sup> in three locations: Section 303(i)(1), 703.3, and 803.6(c). The definition of formula retail hinges on the following 2 characterizations:

1. **Number of Establishments:** The Planning Code defines a formula retail use as retail sales activity or retail sales establishment with 11 or more other retail sales establishments located in the United States, including leases held<sup>2</sup>.
2. **Features:** A formula retail use 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.

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<sup>1</sup> Formula Retail is defined in Section 703.3 of the Planning Code 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 standardize array of merchandise, a standardized façade, a standardized décor and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark."

<sup>2</sup> On June 19, 2013, the Board of Appeals adopted findings related to Appeal No. 13-030 that set a precedent to consider lease agreements equivalent to brick and mortar store that should count towards the threshold for becoming a formula retailer. <http://www.sfgov3.org/Modules/ShowDocument.aspx?documentID=4949>

3. **Use Category.** In addition, the Planning Code adds the following uses to the definition of retail, for purposes of formula retail regulation. Section 303(i)(2) refines the definition of formula retail to include the following specific retail uses:
- Bars (defined in Section 790.22);
  - Drive-Up Facilities (Section 790.30);
  - Eating and Drinking Use, Take Out Food, Limited Restaurants, and Restaurants (Sections 790.34, 790.122, 790.90 and 790.91);
  - Liquor Stores (Section 790.55);
  - Sales and Service, Retail (Section 790.104);
  - Financial Service (Section 790.110);
  - Movie Theatre, Amusement & Game Arcade (Sections 790.64 and 790.4), and
  - Trade Shop (Section 790.14)<sup>3</sup>

The formula retail controls described in Articles 7 and 8 refer to Section 303(i)(2) for the above listed uses. The exception to this list is “Trade Shop”, a use defined in Section 790.124, which is only subject to the formula retail controls when proposed in the Taraval Street NCD, Noriega Street NCD and the Irving Street NCD.<sup>4</sup>

**Zoning Districts that Control Formula Retail.** Retail uses that fall into the category of formula retail, as described above, may be permitted, prohibited, or may require Conditional Use authorization, depending on the zoning district in which the use is proposed. In addition, there are specific controls or combinations of controls that apply only in certain districts.

Controls for formula retail uses are summarized in Figure 1 and Table 1, which show that formula retail uses typically require Conditional Use authorization in NC districts, are generally not permitted in residential districts<sup>5</sup> and are permitted in downtown and South of Market industrial districts. Formula retail is subject to the same controls as all commercial uses in residential zoning districts.

Within a number of zoning districts, however, formula retail controls are further refined and differ from the basic uses and controls that apply to formula retail, as shown in the “Specific Restrictions” column of Table 1. These controls have typically been added in response to concern regarding over-concentration of certain uses, perceived threats to independent business and the related threat of neighborhood homogenization, or the impacts to neighborhood character caused

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<sup>3</sup> Trade Shops are only defined as Formula Retail uses in Taraval Street NCD, Noriega Street NCD and Irving Street NCD.

<sup>4</sup> Section 790.124 defines Trade Shop as: “A retail use which provides custom crafted goods and/or services for sale directly to the consumer, reserving some storefront space for display and retail service for the goods being produced on site...” includes: repair or personal apparel, accessories, household goods, appliances, furniture and similar items, but excluding repair of motor vehicles and structures; upholstery services; carpentry; building, plumbing, electrical, painting, roofing, furnace or pest control contractors; printing of a minor processing nature; tailoring; and other artisan craft uses, including fine arts uses.

<sup>5</sup> Planning Code Section 209.8 prohibits commercial establishments in R Districts, with the exception of Limited Corner Commercial Uses in RTO Districts (Section 231). Commercial establishments are permitted in RC-3 and RC-4 Zoning Districts.

by large use sizes within geographic area. Examples of these specific controls include the stipulation that Trade Shops (defined in Section 790.124) are subject to formula retail controls in certain NC districts in the Sunset, and that Pet Supply stores are subject to the controls on Geary Boulevard – a district that does not restrict many other uses categorized as formula retail.

**Table 1. Summary of Existing Specific Formula Retail Controls Applicable in Individual Zoning Districts**

<b>Zoning District</b>	<b>Underlying formula retail Control</b>	<b>Specific Restriction</b>
<b>Upper Fillmore NCD</b>	Conditional Use	Formula retail Restaurants and Limited Restaurants not permitted
<b>Broadway NCD</b>	Conditional Use	Formula retail Restaurants and Limited Restaurants not permitted
<b>Mission Street formula retail Restaurant SUD</b>	Conditional Use	Formula retail Restaurants and Limited Restaurants not permitted
<b>Taraval Street Restaurant SUD</b>	Conditional Use	Formula retail Restaurants and Limited Restaurants not permitted
<b>Geary Boulevard formula retail Pet Store and Restaurant SUD</b>	Permitted	Formula retail Pet Supply Store not permitted; Formula retail Restaurants and Limited Restaurants not permitted
<b>Taraval Street NCD</b>	Conditional Use	Trade Shops are subject to formula retail controls
<b>Noriega Street NCD</b>	Conditional Use	Trade Shops are subject to formula retail controls
<b>Irving Street NCD</b>	Conditional Use	Trade Shops are subject to formula retail controls
<b>WSoMa Mixed-Use Office District (WMUO)</b>	Conditional Use	Formula retail not permitted if use is over 25,000 square feet
<b>Service/Arts/Light Industrial District (SALI)</b>	Conditional Use	Formula retail not permitted if use is over 25,000 square feet
<b>Upper Market NCT</b>	Conditional Use	CU required for Limited Financial Services and Business or Professional Services (18-month interim control)
<b>Central Market Area</b>	Permitted	CU required for formula retail fronting on Market Street between 6th and Van Ness (18-month interim control)
<b>Bayshore Boulevard Home Improvement SUD</b>	Permitted	formula retail over 10,000 square feet requires CU
<b>Third Street Formula Retail RUD</b>	Mixed zoning: in some zoning districts within this SUD formula retail requires CU and in some districts formula retail is permitted.	Any new formula retail requires CU
<b>Potrero Center Mixed-Use SUD</b>	Conditional Use	Relieves formula retail requirements for parcels which would otherwise require a CU





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**Conditional Use Criteria.** When hearing a request for CU authorization for a formula retail use, Section 303(i)(3) outlines the following five criteria the Commission is required to consider in addition to the standard Conditional Use criteria set forth in Section 303(c):

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.

**Changes of Use.** Planning Code Section 303(i)(7) requires that a change of use from one formula retail use to another formula retail use requires a new Conditional Use authorization. In addition, a new Conditional Use authorization is required when the use remains the same, but the operator changes, except if the new retailer meets the following two criteria:

1. Where the formula use establishment remains the same size, function and with the same merchandise, and
2. Where the change in the formula retail operator is the result of the "business being purchased by another formula retail operator who will retain all components of the existing retailer, including but not limited to signage for the premises, the name of the premises and the general merchandise offered on the premises."

When the exceptions apply and no new Conditional Use authorization is required, all conditions of approval that were imposed with the first authorization remain associated with the entitlement.

**Large-Scale Retail Uses.** Planning Code Section 121.6 establishes controls for large-scale retail uses as follows:

- All districts, except the C-3: require Conditional Use authorization for any retail use between 50,000- 120,000sf. Retail uses above 120,000 sf is prohibited.
- C-3 District: require Conditional Use authorization for any retail use over 120,000sf. In addition, the establishment of a single retail use in excess of 120,000 gross square feet in a C-3 Zoning District shall be prohibited if it would sell groceries; contain more than 20,000 Stockkeeping Units (SKUs); and devote more than five percent (5%) of its total sales floor area to the sale of non-taxable merchandise.

When the Commission considers such large-scale retail uses, Section 303(j) provides that in addition to the standard CU criteria, the Commission shall also consider:

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1. The extent to which the retail use's parking is planned in a manner that creates or maintains active street frontage patterns;
2. The extent to which the retail use is a component of a mixed-use project or is designed in a manner that encourages mixed-use building opportunities;
3. The shift in traffic patterns that may result from drawing traffic to the location of the proposed use; and
4. The impact that the employees at the proposed use will have on the demand in the City for housing, public transit, childcare, and other social services.

### The Way It Would Be:

The Planning Department is proposing that the Commission consider the following changes to formula retail controls.

1. **Refine the definition of formula retail, while maintaining a balance.**
  - A. **Numerical Threshold and Definition.** Increase numerical threshold and broaden definition to include more uses and businesses.
  - B. **Location of Establishments.** Expand the definition of formula retail by including international locations and entitled locations.
  - C. **Use Categories.** Expand the definition of formula retail to include the following uses as formula retail uses:
    1. Limited Financial Service
    2. Fringe Financial Service
    3. Business and Professional Service
2. **Expand formula retail controls to areas of concern**
  - A. **Require Conditional Use authorization for formula retail establishments with frontage on Market Street between 6<sup>th</sup> Street and the intersection of Franklin Street, 12<sup>th</sup> Street and Market Street, in the C-3-G District.** Permanent controls to replace the existing interim controls on this portion of Market Street regarding specific formula retail uses.<sup>6</sup>
3. **Focus review on issues of most importance to residents.**
  - A. **Strengthen review criteria and process for new formula retail in districts with controls.** The existing Code provides a loose framework for formula retail review that has been applied inconsistently. Adopt Performance-Based Review Standards as directed by the Code.
  - B. **Look more closely at Super Stores.** Require an economic impact statement to evaluate large-scale retail uses.
4. **Create a Performance-Based Formula Retail Administrative Review for less impactful formula retail.** Allow a focused review process for changes of formula retail to formula

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<sup>6</sup> Resolution Number 305-13 [Board File No. 130712] is available online: <https://sfgov.legistar.com/View.ashx?M=F&ID=2588632&GUID=63B9534F-8427-400B-A2FF-A17A25081C23>

retail; where aesthetic impacts are minimized; there is no change of use category or size of use; and the project is not controversial. After public notice, when controversy arises, provide for a full formula retail review by the Planning Commission at a public hearing.

5. **Small Business Support.** Small businesses contribute significantly to the unique neighborhood character of each district. The Department recommends further outreach and education by OWED to maximize utilization of their programs to support neighborhood serving businesses.

## BACKGROUND

In 2004, the Board of Supervisors adopted San Francisco's first formula retail controls, which added Section 703.3 ("Formula Retail Uses") to the Planning Code to provide both a definition of formula retail and a regulatory framework that intended, based on the findings outlined in the Ordinance, to protect a "diverse base with distinct neighborhood retailing personalities comprised of a mix of businesses."<sup>7</sup> The Ordinance established the existing definition for formula retail as a "type of retail sales activity or retail sales establishment which, along with eleven or more other retail sales establishments, 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."<sup>8</sup> The Ordinance required Neighborhood Notification pursuant to Planning Code Section 312 for formula retail uses, Conditional Use (CU) Authorization for specific area of Cole and Carl Streets and Parnassus and Sanyan Streets and a prohibition on formula retail in the Hayes-Gough Neighborhood Commercial District.

The 2004 Ordinance established a precedent for formula retail controls; a number of amendments in quick succession added districts in which formula retail uses require CU authorization.

In 2005:

- Amendments added the requirement for a CU for formula retail uses in the Haight Street NCD and the NC-2 District along Divisadero Street between Haight and Turk Streets<sup>9</sup>.
- Amendment added a prohibition on formula retail uses in the North Beach NCD<sup>10</sup>.

In 2006:

- Amendment added formula retail CU controls to the Japantown Special Use District (SUD)<sup>11</sup>.

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<sup>7</sup> Ordinance Number 62-04, Board File 031501, available on-line at: <https://sfgov.legistar.com/LegislationDetail.aspx?ID=473759&GUID=A83D3A84-B457-4B93-BCF5-11058DDA5598&Options=ID|Text|&Search=62-04> (March 20, 2014).

<sup>8</sup> Planning Code Section 703.3(b)

<sup>9</sup> Ordinance Nos. 8-05 (Haight Street) and 173-05 (Divisadero Street) Available online at: <http://sfgov.legistar.com/Legislation.aspx>.

<sup>10</sup> Ordinance No. 65-05, available online at: <http://sfgov.legistar.com/Legislation.aspx>.



- Planning Code Section 803.6 was added to the Planning Code, requiring CU authorization for formula retail uses in the Western SoMa Planning Area SUD.<sup>12</sup>

In 2007:

- San Francisco voters approved Proposition G, the “Small Business Protection Act” which amended the Planning Code by adding Section 703.4 required CU authorization for formula retail uses (as defined in the Code) proposed in any NCD.<sup>13</sup> Proposition G also noted that nothing precluded the Board of Supervisors from “adopting more restrictive provisions for conditional use authorization of formula retail use or prohibiting formula retail use in any Neighborhood Commercial District.”

In 2012:

- The Planning Code was amended to include “Financial Services” as a use type subject to formula retail controls<sup>14</sup>.

There have been a number of recently enacted policy and legislative changes to formula retail controls which can be reviewed in Table 2.

On April 11, 2013, the Planning Commission adopted Resolution Number 18843, which set forth a policy that provides the first quantitative measure for concentration in the Upper Market Neighborhood<sup>15</sup>. This Resolution established a formula for calculating the visual impacts of formula retail uses on a street frontage and determined that if the concentration of formula retail linear frontage is greater than or equal to 20 percent of the total linear frontage of all parcels located within 300 feet of the subject property and also zoned neighborhood commercial, the Planning Department staff shall recommend disapproval.

On June 13, 2013, then-Planning Commission President Fong directed staff to review and analyze planning controls for formula retail uses in San Francisco due to the numerous pending proposals to change these controls.

On June 19, 2013, the Board of Appeals ruled that if a company has signed a lease for a location (even if the location is not yet occupied) those leases count toward the 11 establishments needed

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<sup>11</sup> Ordinance No. 180-06, available online at: <http://sfgov.legistar.com/Legislation.aspx>.

<sup>12</sup> Ordinance No. 204-06. Available online at: <http://sfgov.legistar.com/Legislation.aspx>.

<sup>13</sup> The text of the Proposition, as well as arguments for (drafted by then-Supervisors Peskin, Sandavol, Ammiano, Daly, Mirkarimi, Gonzalez and the nonprofit San Francisco Tomorrow) and against (draft by then-Supervisors Elsbernd and Alioto-Pier) are available online here: <http://smartvoter.org/2006/11/07/ca/sf/meas/G> (March 20, 2014)

<sup>14</sup> Ordinance No. 0106-12

<sup>15</sup> The Upper Market Neighborhood is defined in the Resolution as Market Street from Octavia Boulevard to Castro Street. The Resolution is available online at: [http://www.sf-planning.org/ftp/files/legislative\\_changes/form\\_retail/formretail\\_18843.pdf](http://www.sf-planning.org/ftp/files/legislative_changes/form_retail/formretail_18843.pdf)



to be considered formula retail<sup>16</sup>. The Board discussed, but did not act on, web-based establishments.

On June 25, 2013 Supervisor Weiner's ordinance amended the Department of Public Works Code to restrict food trucks that are associated with formula retail establishments in the public right-of-way<sup>17</sup>. 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.

On August 7, 2013 Supervisor Kim's Interim Controls for retailers with frontage on a stretch of Market Street were enacted. This Resolution imposed interim zoning controls requiring Conditional Use authorization for certain formula retail uses, as defined, on Market Street, from 6<sup>th</sup> Street to Van Ness Avenue until February 2015<sup>18</sup>. This resolution expanded formula retail controls to include fringe financial services within the interim control area.

**Table 2: Summary of Recent, Proposed and Interim Changes to Formula Retail Controls**

Legislative or Policy Change	Type of Action	Status
<b>Modifies the definition of formula retail in the Upper Fillmore Neighborhood Commercial District</b> to include retail with 11 or more establishments anywhere in the world, and establishments where 50% or more of stock, shares, etc. are owned by a formula retail use.	BOS Ordinance (Farrell)	Pending Committee Action
<b>Establishes the Fillmore Street Neighborhood Commercial District</b> between Bush and McAllister Streets. The proposal seeks to weight the community voice over other considerations, generally weight the hearing toward disapproval, legislate a requirement for pre-application meeting (which is already Planning Commission policy), and codify criteria for approval related to the concentration of existing formula retail.	BOS Ordinance (Breed)	Referred to Planning Department; Planning Commission recommended further study
<b>Establishes the Divisadero Street Neighborhood Commercial District</b> between Haight and O'Farrell Streets. The proposal seeks to weight the community voice over other considerations, generally weight the hearing toward disapproval, legislate a requirement for pre-application meeting (which is already Planning Commission policy), and codify criteria for approval related to the concentration of existing formula retail.	BOS Ordinance (Breed)	Referred to Planning Department; Planning Commission recommended further study

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<sup>16</sup> Appeal No. 13-030 is available online at

<http://www.sfgov3.org/Modules/ShowDocument.aspx?documentID=4949>

<sup>17</sup> Board File No. 120193 is available online at

<https://sfgov.legistar.com/View.ashx?M=F&ID=2557049&GUID=5250C736-26C0-40EF-B103-4321F058992C>

<sup>18</sup> Resolution Number 305-13 [Board File No. 130712] is available online:

<https://sfgov.legistar.com/View.ashx?M=F&ID=2588632&GUID=63B9534F-8427-400B-A2FF-A17A25081C23>

<b>Created 18-month interim controls on Market Street</b> between Sixth Street and Van Ness Avenue (the Central Market area). A conditional use authorization is required for any formula retail fronting on Market Street in this area.	BOS Ordinance (Kim)	Enacted Expires Feb 2015
<b>Modifies the definition of formula retail in the Hayes-Gough Neighborhood Commercial Transit District</b> to include retail with 11 or more establishments anywhere in the world, and establishments where 50% or more of stock, shares, etc. are owned by a formula retail use.	BOS Ordinance (Breed)	Referred to Planning Department; Planning Commission recommended further study
<b>Third Street Formula Retail Restricted Use District (RUD)</b> modifies the zoning controls on Third Street and expands the applicability of Formula Retail controls citywide. This mixed-use district had some parcels where CU was not required for FR. Now all parcels in this RUD require CU for the establishment of CU. Certain changes to existing entitled FR locations citywide now trigger the need for a new CU hearing.	BOS Ordinance (Cohen)	Enacted
<b>Fulton Grocery Special Use District (SUD).</b> The Planning Commission recently recommended this SUD, which would create an exception to the current prohibition on Formula Retail in the Hayes Gough NCT so as to allow the Commission to consider a Formula Retail grocer by CU.	BOS Ordinance (Breed)	Pending Committee Action on FR change
<b>Expands the Citywide definition of formula retail</b> to include businesses that have 11 or more outlets worldwide, and to include businesses that are at least 50% owned by a formula retail business; expands application to other types of retail uses (e.g., "Adult Entertainment," "Automobile Service Station," "Hotel, Tourist," "Tobacco Paraphernalia Establishment"); requires the Planning Commission to consider economic impact on other businesses in the area as part of the CU process; expands noticing procedures for formula retail applications.	BOS Ordinance (Mar)	Pending Committee Action
<b>Creates the first quantitative basis for evaluating concentration of formula retail in the Upper Market Neighborhood Commercial District and Neighborhood Commercial Transit District.</b> Planning Department staff will recommend disapproval of any project that brings the concentration of formula retail within 300 feet of the subject property to 20% or greater of total linear store frontage.	Planning Commission Policy	Adopted
<b>Board of Appeals ruling.</b> Established that if a company has signed a lease for a location (even if the location is not yet occupied), the lease counts towards the 11 establishments needed to be considered formula retail.	Board of Appeals ruling	
<b>Amended the Department of Public Works code to restrict food trucks that are associated with formula retail establishments.</b> 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.	BOS Ordinance (Wiener)	Passed

Acronyms:

BOS: Board of Supervisors

CU: Conditional Use authorization

N/A: Not Applicable

## ISSUES AND CONCERNS

Formula Retail controls began in selected areas in 2004 and were adopted citywide as the Small Business Protection Act in 2006<sup>19</sup>. Now that the Department and the Commission have had 10 years of experience applying the formula retail controls and with benefit of the recent local studies, we can review the original intentions of the Act and evaluate their current and future applicability. It seems many of the concerns originally identified by the voters remain relevant in today's discussion. From the focus groups and public hearings this year, it seems the primary concerns with formula retail include 1) a displacement of critical goods and services to meet daily needs within the neighborhood; 2) a homogenization of the neighborhood's aesthetic; and 3) that formula retailers be of less economic benefit than nonformula retailers. These expressed concerns are amplified as the use size of the formula retailer increases. The issues and potential impacts are subjective. As such, the Conditional Use process provides the best remedy as this process allows for case by case analysis and the discretion of the Commission. Our department's core findings are that the existing conditional use process is working and can be adjusted to better serve the residents.

San Francisco's retail brokers completed a study of 28 neighborhood commercial streets in early 2014 and found that successful retail districts include the characteristics described below. All of these characteristics were further emphasized in similar studies conducted by the Office of Economic Analysis, the Planning Department and San Francisco Budget and Legislative Analyst.

- Massing: two blocks of shops have greater potential to become a popular shopping destination than two stores on a residential street;
- Tenant Mix: the healthiest and most viable retail environments offer a mix of retailers who vary in size; offerings; and date of conventional and cutting edge, established and newly established;
- Visibility: particularly if a store is on a corner, will impact whether shoppers will visit and increase the perceived presence of the establishment in the neighborhood;<sup>20</sup>

**Importance of Distinct & Diverse Neighborhoods to the City.** The Office of Economic Analysis (OEA) report "Expanding Formula Retail Controls: Economic Impact Report" (hereinafter "The OEA Report") found that formula retail controls may have an effect on the City's economy, through their effect on the City's neighborhoods. Proposition G was passed by a wide majority and can be read as evidence that many residents do not favor the unrestricted growth of formula retail in their neighborhoods. The OEA Report's analysis of the Bay Area housing market suggests that San Francisco residents pay a premium to live in the City and neighborhood quality

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<sup>19</sup> Proposition G, added 11/7/2006

<sup>20</sup> Formula Retail Mapping Project, Colliers International, 2014 [http://www.sf-planning.org/ftp/files/legislative\\_changes/form\\_retail/formretail\\_BOS\\_brokers\\_study\\_Formula\\_Retail\\_Final.pdf](http://www.sf-planning.org/ftp/files/legislative_changes/form_retail/formretail_BOS_brokers_study_Formula_Retail_Final.pdf)

is included in the price of housing. However, the OEA is unable to quantify the impact of the presence of formula retailers on this neighborhood premium, if any. Consequently, the OEA Report recommends that the impact of formula retailers on neighborhood quality be weighed by directing the Commission to consider both the opinions of neighborhood residents and whether a proposed store could prevent “blight”<sup>21</sup>.

As the center of neighborhood activity and through the shared use of commercial facilities, the commercial street plays the vital sociological role of linking neighborhood residents to one another and to the neighborhood.<sup>22</sup> Indeed, the orientation and development of a commercial street is a significant factor in determining a successful and interesting neighborhood.<sup>23</sup> The commercial street is perhaps the greatest source of vitality and character of a city neighborhood.<sup>24</sup> Neighborhood character is intimately related to a variety of commercial uses, and leads to broader diversity as Jane Jacobs observed in *The Death and Life of Great American Cities*:

*Whenever we find a city district with an exuberant variety and plenty of commerce, we are apt to find that it contains a good many kinds of diversity also, including variety of its population and other uses. This is more than a coincidence. The same physical and economic conditions that generate diverse commerce are intimately related to the production, or the presence of other kinds of city variety.*<sup>25</sup>

According to recommendations made by the Planning Commission in September 1980 to the Board of Supervisors, the importance of the sociological function a locally-oriented commercial street performs was recognized<sup>26</sup>. The Neighborhood Commercial Rezoning Study found that such character and orientation should be preserved and encouraged.<sup>27</sup> The recommendations put forth by the Planning Department today seek to continue working toward the ideal balance of commercial diversity to create and maintain unique neighborhoods as they evolve.

**Small Businesses.** Existing formula retail controls generally consider the neighborhood impacts when formula retailers locate in San Francisco neighborhoods. However, if the City also wants to protect the small business sector, there should be a focus on supporting small businesses to make

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<sup>21</sup> Expanding Formula Retail Controls: Economic Impact Report, Office of Economic Analysis, February 12, 2014, Pages 20 and 28.

<sup>22</sup> Suzanne Keller, *The Urban Neighborhood: A Sociological Perspective* 1968, page 103.

<sup>23</sup> Mark Cohen, San Francisco’s Neighborhood Commercial Special Use District Ordinance: An Innovative Approach to Commercial Gentrification, *Golden Gate University Law Review*, Vol. 13, Issue 2, September 3, 2010, Page 367 <http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1300&context=ggulrev>

<sup>24</sup> Jane Jacobs, *The Death and Life of Great American Cities* (1961) page 148

<sup>25</sup> Jane Jacobs, *The Death and Life of Great American Cities*, (1961), page 148.

<sup>26</sup> San Francisco Board of Supervisors Res. 432-80, 451-80 through 457-80 (1980).

<sup>27</sup> San Francisco Dept. of City Planning, *Neighborhood Commercial Rezoning Study: Proposed Article of the Planning Code for Neighborhood Commercial Districts* (January 1983); Department of City Planning, City and County of San Francisco, *Memorandum to Dean Marcris* (March 7, 1983).

them more competitive rather than hindering formula retailers. Through the process of developing the “San Francisco Formula Retail Economic Analysis” (The Department’s Study), 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 Department’s Study found that landlords often perceive a benefit in renting to large established chains, which typically have better credit and can sign longer leases than independent retailers, lowering the risk that the tenant will be unable to pay its rent<sup>28</sup>. Conversely, the formula retail Conditional Use process may create a disincentive for formula retailers to be located in areas with controls.

**Economic Viability.** Small businesses have raised concerns that formula retailers are willing and able to pay higher rents than independent retailers, contributing to rapidly rising rents in the City’s NCDs. Stakeholders have also raised concerns that some landlords prefer formula retailers or other established brands over independent retailers<sup>29</sup>.

The development conditions and constraints of small infill sites may be one explanation. In terms of redevelopment potential, some vacant retail buildings that are too big for independent retailers are located on parcels that are too small to support enough residential units to justify the expense of demolition and new construction. Vacant retail buildings may present other challenges for redevelopment, based on location, adjacent uses, historical preservation and cost.

Department policy encourages mixed use developments, with ground floor retail and housing above. In Neighborhood Commercial Districts where height limits typically only allows 4 stories, the ground floor retail space accounts for a quarter of the entire development. For these projects, developers report difficulty in securing financing from a bank without a stable, known tenant. Developers must secure financing partners and lenders who want the stability of a commercial tenant with a strong credit rating and branding and name recognition. San Francisco developers prefer to have a mix of commercial tenants (both independent and formula retailers), however the credibility of the formula retailer is what provides confidence for the lender. Formula retailers will typically be better equipped to sign long term leases and can provide the stability and activation that lenders look for<sup>30</sup>. In addition, formula retailers often serve as an anchor to energize a new development and bring foot traffic to a redevelopment area<sup>31</sup>. Sophisticated developers recognize that part of what makes San Francisco a desirable place to live is the

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<sup>28</sup> Strategic Economics, “San Francisco Formula Retail Economic Analysis”, prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 64.

<sup>29</sup> Strategic Economics, “San Francisco Formula Retail Economic Analysis”, prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 64.

<sup>30</sup> Planning Department and OEWD Developer Roundtable, March 28, 2014

<sup>31</sup> Strategic Economics, “San Francisco Formula Retail Economic Analysis”, prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 27.

unique nature of its neighborhoods and seek to find a balance between formula retailers that can activate a neighborhood, energize lenders and anchor independent retailers to create a thriving district.

**Changing Nature of Retail.** As San Francisco continues to grow, underutilized parcels redeveloped as mixed use developments increase the amount of available commercial space<sup>32</sup>. As of 2012, 26 percent of the 55,471 establishments in San Francisco were retail establishments<sup>33</sup>. Commercial uses occupy 17 percent of the City's 46.9 square miles of land area and mixed uses occupy an additional seven percent (7%)<sup>34</sup>. Combined with the increasing amount of commercial space, residents express concern over the long-term commercial vacancies in some NCDs, as evidenced by the request of Supervisor Mar's office to prepare a policy analysis report on preventing and filling commercial vacancies. The Budget and Legislative Analyst report on commercial vacancies found that some reasons for commercial vacancies include building owners that purposely keep their retail space vacant to avoid investment and/or speculate that rents will increase significantly in the near future, absentee landlords who are less fervent about keeping their property occupied and large formula retail establishments resulting in the closure of nearby small non-formula retail establishments<sup>35</sup>.

Real estate brokers report that the formula retail controls make it more difficult to fill vacancies, particularly of large spaces (more than 3,000 square feet). Cities across the country are finding it increasingly difficult to fill retail space with retail stores (i.e. businesses selling goods directly to consumers) as the number of potential retail tenants has shrunk due to competition with e-commerce and the consolidation of national retail brands<sup>36</sup>. As consumers seek an experience rather than a specific product, real estate professionals note a nationwide shift toward retail uses that do not compete directly with online sales<sup>37</sup>. Uses which may be appropriate in retail spaces include eating and drinking uses, grocery stores, personal services, financial advising, automotive services and dry cleaners.<sup>38</sup>

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<sup>32</sup> San Francisco is not alone in this trend. Nationwide the amount of retail space per person is increasing.

<sup>33</sup> San Francisco Planning Department, Commerce and Industry Inventory, 2012, Page 18.

<sup>34</sup> San Francisco Planning Department, Commerce and Industry Inventory, 2012, Page 20.

<sup>35</sup> San Francisco Budget and Legislative Analyst, "Preventing and Filling Commercial Vacancies in San Francisco," August 20, 2013.

<sup>36</sup> Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 11.

<sup>37</sup> ChainLinks Retail Advisors, Fall/Winter 2013 Retail Review and Forecast.

<sup>38</sup> Stakeholders have expressed concern over e-commerce grocery services such as Amazon Fresh and Google Express. However, both of these services shop at local stores in many instances and make brick and mortar supplied specialty products delivery available through their websites. Amazon Fresh does maintain its own grocery distribution centers which compete directly with brick and mortar grocers.

The Department's Study's review of the Ocean Avenue NCT found that the total number of stores reporting sales tax revenues declined from 62 in 2002 to 47 in 2013. The overall decline in stores may be linked to national trends including e-commerce competition and the consolidation of national retail brands. Traditional retail spaces across the country are increasingly being filled with service-oriented uses such as personal, financial and medical service uses<sup>39</sup>. These findings indicate that service-oriented uses play an important role in both filling vacancies and meeting the daily needs of neighborhood residents.

**Daily Needs Serving Uses.** Neighborhood Commercial Districts are intended to serve the daily needs of residents living in the immediate neighborhood. The Department's Study found that formula retail can often serve the function of meeting daily needs; however, some Districts report loss of daily needs uses due to an inundation of formula retailers that target larger citywide or regional audiences. The City strives to ensure that goods and services that residents need for daily living are available within an easy walking distance and at an affordable price. These establishments include: corner markets and grocery stores, cafés and limited restaurants, drug stores and pharmacies, hardware and general variety stores, dry cleaners and laundry facilities, banking and financial institutions, personal services and some trade shops such as those that provide tailoring, alterations, shoe repair and furniture repair.

Establishments that serve daily needs and those that are considered formula retail are neither mutually exclusive nor overlapping categories. For example, banks and financial institutions are subject to formula retail controls; however, most people value having a bank within walking distance of their residence and workplace. Pharmacies and drug stores also tend to predominantly be formula retailers but are a desired use in NCDs. Pharmacies, grocery stores, banks and other uses that serve residents' daily needs account for much of the formula retail in NCDs and other mixed use districts with formula retail controls in place<sup>40</sup>.

**Retail Clusters.** Comparison goods are products like clothes, shoes, furniture and cars. They are items shoppers like to test and compare before purchasing. Comparison retailers, such as apparel

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([https://fresh.amazon.com/Category?cat=spotlight&appendmp=true&pf\\_rd\\_s=center-5&pf\\_rd\\_p=1808047122&pf\\_rd\\_t=101&pf\\_rd\\_i=1&pf\\_rd\\_r=15QK7R6BD56K84GC450Y](https://fresh.amazon.com/Category?cat=spotlight&appendmp=true&pf_rd_s=center-5&pf_rd_p=1808047122&pf_rd_t=101&pf_rd_i=1&pf_rd_r=15QK7R6BD56K84GC450Y);  
<http://online.wsj.com/news/articles/SB10001424127887324798904578526820771744676>;  
<https://www.google.com/shopping/express/?gclid=CLiu2r2HrL4CFQGTfgodJEgAZA#HomePlace:s=0&c=24&mall=SanFrancisco>)

<sup>39</sup> Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 94.

<sup>40</sup> Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 26.



and accessories stores, are especially likely to cluster together in concentrated nodes. Comparison retailers are particularly likely to benefit from co-locating with similar retailers in destinations where shoppers can walk from store to store. We see this trend not only in the Downtown and Union Square area but also in some Neighborhood Commercial Districts like the Upper Fillmore and Hayes Valley. These retail clusters can provide convenience to shoppers and help to create a neighborhood identity.

At the same time, there is growing concern that such clusters, both formula and independent, are increasingly serving a luxury or high-end market and may be displacing businesses that serve residents' daily needs. Stakeholders, including people from both the Upper Fillmore and Hayes Valley neighborhoods, have observed that long-standing retail uses that once provided affordable goods and services to serve daily needs are being replaced by stores that predominantly sell jewelry, clothing shoes and furniture – items that most households purchase only occasionally<sup>41</sup>. The shift towards higher-end, comparison shopping stores may in part reflect a regional and national decline in consumer demand from the middle class, accompanied by strong growth in retail sectors serving either the most affluent households or struggling low-income households<sup>42</sup>.

**Expanding Use Types.** Business and professional services such as tax preparation firms, realtors and insurance agencies offer a retail sale or service and making them subject to formula retail controls would be consistent with the spirit and intent of the Act. Independent business and professional services account for approximately 95 percent of existing business and professional services in San Francisco. The remaining five percent bear the hallmarks of formula retail uses with standardized signage, décor and services<sup>43</sup>.

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<sup>41</sup> Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 11.

<sup>42</sup> Nelson D. Schwartz, "The Middle Class is Steadily Eroding. Just Ask the Business World", The New York Times. February 2, 2014, [www.nytimes.com/2014/02/03/business/the-middle-class-is-steadily-eroding-just-ask-the-business-world.html](http://www.nytimes.com/2014/02/03/business/the-middle-class-is-steadily-eroding-just-ask-the-business-world.html).

<sup>43</sup> Dun & Bradstreet, 2012; Strategic Economics, 2014. Based on Dun & Bradstreet business data that have not been independently verified; all numbers are approximate.



Figure 2: State Farm Insurance offices (Business and Professional Service) nationwide

Gyms are one personal service use in particular that need a larger space than generally available in an NCD and would require a Conditional Use if they proposed merging storefronts in excess of what is principally permitted. While gyms are generally thought of as chains with a large space required (24 Hour Fitness, Equinox and Curves are some examples) there are also smaller (use size) fitness studio chains such as Pop Physique, Soul Cycle and Dailey Method. These smaller personal services uses are more likely to be aesthetically compatible with a NCD due to their use size as well as serve a daily need of residents.

**Parent and Subsidiary Companies.** Some of the pending Ordinances include expanding the definition of formula retail to include subsidiary companies. Subsidiaries are defined as establishments “where 50 percent 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 11 retail sales establishments located anywhere in the world.”<sup>44</sup> The Department’s Study found that expanding the definition to include establishments that are majority-owned by formula retail businesses is also likely to affect a small number of potential new businesses<sup>45</sup>. This proposed policy change is designed to address several recent cases of new or proposed establishments that did not have to go through the formula retail Conditional Use process even though they were owned by formula retailers, such as the Jack Spade store in the Mission (owned by Fifth and Company, the same

<sup>44</sup> Board File No. 130486 Legislative Digest <https://sfgov.legistar.com/View.ashx?M=F&ID=2516654&GU-ID=F9DAA5F2-CDBF-4089-AFAE-3BA772DCADDE>

<sup>45</sup> Strategic Economics, “San Francisco Formula Retail Economic Analysis”, prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 117.

holding company that owns Kate Spade an established formula retailer), and Athleta and Evolution Juice in the Upper Fillmore (owned by The Gap and Starbucks, respectively). However, based on the businesses that are already located in San Francisco, this proposed change is unlikely to have a wide-ranging effect. Citywide, subsidiaries account for only three percent of retail businesses in San Francisco that have 12 or more corporate family members. Most of these would already qualify as formula retail under the existing Planning Code, because they have 12 or more locations of the same trade name in the United States<sup>46</sup>.

The Department believes that San Francisco is an international city that seeks to attract innovative business development<sup>47</sup>. San Francisco is attractive to start ups and experimental services based on its ideal nature of a densely packed city with a high concentration of educated, young, urban professionals and its relationship to the greater Bay Area region<sup>48</sup>. Many established corporations choose San Francisco as one of their primary testing locations for new concepts<sup>49</sup>. Gap Inc. opened its first Athleta store in San Francisco in 2011. There are now over 50 Athleta locations across the country. Starbucks opened its second Evolution Fresh location in San Francisco in 2012 and even today there are only four locations. Starbucks is a Seattle based companies (the three other Evolution Fresh stores are in Washington) with its Evolution Fresh production facility located outside Los Angeles<sup>50</sup>. Black Fleece, a subsidiary of formula retailers Brooks Brothers, opened its second location in San Francisco in 2009. There are still only two Black Fleece locations (the other is in New York City). These concept stores were tested in San Francisco and continue to be successful. At the time of their opening, they did not have standardized features meeting the formula retail definition and with the exception of Athleta, they still do not. Without the standardized features, these businesses do not contribute to the

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<sup>46</sup> Note that because the majority of subsidiaries have at least 12 outlets in the U.S., these businesses were generally considered to be “formula retail” for the purposes of the study.

<sup>47</sup> The Atlantic, “The World’s 26 Best Cities for Business, Life and Innovation” by Derek Thompson published on May 6, 2011 lists San Francisco as the 3<sup>rd</sup> most successful international city, ranked #1 in percent of population with higher education and #2 in entrepreneurial environment and life satisfaction (<http://www.theatlantic.com/business/archive/2011/05/the-worlds-26-best-cities-for-business-life-and-innovation/238436/#slide24>). San Francisco ranked #6 in Price Waterhouse Coopers 2012 analysis of a city’s performance and functionality by evaluating ten indicators across 60 variables to reveal how well-balances a city is for both businesses and residents ([http://www.baruch.cuny.edu/nycdata/world\\_cities/cities-favorable\\_characteristics.htm](http://www.baruch.cuny.edu/nycdata/world_cities/cities-favorable_characteristics.htm)). The Office of Economic and Workforce Development houses an International Trade and Commerce Division to attract new international business (<http://www.oewd.org/International.aspx>).

<sup>48</sup> Mike Elgan, “Why San Francisco Today is Like Every City Tomorrow” September 28, 2013, [http://www.computerworld.com/s/article/9242772/Why\\_San\\_Francisco\\_today\\_is\\_like\\_every\\_city\\_tomorrow](http://www.computerworld.com/s/article/9242772/Why_San_Francisco_today_is_like_every_city_tomorrow)

<sup>49</sup> The New York Times, David Leonhardt, January 23, 2014 [http://www.nytimes.com/2014/01/23/business/upward-mobility-has-not-declined-study-says.html?\\_r=0](http://www.nytimes.com/2014/01/23/business/upward-mobility-has-not-declined-study-says.html?_r=0)

<sup>50</sup> Los Angeles Times, Tiffany Hsu, October 8, 2013 <http://www.latimes.com/business/money/la-fi-mo-starbucks-evolution-fresh-juice-20131008,0,1952256.story#axzz30Trx6E29>

homogenization of a street face and neighborhood. In fact, the businesses are unique and draw people who are attracted to a new concept that can only be found here to the neighborhood

As specialty retailers face more and more competition from fast-fashion and online retailers, spin-off brands have become more ubiquitous. The Ann Taylor brand launched Loft in 1996, J. Crew launched Madwell in 2009 and Kate Spade has Kate Spade Saturday. The spin off brands are intended to capture the interest of younger customers or in some cases retain customers as they age. Spin off brands “give consumers a reason to shop at their physical stores once again with a new brand” and can help to retain brick and mortar retailers<sup>51</sup>.

While generally, subsidiaries are thought of as large established corporations funding a new concept to compete with existing businesses; subsidiary regulations can also affect small business owners. A local business owner, Adriano Paganini, owns 14 restaurants including seven Super Duper Burgers. The remaining restaurants are neighborhood serving unique restaurant concepts including Beretta, Delarosa, Starbelly, Pesce, Lolida and most recently, Uno Dos Tacos. Per Mr. Paganini’s letter to the Board, he prides himself on crafting one-of-a-kind concepts to unique neighborhoods<sup>52</sup>. While Super Duper Burgers is not currently a formula retail use, it is on its way to becoming one if more than 11 locations open. If the definition of formula retail is expanded to include subsidiaries, all restaurants that Mr. Paganini owns more than 50 percent of may be considered formula retail establishments (after Super Duper Burgers reached 11 locations) and any new restaurant concepts would be subject to Conditional Use authorization. If Mr. Paganini wished to open a clothing store it would also be considered formula retail because he also owns at least 50 percent of a formula retail chain.

Including subsidiaries is not only counter intuitive to small business growth and active neighborhood commercial districts; but also it would be extremely challenging to apply consistently. The formula retail evaluation process would require applicants to complete an affidavit certifying that the proposed business is not 50 percent or more owned by a company that also owns a formula retail use. In order to evaluate the application, the Department would need to evaluate the concentration of formula retail existing within the district. To truly assess these existing levels, it seems the Department should confirm that the ownership of all of the other retail sales and service establishments. The Planning Department would only investigate and verify these statements based on complaints. The Department would not be able to verify ownership stakes in companies that are not publically traded. Including subsidiaries would mostly affect large corporations whose ownership structures are subject to change at any time.

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<sup>51</sup> Fashionista, Lauren Sherman, March 26, 2014 “Spin-Off Brands Are on the Rise” <http://fashionista.com/2014/03/the-rise-of-spin-off-brand#awesm=~oD1KVicGqViv3I>

<sup>52</sup> Adriano Paganini, Letter to the Board of Supervisor (Attached in Public Comments)

When Jack Spade was trying to open in the Mission it was owned by Liz Claiborne Inc., which also owned Kate Spade. In February 2014 the ownership company was known as Fifth and Pacific Companies and is now known as Kate Spade & Company. Fifth and Pacific Companies is not a formula retailer, so again, the proposed definition to capture subsidiaries would not capture Jack Spade as it's owning corporation is not a formula retailer. Further, these large corporations regularly change names, ownership structures and buy and sell subsidiaries. Corporations could easily create separate holding companies to avoid formula retail controls.

The very definition of "formula retail" requires standardized features that make a use a "formula" use. In this case, the effort to include subsidiaries seems to conflict with the defining characteristics of the use. Further review of a proposed formula retail use is identifying the concentration of formula retail uses within a given area. However, because Staff cannot review every potential business to determine their ownership structure, this concentration number would not be accurate. The proposed use would be considered formula retail by one part of the definition (ownership and financing) while the other uses in the area would be considered formula retail by another part of the definition (number of locations and standardized features). Expanding the formula retail definition to include subsidiaries is not recommended as it would constrain business development and innovation, be inconsistently applied and further complicate an existing process with minimal, if any, benefit.

**Recirculation of Local Dollars.** Often called the "multiplier effect", recirculation describes higher spending by local, non-formula retailers, generating positive multiplier effects as dollars circulate throughout the local economy, further expanding both spending and employment. One of the main concerns voiced by the public at both the Commission hearings and stakeholder meetings is that formula retailers do not recirculate tax revenue within the local economy. According to an average of ten studies conducted by Civic Economics, a much cited firm that produces studies comparing independent and formula retailers, spending by independent retailers generated 3.7 times more direct local spending than that of national chains.<sup>53</sup> Studies by this firm indicate that the percentage of revenue returned to the local economy may be as high as 52 percent for local businesses, and 13.6 percent for national chains<sup>54</sup>. When it comes to restaurants, 78.6 percent of independent restaurant revenue is returned to the local economy compared to 30.4 percent of restaurant chains<sup>55</sup>. The OEA Report found that formula retail controls primarily affect the economy by changing the retail prices paid by consumers, the

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<sup>53</sup> The American Independent Business Alliance. "Ten New Studies of the 'Local Economic Premium'". Published October 2012. Retrieved at <http://www.amiba.net/resources/studies-recommended-reading/local-premium> on 5/10/14.

<sup>54</sup> Civic Economics, "Indie Impact Study Series", Summer 2012, retrieved from <http://www.localfirst.org/images/stories/SLC-Final-Impact-Study-Series.pdf>

<sup>55</sup> Civic Economics, "Indie Impact Study Series", Summer 2012, retrieved from <http://www.localfirst.org/images/stories/SLC-Final-Impact-Study-Series.pdf>



amount of local spending by retail businesses, commercial rents and vacancy rates and the perceptions of neighborhood quality. In general, chain stores charge lower prices, but may spend less within the local economy. Research by the Office of Economic Analysis suggests that local retailers may spend up to 9.5 percent more within the local economy than chain stores, but charge prices that average 17 percent more. In stark contrast to the Civic Economic Reports, the OEA Report determined that, on balance, the economic benefits of greater local spending by non-formula retailers are outweighed by higher consumer prices<sup>56</sup>.

**Employment.** The public has voiced concerns about differences in hiring practices and the quality of jobs offered by formula and independent retailers. As gathered from public comment at Planning Commission hearings and focus group meetings, the overwhelming public sentiment is that formula retail in San Francisco is more diverse in hiring practices and more willing to hire workers without experience and provide training. However, it has been difficult to substantiate these experiences with data. Studying employment and job quality factors as they related to formula retail has proved challenging. The Department's Study found relatively few sources that provide data on employment at the local level. The data found was limited by the need to protect the privacy of workers and firms. As a result of these constraints, detailed data on the demographics of workers or part-time versus full-time status are only available at the national level, through sources that do not distinguish between independent and formula retailers. Adding to this challenge, the definition of "formula retail" in our Planning Code is very specific and is neither reflected in the literature on retail employment nor possible to exactly replicate with available data sources.

The Department's Study found that nationally, retail stores and restaurants tend to provide workers with lower wages, more limited benefit coverage and fewer and more irregular work hours compared to other industries. These industries face pressure to compete on low pricing and customer convenience (e.g. to be open long hours and on weekends and holidays).<sup>57</sup> There is also significant variation in pay and job quality within the retail sectors. For example, some firms

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<sup>56</sup> City and County of San Francisco, Office of the Controller, Office of Economic Analysis, "Expanding Formula Retail Controls: Economic Impact Report", February 12, 2014 [http://www.sf-planning.org/ftp/files/legislative\\_changes/form\\_retail/formretail\\_130788\\_economic\\_impact\\_final.pdf](http://www.sf-planning.org/ftp/files/legislative_changes/form_retail/formretail_130788_economic_impact_final.pdf)

<sup>57</sup> Francoise Carre, Chris Tilly and Diana Denham, "Explaining Variation in the Quality of U.S. Retail Jobs" (presented at the Annual Meeting of the Labor and Employment Relations Association, Denver, CO, 2010), <http://www.russellsage.org/sites/all/files/Carre-Tilly-Retail%20job%20quality-LERA-01.03.10-final-rev2.pdf>; Francoise Carré and Chris Tilly, *Short Hours, Long Hours: Hour Levels and Trends in the Retail Industry in the United States, Canada, and Mexico*, Upjohn Institute Working Paper 12-183 (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research., 2012), <http://www.econstor.eu/handle/10419/64322>; Annette D. Bernhardt, *The Future of Low-Wage Jobs: Case Studies in the Retail Industry*, IEE Working Paper (Institute on Education and the Economy, Teachers College, Columbia University, 1999), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.41.885&rep=rep1&type=pdf>.

pay more and provide better benefits to attract better talent, reduce turnover and increase productivity. Examples include many electronics, hardware and high-end clothing stores that compete for customer business based on quality of service and where knowledgeable salespersons are often highly valued. In contrast, other stores put a higher priority on low costs and low prices, and tend to pay lower wages.<sup>58</sup> Walmart is the classic example; workers there earn approximately 12 percent less than other retail workers and 14.5 percent less than workers at large retailers and rely heavily on public programs for health care and other needs.<sup>59</sup> Beyond business strategy, other factors that influence retail job quality include state and local labor laws, unionization, and the competitiveness of the local labor market.<sup>60</sup>

Nationally, retail firms with fewer than 10 outlets tend to pay higher average wages than firms with more than 10 outlets. Studies have shown that large firms are generally more likely to offer better health care coverage, hire more minorities and comply with labor laws compared to smaller firms<sup>61</sup>. A 2001 national survey of employers and households found that larger firm size was associated with hiring significantly more African-Americans<sup>62</sup>. These differences between small and large firms may have to do with a number of factors, including awareness of labor laws, hiring methods and financial resources.

While there is significant variation in the provision of benefits and hiring practices, San Francisco's progressive labor laws raise the floor for all workers. San Francisco is nationally known for its progressive laws improving pay, access to health care and paid sick leave for all workers, particularly lower-wage workers.<sup>63</sup> Table 3 shows the required provisions of employment benefits in San Francisco based on firm size and employment status. Because benefits such as paid sick leave and health care are applicable based on the number of employees, firms with more employees will be required to provide more benefits. Most formula retailers are likely to be subject to the Health Care Security and Family Friendly Workplace Ordinance given that they have more than 11 locations and therefore will have more than 20 employees.

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<sup>58</sup> Carré, Tilly, and Denham, "Explaining Variation in the Quality of U.S. Retail Jobs."

<sup>59</sup> Ken Jacobs, Dave Graham-Squire, and Stephanie Luce, *Living Wage Policies and Big-Box Retail: How a Higher Wage Standard Would Impact Walmart Workers and Shoppers*, Research Brief (UC Berkeley Center for Labor Research and Education, 2011), <http://www.mef101.org/Issues/Resources/11-0428%20-%20Bigbox%20Living%20Wage%20Policies.pdf>.

<sup>60</sup> Carré, Tilly, and Denham, "Explaining Variation in the Quality of U.S. Retail Jobs."

<sup>61</sup> Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 53.

<sup>62</sup> Philip Moss and Chris Tilly, *Stories Employers Tell: Race, Skill, and Hiring in America* (Russell Sage Foundation, 2001).

<sup>63</sup> Michael Reich, Ken Jacobs, and Miranda Dietz, eds., *When Mandates Work: Raising Labor Standards at the Local Level*, 2014, <http://www.ucpress.edu/book.php?isbn=9780520278141>.



Table 3: San Francisco Labor Laws

Law	Employer Applicability	Requirement	Effective Date
<b>Minimum Wage Ordinance</b>	All employers with employees who work in San Francisco more than two hours per week, including part-time and temporary workers*	All employees who work in San Francisco more than two hours per week, including part-time and temporary workers, are entitled to the San Francisco minimum wage (\$10.74 per hour as of January 2014).	February 2004
<b>Paid Sick Leave Ordinance</b>	All employers** with employees who work in San Francisco, including part-time and temporary workers	All employees who work in San Francisco, including part-time and temporary workers, are entitled to paid time off from work when they are sick or need medical care, and to care for their family members or designated person when those persons are sick or need medical care.	February 2007
<b>Health Care Security Ordinance</b>	Employers with 20 or more employees nationwide, including part-time and temporary workers (and non-profit employers with 50 or more employees)	Employers must spend a minimum amount (set by law) on health care for each employee who works eight or more hours per week in San Francisco. The expenditure rate varies by employer size; in 2014, for-profit businesses with 20 to 99 employees nationwide are required to spend \$1.63 per worker per hour paid; employers with 100+ employees nationwide are required to spend \$2.44 per worker per hour paid.	January 2008
<b>Family Friendly Workplace Ordinance</b>	Employers with 20 or more employees nationwide, including part-time and temporary workers	Employers must allow any employee who is employed in San Francisco, has been employed for six months or more by the current employer, and works at least eight hours per week on a regular basis to request a flexible or predictable working arrangement to assist with care-giving responsibilities.	January 2014

**Neighborhood Character & Homogenization.** The intent of the neighborhood commercial districts is to provide convenience retail goods and services, primarily during the daytime hours. While the commercial intensity of the district varies, each district has its own scale and character description in the zoning control table. The districts feature commercial on the lower floors with residential uses above. The largest of these districts not only serve the immediate neighbors but also may offer a wide variety of comparison and specialty goods and services for the surrounding neighborhoods. Even in these cases, however, the Code is clear that a special emphasis on neighborhood-serving businesses is paramount<sup>64</sup>. Beyond that, each district begins with a description of the character so that future development can be compatible with the overall

<sup>64</sup> Planning Code Section 710-745. The largest NC district, NC-3, maintains an emphasis on neighborhood serving businesses.

character. The very nature of the Commission's discretion on Conditional Use applications requires that neighborhood compatibility be considered with each authorization. Certain neighborhoods may be more defined by uniqueness than other neighborhoods. For instance, the vice president of the Valencia Street Merchants Association described the relationship between formula retail and this neighborhood by stating, "We appreciate you can go a mile on Valencia Street and not see one formula-retail store," in the *New Yorker*<sup>65</sup>. As quoted earlier in this report, the OEA Report described an economic value to San Francisco that is inherent in its desirability as a unique city. This sentiment is reflected in other cities too. "The reaction is largely driven by sameness," says Dick Outcalt, a partner in Outcalt & Johnson Retail Strategists in Seattle. "The populace is more empowered protecting the feel of a community because they realize that commercially, aesthetically and from the property value standpoint, uniqueness has value<sup>66</sup>."

While homogenization is a factor, community participation is also part of neighborhood character. During the Department's stakeholders reported difficulty in garnering the involvement of formula retail managers who often needed remote approval from corporate offices. The Department's Study found that community members in the Ocean Avenue NCT note that it is challenging to establish ongoing relationships with formula retailers because the managers rotate between stores or do not have the authority to make decisions<sup>67</sup>. New York City also had concern about the loss of "mom-and-pop" stores being replaced by Whole Foods, TJ Maxx, and Sephora. When asked by the *New York Times* about the issue, a neighbor replied, "We've lost a lot of feeling of being a community. There's a sense of community that comes from living with small merchants whom you get to know<sup>68</sup>."

When considering the appearance for a new formula retail establishment, these businesses, are ubiquitous and diminish the unique qualities of a shopping street. Under the Planning Code, formula retail establishments are defined as "an...establishment which, along with eleven or more other retail sales establishments...maintains two or more [standardized] features". In other words, formula retailers are stores with multiple locations and a recognizable "look" or appearance. What makes a look recognizable in this case, is the repetition of the same characteristics of one store in multiple locations. The sameness of formula retail outlets, while

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<sup>65</sup> Lauren Smiley. "What It Means to Keep Chain Stores Out of San Francisco" September 20, 2013. *The New Yorker*. Retrieved from <http://www.newyorker.com/online/blogs/currency/2013/09/what-it-means-to-keep-chain-stores-out-of-san-francisco.html>

<sup>66</sup> Haya El Nasser. "Cities put shackles on chain stores" July 20, 2004. *USA Today*. Retrieved from <http://sustainableconnections.org/ex-pdfs/USA%20Today%20Cities%20put%20shackles.pdf>

<sup>67</sup> Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 91.

<sup>68</sup> Joseph Berger. "Fear (and Shopping) When Big Stores Move In" June 4, 2010. *The New York Times*. Retrieved from [http://www.nytimes.com/2010/06/05/nyregion/05metjournal.html?\\_r=2&](http://www.nytimes.com/2010/06/05/nyregion/05metjournal.html?_r=2&)

providing clear branding for consumers, counters the general direction existing land use controls which value unique community character. The standardized characteristics that are found other places provide some level of homogenization. Formula retailers cannot be unique because there are at least 11 others with the same look.

This effect has an impact on tourists and locals alike. A quick stroll through “Yelpers” review of Fisherman’s Wharf elicits the following quotes<sup>69</sup>:

- *“This place is gross... and reeks of chain restaurants and poor examples of badly executed notions of Americana.”*
- *“This area has some restaurants but they are chains or have only average food.”*
- *“Restaurants are a mix of chains and tourist favorites.”*
- *“Understandably, there are cheesy chain restaurants, expensive ventures for the kids and family, and more people crammed into one area than all of the rest of the city. There will be lots of distractions, gimmicky souvenirs to be sold, but that’s not to say it’s all a bad time.”*
- *“It is fun to walk and widow-shop here. Also, you can chose between fine seafood restaurants and street kiosk to satisfy any craving. The problem: too many chain restaurants spoil an area that should be an authentic neighborhood of San Francisco.”*

While Fisherman’s Wharf is not subject to formula retail controls, the sentiment above is a good indicator of some general reactions to a perceived overabundance of formula retail.

**The Conditional Use Process.** The Department’s Study and the OEA Report found that the Conditional Use process is working to retain unique neighborhood character. The relatively low concentration of formula retail in commercial and mixed-use neighborhoods with formula retail controls in places suggest that the controls are successful in limiting the amount of formula retail in the City’s Neighborhood Commercial Districts<sup>70</sup>. The Conditional Use process creates disincentives for formula retailers to locate in NCDs. The upfront time and financial investment required to go through the Conditional Use process results in many formula retailers being unwilling to consider locating in the NCDs. However, formula retailers are more likely to submit applications in neighborhoods with strong market demand for new retail and where they anticipate a positive reception by the community. The process empowers the local community by giving community members the power to keep unwanted formula retail uses out. Excluding pending applications, 75 percent of formula retail Conditional Use applications have been

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<sup>69</sup> User reviews from Fisherman’s Wharf Yelp! page. Retrieved on May 9, 2014 from <http://www.yelp.com/biz/fishermans-wharf-san-francisco-3>

<sup>70</sup> Page 28 of The Department’s Study determined that formula retailers account for ten percent of the retail establishments in commercial/mixed-use districts with controls in place, while they account for 25 percent of the retail establishments in commercial/mixed-use districts without controls.

approved<sup>71</sup>. In cases where community members have reached a clear consensus that a proposed formula retailer is not desirable and appeared at Planning Commission hearings, the applications have often been denied or withdrawn. In general, community reaction to formula retail Conditional Use applications appears to depend on factors such as the potential impacts on existing and beloved businesses and whether the prospective formula retail tenants are filling long-standing vacancies and/or meeting unmet community needs.

Conversely, the City's formula retail controls may be a contributing factor in some long-term vacancies, particularly of larger storefronts. Brokers report that large, deep spaces may sit empty for extended periods of time if a formula retail Conditional Use application is disapproved or withdrawn, and that these vacant spaces can act as a drag on the vibrancy and overall performance of the surrounding district. Formula retailers can generally fill more floor space than independent retailers, and can more often afford to make needed tenant improvements and pay rents required to lease larger storefronts. While formula retail controls may make leasing some spaces more challenging, obsolete building designs, significant maintenance needs and challenging locations also likely contribute to long-term vacancies in many cases. There are significant limitations to the approach that formula retail controls encourage property owners to subdivide or redevelop large, vacant retail spaces. Some large retail buildings are not possible to subdivide into multiple smaller storefronts that would be more suitable for independent businesses because of structural or design issues<sup>72</sup>.

The Conditional Use process allows evaluation on a case by case basis and for consideration of community input. One recent example is Pet Food Express, a locally based chain that would have activated a long vacant building, potentially promoted additional commercial investment, provided two services that were not being provided in the neighborhood, increased street front transparency and improved the streetscape<sup>73</sup>. The project sponsor provided an economic impact study and had 42 speakers in favor of the project and 41 speakers opposed<sup>74</sup>. The controversial project was ultimately found to not be necessary or desirable and was disapproved.

**Lack of clarity in existing Code.** The existing Code establishes that the "Planning Commission shall develop and adopt guidelines which it shall employ when considering any request for discretionary review." The Code then lays out five criteria for consideration, which have not been interpreted or clarified. Review of previous staff prepared case reports indicates inconsistent application of these criteria.

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<sup>71</sup> Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 5.

<sup>72</sup> Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 6.

<sup>73</sup> Case No. 2013.0128C, heard on August 8, 2013

<sup>74</sup> Planning Commission Minutes for Case No. 2013.0128C heard on August 8, 2013

**1. Existing concentrations of formula retail uses within the district.**

Review of previous staff prepared case reports indicates that this criterion is not reviewed consistently. Some reports include a count of the entire NCD and some include a count within the general “vicinity”. The application of what was the “vicinity” varied by planner. The Planning Commission adopted policy for Upper Market Street neighborhood that established a method for calculating concentration based on linear commercial frontage of all NC zoned parcels within 300 feet of the subject property. The policy stipulated that if a proposed formula retail use would result in a concentration greater than 20 percent, the Planning Department would recommend disapproval of the case. This policy has been enacted since April 2013 and resulted two cases being disapproved by the Planning Commission, a Starbucks that would have brought the concentration to 21 percent and a Chipotle that would have brought the concentration to 36 percent. While the Duboce Triangle Neighborhood Association has been pleased with the implementation of this policy, members of the Commission have expressed a desire to revisit this methodology, prior to broader application.

The Department’s Study found that the appropriate concentration of formula retail for districts varies significantly depending on existing conditions and the community’s preferences. Communities often react differently to formula retail Conditional Use applications depending on factors such as the potential impacts on competing businesses and whether prospective formula retail tenants are filling long standing vacancies and/or meeting perceived community needs. **Given this variation, the Department’s Study found that it is not possible to define an ideal level of concentration for formula retail that could apply across multiple zoning districts<sup>75</sup>. However, looking at the concentration by number of existing formula versus non-formula retailers as well as the amount of linear frontage of each business use type would be a useful metric for comparison.**

- 2. Availability of other similar retail uses within the district.** This criterion directs staff to review whether the goods and/or services proposed are currently being provided in the district. There is no additional direction provided on how these similar retail uses are dispersed within the district as well as no analysis of similar retail uses in commercial areas immediately adjacent to the district or even the proposed location in some cases. A literal interpretation of this criterion may lead staff evaluating a proposal for formula retail along Geary Street in the Richmond (NC-3 Zoning District) to not only examine the availability of similar retail uses on the contiguous Geary NC-3 but also within the all of

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<sup>75</sup> Strategic Economics, “San Francisco Formula Retail Economic Analysis”, prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 8.

the NC-3 zoned parcels which exist as far away as Mission Street in the Outer Mission neighborhood. **For this criteria and the one above, it seems that the important question is not whether these goods are provided anywhere within the zoning district, but rather within the zoning district that is an easy walk.**

3. **Compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the district.** Most formula retail Conditional Use applications include solely interior tenant improvements and signage. Signage is administratively approved per Planning Code Article 6 and generally permitted separate from the Conditional Use authorization. However, the Conditional Use process allows for the Commission to exercise discretion and negotiate reduced visual impacts with project sponsors. **Given the concerns around potential homogenization of neighborhoods by formula retail, more specific aesthetic and architectural features of concern should be identified for review of this criterion.**
4. **Existing retail vacancy rates within the district.** Like most data, vacancy rates are most useful when comparisons can be drawn. There is currently minimal tracking of vacancy rates in commercial districts and it is not maintained consistently. There is also no comparison to a healthy vacancy rate, which the Department's Study identifies as ten percent. The Department has access to vacancy rates in both the Retail Broker's Study and the Invest in Neighborhoods project. **Using these existing data sources as a starting point, vacancies should be considered in relation to the proximity to the proposed site. The Department should work to update this information with each formula retail application and through subsequent studies so that time-series data may be established to demonstrate how various neighborhoods change over time.**
5. **Existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the district.** As discussed earlier, many residents are concerned about the loss of neighborhood or daily needs serving retail uses. The Department's Study found that many of the districts with controls are predominantly daily needs-serving. This existing criterion provides no guidance of what is considered neighborhood-serving retail versus Citywide-serving. Similar to concentrations, there is no one ratio that fits all NCDs. The distribution of neighborhood serving uses is also not considered, even though many NCDs stretch for miles and residents are unlikely to travel only within their NCD to have their needs met. Due to the lack of guidance provide, this criterion too is evaluated inconsistently.

## REQUIRED COMMISSION ACTION

The Commission is being asked to initiate the attached Ordinance. If initiated today, the Department would ask the Commission to take an action on the draft Ordinance and associated Performance-Based Review Standards for formula retail review on or after June 5, 2014.

## POLICY RECOMMENDATIONS AND BASIS FOR RECOMMENDATIONS

The Department recommends that the Commission retain the existing framework of Conditional Use authorization, while making some changes to better respond to issues of concern and to facilitate consideration of formula retail uses which enrich a neighborhood. The proposal seeks to maintain the original intent of formula retail controls while adding rigor and consistency to the process. The specific recommendations of the Department and a discussion of why the changes are being proposed follows:

1. **Refine the definition of formula retailer, while maintaining a balance.** Increase the numerical threshold from 11 to 20 and broaden the definition to include more use types and businesses located outside of United States. In addition to physical establishments, locations that are permitted or entitled by the local jurisdiction would now be added toward the threshold for formula retail. The Department recommends not counting merely signed leases without any land use entitlements towards this threshold.

**A. Numerical Threshold.** Formula retail is currently defined as a retail establishment which, along with 11 or more retail sales establishments located in the United States, maintains two or more standardized features. When a qualifying use applies for the twelfth or more location and the new application is located in a zoning district with formula retail controls, it is required to procure Conditional Use authorization from the Planning Commission. When the original formula retail legislation was proposed in 2003, the definition of formula retail was four or more locations<sup>76</sup>. Through the Board of Supervisor's review of the ordinance, the number was increased to 11 to avoid negatively impacting small businesses.

Blue Bottle and Philz Coffee recently reached 14 locations and San Francisco Soup Company has 16 locations. These businesses are now considered formula retail and reviewed under the same process as much larger businesses such as Starbucks (over 20,000 locations) and Subway (over 40,00 locations). According to the San Francisco Formula Retail Economic Analysis, approximately half of San Francisco's formula retail establishments are associated with companies that have more than 1,045 branches and subsidiaries. Only five percent of formula retail establishments in San Francisco are

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<sup>76</sup> Board File No. 031501 <https://sfgov.legistar.com/View.ashx?M=F&ID=704645&GUID=36C7A18F-7673-4720-BDCD-8A7F0FCE9DC6>



associated with businesses with fewer than 20 total branches<sup>77</sup>. Raising the number of locations to 20 would mean that relatively small businesses such as Blue Bottle Coffee, Philz Coffee and Patxi's Pizza are no longer considered formula retail. The formula retail definition would continue to capture the majority of well-known formula retailers (such as Safeway, Wells Fargo, Peets Coffee, Gap) as well as some medium-sized businesses that have grown substantially, such as Umami Burger, Boudin, Extreme Pizza and the Cheesesteak Shop. Retailers such as Steven Alan, James Perse and Athleta would continue to be defined as formula retailers. Meanwhile, the number of smaller businesses such as Super Duper Burger and San Francisco Soup Company can continue to grow in San Francisco<sup>78</sup>.

The Department recommends counting locations that are permitted or entitled towards the numerical threshold. As previously discussed, a Board of Appeals ruling required that leases held count as potential locations toward meeting the formula retail threshold. However, leases are private agreements between landlords and tenants and cannot be independently verified. Leases are sometimes held for years before a retailer operates in a location. The long vacant former Walgreens on Ocean Avenue and the proposed Pet Food Express location on Lombard Street are local examples of this phenomenon. An entitled or permitted location is one that has already been approved to operate by a local jurisdiction. The proposed establishment would have at this point invested time and money in ensuring an operation. Further, entitlements and permits are public record and can be independently verified. These pending locations which have received land use approvals have a much greater likelihood of coming to fruition and should therefore be counted toward the numerical threshold of 20. This proposed change should address the concern of formula retail establishments coordinating their openings in an effort to circumvent San Francisco's formula retail controls.

- B. Location of Establishments.** Similarly, including international locations toward the 20 locations would balance the increase in number of locations while still allowing small businesses to grow. Data on the number of establishments located internationally were not available; however, by looking at the headquarters of formula retailers we can get an approximation of where retailers are primarily located. According to the Department's Study, within San Francisco, only 10 percent of businesses with 12 or more corporate family members are part of a corporation that is headquartered outside the United

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<sup>77</sup> This number is based on the number of existing formula retailers in San Francisco, i.e. those with more than 11 locations.

<sup>78</sup> Numbers are based on individual websites, accessed 4/7/2014.

States<sup>79</sup>. A vast majority of these have long established presences in the U.S. and already qualify as formula retail under the current Planning Code. For example, highly recognizable brands such as T-Mobile (based in Germany), 7-Eleven (headquartered in Japan), The Body Shop (headquartered in England) and Sephora (based in France) account for many of the 130 businesses headquartered outside of the U.S.

The proposal to include internationally based retailers who desire to open a flag ship U.S. location are unlikely to be hindered by formula retail controls, as flagship stores are likely to be located in a major regional shopping center such as Union Square, which does not have formula retail controls. When Japan-based Uniqlo opened its first west coast store in Union Square, it had 1,132 stores in 13 countries. The U.S. COO said, "We chose San Francisco because it's a hotbed of global technological innovation."<sup>80</sup> San Francisco is a desired retail location and will continue to be so.

By increasing the number of global locations to 20, businesses such as Uniqlo, Muji, Daiso, Loving Hut, Aesop and Oska would continue to be formula retailers. The proposed increase can expect to capture approximately the same number of formula retailers that are currently captured. The number of retailers that would newly be captured is very small<sup>81</sup>.

**C. Use Categories.** The Department recommends expanding the definition of formula retail to include Limited Financial Service, Fringe Financial Service and Business and Professional Service.

**1. Limited Financial Service** is defined in Planning Code Section 790.112 as "*A retail use which provides banking services, when not occupying more than 15 feet of linear frontage of 200 square feet of gross floor area. Automated teller machines, if installed within such facility or on an exterior wall as a walk-up facility, are included in this category; however, these machines are not subject to the hours of operation...*" These uses tend to be ATMs but there is nothing in the Code that prevents a small branch from opening under this

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<sup>79</sup> Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 3.

<sup>80</sup> Carolyn Said, "Uniqlo Opens S.F. Store," *SFGate*, October 4, 2012, <http://www.sfgate.com/business/article/Uniqlo-opens-S-F-store-3919489.php#src=fb>.

<sup>81</sup> Strategic Economics reported that almost all (if not all) of the businesses with locations in San Francisco that are headquartered outside the U.S. and are currently captured by the definition of formula retail would still be captured by the definition of formula retail if the threshold was raised to 20 locations worldwide. Only one instance of an internally based retailer that may not meet the 20 location threshold was found. This example was Sheng Kee Bakery, which has 12 U.S. locations but is headquartered in Taiwan. The company appears to have locations in Taiwan, Singapore and Canada but it is unclear if they are all actually the same company. If they are the same company, there are fewer than 8 locations outside the U.S. (Reported via email on May 6, 2014).

use category and it is therefore analogous to Financial Services, which are already subject to formula retail controls. The number of Limited Financial Service uses that would be captured by this definition change are not available because the data combines this use category with Financial Services in general. The proposal includes an exemption for Limited Financial Services that are located within another use and that are not visible from the street. Supervisor Weiner's Interim Controls in the Upper Market Street NCT currently requires Conditional Use authorization for all Limited Financial Service uses, indicating a community desire to more heavily regulate these uses.

Board File No, 12-0047, which adopted Financial Services as a use category subject to formula retail controls found that Limited Financial Service uses would allow smaller size financial services with less of an impact on the aesthetic character and vibrancy of a NCD. While banking services are a desired neighborhood serving use, a bank of ATMs or an ATM vestibule do not contribute to the vibrancy of street activity. Limited Financial Services, similar to Financial Services, tend to include maximum signage serving as advertising and branding on a street face. San Francisco is not unique in dealing with the aesthetic impacts that banking services have on neighborhood commercial districts. New York City addressed this issue in the Upper West Side neighborhoods by limiting the width of bank storefronts to no more than 25' wide. The concern there, however, was that the small fine grained nature of the existing neighborhood commercial district was being eroded by larger storefronts. San Francisco's NCDs generally feature storefronts that are 15 to 25', necessitating further controls applied to Limited Financial Services.

2. **Fringe Financial Service.** Fringe Financial Service is defined in Planning Code Section 790.111 as *"A retail use that provides banking services and products to the public and is owned or operated by a "check cashier" as defined in California Civil Code Section 1789.31, as amended from time to time, or by a "licensee" as defined in California Financial Code Section 23001(d), as amended from time to time."* Fringe Financial Services are regulated within the Fringe Financial Service Restricted Use District (Sec. 249.34 of the Planning Code) because they have the *"potential to displace other financial service providers, including charter banks, which offer a much broader range of financial services, as well as other desired commercial development in the City, which provides a broad range of neighborhood commercial goods and services."* The Fringe Financial Service RUD only applies to the Mission Alcoholic Beverage District SUD, the North of Market Residential SUD, the Divisadero Street Alcohol RUD, the Third Street Alcohol RUD and the Haight Street Alcohol RUD. By applying the definition of formula retail to fringe financial services, the Department will be better equipped to evaluate future locations in Neighborhood Commercial Districts, as well as evolving Mixed Use Districts. Supervisor Kim's Interim Zoning Controls on Market Street require

Conditional Use authorization for new Fringe Financial Service that front on Market Street between 6<sup>th</sup> Street and Van Ness Avenue, demonstrating a community desire to further control Fringe Financial Services. Currently, there are 10-20 fringe financial uses within San Francisco that have more than 20 locations<sup>82</sup>.

3. **Business and Professional Service.** Defined in Planning Code Section 790.108 as “A retail use which provides to the general public, general business or professional services, including but not limited to, architectural, management, clerical, accounting, legal, consulting, insurance, real estate brokerage, and travel services. It also includes business offices of building, plumbing, electrical, painting, roofing, furnace or pest control contractors...It does not include research service of an industrial or scientific nature in a commercial or medical laboratory, other than routine medical testing and analysis by a health-care professional or hospital.” Expanding the definition of formula retail to include business and professional services will apply to businesses such as H&R Block, the UPS Store, Kinkos, and real estate and insurance offices such as Coldwell Banker and State Farm Insurance. These businesses often seem to present the standardized features that determine when multiple outlets should be considered formula retail and therefore should be captured in the definition.

## 2. Expand formula retail controls to areas of concern.

- A. **Require Conditional Use authorization for formula retail establishments with frontage on Market Street between 6<sup>th</sup> Street and 12<sup>th</sup> Street.** Long-standing policies adopted in the General Plan acknowledge the importance of Market Street as the city’s cultural and ceremonial spine. Given this elevated importance to the image of the City, the Department recommends permanent formula retail controls to replace the current interim controls along Market Street and expanding the area of controls from Van Ness to 12<sup>th</sup> Street. In January 2010, the Mayor’s Office of Economic and Workforce Development launched the Central Market Partnership, a public/private initiative to renew and coordinate efforts to revitalize the Central market neighborhood. In November 2011, the Mayor released the Central Market Economic Strategy. In July 2013, Supervisor Kim sponsored legislation to place interim formula retail controls on Market Street between Van Ness and 6<sup>th</sup> Street in order to ensure that new development retained a unique neighborhood character.

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<sup>82</sup> Source: Dun & Bradstreet, 2012; Strategic Economics, 2014. Based on Dun & Bradstreet business data that have not been independently verified; all numbers are approximate and includes branches or subsidiaries located anywhere in the world.

This portion of Market Street is zoned C-3-G: Downtown General Commercial and had no restrictions on formula retail uses, prior to the adoption of interim controls. The C-3-G District is described in Planning Code Section 201.3, "This district covers the western portions of downtown and is composed of a variety of uses: Retail, offices, hotels, entertainment, clubs and institutions, and high-density residential. Many of these uses have a Citywide or regional function, although the intensity of development is lower here than in the downtown core area. As in the case of other downtown districts, no off-street parking is required for individual commercial buildings. In the vicinity of Market Street, the configuration of this district reflects easy accessibility by rapid transit."

Between 2011 and 2013, 17 new companies moved into the Central Market area. As this area experiences major growth, now is the time to ensure the land use controls create a neighborhood that is worthy of the importance of the street. Over 5,571 residential units are under construction or approved and 40 additional development projects are in the pipeline<sup>83</sup>. Central Market is a burgeoning mixed-use neighborhood and formula retail controls will help shape the future development of the neighborhood. The Department recommends applying the existing Conditional Use process to formula retail establishments that front on Market Street between 12<sup>th</sup> Street and 6<sup>th</sup> Street in order to ensure the development of balanced neighborhood character rather than producing a bland or generic retail presence. The approach itself is balanced in applying only to storefronts with a frontage on Market Street rather than the entire Central Market area. Key to this proposal is careful review of the uses visible from the right-of-way. The Conditional Use process will ensure that formula retail establishments that locate visibly on the central part of Market Street will be compatible with the development neighborhood character and uses.

As the City continues to attract new businesses to this emerging retail corridor, there is a desire to preserve and attract neighborhood retail that is in keeping with the character of this historic area. Since 2011, 13 new small businesses have located in the Central Market area, with five additional businesses planning to open soon<sup>84</sup>. Through

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<sup>83</sup> Central Market Turnaround 2011 – 2013, San Francisco Office of Economic and Workforce Development, November 1, 2013. (Attached)  
<http://www.oewd.org/media/docs/Central%20Market/CENTRAL%20MARKET%20TURNAROUND%2011-1-13.pdf>

<sup>84</sup> Central Market Turnaround 2011 – 2013, San Francisco Office of Economic and Workforce Development, November 1, 2013. (Attached)  
<http://www.oewd.org/media/docs/Central%20Market/CENTRAL%20MARKET%20TURNAROUND%2011-1-13.pdf>

the Department's Study, neighborhood merchants voiced concern that they see a pattern of independent startup businesses that turn a neighborhood around and are then forced out through rent increases. Startups take the risk of locating in transitional neighborhoods and help to improve the neighborhood through their presence and investment. This is generally due to these more risky neighborhoods being affordable to startup businesses. They draw in more foot traffic and as the neighborhood improves and becomes less risky, established businesses want to locate there. These established businesses tend to be formula retailers and are typically better capitalized, have better credit and can pay higher rents and commit to longer leases which may negatively impact the start-up businesses that played a key role in revitalizing a neighborhood. In the Central Market area there are already ten formula retail limited restaurants (fast food) and two formula retail pharmacies<sup>85</sup>. The unregulated and unmonitored establishment of additional formula retail uses may unduly limit or eliminate business establishment opportunities for startup businesses, many of which tend to be non-traditional or unique. Recent additions to this part of Market Street include Littlejohn's Candies, Beer Hall, Huckleberry Bicycles, Alta and Little Griddle. These business owners took a risk and made an investment on a transitional part of Market Street and are paving the way for future economic development in the City's historic core. Their efforts should not be hampered by a proliferation of formula retailers that can significantly alter neighborhood character.

The Department further recommends expanding formula retail Conditional Use controls beyond the interim control boundary of Van Ness Avenue to 12<sup>th</sup> Street and Franklin Street as the western boundary. Franklin Street and 12<sup>th</sup> Street divide the NCT-3 zoning district in the Upper and Central Market neighborhoods and should be included in the permanent controls to ensure consistent application on Market Street.

### 3. Focus review on issues of most importance to residents.

- A. **Strengthen review criteria and process for new formula retail in Districts with formula retail controls in place.** Planning Code Section 703.3(h) (Formula Retail Uses) includes the language "The Planning Commission shall develop and adopt guidelines which it shall employ when any considering request for discretionary review made pursuant to this Section." The Section goes on to list the following five criteria for consideration of formula retail uses. The Department proposes developing formula retail review guidelines in a Performance-Based Review Standards document as directed by the

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<sup>85</sup> Interim Zoning Controls – Specific Formula Retail Uses on Market Street, from 6<sup>th</sup> Street to Van Ness Avenue, Board File No. 130712, Resolution No. 305-13, page 2  
<https://sfgov.legistar.com/View.ashx?M=F&ID=2588632&GUID=63B9534F-8427-400B-A2FF-A17A25081C23>

current Code. The Performance-Based Review Standards will provide clarity to staff and increase rigor in the implementation of the five Conditional Use criteria existing in Planning Code Section 303(i)(3).

**Consistent Data & Description Contextualized, When Possible.** The Performance-Based Review Standards will include direction to staff on how to construct consistent reports for the Commission's consideration. The reports for the Commission should include uniform assessments of key neighborhood features such as demographics, trends, a qualitative characterization the nature of the District, including massing, use size, anchors, and clusters. Data on the retail character should consistently describe vacancies, the amount of formula and no-formula retailers, as well as the prevalence of uses that meet daily needs. The data should be contextualized with comparisons to City-wide data and other Districts, where available. The Review Standards will provide interpretation and guidance to staff, applicants, and the public about how to apply the existing formula retail Conditional Use review criteria as detailed below.

**Area of Comparison: Defined Radius Instead of Zoning District.** The existing codified evaluation criteria require analyzing the proposed use in the context of the entire zoning district. Most residents can identify their Neighborhood Commercial District, however Eastern Neighborhoods and Mixed Use Zoning Districts are not linear districts that residents can easily identify. Even NCDs that are linear can stretch over a mile, much greater than typical walking distance or a perceived "neighborhood". Rather than evaluating the zoning district, the Department recommends amending the evaluation area to a quarter mile of the proposed location for criterion evaluating concentration of formula retail, use mix and neighborhood service uses as specified below. The radius of a quarter mile will capture the uses that residents can walk to and serve as better indicator of impact. Using the quarter mile radius will capture uses in the walkable area that are not in the same District. For example, Mission and Valencia are parallel adjacent NCDs but currently, a formula retail proposal in the Mission NCT would not evaluate uses in the Valencia NCD even though they are separated by a block. Similarly, the NC-3 zoning district on Geary Boulevard stretches over two miles. The western side of Geary is very different from the middle and eastern sides. But residents along middle Geary Boulevard are very likely to consider middle Clement Street their neighborhood. Using the quarter mile radius would seek evaluation of all walkable commercial uses from a proposed formula retailer. Again, a literal interpretation of the existing criterion may to a meaningless evaluation of formula retail throughout the "zoning district" which may include parcels as far away as those on Geary Street in the Richmond with parcels having the same zoning designation on Mission Street in the Outer Mission neighborhood.

**Specifically, how the existing criteria would be evaluated.** Below is a discussion of the existing criteria with the proposed changes as well as a further guidance to staff that



would be provided in the Performance-Based Review Standards. No thresholds are provided that would require staff to recommend approval or disapproval on any one criterion, rather guidance is provided to ensure review of the project, the District and the immediate area holistically.

1. **The existing concentrations of formula retail uses within ~~the district~~ a ¼ mile radius of the proposed location, (hereinafter “within a ¼ mile walk<sup>86</sup>”).** Staff will inform the Commission discussion of concentration of formula retail by providing:
  - a. A discussion of linear frontage concentration of formula retail establishments based on the Upper Market NCD and NCT methodology, adopted as policy by this Commission on April 11, 2013. Staff will be directed to calculate the concentration of formula retail linear frontage within a ¼ mile walk of the subject property. By counting linear frontage, corner parcels are more heavily weighted due to their greater aesthetic impacts.  
The Department does not identify an ideal concentration threshold because it varies significantly by Neighborhood Commercial District. This variation is based on pre-existing uses, massing and use sizes and what the neighborhood demonstrates a need for.
2. **The availability of other similar retail uses within ~~the district~~ a ¼ mile walk of the proposed location.**
  - a. A discussion of similar retail uses as well as mapping their locations within a ¼ mile walk. Similar retail uses include those within the same land use category as well as retailers that provide similar goods and/or services. A comparison of similar uses and their locations will demonstrate how uses are scattered throughout the walkable area.
3. **The compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the district.**
  - a. Compare the aesthetic characteristics of proposed formula retail to the nature of the district, addressing whether or not the use size is consistent with existing character, whether signage is appropriate and compatible, and whether the storefront design is more or less pedestrian-scaled than the district as a whole. Under the existing Conditional Use review, formula retail uses are subject to the same signage review as all uses. Otherwise the existing review is entirely administrative under Article 6 of the Planning Code. While the Commission and Staff can request and recommend that signage be reduced or altered to be more compatible with the District, it cannot be required, with the exception of Article 11 Conservation Districts and Known Historical Resources.

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<sup>86</sup> Within a ¼ mile walk is defined as all parcels that are wholly or partially located within a 1/4 mile radius of the subject property and are also zoned commercial or contain commercial uses.

- b. Provide discussion of the visual impact of the proposed formula retail location including identifying its place in the District (corner, anchor, recessed from street) and whether it is in a protected viewshed in the General Plan.
- c. **Apply the proposed Performance-Based Review Standards to all Formula Retail Applications.** These criteria would include specifications on how the façade appears and would include; signage, storefront transparency and pedestrian-oriented design.
  - i. **Minimized Standard Business Signage.** Signage controls exist in Article 6 of the Planning Code to protect the distinctive appearance of San Francisco and its unique geography, topography, street patterns, skyline and architectural features. These controls encourage sound practices and lessen objectionable effects in respect to the size and placement of signs. Signage creates visual impacts which play a role in the attraction of tourists and other visitors who are so important to the economy of the City and County. Signs serve as markers and create individual identities for businesses that add to the greater identity of a neighborhood and district<sup>87</sup>. The Department recommends adoption of signage guidelines as part of the Performance-Based Review Standards that would also apply to all Conditional Use review for formula retail and that would be the focus of the proposed Performance-Based Formula Retail Review. Formula retailers going through the Conditional Use process would have to comply with these guidelines and conform to Department discretion regarding signage.
  - ii. **Maximized Storefront Transparency and Pedestrian-oriented Design.** The vitality of a district's streetscape is dependent on the existence and success of storefront business. In response to changing marketing and advertising strategies designed to draw in customers, storefronts are the most commonly altered architectural feature in commercial buildings. The purpose of storefront design standards are to protect and enhance the character of a neighborhood by encouraging storefront design that allows tenants to successfully convey their image and products, compliment the public realm and respect the architectural features of the building and character of the district<sup>88</sup>. A transparent storefront welcomes customers inside with products and services on display, discourages crime with more "eyes on the street", reduces energy consumption by letting in natural light, and enhances curb appeal and value of the store and the entire

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<sup>87</sup> San Francisco Planning Department, General Planning Information, Signs, November 2012.

<sup>88</sup> San Francisco Planning Department, Design Standards for Storefronts for Article 11 Conservation Districts, Draft November 2012.

neighborhood<sup>89</sup>. The Planning Department strives to ensure that tenant spaces remain transparent to the exterior, contribute to the activity of the public realm and do not evolve into de facto sign boards for tenants. Planning Code Section 145.1(c)(6) requires that “frontages with active uses that are not residential or PDR must be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building”. While this code section is reviewed as part of the Conditional Use review process for formula retail uses, businesses are not required to alter their storefronts to meet the Code requirement. In most cases, a business will occupy an existing storefront that does not meet the requirement and cannot make significant alterations to a potential historic resource. However, if the existing storefront has opaque glazing or security gates or grillwork that obscures visibility, adoption of the Performance-Based Review Standards would require altering the storefront, where possible, to meet the Code requirement.

4. **The existing retail vacancy rates within the district.**
  - a. Identify current vacancy rates in district and historic vacancy rates, as this information becomes available in the future.
  - b. Identify commercial spaces that are long term vacancies and analyze potential factors contributing to long term vacancies
5. **The existing mix of Citywide-serving retail uses and ~~neighborhood-serving daily~~ needs serving retail uses within the district a ¼ mile walk of the proposed location.**

This criterion in particular seems to be difficult to interpret and apply consistently. The Code has an existing definition of “neighborhood serving” but no definition of “citywide-serving”. As NCDs are intended to serve the daily needs of the neighborhood residents’ daily needs serving retailers are those that provide goods and services that residents want within walking distance of their residence or workplace. To apply the principles behind this criterion and the intent of NCDs, the Department recommends changing the criterion as follows:

  - a. Establish a definition of “Daily Needs” with the following use types as adopted in the Implementation Document.<sup>90</sup> The Department cautions against codified this definition as resident needs are evolving and the intent of the Implementation Document is to be responsive to these changes. For example, if Wells Fargo filed a Conditional Use application and it was found that the neighborhood lacked

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<sup>89</sup> San Francisco Planning Department, Standards for Storefront Transparency, Planning Code Requirements for Commercial Businesses, November 2013.

<sup>90</sup> Corresponding definitions apply to zoning districts within Article 8 of the Planning Code.

financial services, Wells Fargo would be providing a daily needs serving use and be more desirable.

1. Limited Restaurant, as defined by Planning Code Sec. 790.90
  2. Specific Other Retail, Sales and Services as defined by the following subsections of Planning Code Sec. 790.102
    - (a) General Grocery;
    - (b) Specialty Grocery;
    - (c) Pharmaceutical drugs and personal toiletries;
    - (e) Self-service Laundromats and dry cleaning;
    - (f) Household goods and services;
    - (g) Variety merchandise, pet supply stores and pet grooming services;
    - (l) Books, music, sporting goods, etc.
  3. Personal services, as defined by Planning Code Sec. 790.116
  4. Limited Financial Service (Planning Code Sec. 790.1120) and/or Financial Service (Planning Code Sec. 790.110)
  5. Specific Trade Shops as defined by the following subsections of Planning Code Sec. 790.124
    - (1) Repair of personal apparel, accessories, household goods, appliances, furniture and similar items, but excluding repair of motor vehicles and structures;
    - (6) Tailoring
- b. Evaluate the provision of daily needs for the 1/4-mile radius in relation to the district's defined intent. If the district is intended only to support residents, the mix of uses should reflect that. Conversely, if it is to meet wider shopping or tourist needs, the mix of uses and retailers should reflect that.
- B. Look more closely at Super Stores with an economic impact report.** Require an economic impact report for big box retail uses that are over 50,000 sf in most districts and that are over 120,000 sf in the C-3 district. Super Stores or Big Box Stores are physically large retail establishments and usually part of a chain that would be considered a formula retail use. Shared characteristics of Super Stores include:
- Large, free-standing, rectangular, generally single-floor structures;
  - Structures that sit in the middle of a large parking lot that is meant to be vehicle accessible rather than pedestrian accessible<sup>91</sup>;
  - Floor space several times greater than traditional retailers in the sector allowing for a large amount of merchandise<sup>92</sup>.

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<sup>91</sup> Douglas Kelbaugh, *Repairing the American Metropolis*, USA: University of Washington Press (2002) page 165

<sup>92</sup> CQ Researcher: Big-Box Stores. September 10, 2004.

These Super Stores can generally be broken into two categories: general merchandise, which includes stores like Walmart and Target that sell a wide variety of goods and products and specialty stores, such as Best Buy, that focus on a specific type of product, such as technology. Conventionally, super stores are generally more than 50,000 square feet and sometimes approach 200,000 square feet. In San Francisco, single retail uses over 50,000 gross square feet require a Conditional Use authorization in all but the C-3 Zoning District. Single retail uses over 90,000 gross square feet are only permitted in some C-3 zoned areas and require a Conditional Use authorization. Uses over 120,000 gross square feet are prohibited in all but the C-3 Zoning District<sup>93</sup>. Existing large single-retail uses in San Francisco include the Target at City Center and Costco, which are both approximately 120,000 square feet. The Target at Fourth and Mission is approximately 85,000 square feet. Both Best Buy locations in San Francisco are approximately 50,000 square feet<sup>94</sup>.

Super Stores can affect the local economy in a variety of ways. They initially bring an influx of jobs to an area, due to the size of their operation compared to small businesses. However, this gain can be nullified over time as smaller businesses are put out of business because of their inability to match the low pricing and wide variety of a super store. A 2005 study found that the opening of a Walmart saw, on average, a 2.7 percent reduction in retail employment in the surrounding County<sup>95</sup>. In terms of tax revenue, studies indicate that mixed-use is the most beneficial to the economy and big-box retailers do not significantly help the economy<sup>96</sup>. The standard for a super store (a large, single-floor structure), does not yield the same multiplier effect that comes from vertical expansion that can be seen in a dense mixed-use development.

In order to fully evaluate the impact of such a use, the Department recommends requiring a thorough economic impact report as part of the Conditional Use review of

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<sup>93</sup> San Francisco Planning Code Section 121.6. Uses over 120,000 gross square feet that sell groceries, contain more than 20,000 Stockpiling Units (SKUs); and devotes more than 5% of its total sales floor area to the sale of non-taxable merchandise are prohibited in San Francisco.

<sup>94</sup> Best Buy on Harrison Street is approximately 46,743 square feet and Best Buy at City Center is approximately 55,000 square feet.

<sup>95</sup> David Neumark, Junfu Zhang and Stephen Circcarella. National Bureau of Economic Research, "The Effects of Wal-Mart on Local Labor Markets" (2005). Page 28 Retrieved from <http://www.nber.org/papers/w11782.pdf>

<sup>96</sup> Philip Langdon. New Urban News, "Best bet for tax revenue: mixed-use development downtown" (2010) Retrieved from <http://bettercities.net/article/best-bet-tax-revenue-mixed-use-downtown-development-13144>

any proposed Super Store. The economic impact report would include specified assessments and projections, including, 1) an assessment of the effect that the proposed superstore will have on retail operations and employment in the same market area, including construction-related employment; 2) an estimation of change in sales tax to be paid to the City; specifying if the change would be a net increase or decrease; 3) a projection of the costs of public services and public facilities resulting from the construction and operation of the proposed superstore and the incidence of those costs, including the cost to the state, city, or county of any public assistance that employees of the proposed superstore will be eligible for based on the wages and benefits to be paid by the proposed superstore; 4) a leakage study to determine if the superstore would be recapturing sales that are currently occurring outside the City; and 5) a multiplier study to estimate change whether an increase or decrease in recirculation of local dollars could be expected. This work shall be paid for by the applicant and shall be completed under the direction of Planning Department staff by an economic consultant firm identified as a pre-qualified firm by the City Office of Controller.

**4. Create a Performance-Based Formula Retail Administrative Review process for aesthetic review of less impactful formula retail, while still providing for the option of full Conditional Use authorization when a project is controversial.**

The goal of Performance-Based Formula Retail Review is to allow for a focused review of aesthetic impacts and performance where a formula retail establishment has already been authorized<sup>97</sup> for the site; where the use is not expanding in size nor changing use category; and where the project itself is not controversial. If a formula retail conditional use has already been granted at the site, the Commission has already established the compatibility of formula retail use at this location. Therefore, the Administrative Review process would center on the Performance-Based Review Standard for criteria three regarding aesthetic compatibility (Sec. 303(i)(3)(C) in the proposed Ordinance). As discussed earlier in Recommendation 3, the Department proposes enriching this review to require specifics for signage, storefront transparency and pedestrian design standards that would apply to formula retailers that are eligible for the Performance-Based Review. However, if there is controversy around the project and after public notice a member of the public or a Commissioner would request a Discretionary Review hearing, then the Commission hearing

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<sup>97</sup> The Performance Based Formula Retail Review process would not apply to grandfathered formula retail establishments that pre-date the current formula retail controls. If a formula retail establishment that did not receive Conditional Use authorization is changing to another formula retail establishment, regardless of use category, a full Conditional Use review and hearing would be required. The proposed formula retail establishment would be treated as a new formula retail use. For example, if the McDonald's on Haight Street wanted to change to a Burger King, a new formula retail Conditional Use application would be required because the original McDonald's did not procure a Conditional Use to operate a formula retail use at that site.

would focus on the full criteria that would be apply under a traditional Conditional Use authorization for formula retail (Section 303(i)(3)(A-H<sup>98</sup>) in the proposed Ordinance).

**Minimized Standard Business Signage.** As described earlier, the Department recommends adoption of signage guidelines as part of the Performance-Based Review Standards for all formula retail. Even projects that would go through this administrative process should be reviewed to confirm that the site meets the Commission's newly adopted Standards. Formula retailer that opts for the Performance Based Review would have to comply with these guidelines and conform to Department discretion regarding signage.

**Storefront Transparency and Pedestrian design is maximized.** As mentioned earlier, while this code section is reviewed as part of the existing Conditional Use review process for formula retail uses, businesses are not required to alter their storefronts to meet the Code requirement. Adding this requirement to the Performance-Based Formula Retail Review would enable the Department to ensure that the entitlement is not granted until the property meets this requirement.

**Process.** Formula retailers who qualify for the Performance Based Formula Retail Review would be required to conduct a Pre-Application meeting prior to filing their Performance Based Formula Retail Review application with the Department. A Performance Based Review is examined by staff to ensure compliance with the objectives above. A draft letter is written informing the applicant of the recommendation and any recommended conditions of approval. A public notice is mailed to the Planning Commission and neighborhood groups and the notice is posted at the Project Site. The posted notice would inform the public of the type of application, and an expiration date for the notice with instructions on how to request a hearing if desired. Any interested party may requests a Discretionary Review hearing, in writing, up to 5pm on the date of notice expiration. If a request for public hearing is made, the item will be scheduled for hearing before the Planning Commission. The hearing would require its own mailed and posted notice for the hearing and the Commission may consider not only the aesthetic compatibility criteria (Section 303(i)(3)(C) in the proposed Ordinance) per the Administrative Review, but also all of the proposed criteria (Section 303(i)(3)(A-H) in the proposed Ordinance) at the hearing.

**Apply the Aesthetic Criteria from the Commission's Performance-Based Formula Retail Standards for Changes of formula retail tenants that retain the same size and use category.**

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<sup>98</sup> These criteria in the proposed ordinance would be: (A) The existing concentrations of formula retail uses within a ¼ mile of the proposed project. (B) The availability of other similar retail uses within a ¼ mile of the proposed project. (C) The compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the district. (D) The existing retail vacancy rates within a ¼ mile of the proposed project. (E) The existing mix of Citywide-serving retail uses and neighborhood daily needs-serving retail uses within a ¼ mile of the proposed project the district. (F) Additional relevant data and analysis set forth in the Performance Review Standards adopted by the Planning Commission. (G) If required by Section 303(j) for Large Retail Uses, preparation of an economic impact study. (H) 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 its discretion to require changes in the time, place and manner of the proposed signage for the proposed formula retail use.



Conditional Use authorizations are land use entitlements that correspond to a parcel. Formula retail uses have been interpreted in the Planning Code to be a separate, unique land use category in its own right and therefore a new Conditional Use is required upon the change of operator. The Planning Code currently requires new Conditional Use authorization when there is any change of formula retail use. For example, Tully's Coffee on Cole Street was converted to a Peet's Coffee with no change in use size or use category (limited restaurant), yet a new Conditional Use was required<sup>99</sup>. This is a common occurrence in City's shopping centers (Lakeshore Plaza, City Center at Geary and Masonic and 555 9th Street shown in Figure 3, Figure 4 and Figure 5). These shopping centers have formula retail controls in place but are almost entirely occupied by formula retail tenants and have essentially always been that way. They share similar large scale massing, parking lots and are oriented internally, away from pedestrian and street activity.

Even though these shopping centers are known for formula retail and considered appropriate locations for formula retail, as evidenced by the lack of Conditional Use disapproval at these locations, every time there is a change of tenant, the new formula retail tenant is required to seek new Conditional Use authorization. Formula retail uses in Neighborhood Commercial and mixed use districts that have been granted a Conditional Use authorization have already been evaluated for use and visual compatibility. Requiring a new Conditional Use for each tenant change adds to the cost of doing business, as review and processing time is significant. This expense is justified when there could be a negative impact to the neighborhood. However, for sites where the formula retail use has already been authorized; where homogenization of the neighborhood character has been addressed through the Performance-Based Review Criteria for aesthetic considerations; and where the project, itself is deemed to not be controversial as no DR hearing was requested, the Department recommends using this new Administrative Formula Retail Review rather than the full Conditional Use review. The Administrative Review would be a reduced process that focuses on increasing people-centered design and decreasing a homogenized aesthetic while maintaining a balance of uses, as use category changes would not be permitted to go through the reduced process. The Administrative Review includes the performance-based standards for sign controls, transparency and fenestration controls and urban design controls designed to allow already permitted uses to continue operating as formula retailers as well as addresses the need for visual improvements in the future.

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<sup>99</sup> Case No. 2012.1507C at 919 Cole Street, heard on April 18, 2012, Planning Commission Motion No. 18847 [http://50.17.237.182/docs/Decision\\_Documents/CPC\\_Motions\\_and\\_Resolutions/18847.pdf](http://50.17.237.182/docs/Decision_Documents/CPC_Motions_and_Resolutions/18847.pdf)



**Figure 3: Rendering of City Center at Geary and Masonic.** Recently, the Commission approved multiple Conditional Use authorizations for this site without controversy. This site can be expected to see additional tenant turn-over in the future and may not benefit from review beyond aesthetic compatibility.



**Figure 4: Aerial view of the Power Center at 555 9th Street.** The Planning Commission considered an ordinance [BF 120083] that would have allowed formula retail uses without the need for Conditional Use authorization in 2012. At that time, the Commission expressed general comfort with formula retail use but desired capacity to improve the aesthetic functions of this site and improve the pedestrian orientation. See Commission Resolution 18581. The Administrative Review process proposed in this document seeks to provide the commission with this capacity while removing unneeded review for the larger Conditional Use process.



**Figure 5: Lakeshore Plaza at 1501 Sloat Boulevard.** This is another site that frequently experiences turnover in formula retail tenants and rarely do those entitlements engender opposition. When there is controversy, however, the proposed Administrative Review, could be elevated to a hearing before the Commission that would all the Commission full discretion on the project.

## 5. Small Business Support

Small businesses contribute significantly to the unique neighborhood character of each district. The Department recommends further outreach and education to maximize utilization of OWED programs to support neighborhood serving businesses.

**Utilization of Office of Economic and Workforce Development (OEWD) resources.** The Mayor's Office of Economic and Workforce Development offers small business support services intended to make them more competitive with formula retailers. These programs include:

- **Jobs Squad:** A two member team of City staff that conducts door to door outreach to small businesses around the City to connect them with help and information.
- **Technical Assistance Programs.** OEWD, the Small Business Assistance Center in City Hall, and OEWD-funded nonprofit organizations offer technical assistance to entrepreneurs seeking to launch, expand, or stabilize their small business. They also offer legal and leasing assistance.
- **Small Business Loan Programs.** OEWD and its partners offer a variety of loan programs to entrepreneurs seeking to launch, expand or stabilize their business. Loans can range from \$5,000 to \$1,000,000.
- **SF Shines Façade & Tenant Improvement Program.** SF Shines helps businesses in targeted corridors upgrade their storefront exterior and interior space by providing funding and staff support for design, project management, and construction.
- **Biz Fit SF.** Biz Fit SF provides focused assistance in targeted corridors to existing retailers and restaurants that may be at risk of displacement.
- **Healthy Retail SF.** Healthy Retail SF provides technical assistance in targeted corridors to retailers seeking to increase access to healthy foods.
- **Storefront SF.** Storefront SF is a free internet tool for entrepreneurs seeking to lease or purchase storefront retail space to launch or expand their business.

## ENVIRONMENTAL REVIEW

The proposed Ordinance and procedural changes are not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because the proposal does not result in a physical change in the environment.

## PUBLIC COMMENT

The Department conducted extensive public outreach as part of the Department's Study and resulting policy recommendations. The Department has received formal written comments from the following individuals and organizations:

- Coblentz Patch Duffy & Bass LLP, representing the Power Center located at 555 Ninth Street
- The Haight Ashbury Merchants Association
- 48 letters from commercial retail brokers
- Duboce Triangle Neighborhood Association
- Adriano Paganini, owner of Super Duper Burger and six other San Francisco restaurants
- Small Business Commission
- Tom Radulavich, Livable Cities
- Stacy Mitchell, Institute for Local Self-Reliance
- Small Business Commissioner Kathleen Dooley

The Department created a list of stakeholders with input from the Mayor's Office, the Office of Economic and Workforce Development and the Board of Supervisors. The stakeholders included representatives from local neighborhood organizations, merchant organizations, commercial realtors and brokers, formula retailers, independent retailers, the Chamber of Commerce, the Small Business Commission and the Planning Commission. Focus group meetings were conducted in January, March, and May of 2014.

The Department created and maintained a website "Planning Study of Formula Retail" at [www.sf-planning.org/formularetail](http://www.sf-planning.org/formularetail). Any interested party was able to sign up for updates on the Department's Study and resulting policy recommendations via this website. There are approximately 132 subscribers receiving updates from this website.

In addition to public comment received through the focus group process and inquiries from the website, there have been four public hearings at the Planning Commission intended to gather additional public comment. Hearings were held in July 2013 and January, February and April 2014.

<b>RECOMMENDATION:</b>	<b>Recommendation of Initiation of Proposed Ordinance and Consideration of Adoption of Proposed Ordinance on or after June 5, 2014.</b>
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**Attachments:**

Market Street Map  
San Francisco Planning Department, General Planning Information, *Signs*  
San Francisco Planning Department, *Design Standards for Storefronts for Article 11 Conservation Districts*  
San Francisco Planning Department, *Standards for Storefront Transparency*  
Public Comment