



SAN FRANCISCO PLANNING DEPARTMENT

Memorandum to the Planning Commission

HEARING DATE: JULY 25, 2013

Project Name: **Formula Retail Controls Today and Tomorrow**
Case No.: 2013.0936U
Initiated by: Planning Commission
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Recommendation: **Recommend Further Study**

STATEMENT OF PURPOSE

On June 13, 2013, Planning Commission President Rodney 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. While the Department has requested additional time to develop a thorough proposal, the Commission will consider a pending proposed Ordinance introduced by Supervisor Cohen to establish the Third Street Formula Retail Restricted Use District during the July 25, 2013 hearing.

This report will provide a history of formula retail controls in San Francisco, and will summarize existing controls across zoning districts, highlighting similarities and differences. In addition, this report will outline recent legislative proposals to amend the formula retail controls in individual neighborhoods. It is the Department's goal to develop a series of controls that are clear, concise, and easy to implement that will protect neighborhood character and provide necessary goods and services. Finally, this report will identify topics for additional study and will outline ideas for future amendments to the formula retail controls to better maintain both a diverse array of available goods and services and the unique character of San Francisco's neighborhoods, including Neighborhood Commercial Districts, downtown districts, and industrial areas.

BACKGROUND

History of San Francisco's Formula Retail Controls. In 2004, the Board of Supervisors adopted San Francisco's first formula retail use controls, which added Section 703.3 ("Formula Retail Uses") to the Planning Code to provide both a definition of formula retail and a regulatory framework that intended, based on the findings outlined in the Ordinance, to protect "a diverse

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retail base with distinct neighborhood retailing personalities comprised of a mix of businesses.”¹ The Ordinance established the existing definition for formula retail as “a type of retail sales activity or retail sales establishment which, along with eleven or more other retail sales establishments, maintains two or more of the following features: a standardized array of merchandise, a standardized façade, a standardized décor and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark.”² This first identification of formula retail in the Planning Code provided the following controls:

- Neighborhood Notification pursuant to Planning Code Section 312 for most permitted uses in Neighborhood Commercial Districts (NCDs);
- Conditional Use (CU) authorization for specific blocks and lots in the area of Cole and Carl Streets and Parnassus and Stanyan Streets; and,
- A prohibition on all formula retail uses within the Hayes-Gough Neighborhood Commercial District.

The 2004 Ordinance established a precedent for formula retail controls; a number of amendments in quick succession added districts in which formula retail uses require CU authorization, including: 2005 amendments that added the Haight Street NCD and the small-scale NCD along Divisadero Street between Haight and Turk Streets, and a 2006 amendment that added the Japantown Special Use District (SUD).³ In addition, a 2005 amendment added a prohibition on formula retail uses in the North Beach NCD.⁴ In 2006, Section 803.6 was added to the Planning Code, requiring CU authorization for formula retail uses in the Western SoMa Planning Area SUD.⁵

In 2007, formula retail controls were further expanded when San Francisco voters approved Proposition G, the so-called “Small Business Protection Act,” which amended the Planning Code by adding Section 703.4, requiring CU authorization for formula retail uses (as defined in the Code) proposed for any NCD.⁶

¹ Ordinance Number 62-04, Board File 031501, available online at: <http://sfgov.legistar.com/LegislationDetail.aspx?ID=473759&GUID=A83D3A84-B457-4B93-BCF5-11058DDA5598&Options=ID|Text|&Search=62-04> (July 16, 2013). It is interesting to note that when this Ordinance was originally proposed, the definition of “formula retail” referred to a retail establishment with four or more outlets, rather than eleven or more other establishments (as indicated in “Version 1” of the legislation). In addition, during the legislative review process, the Planning Department was not supportive of the controls, and cited difficulties in implementation and the additional staff required in order to implement the additional review procedures.

² Planning Code Section 703.3(b).

³ Ordinances Nos. 8-05 (Haight Street), 173-05 (Divisadero Street), and 180-06 (Japantown). Available online at: <http://sfgov.legistar.com/Legislation.aspx>.

⁴ Ordinance No. 65-05, available online at: <http://sfgov.legistar.com/Legislation.aspx>.

⁵ Ordinance No. 204-06. This Section has since been further amended to allow formula retail uses with Conditional Use authorization in the MUG, UMU, Western SoMa SUD, the Chinatown Business District and the Chinatown Residential Neighborhood Commercial District, and to prohibit formula retail uses in the Chinatown Visitor Retail District, and to prohibit formula retail Restaurants in any Chinatown Mixed Use District. The Ordinances are available online at: <http://sfgov.legistar.com/Legislation.aspx>.

⁶ The text of the Proposition, as well as arguments for (drafted by then-Supervisors Peskin, Sandoval, Ammiano, Daly, Mirkarimi, Gonzalez, and the nonprofit San Francisco Tomorrow) and against (drafted by then-Supervisors Elsbernd and Alioto-Pier) are available online here: <http://smartvoter.org/2006/11/07/ca/sf/meas/G/> (July 16, 2013).

The passage of Proposition G set the stage for a series of further amendments to the Planning Code that have further limited formula retail uses in a range of zoning districts, through CU authorization requirements and prohibitions, as summarized in Table 1, below.

Voter-Established Controls vs. Typical Planning Code Amendments. Proposition G, a voter-approved ballot proposition, established Planning Code Section 703.4; therefore, the contents of this section can only be changed through a similar ballot process, and may not be amended by the typical legislative process.

The specific provision that may not be altered without a ballot initiative requires that formula retail uses proposed for an NCD requires Conditional Use authorization by the Planning Commission. Conversely, the definition of “formula retail,” the use types included in the definition, and the criteria for consideration may be altered through a standard Planning Code Amendment initiated by the mayor, the Board of Supervisors, or the Planning Commission. Furthermore, Section 703.4 specifically notes that the Board of Supervisors may adopt more restrictive provisions to regulate formula retail in any NCD.

The Way It Is Now:

Definition. The Planning Code includes an identical definition of “Formula Retail” in three locations: Section 303(i)(1), 703.3, and 803.6(c). “Formula Retail” is defined as: “a type of retail sales activity or retail sales establishment which, along with eleven or more other retail sales establishments located in the United States, maintains two or more of the following features: a standardized array of merchandise, a standardized façade, a standardized décor and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark.” As noted above, this definition was first established in Section 703.3.

Use Types Subject to the Definition of Formula Retail. Section 303(i)(2) refines the definition of formula retail to include the following specific retail uses:

- Bars (defined in Section 790.22);
- Drive-Up Facilities (defined in Section 790.30);
- Eating and Drinking Use, Take Out Food, Limited Restaurant, and Restaurants (defined in Sections 790.34, 790.122, 790.90, and 790.91);
- Liquor Store (defined in Section 790.55);
- Sales and Service, Retail (defined in Section 790.104);
- Financial Service (defined in Section 790.110); and,
- Movie Theatre, Amusement and Game Arcade (defined in Sections 790.64 and 790.4).

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

⁷ Sections 739.1 and 740.1. Section 790.124 defines Trade Shop as: “A retail use which provides custom crafted goods and/or services for sale directly to the consumer, reserving some storefront space for display and retail service for the goods being produced on site ...” includes: repair of personal apparel, accessories, household goods, appliances, furniture and similar items, but excluding repair of motor vehicles and structures; upholstery services; carpentry; building,

Zoning Districts that Control Formula Retail. Retail uses that fall into the category of formula retail, as described above, may be permitted, prohibited, or may require CU authorization, depending on the zoning district in which the use is proposed. In addition, there are specific controls or combinations of controls that apply only in certain zoning districts. Controls for formula retail uses are summarized in Tables 1 and 2 below.

Table 1: Summary of Basic Controls for Formula Retail Uses

Formula Retail Not Permitted	Formula Retail Requires a CU	Formula Retail Permitted
Hayes-Gough NCT	All Neighborhood Commercial Districts listed in Article 7	C-2, C-3 (all), C-M, M-1, M-2, PDR-1-G, PDR-1-D, PDR-1-B, PDR-2 (Section 218)
North Beach NCD	RC-3 and RC-4 (Section 209.8(d))	Potrero Center Mixed Use SUD (Section 249.40)
RH-1(D)-3, RM-1-4, RTO, RTO-M (Section 209.8)	Japantown SUD (249.31)	South Park District (Section 814)
Chinatown Visitor Retail District (Section 811)	Bayshore Boulevard Home Improvement SUD (249.65, when 10,000 square feet or larger.)	RSD (Section 815)
Residential Enclave District (Section 813)	Chinatown Community Business District (Section 810)	SLR (Section 816)
RED-MX (Section 847)	Chinatown Residential NCD (Section 812.1)	SLI (Section 817)
	Western SoMa SUD (Section 823, including specific review criteria)	SSO (Section 818)
	MUG District (Section 840)	Rincon Hill Downtown Residential District (Section 827)
	UMU (Section 843)	Transbay Downtown Residential District (Section 828)
	WMUG (Section 844)	Southbeach Downtown Residential District (Section 829)
	SALI (Section 846), with size limits	MUR (Section 841)
	WMUO (Section 845), with size limits	MUO (Section 842)

Table 1 summarizes the basic controls for Formula Retail by zoning district.

As illustrated above, formula retail uses typically require CU authorization in NC districts, are not permitted in residential districts, and are permitted in downtown and South of Market industrial districts.

Within a number of zoning districts, however, formula retail controls are further refined and differ from the basic uses and controls that apply to formula retail, as summarized below in Table 2. These controls have typically been added in response to concern regarding over-concentration of certain uses, perceived threats to independent businesses, or the impacts to neighborhood character caused by large use sizes within a geographic area. Examples of these specific controls

plumbing, electrical, painting, roofing, furnace or pest control contractors ; printing of a minor processing nature; tailoring; and other artisan craft uses, including fine arts uses.

include the stipulation that Trade Shops (defined in Section 790.124) are subject to formula retail controls in certain NC districts in the Sunset, and that Pet Supply stores are subject to the controls on Geary Boulevard – a district that does not restrict many other uses categorized as formula retail.

Table 2: Summary of Formula Retail Controls Applicable to Individual Zoning Districts

Zoning Districts with Specific FR Controls	Summary of Control or Controls	Underlying FR Control
Upper Fillmore NCD (Section 718)	FR Restaurants/Limited Restaurants NP	FR Requires CU
Broadway NCD (Section 714)	FR Restaurants/Limited Restaurants NP	FR Requires CU
Mission Street FR Restaurant SUD (Section 781.5)	FR Restaurants/Limited Restaurants NP	FR Requires CU
Taraval Street Restaurant SUD	FR Restaurants/Limited Restaurants NP	FR Requires CU
Geary Boulevard FR Retail Pet Store and Restaurant SUD (Section 781.4)	FR Pet Supply Store NP and FR Restaurants/Limited Restaurants NP	FR Requires CU
Taraval Street NCD (Section 741)	Trade Shops are subject to FR Controls and FR Restaurants/Limited Restaurants NP.	FR Requires CU
Noriega Street NCD (Section 739)	Trade Shops are subject to FR Controls	FR Requires CU
Irving Street NCD (Section 740)	Trade Shops are subject to FR Controls and FR Restaurants/Limited Restaurants NP.	FR Requires CU
Judah Street NCD (Section 742)	Trade Shops are subject to FR Controls	FR Requires CU
WMUO (Section 845)	FR NP if use is over 25,000 square feet	FR Requires CU
SALI (Section 846)	FR NP if use is over 25,000 square feet	FR Requires CU

Table 2 summarizes the more specific controls that apply in certain zoning districts.

As Table 2 indicates, a number of NCDs and SUDs have adopted controls specifically geared toward controlling formula retail restaurants, as well as more limited concern regarding formula retail pet supply stores and trade shops. Use size in association with formula retail has been identified as an issue to closely manage in the south of market districts.

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

1. The existing concentrations of formula retail uses within the district.
2. The availability of other similar retail uses within the district.
3. The compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the district.
4. The existing retail vacancy rates within the district.
5. The existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the district.

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

1. Where the formula use establishment remains the same size, function and with the same merchandise, and
2. Where the change in the formula retail operator is the result of the “business being purchased by another formula retail operator who will retain all components of the existing retailer and make minor alterations to the establishment(s) such as signage and branding.”

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

The Way It Would Be:

Active or Pending Legislation, Policies, or Decisions Related to Formula Retail. The Commission is expected to consider the contents of this report on July 25, 2013. During this same hearing, the Commission also is expected to consider a draft Ordinance from Supervisor Cohen that would enact two changes regarding formula retail [Board File 130372]. This amendment would first create the Third Street Formula Retail Restricted Use District (RUD) along Third Street from Williams Avenue to Egbert Avenue. Second, the proposed RUD would require that any new formula retail use on Third Street between Williams Avenue and Egbert Avenue seek CU authorization to operate. If any existing formula retail use has not already procured a CU permit to operate as a formula retail use, any alteration permits for a new formula retail use would require CU authorization. Any expansion or intensification of an existing Formula Retail use would also require CU authorization.

In addition to Supervisor Cohen’s pending ordinance described above, there are seven other proposals or pending modifications formula retail controls in the City. The following is a summary of active formula retail control proposals:

1. **Commission Policy for Upper Market.** This policy (established by Commission Resolution Number 18843 on April 11, 2013) provides the first quantitative measure for concentration. Under the law, concentration is to be considered but without guidance, concentration levels have been interpreted differently. Under this enacted policy, the Department recommends disapproval if certain concentrations are reached.
2. **Supervisor Breed** would create the Fillmore [BF 120814] and Divisadero [BF 120796] NCDs which, among other controls, originally sought to prohibit new formula retail uses. Her new proposal would seek to weigh the community voice over other considerations (including staff recommendation); generally weigh the hearing towards disapproval; legislate a requirement for pre-application meeting; and codify our current formula retail policy for Fillmore and Divisadero. While the commission recommended against codifying the formula retail policy and against deferring the commission recommendation to community groups, the Supervisor is still considering how to best amend this proposal.

3. **Supervisor Breed** would also amend the definition of formula retail but only in the Hayes-Gough NCT [BF 130468]. The legislation proposes to modify the definition of formula retail to include formula retail that is a type of retail sales activity or retail sales establishment and has eleven or more other retail sales establishments located *anywhere in the world* (emphasis added). The definition of formula retail would also include a type of retail sales activity or retail sales establishment where fifty percent (50%) or more of the stock, shares, or any similar ownership interest of such establishment is owned by a formula retail use, or a subsidiary, affiliate, or parent of a formula retail use, even if the establishment itself may have fewer than eleven retail sales establishments located anywhere in the world.
4. **Supervisor Kim** introduced interim controls [BF 130712] at the July 9th, 2013 Board of Supervisors' hearing that would impose interim zoning controls requiring conditional use authorization for certain formula retail uses, as defined, on Market Street, from 6th Street to Van Ness Avenue, subject to specified exceptions for grocery stores, for 18 months.
5. **Implications from recent Board of Appeals hearing.** The Board of Appeals recently ruled (Appeal No. 13-030) that if a company has signed a lease for a location (even if the location is not yet occupied) those leases count that toward the 11 establishments needed to be considered formula retail. The Board discussed, but did not act on web-based establishments.
6. **Mobile Food Facilities.** Supervisor Wiener's recently approved ordinance amended the Department of Public Work's code [BF 120193] to restrict food trucks that are *associated* with formula retail establishments in the public right of way. The change of note is that for this restriction, the formula retail definition includes "affiliates" of formula retail restaurants, which includes an entity that is owned by or has a financial or contractual agreement with a formula retail use.
7. **Interim Controls in Upper Market.** On June 25, 2013, Supervisor Wiener introduced interim controls for Upper Market [BF 130677]. Although not specifically related to formula retail this resolution seeks to require CU for uses that are not currently regulated by formula retail controls but that have been suggested for inclusion in formula retail definition in the same way that financial services were recently added to the definition. Centers around 16th and Market would require a CU for limited financial and business services for 18 months.

REQUIRED COMMISSION ACTIONS

No action is required. The proposed resolution is before the Commission so that it may recommend further study of the issue.

ISSUES AND CONSIDERATIONS

As has been noted in recent case reports by the Department that address specific proposals and projects that include a formula retail component, San Francisco has struggled with the how best to define, manage, and evaluate chain establishments since the 1980s, when the NCDs were added to the Planning Code. The NCDs districts were specifically created to protect and maintain the unique character of these districts. That said, there are districts and neighborhoods

that want to encourage access to the goods and services provided by certain forms of formula retail, or by specific companies that are considered formula retail; there are also neighborhoods that have banned formula retail of all kinds in order to protect the character derived from independent businesses.

In this section, we consider the definition of formula retail, statistics related to CU authorization applications since the implementation of the first formula retail controls, a review of the economic impacts of formula retail, and the approach to formula retail controls taken in other jurisdictions.

Formula Retail Defined: Chain Stores, National Brands, and Local Favorites

Existing formula retail controls apply to businesses that one would expect to consider “chain stores,” such as so-called big box retailers, as well as to businesses that may be surprising, such as smaller-scale businesses with local ownership, but with eleven or more brick and mortar establishments. The broadest definition of “Formula Retail” included in the Planning Code is:

[A use] hereby defined as a type of retail sales activity or retail sales establishment which, along with eleven or more other retail sales establishments located in the United States, maintains two or more of the following features: a standardized array of merchandise, a standardized façade, a standardized décor and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark.⁸

The definition currently appears in three places in the Planning Code: Sections 303(i), 703.3(c), and 803.6, and captures many of the types and sizes of businesses generally associated with the term “chain store”:

- “Big box” retailers such as Walmart, HomeDepot, and CVS;
- Fast food restaurants such as Subway, McDonalds, and casual dining establishments such as TGI Fridays and Chipotle;
- Nationally recognized brands such as the Gap, Footlocker, and AMC Movie Theaters.

As noted in the Finding 9 of Section 703.3(1), which outlines the general controls applicable within the City’s NCDs, formula retail establishments may ...“unduly limit or eliminate business establishment opportunities for smaller or medium-sized businesses, many of which tend to be non-traditional or unique, and unduly skew the mix of businesses towards national retailers in lieu of local or regional retailers[...].” The controls are explicit in their intent to provide additional oversight to national brands that may fit general use size limitations, but may also pose a threat to the unique visual character of San Francisco’s neighborhood commercial districts.

However, the definition also captures a number of local brands and smaller retailers that may not typically be associated with the term chain store, such as:

- La Boulange Bakery, which has 20 locations, all in the Bay Area;
- Pet Food Express, which has 47 stores, all in the Bay Area;

⁸ Planning Code Sections 703.3 and 803.6

- Blue Bottle Coffee, which has 11 locations: six in the Bay Area, and five in New York City;
- Benefit Cosmetics, which has six Bay Area locations, as well as five in the Chicago area, and seven in the northeast including New York, Massachusetts, and Connecticut.

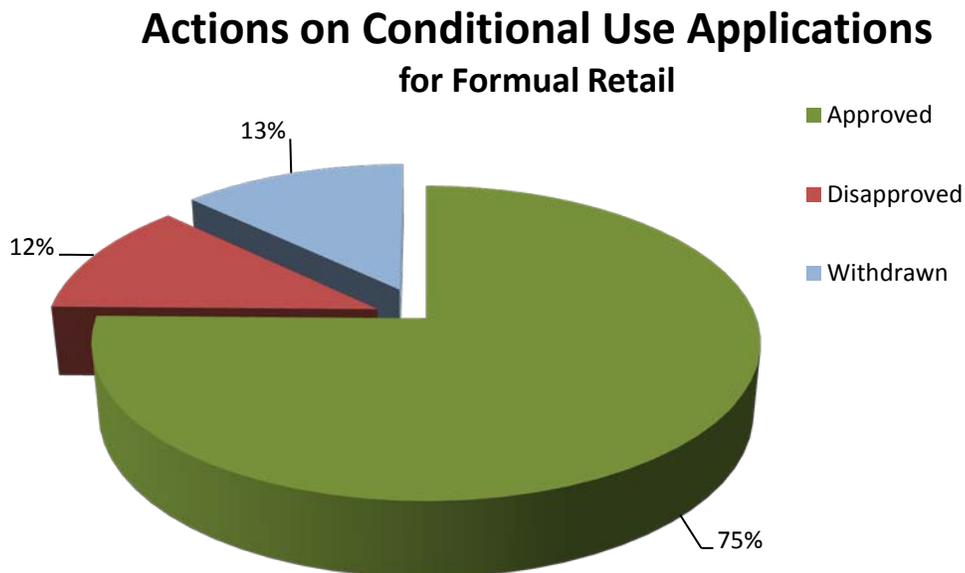
Conversely, the definition does not apply to a number of establishments that are nationally known brands with standardized signage, a standardized décor, and a trademark, such as:

- Uniqlo, Boots Pharmacy, and David’s Teas: three internationally known stores and brands with fewer than 11 stores or retail outlets in the United States;
- High end clothiers that are found in many department stores, with few brick and mortar stores, such as Gant, Jack Spade, and Joie;
- Chevron Gas Station and Equinox Gym meet threshold criteria for the number of locations as well as standardized branding, but do not fall into the types of “retail” to which the controls apply.

Data Related to Applications for CU Authorization for Formula Retail in San Francisco

Of the cases that have been filed with the Department and resolved since the enactment of San Francisco’s formula retail controls in 2004, there have been approximately 93 formula retail Conditional Use cases. Of those 12 have been withdrawn, 11 have been disapproved, 70 have been approved. Not including currently active cases,

- 25% of all Formula Retail Conditional Use applications have been either withdrawn by the applicant or disapproved by the Commission and
- 75% of all Conditional Use applications have been approved by the Planning Commission.



This pie-chart shows the results of the 93 CU applications for formula retail that have been resolved. In addition to the closed cases shown above, there are currently 12 applications which are pending a hearing before the Planning Commission.

Survey of Economic Impacts of Formula Retail Uses and Non-Formula Retail Uses

During a staff review of existing research and study of formula retail, the Department found that most of the studies done to date focused on big box retail. The Institute for Local Self-Reliance maintains a collection of research, some of which was relevant information for San Francisco. Attachment C contains a survey of material, some published in journals such as the Cambridge Journal of Regions and Economy and Society, Economic Development Quarterly, some not. The majority of the relevant research has been completed by Civic Economics and The Institute for Local Self-Reliance, as commissioned work. A review of existing findings of this work showed several case studies that compare economic impacts from formula retail uses and non-formula retail uses, including one study conducted in San Francisco⁹. Although most studies investigate economic impacts in smaller cities with less density and intense uses than San Francisco, the studies conclude that non-formula retail uses generate greater economic impacts for the local economy.

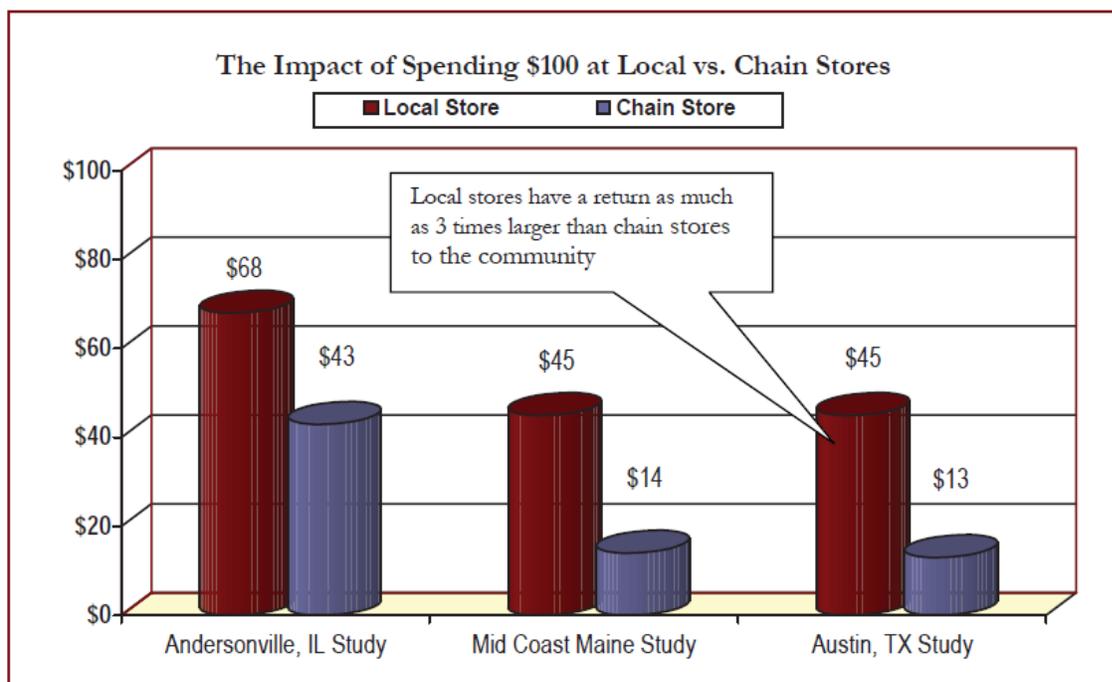
Below, the department reviews two recent studies examining formula retail and non-chain stores: an overview of other studies by Ridley & Associates in 2008 and the Civic Economics that was specific to San Francisco in 2007.¹⁰ Both of these studies found that both formats have economic advantages. The Ridley & Associates study compared the economic impacts of “local stores” vs. “chain stores” and established three major findings:

- First, formula retailers provide goods and services at a more affordable cost and can serve as retail anchors for developing neighborhoods.
- Second, these formula retailers can also attract new customers, and offer a greater selection of goods and services.
- Third, conversely, independent businesses generate a higher investment return, and overall economic growth, for the local economy in comparison to formula retailers. According to the report, local stores generate more economic growth because they tend to pay higher wages; purchase goods and services from local businesses at twice the rate as chain stores; and employees and owners tend to live in the local area, therefore returning their earnings back to the local community.

⁹ Institute for Local Self- Reliance. “Key Studies on Big Box Retail and Independent Business”. <http://www.ilsr.org/key-studies-walmart-and-bigbox-retail/> (June 28, 2013).

¹⁰ Ridley & Associates, Inc. “Are Chain Stores Bad?” 2008. http://www.capecodcommission.org/resources/economicdevelopment/Are_Chain_Stores_Bad.pdf and Civic Economics. Civic Economics. “The San Francisco Retail Diversity Study.” May 2007. <http://civiceconomics.com/app/download/5841704804/SFRDS+May07.pdf>

Looking specifically at San Francisco, the Civic Economics study stated that the increased retail sales generated by independent merchants generate additional taxable income for public services. The study highlights that independent restaurants tend to generate the most economic growth for the local economy due to the fact they function like small manufacturing establishments and pay higher wages. Other independent merchants that generate less pronounced economic growth include book stores, toy stores and sporting goods stores. Figure 1 illustrates the difference in economic growth generation between chain and independent retailers in three communities: Anderson, Illinois, Maine, and in Austin, Texas. The Department believes that further research is needed in this area.



This graphic prepared by Ridley and Associates illustrates the higher investment return to the community by local stores.

Formula Retail Controls Across the Nation

The proliferation of formula retail is occurring throughout the nation. Several cities are in the process of or have recently adopted formula retail regulations. (See Attachment B for a table of cities with such controls compiled by the Institute for Local Self-Reliance.) Staff review of these controls reveal that concerns about formula retail include: 1) preservation of the neighborhood character; 2) maintenance of diverse store fronts, goods and services. 3) activation of streetscapes and 4) support for potential economic advantages of independent businesses. Many of the ordinances do not seek to prohibit every formula establishment, but instead seek to prevent a proliferation of formula retail may disrupt the culture of a neighborhood and/or discourage diverse retail and services.

Formula retail controls have been enacted in states including Texas, Florida, Idaho and Massachusetts. Cities that have adopted formula retail laws tend to be smaller than San Francisco and are often located in California. Other than San Francisco, the largest city that has

an enacted law is Fairfield Connecticut which has a population of 57,000. In addition to whole cities, a portion of New York City, the Upper West Side neighborhood, has enacted controls that while not formula retail controls per se, do seek to limit the size of establishments and impose aesthetic regulation of transparency, largely as a response to a perceived over-proliferation of banks¹¹.

Generally, other jurisdictions define formula retail in a manner similar to San Francisco. Typical definitions include retail establishments that are required to operate using standardized merchandise, trademarks, logos, uniform apparel, and other standardized features. To date, zoning tools have largely required special permits (similar to San Francisco's CU authorization), instilled a ban, or have limited the number of establishments or the size of the establishments permitted. As described above, San Francisco defines formula retail as eleven or more national establishments, whereas Malibu's definition captures retail establishments with six or more other locations in Southern California.¹² On the other end of the spectrum, Chesapeake City's threshold for formula retail is 50 or more establishments, regardless of location in the United States.

This report explores controls from two cities. One set of controls enacted in New York City represents an attempt to encourage "active and varied" retail in a large dense, urban area similar to San Francisco. The other set of controls passed in the small town of Coronado California, is important in that it withstood a court challenge.

1. Upper West Side, New York City.

San Francisco is often compared to New York City (NYC) in regards to the intensity of land uses, density and urbanity. While not regulating formula retail per se, in 2012 NYC City Council passed a zoning text and map amendment to to promote an "active and varied" retail environment in the Upper West Side (UWS) of Manhattan. The UWS is typified by high residential density and limited commercial space. After the community board and elected officials approached New York City Department of City Planning (NYCDCP) with concerns that the current retail landscape and the overall aesthetic of the neighborhood were threatened, the New York Department of City Planning conducted a block-by-block survey of the area, which illustrated that banks disproportionately occupied the existing retail frontages of the limited commercial space.¹³ At that time, 69 banks had in retail frontage in the UWS. The banks uses often consolidated between 60-94' of street frontage, while the smaller, neighborhood-serving uses featured storefronts that were 10-17'¹⁴.

The adopted Special Enhanced Commercial Districts in the UWS provide stricter controls for the two neighborhood-serving commercial corridors, and less restrictive controls for the regional-commercial hub. The controls restrict the size of street frontages for banks as well as residential lobbies and non-retail uses. Highlights of the adopted controls include:

¹¹ New York City Department of City Planning. "Special Enhanced Commercial District Upper West Side Neighborhood Retail Street." Accessed July 15, 2013. <http://www.nyc.gov/html/dcp/html/uws/index.shtml>

¹² Malibu's ordinance defines "Southern California" as the counties of San Luis Obispo, Kern, San Bernardino, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego, and Imperial.

¹³ New York City Department of City Planning. "Special Enhanced Commercial District Upper West Side Neighborhood Retail Street." Accessed July 15, 2013. <http://www.nyc.gov/html/dcp/html/uws/index.shtml>

¹⁴Upper West Side Neighborhood Retail Streets - Approved! Presentation - updated on June 28, 2012, reflecting City Council adoption of proposal" Accessed July 16, 2013. <http://www.nyc.gov/html/dcp/html/uws/presentation.shtml>

- a. For every 50' of street frontage, there must be at least two store fronts;
- b. No single store may include more than 40' of street frontage. (Grocery stores, houses of worship and schools are exempt from restrictions.)
- c. Banks and residential lobbies are limited to 25' of ground floor frontage.
- d. A 50% transparency requirement is established.¹⁵

The intent of this district is to maintain and encourage a pedestrian friendly neighborhood and the retail diversity of the district, while protecting the neighborhood-serving retailers.

2. Coronado, California

Coronado is an affluent resort city of 24,000 people located in San Diego County. It is described to have a village atmosphere, "in which its housing, shops, work places, schools, parks and civic facilities co-exist in relative harmony—its streets invite walking and bicycling and its eclectic architecture styles create a sense of timelessness that have contributed to a strong Sense of community."¹⁶ Coronado has two zoning ordinances that regulate formula retail establishments: one establishes limits on formula retail restaurants; the other requires conditional use authorization for formula retail stores. The Formula Restaurant Ordinance allows no more than ten formula restaurants to be approved in the city. New formula retail restaurants must obtain a special use permit, may not locate on a corner, and must meet adopted design standards.

In December 2000, Coronado adopted a formula retail ordinance related to commercial stores. The ordinance requires that formula retail businesses obtain a special use permit from the city. Approval hinges on demonstrating that the store will contribute to an appropriate balance of local, regional, or national-based businesses and an appropriate balance of small, medium, and large-sized businesses. Formula retail businesses must be compatible with surrounding uses and occupy no more than 50 linear feet of street frontage.

Coronado's formula retail ordinance was challenged in court shortly after it was enacted, but a California Appeals Court upheld the law in June 2003. In its decision, the court stated that the ordinance does not violate the US Constitution's commerce and equal protection clauses, and is a valid use of municipal authority under California state law.¹⁷ Specifically, the court stated,

"[The] primary purpose was to provide for an economically viable and diverse commercial area that is consistent with the ambiance of the city, and that it believed the best way to achieve these goals was to subject to greater scrutiny those retail stores that are contractually bound to use certain standard processes in displaying and/or marketing their goods or services, and to limit

¹⁵ NYC Zoning Resolution 132-20 "Special Use Regulations" – Special Enhanced Commercial Districts: EC 2 (Columbus and Amsterdam Avenues) and EC 3 (Broadway). Available online at: <http://www.nyc.gov/html/dcp/pdf/zone/art13c02.pdf> (July 17, 2013).

¹⁶ Coronado's Formula Retail Ordinance. "http://www.ilsr.org/rule/formula-business-restrictions/2312-2/"

¹⁷ Ibid.

the frontage area of these businesses to conform with existing businesses.”¹⁸

By upholding Coronado’s right to enact controls that provided strict oversight over formula retail establishments, the Court sent a signal to other jurisdictions considering local controls.

RECOMMENDATION

The Department recommends that the Commission recommend that the issue of formula retail be studied further to increase understanding of the issue as a whole, and to examine potential economic and visual impacts of the proposed controls compared to the absence of new controls. If pending proposals move forward before the Department completes further study, the Department recommends that the Commission recommend resisting patchwork changes to structural components of the controls (such as modifying the definition of formula retail); these types of structural changes are best applied citywide.

BASIS FOR RECOMMENDATION

The goal of this report is to lay the groundwork for a set of controls that appropriately and accurately evaluates the merits of formula retail and manages its impacts – positive and negative. The Department seeks a solution that will consolidate controls in a manner that is clear to the public, and consistently implemented by staff. Further, the Department seeks to develop criteria based on sound economic data and land use policy in order to protect the diversity of goods and services available to residents and visitors as well as the economic vitality of commercial districts large and small.

Formula retail controls in San Francisco have evolved over the last nine years, and as indicated by the diversity of pending legislative proposals, many elected officials believe the controls need updating. As the issues and implications are numerous, the department recommends that changes be made based upon data and sound research. To assist with this effort, the Director has asked staff to seek consultant assistance on a study of the issues early this fall.

There are at least five discreet topics that staff grapples with and that the Department seeks to understand better, including: 1) the structure of the controls including the definition of use types, size, and number of establishments, 2) the criteria for evaluation, 3) visual impacts, 4) economic impacts, and 5) geographic boundaries of the controls.

1. Structural Controls: Definition, Use Types, and Size

All formula retail use types are currently considered in the same manner, and the criteria for evaluation are universally applied: a clothing store is evaluated using the same criteria as are used to consider a proposed new grocery store or a fast food restaurant. This begs the question: should the formula retail controls treat all use types equally? Are there formula

¹⁸ The Malibu Times, “Public Forum: Chain Stores, formula retail ordinances and the future of Malibu”. Posted on March 27, 2013. Retrieved from: http://www.malibutimes.com/opinion/article_145150ca-9718-11e2-892c-001a4bcf887a.html on July 16, 2013.

retail use types that should be encouraged, and others that should be discouraged? Do all formula retail uses have the same impacts in every location?

The Department would like to explore whether uses such as grocery stores and pharmacies provide needed neighborhood-serving goods and services to underserved areas, and whether there exist a sufficient number of independent retailers to provide such goods and services. Proposed amendments to the formula retail controls may target specific uses, such as grocery stores, for specific underserved areas and provide a set of criteria and/or incentives to encourage use types that provide essential goods or services in appropriate locations. Based upon the current controls, on the other hand, it appears that formula retail restaurants are less beneficial, perhaps having a greater impact on neighborhood character than other use types.

Conversely, the range of use types and sizes captured by the existing definition of formula retail may decrease the availability of neighborhood-serving goods and services, and lead to gentrification. Can the presence of upscale formula retail lead to gentrification? A 2002 report from the Institute for Local Self Reliance (ILSR) addresses the role of formula retail in gentrification, and specifically addresses the role of protecting neighborhood-serving retailers.¹⁹ Stacy Mitchell of ILSR notes, “[...]And of course there are plenty of formula businesses that are very expensive, such as Whole Foods, Restoration Hardware, and many clothing chains. (Indeed, these are probably the kinds of formula businesses that would locate in Hayes Valley if given the chance.)”²⁰

Further, many proposals seek to expand the definition of formula retail. Perhaps the trigger of eleven national establishments could be revised, or perhaps the definition should also consider the prevalence of an establishment within San Francisco. It seems increases in the square footage, street frontage or number of formula retail establishments within San Francisco may dilute the City’s unique character.

2. Criteria for Evaluation

As noted throughout this report, the same five criteria are used to evaluate all forms of formula retail proposed in districts that require CU authorization. The Department proposes to consider gradations of criteria that address concentration on one hand, and use types on the other.

Should local retailers with eleven establishments be subject to the same criteria as Walmart? Or, does it make more sense to establish a simpler set of criteria for smaller outlets that are not part of large retailers that perhaps already have a significant presence in the city, and to impose a more rigorous set of criteria on larger stores? Is “eleven” the appropriate number to define a business as a formula retail establishment?

A recently adopted Commission policy considers the existing concentration of formula retail uses within the Upper Market NCT when evaluating new formula retail proposals in the district. This approach will be reviewed as the Department’s proposal is developed.

¹⁹“Tackling the Problem of Commercial Gentrification,” November 1, 2002, available online at: <http://www.ilsr.org/retail/news/tackling-problem-commercial-gentrification/> (July 17, 2013).

²⁰ Stacy Mitchell. Institute for Local Self Reliance. E-mail communication. July 17, 2013.

3. Visual Impacts

The unique character of San Francisco neighborhoods is derived not only from the diversity of goods and services offered, but also from the appearance of the streetscape. While the term “formula retail” may conjure images of large big box chain stores, formula retail establishments may also be small, upscale boutiques. The common thread is that formula retail businesses all have a standardized brand used across a minimum of eleven locations. Does this level of standardization allow for a sense of place that can respond to the unique neighborhood character of a particular location?

4. Economic Impacts

While one study of potential economic impacts of formula retail has been completed in San Francisco (the previously cited Civic Economics Report), the Department would like to examine the issue more specifically with neighborhood case studies comparing neighborhoods with and without controls to assess vacancy rates, commercial rents, turnover rates, and the availability of services and goods appropriate to the neighborhood.

The Department intends to explore ways to incorporate use size limits, street frontage maximums, transparency thresholds, and signage considerations into our formula retail controls as ways to further protect and enhance the visual character of neighborhoods. Until this study can be completed, the Department is wary of enacting a patchwork of different formula retail controls throughout the city without specific evidence to warrant such changes. For this reason, the Department recommends minimal changes until a study can be completed to clarify impacts of formula retail controls to neighborhood vitality and character.

5. Geographic Boundaries of Controls

Two pending proposals would extend formula retail controls beyond the traditional neighborhood commercial districts and mixed use districts and into more the industrial production, distribution, and repair districts [Supervisor Cohen, BF 130372] and the city’s downtown C-3 district [Supervisor Kim, BF130712]. The department seeks to inform potential geographic expansion with new information gleaned from exploration of the issues above.

If the Commission agrees, the Department proposes to develop a more robust set of amendments to bring forward to the Commission for consideration in the fall of 2013 to ensure that neighborhood-serving retailers thrive, the visual character of individual neighborhood commercial districts is maintained, and essential goods and services are available to residents and visitors alike.

ENVIRONMENTAL REVIEW

The proposal to conduct a study prior to further changes to existing controls would result in no physical impact on the environment. This proposal is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

PUBLIC COMMENT

As of the date of this report, the Planning Department has received an email from Paul Wermer summarizing his understanding of existing community sentiment as well as his own proposal for the regulation of formula retail. The letter is attached.

RECOMMENDATION: Recommendation of Further Study
