



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change

HEARING DATE: JULY 17, 2014

Date: July 10, 2014
Project Name: **Expanding Formula Retail Controls**
Case Number: 2013.1166T [Board File No. 130788-2]
Initiated by: Supervisor Eric Mar/ Substituted May 13, 2014
Staff Contact: AnMarie Rodgers, Senior Policy Advisor
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Reviewed by: Kanishka Burns, Formula Retail Project Manager
Recommendation: **Recommend Approval with Modifications**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to expand the definition of formula retail to include businesses that have eleven or more outlets worldwide, and to include businesses 50% or more owned by formula retail businesses; expand the applicability of formula retail controls to other types of retail uses; expand the notification procedures for formula retail applications; require an economic impact study as part of the formula retail conditional use application; charge administrative fees to pay for staff review time of such studies; and making environmental findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

The Way It Is Now:

Definition: The Planning Code includes an identical definition of "Formula Retail"¹ in three locations: Section 303(i)(1), 703.3, and 803.6(c). The definition of formula retail applies to businesses with eleven or more (the twelfth location is regulated) establishments that maintains two or more of standardized features². In addition, the Planning Code establishes that only certain retail sales and service use types may be categorized as formula retail³.

¹ 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."

² The standardized features that establish if a use is formula retail include the following: 1) standardized array of merchandise, 2) standardized façade, 3) standardized décor and color scheme, 4) uniform apparel, and 5) standardized signage, a trademark or a servicemark.

³ Section 303(i)(2) establishes that formula retail may include the following 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).

The Way It Would Be:

Below is a summary of Supervisor Mar's current proposal. The Supervisor's current proposal is reflected in the draft Ordinance as substituted on May 13, 2014 (Exhibit D) and as revised in a July 8, 2014 email from the Supervisor's Office (Exhibit E). Where appropriate, the Supervisor's proposal is contrasted with the Commission's proposal and/or existing regulations.

Definition Changes: Supervisor Mar's current proposal would add amend the definition of Formula Retail to include more use types, add international establishments, and establish a committee to further study subsidiaries.

Comparison with draft Planning Commission Proposal. All of these definitional changes are consistent with the current Planning proposal.

- **New Use Types Proposed to Be Formula Retail.** The Supervisor's proposal would increase the retail sales and services uses that may be Formula Retail by adding the following use categories to the definition: 1) Limited Financial Service, 2) Personal Service, 3) Business or Professional Service, 4) Massage Establishment, 5) Fringe Financial Service, and 6) Tobacco Paraphernalia Establishments⁴.
- **Addition of International Establishments.** The proposed Ordinance would not only count establishments located in the United States but would also count international locations towards the threshold for being designated as a Formula Retail use.
- **Further Consideration of Subsidiaries.** The Supervisor's proposal would amend his proposed Ordinance to create a committee to study the difficult issue of subsidiaries and prepare a report for the Board of Supervisors within six months⁵.

Notification Changes: In addition to the current notice requirements described in Section 312, the proposed Ordinance would add new notification requirements⁶.

⁴ The July 8, 2014 email from the Supervisor's office indicated that the Supervisor would remove the following uses from his proposed broadening of the definition of Formula Retail 1) Tourist Hotel, 2) Automobile Parking, 3) Automotive Gas Station, 4) Automotive Service Station, 5) Automotive Repair, 6) Automotive Wash, 7) Automobile Sale or Rental, 8) Storage, 9) Light Manufacturing, Wholesale Sales, 10) Storage, 11) Other Entertainment, 12) Medical Service, 13) Administrative Service, and 14) Adult Entertainment.

⁵ The July 8, 2014 email from the Supervisor's office indicated the Supervisor would amend his proposed Ordinance to remove the proposed regulation of subsidiaries and instead to create a committee to study the difficult issue of subsidiaries and prepare a report for the Board of Supervisors within 6 months.

⁶ The July 8, 2014 email from the Supervisor's office indicated the Supervisor would remove the poster size requirement from the draft ordinance and any requirements which are duplicative with existing notification requirements.

- The draft ordinance would have established a 18"x 24" requirement which is smaller than the current poster provided which is 36"x 40".
- Existing notification requirements that were duplicated in Supervisor Mar's draft ordinance and are now proposed for elimination include: description of the proposal compared to any existing improvements on the site with dimensions of the basic features, elevations and site plan of the proposed project including the position of any adjacent buildings, exterior dimensions and finishes, a graphic reference scale, existing and proposed uses and commercial or institutional business name, if known. The notice shall also include the name of the

Comparison with draft Planning Commission Proposal. The draft Ordinance, initiated by the Planning Commission does not change Formula Retail notification requirements. To help understand the scope of the Supervisor's changes, each notification change is compared with the existing requirements below.

- **Written Notice.** The notice shall include the name of the proposed formula retail business and its corporate parent name(s), if any.
Comparison with Existing Required Notice. The inclusion of the corporate parent name(s) would be a new requirement.

- **Parties Receiving Notice.** The written notice shall be mailed to the notification group, which shall include the applicant, tenants of the subject property, relevant neighborhood organizations as described in Subparagraph 312(d)(2)(C), all individuals having made a written request for notification, and all owners of property and tenants within the notification area.
Comparison with Existing Required Notice. All of the parties described above are currently included in the existing notification for 312, except for the inclusion of the tenants of properties between 150' and 300' of the proposed project.

- **Notification Period.** All building permit applications shall be held for a period of 45 calendar days from the date of the mailed notice.
Comparison with Existing Required Notice. The current required notice is only 20 days, not 45 days.

- **Department Staff Report and Recommendation.** This report shall be available at the Planning Department and on the Planning Department's website two weeks prior to the Planning Commission hearing at which the Conditional Use permit would be considered.
Comparison with Existing Requirements. Currently this report is available one week prior to the Commission hearing.

- **New Methods of Notification.** The notice shall also be posted on the Planning Department's website.
Comparison with Existing Requirements. No internet posting is currently required.

Evaluating the Concentration of Formula Retail: The draft ordinance would codify a methodology for evaluating the concentration of formula retail. While the July 8, 2014 email from the Supervisor's office indicates support of the Planning Commission proposal for evaluating concentration as described in the draft Commission Guide; the Supervisor's draft proposal maintains a strict threshold of 20% for the

proposed formula retail business if any, and a map of the notification area, showing the location of proposed use and existing adjacent businesses/uses. The notice shall describe the project review process and shall set forth the mailing date of the notice and the expiration date of the notification period.

- Supervisor Mar's ordinance requires notification within "the notification area" which was largely duplicative of existing requirements in that it includes the applicant, tenants of the subject property, relevant neighborhood organizations as described in Subparagraph 312(d)(2)(C), all individuals having made a written request for notification, and all owners of property and tenants within the notification area. These items are proposed for deletion from the draft Ordinance. The only new parties to be notified under Supervisor Mar's proposal would be the inclusion of tenants who live between 150' and 300' of the proposed project.

Upper Market NCD. Any proposed formula retail establishment that would push the concentration over 20% within the 300' vicinity would trigger a requirement for Planning Department staff to recommend disapproval.

Comparison with draft Planning Commission Proposal. The Planning Commission established this as Commission policy for the Upper Market NCD and NCT on April 11, 2013 via Resolution No. 18843. Since establishing this policy, the Commission has expressed concerns about the implementation of the obligatory staff disapproval. The Planning proposal that would also be considered by the Commission on July 17, 2014 leaves the Planning Commission policy in place.

Economic Impact Study: Supervisor Mar's current proposal would establish a broad and rigorous regulatory framework requiring economic impact studies for formula retail uses, including very small uses. There would be three size categories established for such study: small-scale (3,000sf or smaller store where all San Francisco based outlets would be 10,000 sf or smaller in total); medium scale (3,000-10,000 sf or smaller store where all San Francisco based outlets would be 20,000 sf or smaller in total) and large-scale (10,000 sf store where all San Francisco based outlets would be 20,000 sf or larger in total). Small scale formula retail uses would not need to complete a study. Medium-scale uses would need to produce a study covering an area of 2.5 miles. Large-scale uses would need to produce a study covering the entire City and County of San Francisco. The content of the study would include the following:

- a. the extent to which the proposed retailer will capture a share of retail sales in the market area;
- b. how the construction and operation of the proposed retailer will affect the supply and demand for retail space in the market area;
- c. how the construction and operation of the proposed retailer will affect employment in the market area, including an analysis of whether the proposed retailer will result in a net increase or decrease in employment in the market area;
- d. the effect on wages and benefits of employees of other retail businesses, and community income levels in the market area;
- e. the costs of public services and public facilities resulting from the construction and operation of the proposed retailer and the incidence of those costs;
- f. the effect that the construction and operation of the proposed retailer will have on retail operations, including grocery or retail shopping centers, in the same market area;
- g. the effect that the construction and operation of the proposed retailer will have on average total vehicle miles traveled by retail customers in the same market area;
- h. the potential for long-term vacancy of the property on which the retailer is proposed in the event that the business vacates the premises; and
- i. For purpose of the economic impact study, the "market area" is defined as an area around the store large enough to support its operation, but which may not extend further than 2.5 miles from the store for a medium-scale project, City-wide for a large-scale project.

Comparison with draft Planning Commission Proposal. The draft Planning Commission proposal would not require an economic impact study per se for formula retail. Instead, the Commission proposal focuses a requirement for economic study on large-scale retail as defined by Planning Code Section 121.6, regardless of whether the retailer is formula. Large-scale retailers would be those over 50,000sf in most districts and over 120,000sf in the downtown or C-3 district. The draft Planning Commission proposal would require a report on the following content areas:

- a. **Leakage analysis study.** A leakage analysis estimates the net impact that a new retail use is likely to have on sales "leakage," defined as the difference between the buying power (demand)

of the household and workforce population in a trade area and the actual sales (supply) in that same trade area . For leakage studies, in particular, it's important to establish the appropriate size of the study area. Conducting a leakage study at a neighborhood level may be appropriate for smaller stores as this is the level where impacts may be identified. At the same time, conducting such a study for a wider area, such as at the citywide level, may not provide any information as any impact would be too small to be reliably projected. Further, the trade area of impact varies widely by store type and size and other factors. For this reason, the proposal would maintain flexibility in the size of the area to be studied. This numerical leakage analysis described above should be paired with a qualitative assessment of whether the new business would complement the existing merchandise selection in the area. For example, even in the case where there may be no measurable unmet demand for a particular category of goods, a new store may add greater variety in the offerings available to shoppers, helping to bolster the strength of a cluster of similar retailers. In other cases, there may not appear to be any sales leakage because existing stores are capturing sales all of the expected sales, but the existing stores may not necessarily match evolving consumer preferences. Allowing flexibility for determining appropriate trade area for analysis of each project and supplement this number with qualitative assessments are key components to this study.

- b. **Employment analysis.** The Planning proposal includes the following employment information for the proposed project: a projection of both construction-related and permanent employment generated by the proposed project; an analysis of whether the proposed project will result in a net increase or decrease in permanent employment in the impact area; and a discussion of whether the employer is expected to pay a living wage relative to San Francisco's cost of living.
- c. **Fiscal Impact.** The intent of the fiscal impact portion of the report would be to itemize public revenue created by the proposed project and public services needed because of the proposed project. This would be calculated based upon the net fiscal impact to the General Fund. Such estimates should be done using the city's current assumptions used in existing nexus studies (from area plan, transit, open space in-lieu fee and other impact fees) and should include any contributions the business would make through such impact fee payments.

ISSUES AND CONSIDERATIONS

Formula Retail regulation raises a host of planning and land use issues. The case report for the draft Planning Commission proposal (Case No. 2013.0936UT) considers these issues in detail. Therefore this report will focus only on the aspects of Supervisor Mar's proposal which differs from the draft Planning Commission proposal. These issues are discussed in this report under the heading "Basis for Recommendation".

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

The Department recommends that the Ordinance is amended as follows:

1. Raise the threshold for establishments to become formula retail from the existing 11/12 threshold to 19/20.
2. Maintain the existing notification processes. When technology allows, enable the public use the Department website to generate a list of pending formula retail projects.
3. Do not codify mandatory disapproval in the Upper Market NCD if the vicinity concentration is calculated at over 20%.
4. Require economic impact studies only when meaningful information may be provided.

BASIS FOR RECOMMENDATION

After ten years of experience implementing formula retail controls in coordination with decision makers, the public, and applicants; the Department believes that it is time for a thoughtful update to the controls. The proposal initiated by the Planning Commission in May and refined in the intervening months represents the culmination of significant study and outreach. This proposal was developed and vetted through multiple hearings before this Commission as well as through stakeholder groups that represented independent businesses, formula retailers, and community groups. San Franciscans generally demand such public processes and we believe that the Commission's draft proposal responds to input from all parties, including Supervisor Mar. The Department appreciates the Supervisor's interest in coordinating on the final proposal and where we were able to reach agreement; we believe the agreements represent good policy. For the remaining three topics, the Department believes the Supervisor's proposal does not reach the balance needed to respond to the varied needs of the City. The three items below seem to lack the acknowledgement that formula retail can play a valuable role in the City and does have benefits to offer to our residents. For this reason, the Department believes the following components of the draft ordinance should be modified.

1. **Definition of Formula Retail.** As described in "The Way It Would Be" section of this report, Supervisor Mar's proposal matches the draft Planning Commission proposal in all aspects but for one: the threshold number of establishments needed in order for a store to become a formula retailer. While Supervisor Mar's proposal does not change the current number from 11/12, it differs from the draft Planning Commission proposal which does raise the threshold to 19/20. In a variety of ways the Supervisor's ordinance increases the number of businesses that would be regulated as formula retail: six new use categories would be added to the definition, and international locations would be counted towards the numerical threshold. Taken together, these changes would greatly increase the businesses regulated as formula retail. The Department firmly believes that this increase should be balanced with some relief for formula retailers that are on the smaller end of the spectrum. This recommendation is based upon comment from public and decision-makers alike that smaller or local stores should receive some relief from controls that can be difficult to navigate. While, the City cannot give preferential treatment to retailers

based in San Francisco, the controls could focus on larger retailers with at least 20 or more outlets.

2. **Notification.** Public notification should be a simple process that informs the public of important issues with regularity and consistency. Unfortunately, San Francisco's requirements are neither simple nor consistent. The Supervisor's proposal would continue to add complexity and irregularity to the process. The Commission periodically attempted to add predictability to this process. Most recently, the Commission examined noticing requirements in 2009. At that time, the Commission identified more than 40 different notification requirements. (See Exhibit A: Existing Notification Standards 10/5/09.) In the attached table, there are currently five different requirements for Conditional Use authorizations. This proposal would create a sixth unique notice requirement for CU. Most notably, the proposal would require a 45 day notice requirement. This is a longer notice wait period than any other Planning Code notification requirement. It would more than double the existing notice for formula retail from 20 days to 45 days. Further, this requirement could create substantial scheduling delays and therefore increase costs to the project sponsor without apparent benefit. Notably, even formula retail proposals which are embraced by the community would be subject to these costly delays. The existing notification process is comprehensive and effective.
3. **Do not codify mandatory disapproval in the Upper Market NCD if the vicinity concentration is calculated at over 20%.** As mentioned earlier in this report, effectively, there would no change in the way the Department reviews formula retail in the Upper Market by codifying this policy. The Commission continues to use the policy and no change is currently proposed. While the community continues to be relatively satisfied with the 20% threshold; the community is also currently engaged in a detailed study of the neighborhood's retail sector. According to the February/March Duboce Triangle Neighborhood Association (DTNA) newsletter, DTNA "in partnership with the Castro Community Benefits District (CBD) and Castro Merchants (MUMC), Eureka Valley Neighborhood Association (EVNA), Supervisor Wiener's office, and building developers in Upper Market will embark on a retail study for the Castro/Upper Market corridor to better understand the various retail users and uses, who shops here and why, as well as who doesn't shop here and why".

The primary lesson the Department has learned through examining formula retail, is that discretionary review of each proposal is critical to guiding neighborhood character. The CU process is largely working and the Department has concerns about codification of overly rigid structures that remove the capacity for professional discretion. This combined with the pending study by the neighborhood's community and merchant groups; indicates that the time is not right for making this this control permanent. (A minor error in the draft ordinance is that 20% threshold is being applied only to the Upper Market NCD, which is only one parcel, as opposed to the Upper Market NCT which is the primary zoning district for this area.)

4. **Economic Impact Study.** The economic impact study in the proposed ordinance is excessively burdensome without clear public benefit. The thresholds for determining when an economic impact report would be required are exceeding small. Any store over 3000 square feet would require an impact report as would any new store that was smaller than 3000 square foot but where the combination of outlets within San Francisco totaled more than 10,000. Generally speaking stores with fewer than 100,000 square feet are unlikely to have a significant, quantitative economic impact. The total square footage of all stores owned by the applicant throughout the city is not likely to affect the economic impacts of a specific new location. The fact that such small

stores are proposed for economic impact studies combined with the proposed requirement for a large study area of either 2.5 miles or citywide; makes it unlikely that any impacts will be discovered with this report.

Other aspects of this report have also been identified as very to extremely difficult to quantify, including:

- the impacts of the construction (as opposed to operation) of a proposed retailer on factors such as supply and demand for retail space, the cost of providing public services and facilities, other retail operations, and vehicle miles traveled;
- the effect on wages and benefits of employees of other retail businesses and community income levels in the impact area; (Existing literature and data sources do not provide a basis for estimating the effects of most new formula or large-scale retailers on existing competitors); and
- assessing the potential for long-term vacancy of the property on which the retailer is proposed in the event that the business vacates the premises⁷.

Lumped in with the economic impact study are other aspects which are not economic. Estimating the impact of a new retailer on total vehicle miles traveled (VMT) would require a transportation impact study. Further, it's not clear how helpful this information would be because, except for the very largest of big box stores, it's unlikely that an impact would be discovered in San Francisco's traditional neighborhood commercial districts. Typically VMT is not measurable for these smaller retail uses; only where a proposed store would provide a parking lot with 50-100 car spaces would we begin to see a negligible impact. In NC districts, providing 50-100 spaces for a retail use would generally be prohibited.

ENVIRONMENTAL REVIEW

The proposed Ordinance would result in no direct or indirect physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15060(c) and 15378 of the CEQA Guidelines.

PUBLIC COMMENT

As of the date of this report, the Planning Department has received several inquiries about the proposed Ordinance, but has only received a letter from the Small Business Commission. This letter is in Exhibit B.

RECOMMENDATION:	Recommendation of Approval with Modifications
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⁷ July 8, 2014 Memorandum from Strategic Economics to the Planning Department. Preliminary Assessment of Proposed Economic Impact Study Requirements.

Attachments:

- Exhibit A: Existing Notification Standards 10-05-09
- Exhibit B: Letter from the Small Business Commission
- Exhibit C: Draft Planning Commission Resolution
- Exhibit D: Board of Supervisors File No. 13-0788
- Exhibit E: July 8, 2014 Letter from Supervisor Mar's Office describing intended amendments to his draft ordinance
- Exhibit F: July 8, 2014 Memorandum from Strategic Economics analyzing economic impact studies

Existing Notification Standards (10/5/09)

Note: This summary is not definitive. The Summary includes Planning Code Standards that may differ from Department practice.

PROJECT TYPE	Code Reference	EXISTING STANDARDS								
		Posting		Mailing				Newspaper		Comment
		Type	Length	Type	Recipients	Radius	Length	Type	Length	
Building Permit Application (BPA)/Discretionary Review (DR)										
BPA notice in NC District	PC §312	[per ZA requirements] practice is 11"x17"	30 days	notice along with plans [practice is 8.5x11"; no specifications; no floorplans]	owners and occupants	150'	30 days	none	none	Western SoMa subject to Section 312 controls per 803.7. uncodified practice is to use orange paper?
BPA Notice in R District	PC § 311	[per ZA requirements] practice is 11"x17"	30 days	notice along with 11"x17" plans (inc. floor plans)	owners and occupants	150'	30 days	none	none	uncodified practice is to use orange paper
DR - Standard Hearing Notice	PC § 311(d) and 312(e)	30" x 30"	10 days	notice	owners and occupants	150'	10 days	none	none	longstanding practice has been to notify only adjacent neighbors via mail
DR - Mandatory Hearing (MCD)	PC § 217(k), 312(e), 790.141 and 890.133	notice [unspecified]	30 days	notice	owners and occupants	300'	30 days	none	none	Subsequent DR hearing notice under Section 312(e) required.
DR - Staff-Initiated Hearing with 311/312	PC § 311(d)	30" x 30"	10 days	notice	owners and occupants	150'	10 days	none	none	Regular DR Notice performed after completion of Section 311/312 notice.
DR - Staff-Initiated Hearing without 311/312	PC § 311(d)	[per ZA requirements] practice is 11"x17"	30 days	notice along with 11"x17" plans (inc. floor plans)	owners and occupants	150'	30 days	none	none	
DR - Mandatory Hearing	PC § 317 and 311/312 (if required)	30" x 30"	10 days	notice	owners and occupants	150'	10 days	none	none	Regular DR Notice performed after completion of Section 311/312 notice (if required)
Sutro Tower	PC § 306.9	none	none	notice	owners (and occupants?), neighborhood organizations and interested parties.	1,000'	none specified	none	none	

Existing Notification Standards (10/5/09)

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PROJECT TYPE	Code Reference	EXISTING STANDARDS								
		Posting		Mailing				Newspaper		Comment
		Type	Length	Type	Recipients	Radius	Length	Type	Length	
Environmental Review										
MEA - Notification of Project Receiving Environmental Review (all but Class 1 or 3 catex)	Not required - Department policy	none	none	notice	owners	300'	14 days	none	none	practice is to include adjacent occupants and nbhd groups as well
MEA - Notice of Availability of NegDec	Admin. Code Chapter 31.11, CEQA	11x17 onsite	20 days	notice	owners	300'	20 days	notice	20 days	practice is to include adjacent occupants/ nbhd groups as well
MEA - Notice of Availability of NegDec Involving Regional Agencies & State Clearinghouse	Admin. Code Chapter 31.11, CEQA	11x17 onsite	30 days	notice	owners	300'	30 days	notice	30 days	practice is to include adjacent occupants/ nbhd groups as well
MEA - Notice of Preparation of EIR	Admin. Code Chapter 31.11, CEQA	11x17 onsite	30 days	notice	owners	300'	30 days	notice	30 days	practice is to include adjacent occupants/ nbhd groups as well
MEA - Publication of DEIR	Admin. Code Chapter 31.11, CEQA	11x17 onsite	45 days	notice	owners	300'	45 days	notice	45 days	practice is to include adjacent occupants/ nbhd groups as well
MEA - Notice of Appeal of PMND	Admin Code Chapter 31.11	none	none	notice	owner, appellant and interested parties	none	up to 30 days	none	up to 30 days	practice is to include adjacent occupants/ nbhd groups as well

Existing Notification Standards (10/5/09)

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PROJECT TYPE	Code Reference	EXISTING STANDARDS								
		Posting		Mailing				Newspaper		Comment
		Type	Length	Type	Recipients	Radius	Length	Type	Length	
Preservation										
Certificate of Appropriateness (LPAB Only)	PC § 1006.2	none	none	none	none	none	none	none	n/a	
Certificate of Appropriateness (with CPC Review)	PC § 1006.3	none	none	notice	applicant, owner of subject property	subject property	10 days	notice	20 days	
Certificate of Appropriateness (with CPC Review) AND in Historic District	PC § 1006.3	none	none	notice	applicant, owner of subject property AND all property owners in historic district	subject property	10 days	notice	20 days	
Historic Survey	Policy	none	none					none	none	
Landmark (District)	PC § 1004.3	none	none	notice	all property owners in district	district	10 days	notice	20 days	
Landmark (Individual)	PC § 1004.3	none	none	notice	owner of subject property	subject property	10 days	notice	20 days	
Notice of Designation	PC § 1104	posting "in a conspicuous place"	not specified	notice	owner of subject property	none	not specified	"publication" pursuant to California Government Code 6064	not specified	
Notice of Change of Designation	PC § 1106	none	none	notice	owner of subject property	none	not specified	none	none	

Existing Notification Standards (10/5/09)

Note: This summary is not definitive. The Summary includes Planning Code Standards that may differ from Department practice.

PROJECT TYPE	Code Reference	EXISTING STANDARDS								
		Posting		Mailing				Newspaper		Comment
		Type	Length	Type	Recipients	Radius	Length	Type	Length	
Public Hearing for Project Entitlement										
B - Office Allocation Hearing	PC § 322, PC § 306.8	notice 30" x 30"	20 days	none	none	none	none	none	none	
C - Conditional Use (CU)	PC § 306.3	30" x 30"	20 days	notice	owners	300'	10 days	notice	20 days	
CU for Planned Unit Development (PUD)	PC § 306.8	30" x 30" must include map	20 days	notice	owners	300'	10 days	notice	20 days	
CU for PUD in NC or SoMa District	PC § 316.3	[size not specified] must include map	20 days	notice	owners	300'	20 days	notice	20 days	
CU in NC or SoMa District	PC § 316.3	[not specified] practice is 30" x 30"	20 days	notice	owners	300'	20 days	notice	20 days	
CU for Wireless Telecommunications (WTS) Facility (within C-3 & RC-4 Districts)	WTS Guidelines	30" x 30"	20 days	notice	owners AND residential tenants of subject building AND residential tenants within 25 feet of subject building	300'	10 days	notice	20 days	
CU for WTS Facility (all other Districts)	WTS Guidelines	30" x 30"	20 days	notice	owners and occupants	300'	10 days	notice	20 days	
Gas Station Conversion	PC § 228.4	[unspecified]	20 days	notice	owners	300 feet	10 days	none	none	
V - Variance	PC § 305, PC § 306.3, PC § 306.8	30" x 30"	20 days	notice	owners	300'	10 days	none	none	
X - Downtown Project Exception Hearing	PC § 309, PC § 306.8	30" x 30"	20 days	notice	owners	300'	10 days	none	none	
X - Hearing on Downtown Project Proposed Approval (no exceptions sought and sponsor accepts any additional requirements)	PC § 309(g)(2)	none	none	notice	owners and any person who has submitted request for additional requirements	adjacent properties	none specified	none	none	

Existing Notification Standards (10/5/09)

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PROJECT TYPE	Code Reference	EXISTING STANDARDS								
		Posting		Mailing				Newspaper		Comment
		Type	Length	Type	Recipients	Radius	Length	Type	Length	
Text/Map Change										
General Plan Amendments	PC § 306.3	none	none	none	none	none	none	notice along with map, if applicable	20 days	
Map Change Greater Than 1/2ac but Less Than 30ac	PC § 306.3	none	none	notice	owners	300'	10 days	notice	20 days	
Map Change Greater than 30ac	PC § 306.3	none	none	notice	owners	300'	10 days	notice along with map	20 days	practice is to include a map in mailed notice if appropriate
Map Change Less Than 1/2ac	PC § 306.3	8 1/2" by 11" posting at every street intersection w/in 300' radius of subject lot(s)	none	notice	owners	300'	10 days	notice along with map	20 days	
Text Change	PC § 306.3	none	none	none	none	none	none	notice	20 days	
Other										
BBN	PC § 351(f)	none	none	not specified	BBN Requestor	not specified	not specified	none	none	Practice is 10 day notice, signature on plans or phone call.
Child Care Exaction Determination Notice	PC § 314.4(a)(2), PC § 306.3	none	none	notice	owners	300'	10 days	notice	20 days	
Coastal Zone Application Filing	PC § 330.6	none	none	notice	California Coastal Commission	none	10 days	none	none	notice to CC given within 10 days of filing.
Coastal Zone Determination	PC § 330.6	none	none	notice	California Coastal Commission	none	7 days	none	none	notice to CC given within 7 days of decision.
Coastal Zone Appeal (to Board of Appeals)	PC § 330.6	none	none	notice	California Coastal Commission	none	10 days	none	none	notice to CC given within 10 days of appeal filing.
Coastal Zone	PC § 330.7	none	none	notice	occupants	100'	none specified	none	none	notice of coastal zone permit application

Existing Notification Standards (10/5/09)

Note: This summary is not definitive. The Summary includes Planning Code Standards that may differ from Department practice.

PROJECT TYPE	Code Reference	EXISTING STANDARDS								Comment
		Posting		Mailing			Newspaper			
		Type	Length	Type	Recipients	Radius	Length	Type	Length	
IMP Hearing Notice	304.5, 306.3	none	none	notice	owners	300'	10 days	notice	20 days	Practice is to include 20-day posted notice (30"x30"). Mailed notice may also be of longer duration per ZA discretion.
Jobs-Housing Exaction Determination Notice	PC § 313.4(b), PC § 306.3	none	none	notice	owners	300'	10 days	notice	20 days	
X - Downtown Project Application Filing	PC § 309(c)	none	none	notice	owners	adjacent properties only	none specified	notice	none specified	
X - Downtown Project Proposed Approval (no exceptions sought and sponsor accepts any additional requirements)	PC § 309(d)	none	none	notice	owners	adjacent properties only	10 days	notice	none specified	



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

June 30, 2014

President Cindy Wu
San Francisco Planning Commission
1650 Mission Street, Suite 400
San Francisco, CA 94103-2414

Subj: File No. 130788 [Planning Code - Expanding Formula Retail Controls]

Small Business Commission Recommendation: **No Recommendation**

Dear President Wu:

At its meeting of June 23, 2014, the Small Business Commission heard Board of Supervisors (BOS) File No. 130788. The Commission moved to make no recommendation on the legislation. The Commission believed that the legislation does not amend the formula retail controls in a balanced way. Rather, it broadly expands the use categories to which formula retail controls will apply, which will result in a deluge of new conditional use authorization (CUA) hearings at the Planning Commission. With your docket already very full, this does not seem to be a wise development. Furthermore, the legislation contains no provisions to expedite review of the least controversial applications. Experience has shown that simple requests – such as changes of ownership within the same use category – might be more efficiently handled through an administrative process.

In the Commission's view, the legislation does not embrace many of the quantitative and qualitative findings of the Planning Department's "San Francisco Formula Retail Analysis." For instance, the Analysis found no relationship between increasing commercial rents and formula retail occupancies. Yet, the legislation strives to discourage all formula retail by imposing an onerous economic impact study requirement on nearly all formula retail applications, even those with small store footprints that are most likely to be owned by local franchisees.

As you are aware, the Small Business Commission on June 9 moved to approve a related proposal put forth by the Planning Department to amend formula retail controls. The Commission suggested the legislative sponsor continue his dialogue with the Planning Department to unify both proposals. The Commission found many valuable aspects in the Planning Department's legislation, and believes it should be possible to align both pieces of legislation into a single proposal.

Thank you for considering the Commission's recommendation on this legislation. Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Regina Dick-Endrizzi". The signature is fluid and cursive.

Regina Dick-Endrizzi
Director, Office of Small Business

SUBJ: FILE NO. 130788 [PLANNING CODE - EXPANDING FORMULA RETAIL CONTROLS]
(6/30/2014)

cc: Jason Elliott, Mayor's Office
Nick Pagoulatos, Office of Supervisor Eric Mar
Jonas Ionin, Planning Department
Aaron Starr, Planning Department
Kanishka Burns, Planning Department
AnMarie Rodgers, Planning Department



SAN FRANCISCO PLANNING DEPARTMENT

Draft Planning Commission Resolution Planning Code Amendment

HEARING DATE: JULY 17, 2014

Date: July 10, 2014
Project Name: **Expanding Formula Retail Controls**
Case Number: 2013.1166T [Board File No. 130788-2]
Initiated by: Supervisor Eric Mar/ Substituted May 13, 2014
Staff Contact: AnMarie Rodgers, Senior Policy Advisor
anmarie.rodgers@sfgov.org, 415-558-6395
Reviewed by: Kanishka Burns, Formula Retail Project Manager
Recommendation: **Recommend Approval with Modifications**

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ADOPTING A RESOLUTION RECOMMENDING APPROVAL WITH MODIFICATIONS OF A PROPOSED ORDINANCE TO AMEND THE PLANNING CODE TO EXPAND THE DEFINITION OF FORMULA RETAIL TO INCLUDE BUSINESSES THAT HAVE ELEVEN OR MORE OUTLETS WORLDWIDE, AND TO INCLUDE BUSINESSES 50% OR MORE OWNED BY FORMULA RETAIL BUSINESSES; EXPAND THE APPLICABILITY OF FORMULA RETAIL CONTROLS TO OTHER TYPES OF RETAIL USES; EXPAND THE NOTIFICATION PROCEDURES FOR FORMULA RETAIL APPLICATIONS; REQUIRE AN ECONOMIC IMPACT STUDY AS PART OF THE FORMULA RETAIL CONDITIONAL USE APPLICATION; CHARGE ADMINISTRATIVE FEES TO PAY FOR STAFF REVIEW TIME OF SUCH STUDIES; AND MAKING ENVIRONMENTAL FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1.

PREAMBLE

Whereas, in 2004 the Board of Supervisor adopted San Francisco's first formula retail controls in three neighborhoods to provide a definition of formula retail and a regulatory framework that intended to protect a "diverse base with distinct neighborhood retailing personalities comprised of a mix of businesses;"¹ and

Whereas, a number of amendments in quick succession added other formula retail controls to other district and neighborhoods, demonstrating growing concern around the proliferation of chain stores in San Francisco; and

¹ 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).

Whereas, in 2007 San Francisco voters adopted Proposition G, the “Small Business Protection Act” which required Conditional Use authorization in all Neighborhood Commercial Districts; and

Whereas, Resolution Number 18843, adopted on April 11, 2013, set forth a policy that provides the first quantitative measure for concentration in the Upper Market Neighborhood, which 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% of the total linear frontage of all parcels located within 300 feet of the subject property and also zoned neighborhood commercial, the Planning Department shall recommend disapproval; and

Whereas, the summer of 2013 saw five ordinances introduced at the Board of Supervisors to alter the definition and implementation of formula retail controls; and

Whereas, 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; and

Whereas, the Board of Appeals ruled on June 19, 2013, 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 to be considered formula retail, and, while discussed, no action was taken on web-based establishments; and

Whereas, on June 25, 2013, Supervisor Weiner’s ordinance Department of Public Works Code to restrict food trucks that are associated with formula retail establishments in the public right-of-way, including affiliates of formula retail restaurants; and

Whereas, the Planning Commission passed Resolution Number 18931 in July 2013, recommending to the Board of Supervisors that the issue of Formula Retail be further studied, with a focus on the economic, neighborhood, and visual impacts of the existing formula retail controls, as well as the anticipated impacts due to the potential expansion of controls; and

Whereas, in 2013-2014 the Planning Department commissioned a study prepared by Strategic Economics which described the existing formula retailers in San Francisco; the impact of these formula retailers on San Francisco’s neighborhoods; the wages and benefits of formula retailers; the effects of San Francisco’s existing formula retail controls; and current issues revolving around formula retail in the City; and

Whereas, in February 2014, Office of the Controller prepared an economic analysis in response to this proposed changes to San Francisco’s formula retail policies, which included an analysis of consumer price and local spending differences between formula and independent retailers and an evaluation of the overall economic impact of expanding the City’s formula retail controls.

WHEREAS, the proposed legislation is intended to resolve the aforementioned issues; and

WHEREAS, on May 22, 2014 the Planning Commission approved initiation of their own ordinance that would amend formula retail controls at duly noticed public hearing; and

WHEREAS, on July 8, 2014 the Planning Department received an email from Supervisor Mar's office describing additional intended amendments to his Ordinance which have been contemplated in the Commission's consideration of his proposed Ordinance; and

WHEREAS, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on July 17, 2014; and

WHEREAS, the Planning Department has determined that the proposed Ordinance will not result in a direct or reasonably foreseeable indirect physical change on the environment, and therefore no further environmental review is required, as set forth in the California Environmental Quality Act Section 15060(c)(2); and

WHEREAS, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Commission has reviewed the proposed Ordinance, inclusive of the proposed amendments described in the Supervisor's staff email of July 8, 2014

MOVED, that pursuant to Planning Code Section 302(b), the Planning Commission Adopts a Resolution recommending approval with modifications of Supervisor Mar's proposed Planning Code amendments.

The Commission recommends that the Ordinance is amended as follows:

1. Raise the threshold for establishments to become formula retail from the existing 11/12 threshold to 19/20.
2. Maintain the existing notification processes. When technology allows, enable the public use the Department website to generate a list of pending formula retail projects.
3. Do not codify mandatory disapproval in the Upper Market NCD if the vicinity concentration is calculated at over 20%.
4. Require economic impact studies only when meaningful information may be provided.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

- While Supervisor Mar's proposal does not change the current number from 11/12, it differs from the draft Planning Commission proposal which does raise the threshold to 19/20. In a variety of ways the Supervisor's ordinance increases the number of businesses that would be regulated as formula retail: six new use categories would be added to the definition, and international

locations would be counted towards the numerical threshold. Taken together, these changes would greatly increase the businesses regulated as formula retail. The Commission firmly believes that this increase should be balanced with some relief for formula retailers that are on the smaller end of the spectrum.

- This proposal would create a sixth unique notice requirement for CU. Most notably, the proposal would require a 45 day notice requirement. This is a longer notice wait period than any other Planning Code notification requirement. It would more than double the existing notice for formula retail from 20 days to 45 days. Further, this requirement could create substantial scheduling delays and therefore increase costs to the project sponsor without apparent benefit. Notably, even formula retail proposals which are embraced by the community would be subject to these costly delays. The Commission believes the existing notification process is comprehensive and effective.
- Regarding the codification of the mandatory disapproval in the Upper Market NCD if the vicinity concentration is calculated at over 20%, effectively there would no change in the way the Department reviews formula retail in the Upper Market by codifying this policy. The Commission continues to use the policy and no change is currently proposed. While the community continues to be relatively satisfied with the 20% threshold; the community is also currently engaged in a detailed study of the neighborhood's retail sector. According to the February/March Duboce Triangle Neighborhood Association (DTNA) newsletter, DTNA "in partnership with the Castro Community Benefits District (CBD) and Castro Merchants (MUMC), Eureka Valley Neighborhood Association (EVNA), Supervisor Wiener's office, and building developers in Upper Market will embark on a retail study for the Castro/Upper Market corridor to better understand the various retail users and uses, who shops here and why, as well as who doesn't shop here and why". The primary lesson the Commission has learned through examining formula retail, is that discretionary review of each proposal is critical to guiding neighborhood character. The CU process is largely working and the Commission has concerns about codification of overly ridged structures that remove the capacity for professional discretion. This combined with the pending study by the neighborhood's community and merchant groups; indicates that the time is not right for making this this control permanent. (A minor error in the draft ordinance is that 20% threshold is being applied only to the Upper Market NCD, which is only one parcel, as opposed to the Upper Market NCT which is the primary zoning district for this area.)
- The economic impact study in the proposed ordinance is excessively burdensome without clear public benefit. The thresholds for determining when an economic impact report would be required are exceeding small. Any store over 3000 square feet would require an impact report as would any new store that was smaller than 3000 square foot but where the combination of outlets within San Francisco totaled more than 10,000. Generally speaking stores with fewer than 100,000 square feet are unlikely to have a significant, quantitative economic impact.
- With the experience of applying the formula retail controls over the last ten years and the benefit of the recent Study "San Francisco Formula Retail Economic Analysis", the originally identified

concerns of the voters remain relevant. The Departments core findings are that the Conditional Use process is working and can be adjusted to better serve residents.

- Resident concerns include a displacement of critical goods and services to meet the daily needs of the neighborhood, a homogenization of the neighborhood's aesthetics and that formula retailers are of less economic benefit than nonformula retailers.
- The Office of Economic Analysis (OEA) report "Expanding Formula Retail Controls: Economic Impact Report" was unable to quantify the impact of the presence of formula retailers on premium that residents pay to live in the City's unique neighborhoods. However, the report found the uniqueness of San Francisco's neighborhoods is based on a combination of unique visual characteristics and a sense of community fostered by small merchants and resident relationships. A formula retail establishment is determined by its recognizable look which is repeated at every location, therefore, detracting from the unique community character.
- The OEA report found that non-formula retailers may spend up to 9.5 percent more within the City economy than chain stores, but charge prices that average 17 percent more. The Report determined that, on balance, the economic benefits of greater local spending by non-formula retailers are outweighed by higher consumer prices.²
- The Planning Department commissioned a report by Strategic Economics that found the existing formula retail Conditional Use process creates a disincentive for formula retailers to be located in the NCDs.³ This report also found formula retail controls continue to be a useful tool in promoting small, startup businesses.
- Neighborhood Commercial Districts are intended to preserve the unique qualities of a district while also serving the daily needs of residents living in the immediate neighborhood; however community members have reported loss of daily needs uses due to inundation of formula retailers that target larger citywide or regional audiences⁴. The City strives to ensure that goods and services that residents require for daily living are available within walking distance and at an affordable price. Establishments that serve daily needs and formula retail establishments are neither mutually exclusive nor overlapping.

² 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

³ Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 5.

⁴ Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 110.

- 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 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.
- The homogenizing effect of formula retail, based on its reliance on standardized branding, is greater if the size of the formula retail use, in number of locations or size of use or branded elements is larger. The increased level of homogeneity distracts from San Francisco’s unique neighborhoods which thrive on a high level of surprise and interest maintained by a balanced mix of uses and service, both independent and standardized.
- Due to the distinct impact that formula retail uses have on a neighborhood, these uses are evaluated for concentration as well as compatibility within a neighborhood. As neighborhoods naturally evolve over time, changes and intensifications of formula retail uses should also be evaluated for concentration and compatibility within a neighborhood.
- San Francisco is an international city that seeks to attract innovative business development. Established corporations as well as new startups choose San Francisco to test new concepts and ideas. Citywide, subsidiaries account for only three percent of retail businesses in San Francisco formula retail businesses and most of these would already qualify as formula retail under the existing Planning Code because they have 12 or more locations in the United States. Expanding the definition of formula retail 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.
- The National Bureau of Economic Research published a study titled “The Effects of Wal-Mart on Local Labor Markets” examined one specific brand of superstore, Wal-Mart, and found a negative effect on overall retail employment⁵. Specifically, this report found, “The employment results indicate that a Wal-Mart store opening reduces county-level retail employment by about 150 workers, implying that each Wal-Mart worker replaces approximately 1.4 retail workers. This represents a 2.7 percent reduction in average retail employment. The payroll results indicate that

⁵ David Neumark, Junfu Zhang, and Stephen Ciccarella. National Bureau of Economic Research, “The Effects of Wal-Mart on Local Labor Markets.” Originally published 2005, revised on July 31, 2007. Journal of Urban Economics. Volume 67, Issue 1 (2010). Retrieved from <http://www.nber.org/papers/w11782.pdf>, Page 28.

Wal-Mart store openings lead to declines in county-level retail earnings of about \$1.4 million, or 1.5 percent.

- Similarly, studies indicate that in terms of tax revenue, mixed-use is the most beneficial to the economy, while big box retailers do not significantly help the economy⁶. This is largely due to property taxes. 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-used development. The sales tax is negligible, because even the increase in sales is offset by lower prices in super stores.

1. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

I. COMMERCE & INDUSTRY ELEMENT

THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN SETS FORTH OBJECTIVES AND POLICIES THAT ADDRESS THE BROAD RANGE OF ECONOMIC ACTIVITIES, FACILITIES, AND SUPPORT SYSTEMS THAT CONSTITUTE SAN FRANCISCO'S EMPLOYMENT AND SERVICE BASE.

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

OBJECTIVE 3

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

Policy 3.4

Assist newly emerging economic activities.

The proposed changes the Ordinance, including amendments described on July 8, 2014, may be placing too many barriers on formula retail without acknowledgement of the benefits that formula retail may provide. In particular, the economic impact study may be overly broad and without public benefit.

OBJECTIVE 6

⁶ Philip Langdon. New Urban News, "Best bet for tax revenue: mixed-use downtown development." Published September 13, 2010. Retrieved from <http://bettercities.net/article/best-bet-tax-revenue-mixed-use-downtown-development-13144> on May 14 2014.

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

By encouraging independent, small businesses, the proposed changes help to enhance the diversity of the City's neighborhoods and their shopping areas. The added rigor in consideration of neighborhood-serving goods intended to meet the daily needs of residents will further the retention and addition of these valuable goods and services, whether provided by a formula retail or nonformula retail establishment. Neighborhood commercial areas vary widely in function, form, design, and character, and the proposed changes to Commission review would ease the approval of formula retailers that would meet such unmet needs for daily needs while also providing a critical review of formula retail establishments that would displace critical daily need uses.

Policy 6.2

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

Having a healthy mix of both formula retail and independent businesses would promote vital commercial districts throughout the City, which could help foster small business enterprises and entrepreneurship.

2. The proposed replacement project is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed changes the Ordinance, including amendments described on July 8, 2014, may be placing too many barriers on formula retail without acknowledgement of the benefits that formula retail may provide.

B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed amendments, are intended to conserve and protect neighborhood character by preserving independent retail that does not erode existing neighborhood character and provide uses critical to daily living within an easy walk and without the need for auto-generated trips. At the same time, overly strict notice requirements and requirements for economic impact studies may

discourage formula retailers who may prevent vacancies that would otherwise be hard for independent retailers to fill.

- C) The City's supply of affordable housing will be preserved and enhanced:

The proposed Ordinance and procedural changes will have no adverse effect on the City's supply of affordable housing.

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

The proposed Ordinance and procedural changes will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking. In fact, the proposed changes are intended to improve neighborhood services so that more daily needs can be met within an easy walk, decreasing demand for auto-generated trips.

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed Ordinance seeks to influence positive changes to the service sectors and future opportunities for resident employment or ownership in these sectors. At the same time, overly strict notice requirements and requirements for economic impact studies may discourage formula retailers who would offer valuable jobs within the City.

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

Preparedness against injury and loss of life in an earthquake is unaffected. Any new construction or alteration associated with a use would be executed in compliance with all applicable construction and safety measures.

- G) That landmark and historic buildings will be preserved:

Landmarks and historic buildings would be unaffected by the proposed amendments and procedural changes. Should a proposed use be located within a landmark or historic building, such site would be evaluated under all applicable Planning Code provisions and comprehensive Planning Department policies.

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposal. It is not anticipated that permits would be such that sunlight access, to public or private property, would be adversely impacted.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on July 17, 2014.

Jonas P. Ionin
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: July 17, 2014

1 [Planning Code - Expanding Formula Retail Controls]

2

3 **Ordinance amending the Planning Code to expand the definition of formula retail to**
4 **include businesses that have eleven or more outlets worldwide, and to include**
5 **businesses 50% or more owned by formula retail businesses; expand the applicability**
6 **of formula retail controls to other types of retail uses; expand the notification**
7 **procedures for formula retail applications; require an economic impact study as part of**
8 **the formula retail conditional use application; charge administrative fees to pay for**
9 **staff review time of such studies; and making environmental findings and findings of**
10 **consistency with the General Plan, and the eight priority policies of Planning Code,**
11 **Section 101.1.**

12 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
13 **Additions to Codes** are in *single-underline italics Times New Roman font*.
14 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
15 **Board amendment additions** are in double-underlined Arial font.
16 **Board amendment deletions** are in ~~strikethrough Arial font~~.
17 **Asterisks (* * * *)** indicate the omission of unchanged Code
18 subsections or parts of tables.

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

20 Section 1. Findings.

21 (a) The Planning Department has determined that the actions contemplated in this
22 ordinance comply with the California Environmental Quality Act (California Public Resources
23 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
24 Supervisors in File No. _____ and is incorporated herein by reference.

25 (b) On _____, the Planning Commission, in Resolution No. _____, adopted
findings that the actions contemplated in this ordinance are consistent, on balance, with the
City's General Plan and eight priority policies of Planning Code Section 101.1. The Board

1 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
2 Board of Supervisors in File No. _____, and is incorporated herein by reference.

3
4 Section 2. The Planning Code is hereby amended by revising Section 303(i), to read
5 as follows:

6 * * * *

7 (i) Formula Retail Uses.

8 (1) Formula Retail Use. A formula retail use is hereby defined as a type of
9 retail sales activity or retail sales establishment which has eleven or more other retail sales
10 establishments located ~~in the United States~~ anywhere in the world. In addition to the eleven
11 establishments, the business maintains two or more of the following features: a standardized
12 array of merchandise, a standardized facade, a standardized decor and color scheme,
13 uniform apparel, standardized signage, a trademark or a servicemark; or a type of retail sales
14 activity or retail sales establishment where fifty percent (50%) or more of the stock, shares, or any
15 similar ownership interest of such establishment is owned by a formula retail use, or a subsidiary,
16 affiliate, or parent of a formula retail use, even if the establishment itself may have fewer than eleven
17 other retail sales establishments permitted or located in the world.

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

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

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

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

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

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

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

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

12 (2) "Retail Sales Activity or Retail Sales Establishment." For the purposes of
13 subsection (i), a retail sales activity or retail sales establishment shall include the following
14 uses, as defined in Articles 1, 7, and Article and 8 of this Code: "Bar," "Drive-up Facility,"
15 "Eating and Drinking Use," "Liquor Store," "Sales and Service, Other Retail," "Restaurant,"
16 "Limited-Restaurant," "Take-Out Food," "Sales and Service, Retail," "Service, Financial,"
17 "Movie Theater," ~~and "Amusement and Game Arcade."~~ "Entertainment, Adult," "Entertainment,
18 Other," "Service, Limited Financial," "Service, Medical," "Service, Personal," "Service, Business or
19 Professional," "Massage Establishment," "Hotel, Tourist," "Automobile Parking," "Automotive Gas
20 Station," "Automotive Service Station," "Automotive Repair," "Automotive Wash," "Automobile Sale
21 or Rental," "Storage," "Service, Fringe Financial," "Tobacco Paraphernalia Establishments,"
22 "Service, Administrative," and "Light Manufacturing, Wholesale Sales, Storage."

23 (3) Conditional Use Criteria. With regard to a conditional use authorization
24 application for a formula retail use, the Planning Commission shall consider, in addition to the
25 criteria set forth in Subsection (c) above:

1 (A) The existing concentrations of formula retail uses within the district. To
2 determine the existing concentration, the Planning Commission shall consider the percentage of the
3 total linear street frontage within a 300-foot radius of the subject property that is occupied by formula
4 retail and non-formula retail businesses, including all parcels that are wholly or partially located
5 within the 300-foot radius. If the subject property is a corner parcel, the 300-foot radius shall include
6 all corner parcels at the subject intersection. For each property, the Planning Department shall divide
7 the total linear frontage of the lot facing a public-right of way by the number of storefronts, and then
8 calculate the percentage of the total linear frontage for formula retail and non-formula retail. Half
9 percentage points shall be rounded up. For the Upper Market Street Neighborhood Commercial
10 District only, if the application would bring the formula retail concentration within this 300-foot area
11 to a concentration of 20% or above, Planning Department staff shall recommend disapproval of the
12 application to the Planning Commission. If the application would not bring the formula retail
13 concentration within the 300-foot area to a concentration of 20% or above, Planning Department staff
14 shall assess the application according to all the other criteria listed in this Section 303(i), and
15 recommend approval or disapproval to the Planning Commission, according to its discretion and
16 professional judgment. In either case, the Planning Commission may approve or reject the application,
17 considering all the criteria listed in this Section 303(i).

18 (B) The availability of other similar retail uses within the district.

19 (C) The compatibility of the proposed formula retail use with the existing
20 architectural and aesthetic character of the district.

21 (D) The existing retail vacancy rates within the district.

22 (E) The existing mix of Citywide-serving retail uses and neighborhood-
23 serving retail uses within the district.

24 (F) If applicable pursuant to this subsection, the economic impact of the proposed
25 formula retail, as shown in an economic impact study.

1 impact study, and any necessary documents prepared as part of that study. The applicant shall also
2 pay an administrative fee to compensate Planning Department and City staff for its time reviewing the
3 study, as set forth in Section 359 of this Code.

4 (4) Conditional Use Authorization Required. A Conditional Use Authorization
5 shall be required for a formula retail use in the following zoning districts unless explicitly
6 exempted:

7 (A) All Neighborhood Commercial Districts in Article 7;

8 (B) All Mixed Use-General Districts in Section 840;

9 (C) All Urban Mixed Use Districts in Section 843;

10 (D) All Residential-Commercial Districts as defined in Section 206.3;

11 (E) Japantown Special Use District as defined in Section 249.31;

12 (F) Chinatown Community Business District as defined in Section 810.1;

13 (G) Chinatown Residential/Neighborhood Commercial District as defined in
14 812.1;

15 (H) Western SoMa Planning Area Special Use District as defined in 823;

16 (I) Residential Transit-Oriented Districts as defined in 206.4 and 206.5;

17 (J) Limited Conforming Use/Non-Conforming Use in RH-RM-RTO and RED
18 Districts.

19 (5) Formula Retail Uses Not Permitted. Formula Retail Uses are not permitted
20 in the following zoning districts:

21 (A) Hayes-Gough Neighborhood Commercial Transit District;

22 (B) North Beach Neighborhood Commercial District;

23 (C) Chinatown Visitor Retail District;

24 (D) Upper Fillmore District does not permit Formula Retail uses that are
25 also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and 790.91;

1 (E) Broadway Neighborhood Commercial District does not permit Formula
2 Retail uses that are also Restaurant or Limited-Restaurant uses as defined in Section 790.90
3 and 790.91;

4 (F) Mission Street Formula Retail Restaurant Subdistrict does not permit
5 Formula Retail uses that are also Restaurant or Limited-Restaurant uses as defined in
6 Section 790.90 and 790.91;

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

10 (H) Taraval Street Restaurant Subdistrict does not permit Formula Retail
11 uses that are also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and
12 790.91;

13 (6) Neighborhood Commercial Notification and Design Review. Any building
14 permit application for a "formula retail use" as defined in this section ~~and located within a~~
15 ~~Neighborhood Commercial District in Article 7~~ shall be subject to the ~~Neighborhood Commercial~~
16 ~~Notification and~~ Design Review Procedures of Section 312 of this Code. and to the following
17 notice procedures. Upon determination that an application is in compliance with the standards set
18 forth in this Section, the Planning Department shall give notice of the application as follows:

19 (A) **Written notice:**

20 (i) The Planning Department shall provide written notice of the proposed
21 formula retail use. The notice shall include a description of the proposal compared to any existing
22 improvements on the site with dimensions of the basic features, elevations and site plan of the proposed
23 project including the position of any adjacent buildings, exterior dimensions and finishes, a graphic
24 reference scale, existing and proposed uses and commercial or institutional business name, if known.
25 The notice shall also include the name of the proposed formula retail business and its corporate parent

1 name(s), if any, and a map of the notification area, showing the location of proposed use and existing
2 adjacent businesses/uses. The notice shall describe the project review process and shall set forth the
3 mailing date of the notice and the expiration date of the notification period.

4 (ii) The written notice shall be mailed to the notification group, which
5 shall include the applicant, tenants of the subject property, relevant neighborhood organizations as
6 described in Subparagraph 312(d)(2)(C), all individuals having made a written request for notification,
7 and all owners of property and tenants within the notification area.

8 (iii) The notification area shall be all properties within 300 feet of the
9 subject lot in the same Assessor's Block and on the block face across from the subject lot. When the
10 subject lot is a corner lot, the notification area shall further include all property on both block faces
11 across from the subject lot, and the corner property diagonally across the street.

12 (iv) Notification period. All building permit applications shall be held
13 for a period of 45 calendar days from the date of the mailed notice to allow review by residents,
14 occupants, owners of neighboring properties and by neighborhood groups.

15 (B) **Posted Notice.** The notice shall also be posted at the project site with a 18"
16 x 24" poster-size orange-colored paper.

17 (C) **Internet Notice.** The notice shall also be posted on the Planning
18 Department's website.

19 (D) In addition, the Staff Report and Recommendation shall be available at the
20 Planning Department and on the Planning Department's website two weeks prior to the Planning
21 Commission hearing at which the Conditional Use permit would be considered.

22 (7) Change in Use. A change from one formula retail use to another requires a
23 new Conditional Use Authorization, whether or not a Conditional Use Authorization would
24 otherwise be required by the particular change in use in question. This Conditional Use
25 Authorization requirement also applies in changes from one Formula Retail operator to

1 another within the same use category. A new Conditional Use Authorization shall not apply to
2 a change in a formula use retailer that meets the following criteria:

- 3 (A) the formula use operation remains the same in terms of its size,
4 function and general merchandise offering as determined by the Zoning Administrator, and
5 (B) the change in the formula retail use operator is the result of the
6 business being purchased by another formula retail operator who will retain all components of
7 the existing retailer and make minor alterations to the establishment(s) such as signage and
8 branding.

9 The new operator shall comply with all conditions of approval previously
10 imposed on the existing operator, including but not limited to signage programs and hours of
11 operation; and shall conduct the operation generally in the same manner and offer essentially
12 the same services and/or type of merchandise; or seek and be granted a new Conditional Use
13 Authorization.

14 (8) Determination of Formula Retail Use. In those areas in which “formula
15 retail uses” are prohibited, any building permit application determined by the City to be for a
16 “formula retail use” that does not identify the use as a “formula retail use” is incomplete and
17 cannot be processed until the omission is corrected. Any building permit approved that is
18 determined by the City to have been, at the time of application, for a “formula retail use” that
19 did not identify the use as a “formula retail use” is subject to revocation at any time. If the City
20 determines that a building permit application or building permit subject to this Section of the
21 Code is for a “formula retail use,” the building permit application or holder bears the burden of
22 proving to the City that the proposed or existing use is not a “formula retail use.”

23 * * * *

24
25

1 Section 3. The Planning Code is hereby amended by revising Section 703.3,
2 subsections (b) and (g), to read as follows:

3 * * * *

4 (b) Formula Retail Use. Formula retail use is hereby defined as a type of retail sales
5 activity or retail sales establishment which, along with eleven or more other retail sales
6 establishments located ~~in the United States~~ anywhere in the world, maintains two or more of the
7 following features: a standardized array of merchandise, a standardized facade, a
8 standardized decor and color scheme, a uniform apparel, standardized signage, a trademark
9 or a servicemark; or a type of retail sales activity or retail sales establishment where fifty percent
10 (50%) or more of the stock, shares, or any similar ownership interest of such establishment is owned by
11 a formula retail use, or a subsidiary, affiliate, or parent of a formula retail use, even if the
12 establishment itself may have fewer than eleven other retail sales establishments permitted or located
13 in the world.

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

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

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

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

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

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

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

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

8 * * * *

9 (g) Neighborhood Commercial Notification and Design Review. After the
10 effective date of this Ordinance, any building permit application for a use permitted in a
11 Neighborhood Commercial District which is also a "formula retail use" as defined in this
12 section shall be subject to the ~~Neighborhood Commercial Notification and~~ Design Review
13 Procedures of Section 312 of this Code; and the notification procedures set forth in Section 303(i).

14
15 Section 4. The Planning Code is hereby amended by revising Section 803.6,
16 subsection (c) to read as follows:

17 . . .

18 (c) Formula Retail Use Defined. Formula retail use is hereby defined as a type of
19 retail sales activity or retail sales establishment which, along with eleven or more other retail
20 sales establishments located ~~in the United States~~ anywhere in the world, maintains two or more
21 of the following features: a standardized array of merchandise, a standardized façade, a
22 standardized décor and color scheme, a uniform apparel, standardized signage, a trademark
23 or a servicemark; or a type of retail sales activity or retail sales establishment where fifty percent
24 (50%) or more of the stock, shares, or any similar ownership interest of such establishment is owned by
25 a formula retail use, or a subsidiary, affiliate, or parent of a formula retail use, even if the

1 establishment itself may have fewer than eleven other retail sales establishments permitted or located
2 in the world.

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

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

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

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

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

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

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

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

22 (9) "Retail Sales Activity or Retail Sales Establishment" shall include the uses
23 defined in Section 303(i)(2).

24

25

1 Section 5. The Planning Code is amended by adding subsection 803.6(f), to read as
2 follows:

3 * * * *

4 (f) Neighborhood Commercial Notification. After the effective date of this subsection (f),
5 any building permit application for a use permitted in a MUG District, UMU District, Chinatown
6 Mixed Use District, and the Western Soma Special Use District which is also a "formula retail use" as
7 defined in this section shall be subject to the notification procedures set forth in Section 303(i).

8
9 Section 6. The Planning Code is amended by revising Section 350(g), to read as
10 follows:

11 **SEC. 350. FEES, GENERAL.**

12 * * * *

13 **(g) Fee Adjustments.**

14 (1) The Controller will annually adjust the fee amounts specified in Sections 350-
15 ~~358~~359 by the two-year average consumer price index (CPI) change for the San
16 Francisco/San Jose Primary Metropolitan Statistical Area (PMSA). For a listing of the
17 Department's current fees inclusive of annual indexing for inflation, reference the Schedule of
18 Application Fees available on the Department website.

19
20 Section 7. The Planning Code is amended by adding new Section 359, to read as
21 follows:

22 **SEC. 359. ECONOMIC IMPACT STUDY REVIEW.**

23 The fee to review an economic impact study, as required by Section 303(i)(3)(F)(v), shall be
24 \$3,500.00, plus any additional time and materials as set forth in Section 350(c).

25

1 Section 6. Effective Date. This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.

5

6 Section 7. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
7 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
8 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
9 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
10 additions, and Board amendment deletions in accordance with the "Note" that appears under
11 the official title of the ordinance.

12

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

15 By: _____
16 ANDREA RUIZ-ESQUIDE
17 Deputy City Attorney

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From: [Pagoulatos, Nickolas \(BOS\)](#)
To: [Rodgers, AnMarie \(CPC\)](#); [Burns, Kanishka \(CPC\)](#)
Subject: Revised FR Ordinance Amendments
Date: Tuesday, July 08, 2014 5:05:54 PM

AnMarie and Kanishka,

Here is a revised version of the email I sent earlier.

Thank you for continuing to work this issue through with our office. Following up on our recent conversations, below are some changes that we will be making to our ordinance:

We are removing the following uses from our proposed broadening of the definition of Formula Retail 1) Tourist Hotel, 2) Automobile Parking, 3) Automotive Gas Station, 4) Automotive Service Station, 5) Automotive Repair, 6) Automotive Wash, 7) Automobile Sale or Rental, 8) Storage, 9) Light Manufacturing, Wholesale Sales, 10) Storage, 11) Other Entertainment, 12) Medical Service, 13) Administrative Service, and 14) Adult Entertainment. We agreed that the Department's proposal would mirror the our revised list of additional uses.

We are removing the poster size requirement from the draft ordinance and any requirements which are duplicative with existing notification requirements.

We are removing existing notification requirements that were duplicative of the existing code, including: description of the proposal compared to any existing improvements on the site with dimensions of the basic features, elevations and site plan of the proposed project including the position of any adjacent buildings, exterior dimensions and finishes, a graphic reference scale, existing and proposed uses and commercial or institutional business name, if known. The notice shall also include the name of the proposed formula retail business if any, and a map of the notification area, showing the location of proposed use and existing adjacent businesses/uses. The notice shall describe the project review process and shall set forth the mailing date of the notice and the expiration date of the notification period. We will keep the requirement to list the name of the parent company.

We are revising the ordinance section that requires notification within "the notification area" which was largely duplicative of existing requirements in that it includes the applicant, tenants of the subject property, relevant neighborhood organizations as described in Subparagraph 312(d)(2)(C), all individuals having made a written request for notification, and all owners of property and tenants within the notification area. These items are proposed for deletion from the draft Ordinance. The only new parties to be notified under our proposal would be the inclusion of tenants who live between 150' and 300' of the proposed project.

We also agreed to amend both of our Ordinance to remove the proposed regulation of subsidiaries and instead to create a committee to study the difficult issue of subsidiaries and prepare a report with recommendations for the Board of Supervisors within 6 months. Your Ordinance will also mirror this component.

We agreed that both of our Ordinances will amend the method for measuring concentration of Formula Retail as follows: the Department will generally look at the district and then also look at concentration in a closer scale, either 300' or ¼ mile, per staff judgment. Planning will also revise the Performance-Based Standards document from consistently using ¼ mile to reflect this change.

Our policy will also codify the Upper Market policy that requires a negative Planning recommendation should the concentration of Formula Retail rise above 20%. This trigger will only exist for the Upper Market area.

Again, thank you both for continuing to work with us on this complicated issue, we look forward to ongoing progress.



MEMORANDUM

Date: July 9, 2014

To: John Rahaim, AnMarie Rodgers, and Kanishka Burns, San Francisco Planning Department

From: Dena Belzer, Sarah Graham, and Alison Nemirow Strategic Economics,

Project: San Francisco Formula Retail Economic Analysis

Subject: Preliminary Assessment of Proposed Economic Impact Study Requirements

Planning Department staff and Supervisor Eric Mar have each proposed that an economic impact study be required as part of the conditional use authorization process for certain retail businesses. The City & County of San Francisco requested that Strategic Economics (SE) provide a preliminary assessment of the two proposals, based on the results of the San Francisco Formula Retail Economic Analysis and SE's professional experience. This memorandum provides some guiding principles for the City to consider in establishing an economic impact study requirement for certain retail businesses, as well as some questions for clarification and potential challenges posed by the staff proposal (as initiated by the Planning Commission on May 22, 2014) and Supervisor Mar's proposal (Board of Supervisors File No. 130788, substituted May 13, 2014).

Considerations for Establishing an Economic Impact Study Requirement

Many of the considerations that motivate San Francisco's formula retail controls are challenging to measure through economic impact analysis, and are already assessed qualitatively through the existing formula retail conditional use (CU) authorization process. The existing CU process considers vacancy rates within the district where the new establishment will be located, the availability of similar retail uses within the district, and the existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the district. These impacts are challenging to quantify, particularly for stores under 100,000 square feet, and may be best considered qualitatively. Other considerations, such as the relatively larger local economic impact of independent retailers compared to formula retailers (due to the fact that independent retailers tend to generate more local spending) have been well established through specialized research, but are extremely challenging to measure at the level of the individual establishment using traditional economic impact study methodologies.

A business with fewer than 100,000 square feet is unlikely to have a significant, measurable, citywide economic impact. In Strategic Economics' professional experience, smaller retail projects may have localized neighborhood impacts (e.g., on direct competitors), but are unlikely to have significant citywide impacts on total employment, a city budget, or overall economic output.

The appropriate study area for an economic impact analysis depends in part on the likely trade area of the specific business under study. A trade area is typically defined as the area from which

the majority of customers will travel in order to shop, and can vary widely depending on the type of business, size of business, supply and location of existing competitors, local population density, and other factors. For example, a grocery store is likely to draw from a trade area of at least one mile in radius, but could attract customers from a wider market if it is located in an area with few other existing grocery stores, or if it fills a particular niche (e.g., providing particularly high-end or discounted products). A large-scale (100,000 sq. ft. or more) general merchandise store (such as a Target) or a hardware store would generally be expected to serve a three- to five-mile trade area, but could attract shoppers from across the city or region depending on where competitors are located.

Note that trade areas are an appropriate frame of reference for studying the impacts of a new businesses on competing stores, the impacts that employees may have in terms of generating demand for certain types of services may relate to a completely different geography. For example, a big box retailer like Target may draw on a three- to five-mile trade area for its customers, but employees could come from a much larger catchment area.

Economic impact studies are typically performed for a proposed site development or land use plan, rather than a proposed new business. Most new formula retail establishments in San Francisco locate in existing retail buildings, rather than in new buildings or shopping centers.¹ While many of the analytical methods used for new development projects can be applied to new businesses locating in existing buildings, some methods may need to be adjusted in order to account for the impacts of the previous use of the building (whether it was vacant or occupied by another business). This issue may require further consideration.

The economic impact studies proposed by both Supervisor Mar and City staff draw from standard impact analysis methodologies, but do not completely conform to standard practice. Brief descriptions of the conventional methodological approaches to the types of analyses that appear to most closely address the intent of the two proposals are provided below. A further discussion of suggested modifications to the respective ordinances is included in the following two sections.

- **Leakage analysis:** A leakage analysis estimates the net impact that a new retail use is likely to have on sales “leakage,” defined as the difference between the buying power (demand) of the household and workforce population in a trade area and the actual sales (supply) in that same trade area.² Leakage analyses:
 - Are performed for a specific trade area.
 - Measure impacts for the operations phase of a project (i.e., when sales stabilize) rather than construction impacts.
 - Focus on the potential impacts on the specific type of retail that is being proposed (e.g., apparel, general merchandise, food stores, eating and drinking places, other specific retail category).
 - Require a number of assumptions about the incomes and buying power of the existing residents and workforce population, existing sales in the trade area, projected sales for the new use, future population and employment growth, and other factors.

¹ Strategic Economics, *San Francisco Formula Retail Economic Analysis*, prepared for San Francisco Planning Department, June 2014.

² Leakage analyses are often performed for large retail projects (e.g., 100,000 square feet or more) as part of an urban decay study for an environmental impact report (EIR). Urban decay analyses are required under the California Environmental Quality Act (CEQA) if a development project is likely to cause economic impacts that result in significant physical impacts, such as persistent vacancies and blight. Generally, the economic impacts of a project are considered to have a significant effect on the environment if they result in stores closing and becoming vacant, and that those buildings and/or properties remain vacant, deteriorate, and lead to the decline of nearby real estate.

- Include a qualitative assessment of potential effects on existing competitors.
- May result in either a positive or a negative result. If the leakage is positive, there is a gap between total buying power and actual sales that indicates a potential to capture additional retail in the trade area because the sales are “leaking” to another area. A negative leakage number means that actual sales exceed the total buying power, or a sales surplus is being generated by shoppers coming into the trade area from other places. In the San Francisco context, for certain categories of retail sales such as apparel, food stores, or eating and drinking places, leakage is likely to be negative – meaning that the city is attracting more sales in certain categories than would be expected based on local population alone because San Francisco is a regional shopping destination.
- May not capture qualitative factors that could show a positive benefit to adding a new store in a given location. For example, even in the case where there may be no measurable unmet demand for a particular category of good, a new store may add greater variety in the offerings available to shoppers, helping to bolster the strength of a cluster of similar retailers. In other cases, there may not appear to be any sales leakage because existing stores are capturing sales all of the expected sales, but the existing stores may not necessarily match evolving consumer preferences. Grocery stores are a good example of a category where store formats have changed considerably to meet changing consumer preferences for prepared foods, fresh produce, and a larger selection of organic offerings. As a result, even in a trade area where the size of demand has not changed, a new store may enter the market to better address these new preferences. While this new store will likely “cannibalize” sales from an existing store, the new outlet is still meeting a form of previously unmet consumer demand.
- **Multiplier analysis:** A multiplier analysis estimates the total regional economic impact of a new firm or project in terms of sales, value added (gross domestic product), earnings, or employment. Typically, this approach to measuring economic impact is used for very large scale projects such as a large public infrastructure investment, or the impact of a major employer or institution. The analysis uses multipliers (or ratios) calculated using regional input-output economic models (for example, by the U.S. Bureau of Economic Analysis) that capture how changes in one industry generate indirect and induced effects in other industries throughout a county or region.³ Multiplier analyses:
 - Are performed at the county or regional level; multipliers are not available below the county level (note that San Francisco is both a city and a county, so in this case, the analysis could be performed for the city as a whole).
 - May assess short-term impacts of construction as well as long-term impacts of a business’s ongoing operations.
 - Do not capture nuance about the different potential spending patterns of independent versus formula retail firms. While studies have established that independent retailers tend to spend more locally and thus have a larger local economic impact than formula retailers, multipliers are available at the industry level and (while they account for the

³ *Direct effects* are the initial changes in employment, earnings, and output generated by the industry, firm, or project under study. *Indirect effects* occur in industries that provide inputs or respond to the demand generated by the industry, firm, or project under study. *Induced effects* result from households spending the income they earn, whether as a result of the direct effects associated with the initial changes in economic activity, or the indirect effects on different employers throughout the supply chain.

- fact that not all inputs are purchased locally), and do not differentiate by types of firms within industries.
- Require assumptions about the direct effects of the firm under study, or the initial amount of employment, earnings, and/or sales generated by the firm.
 - **Fiscal impact (public revenues and services) analysis:** Fiscal impact analyses measure the impact of a potential project on the City's finances, including new service costs created by increased demand for city services (such as police and fire) and facilities (such as parks); new revenues such as sales tax, property tax, and fee income; and total net fiscal impact (i.e., total revenues minus total costs). Fiscal impact analysis:
 - Assess the impact of a proposed project at the city level (i.e., on the city budget).
 - Measure impacts for the operations phase of a project (i.e., when sales stabilize) rather than construction impacts, but may assess the infrastructure cost impacts of certain types of construction (e.g., the cost of building a new road to serve a project).
 - Require a detailed study of a city's budget, as well as many assumptions about the number of new employees, sales and other revenues, and service needs generated by a project, as well as other factors.
 - Often overstate the cost impact of a given project. While new revenues generated by any given project are often relatively simple to calculate, costs can be much more difficult to measure. The most precise way to address the cost issue is to consider the marginal cost increase taking into account the ability of existing services to accommodate the new demand. However, it is often difficult to ascertain accurate marginal cost increases, so many fiscal impact analyses rely on average cost assumptions, which can also significantly overstate the cost impact of any given project.
 - Are primarily intended to measure the impact of residential rather than commercial development, since these analyses assume that households are more significant consumers of municipal services than businesses. While assumptions related to both property and sales tax revenues generated by commercial projects and their employees are typically included in fiscal impact analyses, the costs for municipal services for employees are generally discounted at a rate of 30-50 percent of those assumed for residents (using an average per capita cost approach).
 - Are calculated for specific funds within a city's budget. For example, many fiscal impact analyses focus on calculating the net fiscal impact of a project on a city's General Fund. Fiscal impact analyses may also assess the impacts on enterprise funds or special revenue funds (for example, in San Francisco, the Municipal Transportation Agency, the Airport, and Port, and the Public Utilities Commission are all enterprise funds). However, in many cities, enterprise funds and other special funds are largely self-supporting (i.e. paid for with fees for service, state or federal grants, and other sources), so new businesses or other growth does not have a direct effect on their operations.
 - Do not typically capture increases in demand for services, such as childcare or other social services, that are not directly paid for by property taxes, sales taxes, and other General Fund sources. Demand for these services may be better measured using different methodologies, such as a nexus study methodology, rather than a fiscal impact analysis.
 - **Employment impact analysis:** An employment impact analysis estimates the impact of a project on total employment. Employment impact analyses:
 - May be conducted at the trade area, city, or regional level.

- Measure the number of short-term construction-related and/or permanent jobs generated by a proposed project; may also assess the likely wages and/or benefits of employees hired by the new firm.
- May assess whether a proposed project will result in a net increase or decrease in permanent employment in a specific trade area (based on findings from a leakage analysis) and/or the economy-wide impact of a new project on total employment and earnings within a county or region (based on a multiplier analysis).
- Do not typically assess the effect on wages and benefits of employees at competing retail businesses; there are no known literature or data sources on which to base such an analysis except for a very limited set of retailers in specific contexts (i.e., almost all of the literature on the competitive effects of new retail establishments is based on studies of new Walmart stores, mostly in suburban or rural locations⁴).
- Require assumptions about the expected number of jobs, type of jobs, and earnings generated by the proposed project.

Planning Department Staff Proposal

The staff proposal (as initiated by the Planning Commission on May 22, 2014) would establish an economic impact study requirement for large-scale retail uses (i.e., retail uses over 50,000 square feet in most districts and over 120,000 square feet in the C-3 district). Given that this proposal focuses on larger stores which are more likely to have measurable impacts, the proposal generally conforms to the characteristics of typical economic impact studies and the other considerations discussed above. However, SE identified the following potential issues and questions for clarification:

- The appropriate study area may vary by 1) type of analysis and 2) the specific trade area of the proposed project. As discussed above, multiplier and public revenues/services (fiscal impact) analyses would assess the impacts of a project for the City and County as a whole. Leakage analyses typically estimate impacts for a specific trade area, while the employment analysis could be conducted for the trade area or other geography. Because the size of the trade area can vary significantly depending on the specific type of retailer, it may be appropriate for City staff and/or the consultant to decide on the appropriate study areas on a project-by-project basis.
- The multiplier and public revenues/services (fiscal impact) analyses could be performed using either 1) only the direct employment and sales impacts of the proposed project or 2) the total, net impacts on the trade area and/or city as estimated in the leakage analysis. The current language is unclear as to which type of analysis is desired.
- It is not clear how a multiplier analysis would assess the spending impacts of a business's local competitors. This may require additional clarification, or could be eliminated, since the issue of existing competition is already addressed through the conditional use authorization process.
- Quantifying the effect on wages and benefits of employees of other retail businesses and community income levels in the impact area is likely to be extremely challenging. As discussed above, existing literature and data sources do not provide a basis for estimating the effects of most new formula or large-scale retailers on existing competitors.
- The description of the public revenues/services analysis could benefit from additional clarification on the following questions and issues:

⁴ See discussion in Strategic Economics, June 2014, Chapter V.

- Should the public services analysis assess the impact of a new project on General Fund services such as public health, police and fire, recreation and parks, and general administration?
- Should the analysis calculate the net fiscal impact on the General Fund (i.e., total revenues from sources such as sales tax, property tax, property transfer tax, and payroll tax, minus the total cost of providing increased General Fund services)?
- Note that the impacts of new businesses or development on other types of municipal and social services (such as transit and childcare) may be paid for in whole or in part using non-General Fund revenues, including impact fees, state and federal grants or formula funds, and other sources. These impacts should be estimated separately from impacts to General Fund services, and may require complex assumptions. For example, a calculation of transit impacts would require assumptions about employee household vehicle ownership and mode share. A calculation of impacts on childcare or other social services would require assumptions about employee household incomes, program eligibility criteria, and the rate at which households take advantage of public assistance programs for which they are eligible.
- Staff may wish to reference the City's existing nexus studies for transit, childcare, and other impact fees, which have already created a methodology for measuring impacts on public services of new development projects (although these nexus studies may not address the impact of new businesses locating in existing buildings).
- Impacts of a new retail store on the State budget will be very challenging to quantify, and would likely be minimal given the scale of California's budget relative to the demand for services created by one new retail store.

Supervisor Mar's Proposed Ordinance

Supervisor Mar's proposed ordinance would create an economic impact study requirement for formula retail conditional use (CU) applicants meeting certain thresholds based on 1) the size of the store proposed by the applicant and 2) the total square footage of all stores in the city owned by the applicant. Given the significant overlap between the two proposals, many of the issues and questions identified above for the staff proposal also apply to Supervisor Mar's proposed ordinance. In addition, several other components of the economic impact study described in the proposed ordinance could benefit from additional clarification or are likely to present methodological challenges. These include the following:

- The proposed ordinance would require multiple different studies, including a leakage analysis, an employment analysis, a fiscal impact analysis, and a transportation impact study to measure vehicle miles traveled.
- Businesses with fewer than 100,000 square feet are unlikely to have a significant, quantitative economic impact, and the total square footage of all stores owned by the applicant throughout the city is not likely to affect the economic impacts of a specific new location. Many of the qualitative impacts of a new formula retail establishment are already examined through the existing CU process, including the existing vacancy rates within the district, the availability of similar retail uses within the district, and the existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the district.
- Although it is not possible to estimate the number of businesses that would be subject to the economic impact study requirement given the ownership criteria described in the proposed

ordinance, it is likely that the majority of formula retail CU applicants would be subject to the requirement.⁵

- The appropriate study area may vary by 1) type of analysis and 2) the specific trade area of the proposed project. Because the size of the trade area can vary significantly depending on the specific type of retailer, it may be appropriate for City staff and/or the consultant to decide on the appropriate trade area on a project-by-project basis.
- The impacts of the construction (as opposed to operation) of a proposed retailer on factors such as supply and demand for retail space, the cost of providing public services and facilities, other retail operations, and vehicle miles traveled⁶ are likely to be challenging to estimate. While construction may create short-term employment opportunities, it is not clear how construction could significantly affect the other factors identified in the proposed ordinance (particularly since for many formula retail CU applicants, construction will involve limited tenant improvements to an existing building, rather than the development of a new building).
- Quantifying the effect on wages and benefits of employees of other retail businesses and community income levels in the impact area is likely to be extremely challenging.⁷ Existing literature and data sources do not provide a basis for estimating the effects of most new formula or large-scale retailers on existing competitors.
- Estimating the impact of a new retailer on total vehicle miles traveled (VMT)⁸ would require a transportation impact study. Typically, transportation impact studies assess vehicle trip generation rates; calculating VMT would require additional assumptions about the length of customer trips by car. Although some existing transportation impact tools include VMT estimates,⁹ additional research may be required to determine the level of precision, appropriate size thresholds, complexity, and applicability of these tools to the San Francisco context where many retail stores provide limited on-site parking.
- Assessing the potential for long-term vacancy of the property on which the retailer is proposed in the event that the business vacates the premises¹⁰ would be extremely challenging. The ease with which a property could be re-tenanted in the future will depend on future market conditions, which are difficult to predict. The potential for long-term vacancy may also depend on whether the retailer continues to hold the lease after vacating the property (a common arrangement among some chains that allows the retailer to keep out competitors) or extinguishes the lease; this in turn is likely to depend on future market conditions, the conditions under which the business vacates the building, the applicant's future business strategy, and other unknown factors. Finally, many if not most new formula retailers in San Francisco locate in existing buildings, many of which are already vacant; it is not clear how the impacts of a future vacancy would be measured in this case.

⁵ The *San Francisco Formula Retail Economic Impact Analysis* found that 61 percent of all existing formula retailers in San Francisco are between 3,000 and 10,000 square feet in size, and that 21 percent are between 10,000 and 50,000 square feet. Only 15 percent are smaller than 3,000 square feet, while fewer than 1 percent are larger than 50,000 square feet. Source: Strategic Economics, June 2014.

⁶ BF 130788, Sections 2(3)(F)(ii)(b), (e), (f), and (g).

⁷ *Ibid.* Section 2(3)(F)(ii)(d).

⁸ *Ibid.* Section 2(3)(F)(ii)(g).

⁹ See discussion in Governor's Office of Planning and Research, "Preliminary Evaluation of Alternative Measures of Transportation Analysis," State of California, December 30, 2013, <http://opr.ca.gov/docs/PreliminaryEvaluationTransportationMetrics.pdf>.

¹⁰ BF 130788, Section 2(3)(F)(ii)(h).