File No. 120047

Committee Item No. 1
Board Item No. 22

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Land Use and Economic Development **Date** May 21, 2012

Board of Supervisors Meeting **Date** June 5, 2012

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Completed by: Alisa Miller **Date** May 18, 2012
Completed by: Alisa Miller **Date** May 31, 2012

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Planning Code - Including Financial Services Within Definition of Formula Retail]

Ordinance amending the San Francisco Planning Code by: 1) amending Section 703.3(c) to include financial services within the uses subject to formula retail controls in Neighborhood Commercial Districts; 2) amending Section 806.3(c) including financial services within the uses subject to formula retail controls in Mixed Use Districts; 3) amending Section 303.3(i) making conforming amendments; and 4) making findings, including environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and with the Priority Policies of Planning Code Section 101.1.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 120047 and is incorporated herein by reference.

(b) Pursuant to Planning Code Section 302, this Board finds that the actions contemplated in this ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. 18580 and the Board incorporates such reasons herein by reference. A copy of Planning Commission Resolution No. 18580 is on file with the Clerk of the Board of Supervisors in File No. 120047.

(c) This Board finds that the actions contemplated in this ordinance are consistent with the General Plan and with the Priority Policies of Planning Code Section 101.1 for the reasons set forth in Planning Commission Resolution No. 18580 and the Board hereby incorporates such reasons herein by reference.

Section 2. The San Francisco Planning Code is hereby amended by amending Section 703.3(c), to read as follows:

SEC. 703.3. FORMULA RETAIL USES.

(c) "Retail ~~s~~Sales ~~a~~Activity or ~~r~~Retail ~~s~~Sales ~~e~~Establishment" shall include the following uses, as defined in Article 7 of this Code: "bar," "drive-up facility," "eating and drinking use," "liquor store," "restaurant, large fast-food," "restaurant, small self-service," "restaurant, full-service," "sales and service, other retail," "sales and service, retail," *"service, financial,"* "movie theatre," "video store," "amusement and game arcade," "take-out food," and "specialty food, self-service."

Section 3. The San Francisco Planning Code is hereby amended by amending Section 803.6(c), to read as follows:

SEC. 803.6. FORMULA RETAIL USES IN THE CHINATOWN MIXED USE DISTRICTS AND IN THE WESTERN SOMA PLANNING AREA SPECIAL USE DISTRICT.

(c) Formula Retail Use Defined. Formula retail use is 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.

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

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

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

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

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

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

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

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

(9) "Retail ~~s~~Sales ~~a~~Activity or ~~r~~Retail ~~s~~Sales ~~e~~Establishment" shall include the following uses, as defined in Article 8 of this Code: "bar," "drive-up facility," "eating and drinking use," "restaurant, large fast-food," "restaurant, small fast-food," "restaurant, full-service," "sales and services, other retail," "sales and services, nonretail," *"service, financial,"* "movie theater," "amusement game arcade," and "take-out food."

Section 4. The San Francisco Planning Code is hereby amended by amending Section 303(i), to read as follows:

SEC. 303. CONDITIONAL USES.

(i) Formula Retail Uses.

(1) Formula Retail Use. A formula retail use is hereby defined as a type of retail sales activity or retail sales establishment which has eleven or more other retail sales establishments located in the United States. In addition to the eleven establishments, the business maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark.

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

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

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

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

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

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

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

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

(2) "Retail ~~s~~Sales ~~a~~Activity or ~~r~~Retail ~~s~~Sales ~~e~~Establishment." *For the purposes of subsection (i)*, a ~~A~~ retail sales activity or retail sales establishment shall include the following uses, as defined in Article 7 and Article 8 of this Code: "bar," "drive-up facility," "eating and drinking use," "liquor store," "restaurant, large fast-food," "restaurant, small self-service," "restaurant, full-service," "sales and service, other retail," "sales and service, retail," *"service, financial,"* "movie theatre," "video store," "amusement and game arcade," "take-out food," and "specialty food, self-service."

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

(A) The existing concentrations of formula retail uses within the district.

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

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

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

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

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

(A) All Neighborhood Commercial Districts in Article 7;

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

(C) All Urban Mixed Use Districts in Article 8;

(D) RC-3 and RC-4 zoned parcels along Van Ness Avenue;

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

(F) Chinatown Community Business District as defined in Section 810;

(G) Chinatown Residential/Neighborhood Commercial District as defined in 812;

(H) Western SoMa Planning Area Special Use District as defined in 802.5.

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

(A) Hayes-Gough Neighborhood Commercial Transit District;

(B) North Beach Neighborhood Commercial District;

(C) Chinatown Visitor Retail District.

(6) Neighborhood Commercial Notification and Design Review. Any building permit application for a "formula retail use" as defined in this section and located within a Neighborhood Commercial District in Article 7 shall be subject to the Neighborhood Commercial Notification and Design Review Procedures of Section 312 of this Code.

(7) Change in Use. A change from one formula retail use to another requires a new Conditional Use Authorization, whether or not a Conditional Use Authorization would otherwise be required by the particular change in use in question. This Conditional Use Authorization requirement also applies in changes from one Formula Retail operator to another within the same use category. A new Conditional Use Authorization shall not apply to a change in a formula use retailer that meets the following criteria:

(A) the formula use operation remains the same in terms of its size, function and general merchandise offering as determined by the Zoning Administrator, and

(B) the change in the formula retail use 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.

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

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

Section 5. This section is uncodified. The provisions of this Ordinance related to financial services shall not apply to projects that had filed an application with the Planning Department by the date of introduction of this Ordinance, on January 24, 2012.

Section 6. Effective Date. This ordinance shall become effective 30 days from the date of passage.

Section ~~6~~7. This section is uncodified. In enacting this Ordinance, the Board intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams, or any other constituent part of the Planning Code that are explicitly shown in this legislation as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the legislation.

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

By: _____
ANDREA RUIZ-ESQUIDE
Deputy City Attorney

FILE NO. 120047

REVISED LEGISLATIVE DIGEST

(5/21/2012, Amended in Committee)

[Planning Code - Including Financial Services Within Definition of Formula Retail]

Ordinance amending the San Francisco Planning Code by: 1) amending Section 703.3(c) to include financial services within the uses subject to formula retail controls in Neighborhood Commercial Districts; 2) amending Section 806.3(c) including financial services within the uses subject to formula retail controls in Mixed Use Districts; 3) amending Section 303.3(i) making conforming amendments; and 4) making findings, including environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and with the Priority Policies of Planning Code Section 101.1.

Existing Law

Section 703.3 of the Planning Code defines "formula retail" as "a type of retail sales activity or retail sales establishment which, along with eleven or more other retail sales establishments located in the United States, maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark." Section 806.3 applies the same definition in the Mixed Use Districts regulated under Article 8 of the Code. Formula retail is prohibited in some areas of the City (such as the Hayes-Gough Neighborhood Commercial District, or the North Beach Neighborhood Commercial District), and requires a conditional use permit on all other Neighborhood Commercial Districts. (See Section 703.4.)

Section 303 of the Planning Code establishes the process for hearing and determining applications for conditional use permits. Subsection (i) sets forth specific considerations for the Planning Commission to take into account when reviewing a conditional use application for a formula retail use, in addition to the general criteria of subsection (c).

Amendments to Current Law

This Ordinance would amend Sections 703.3, 806.3, and 303, to include "financial service" within the categories of uses which are subject to the formula retail controls and require a conditional use permit.

Amendment of the Whole, May 21, 2012

On May 21, 2012, Supervisor Wiener introduced amendments to this legislation to provide that the provisions related to financial services shall not apply to projects that had filed an application with the Planning Department by the date of introduction, on January 24, 2012.

Background Information

Currently banks and other financial institutions do not fall within the definition of "formula retail." This legislation includes financial services in that definition, making banks subject to the conditional use permit requirement. This would allow the Planning Commission to assess whether a proposed bank is necessary or desirable in the community, and, in particular, whether there is an overconcentration of banks within that community; whether other similar retail uses are available within the district; whether the proposed bank is compatible with the existing architectural and aesthetic character of the district; the existing retail vacancy rates within the district; and the existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the district. The Commission has discretion to consider these factors approve or disapprove the conditional use permit for the proposed bank.

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

January 31, 2012

File No. 120047

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On January 24, 2012, Supervisor Mar introduced the following proposed legislation:

File No. 120047

Ordinance amending the San Francisco Planning Code by: 1) amending Section 703.3(c) to include financial services within the uses subject to formula retail controls in Neighborhood Commercial Districts; 2) amending Section 806.3(c) including financial services within the uses subject to formula retail controls in Mixed Use Districts; 3) amending Section 303.3(i) making conforming amendments; and 4) making findings, including environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and with the Priority Policies of Planning Code Section 101.1.

This legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

Alisa Miller

By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

NOT A PROJECT PER
CEQA GUIDELINES,
SECTION 15060(c)(2).

Nannie Turrell
February 1, 2012

SAN FRANCISCO
PLANNING DEPARTMENT

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

April 18, 2012

Supervisor Mar and
Ms. Angela Calvillo, Clerk
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: **Transmittal of Planning Case Number 2012.0174T**
BF No. 12-0047: Financial Services as Formula Retail

Recommendation: **Approval**

Dear Supervisor Mar and Ms. Calvillo,

On April 12, 2012, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance under Board of Supervisors File Number 12-0047.

At the April 12th Hearing, the Commission voted 5-1 to recommend approval of the proposed Ordinance, which would add Financial Services to the definition of Formula Retail.

The attached resolution and exhibit provides more detail about the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

AnMarie Rodgers
Manager of Legislative Affairs

Cc: City Attorney Andrea Ruiz-Esquide

Attachments (one copy of the following): Planning Commission Resolution No. 18580
Department Executive Summary

SAN FRANCISCO
PLANNING DEPARTMENT

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Resolution No. 18580

HEARING DATE: APRIL 12, 2012

Project Name:	**Amendments to the San Francisco Planning Code to include Financial Services in the Definition of Formula Retail**
Case Number:	2012.0174T **[Board File No. 12-0047]**
Initiated by:	Supervisor Mar/ Introduced January 24, 2012
Staff Contact:	Aaron Starr, Legislative Affairs Aaron.starr@sfgov.org, 415-558-6362
Reviewed by:	AnMarie Rodgers, Manager Legislative Affairs anmarie.rodgers@sfgov.org, 415-558-6395

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND THE SAN FRANCISCO PLANNING CODE BY: 1) AMENDING SECTION 703.3(C) TO INCLUDE FINANCIAL SERVICES WITHIN THE USES SUBJECT TO FORMULA RETAIL CONTROLS IN NEIGHBORHOOD COMMERCIAL DISTRICTS; 2) AMENDING SECTION 806.3(C) INCLUDING FINANCIAL SERVICES WITHIN THE USES SUBJECT TO FORMULA RETAIL CONTROLS IN MIXED USE DISTRICTS; 3) AMENDING SECTION 303.3(I) MAKING CONFORMING AMENDMENTS; AND 4) MAKING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND WITH THE PRIORITY POLICIES OF PLANNING CODE SECTION 101.1.

PREAMBLE

Whereas, on January 24, 2012, Supervisor Mar introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 12-0047 which would amend the San Francisco Planning Code by: 1) amending Section 703.3(c) to include financial services within the uses subject to formula retail controls in Neighborhood Commercial Districts; 2) amending Section 806.3(c) including financial services within the uses subject to formula retail controls in Mixed Use Districts; 3) amending Section 303.3(i) making conforming amendments; and 4) making findings, including environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and with the Priority Policies of Planning Code Section 101.1.; and

Whereas, on April 12, 2012, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the proposed zoning changes have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2) and 15378; 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 the applicant, 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; and

MOVED, that the Commission hereby recommends that the Board of Supervisors recommends ***approval of the proposed Ordinance*** and adopts the attached Draft Resolution to that effect.

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:

1. Formula Retail controls were primarily adopted to maintain the unique visual character of the City's neighborhood commercial districts. Formula Retail establishments typically have a standardized look and signage, which can erode the unique visual identity of a neighborhood if there is an over concentration. In addition to having a standardized look and signage, Financial Services typically lack active or visually interesting storefronts. Therefore, having an over concentration of Financial Services in an NCD not only erode the visual uniqueness of that neighborhood, they can also negatively impact street life and vitality.

2. The Commission does not find that requiring a CU to establish a Financial Service is not overly burdensome, and that ensuring our Neighborhood Commercial Districts continue to be unique and vibrant places justifies such a hurdle.

3. Limited Financial Service uses would allow smaller size financial services with less of an impact on the aesthetic character and vibrancy of a NCD to be established in any neighborhood commercial district without being subject to Formula Retail Controls.

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

   <u>I. COMMERCE & INDUSTRY ELEMENT</u>
   THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN SETS FORTH OBJECTIVES AND POLICIES THAT ADDRESS THE BROAD RANGE OF ECONOMIC ACTIVITIES, FACILITIES, AND SUPPPORT SYSTEMS THAT CONSTITUE SAN FRANCISCO'S EMPLOYMENT AND SERVICE BASE.

GOALS
THE THREE GOALS OF THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN RELATE TO CONTINUED ECONOMIC VITALITY, SOCIAL EQUITY, AND ENVIRONMENTAL QUALITY.

OBJECTIVE 6
MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

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.

POLICY 6.10
Promote neighborhood commercial revitalization, including community-based and other economic development efforts where feasible.

The proposed Ordinance would help protect the strength and viability of the City's neighborhood Commercial Districts by limiting the expansion and establishment of Financial Services, which can have negative aesthetic impacts as well as impacts to the vitality to the public realm.

5. 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 Ordinance will require each Financial Service use to be looked at on a case by case basis to help ensure that there is not an overconcentration of Financial Services in any one neighborhood commercial district and that neighborhood serving retail uses are protected.

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

   Financial Services can have negative aesthetic impacts on neighborhood commercial districts. The proposed legislation will help preserve neighborhood character by ensuring that Financial Services are not overly concentrated in any one neighborhood commercial district.

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

   The proposed Ordinance 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 will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

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 would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.

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 by the proposed amendments. 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. Should a proposed use be located within a landmark or historic building, such site would be evaluated under typical 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 proposed amendments.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on April 12, 2012.

Linda Avery
Commission Secretary

AYES: Commissioners Moore, Sugaya, Borden, Wu, Miguel

NAYS: Commissioner Antonini

ABSENT: Commissioner Fong

ADOPTED: April 12, 2012

SAN FRANCISCO
PLANNING DEPARTMENT

Executive Summary
Planning Code Text Change
HEARING DATE: APRIL 12, 2012

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Project Name:	**Amendments to the San Francisco Planning Code to include Financial Services in the Definition of Formula Retail**
Case Number:	2012.0174T **[Board File No. 12-0047]**
Initiated by:	Supervisor Mar/ Introduced January 24, 2012
Staff Contact:	Aaron Starr, Legislative Affairs Aaron.starr@sfgov.org, 415-558-6362
Reviewed by:	AnMarie Rodgers, Manager Legislative Affairs anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation:	**Recommend Approval with modifications**

PLANNING CODE AMENDMENT

The proposed Ordinance would amend the San Francisco Planning Code by: 1) amending Section 703.3(c) to include financial services within the uses subject to formula retail controls in Neighborhood Commercial Districts; 2) amending Section 806.3(c) including financial services within the uses subject to formula retail controls in Mixed Use Districts; 3) amending Section 303.3(i) making conforming amendments; and 4) making findings, including environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and with the Priority Policies of Planning Code Section 101.1.

The Way It Is Now:

The Planning Code currently defines "formula retail" in both Article 7 Neighborhood Commercial Districts and Article 8 Mixed Use Districts. These two definitions are similar but slightly different.

Article 7 currently includes the following uses as Formal Retail: "bar," "drive-up facility," "eating and drinking use," "liquor store," "restaurant, large fast-food," "restaurant, small self-service," "restaurant, full-service," "sales and service, other retail," "sales and service, retail," "movie theatre," "video store," "amusement and game arcade," "take-out food," and "specialty food, self-service."

Article 8 currently includes the following uses as Formula Retail: "bar," "drive-up facility," "eating and drinking use," "restaurant, large fast-food," "restaurant, small fast-food," "restaurant, full-service," "sales and services, other retail," "sales and services, nonretail," "movie theater," "amusement game arcade," and "take-out food."

Financial Services are defined in Planning Code Sections 790.110 and 890.110 as "a retail use which provides banking services and products to the public, such as banks, savings and loans, and credit unions, when occupying more than 15 feet of linear frontage or 200 square feet of gross floor area." This use is not included in the list of uses that are subject to Formal Retail controls in either Articles 7 or 8.

The Way It Would Be:

The proposed ordinance would include Financial Services in the list of uses that are subject to Formula Retail Controls in Articles 7 and 8.

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 ***with modifications*** to include:

- Remove "sales and service, retail" from the list of Retail Sales Activity in Section 703.3

ISSUES FOR CONSIDERATION

Visual Impacts: Formula Retail controls were primarily adopted to maintain the unique visual character of the City's neighborhood commercial districts. Formula Retail establishments typically have a standardized look and signage, which can erode the unique visual identity of a neighborhood if there is an over concentration. In addition to having a standardized look and signage, Financial Services typically lack active or visually interesting store fronts. Therefore, having an over concentration of Financial Services in an NCD not only erode the visual uniqueness of that neighborhood, they can also negatively impact street life and vitality.

Potential Effects on the Provision of Financial Services if the Ordinance is Adopted: There is a concern that there are very few Financial Service establishments in San Francisco, which would not be categorized as Formula Retail. While some local Financial Service operations with fewer than 11 locations exist in San Francisco (Mission National Bank and SF Fireman's Credit Union are two examples) most of the banks and even some Credit Unions are nationwide chains with more than 11 locations. While there will be additional limits on the provision of "financial services" under this proposed Ordinance, it should be noted that banking services provided through Limited Financial Services[1], ATMs, and online banking would still be permitted.

Another concern is that the proposed legislation will effectively prohibit new Financial Service uses in the Hayes-Gough NCD and North Beach NCD. As stated above, most Financial Services that serve San Francisco have more than 11 locations. The Hayes-Gough NCD and the North Beach NCD prohibit Formula Retail establishments outright; therefore most banks would be prohibited from going into these neighborhoods. While North Beach currently has controls that require Conditional Use authorization for Financial Services in certain areas and prohibits them outright in others, Financial Services are principally permitted in The Hayes-Gough NCD. The Supervisor's office has reached out to both of these neighborhoods and has taken their concerns into consideration in drafting this legislation.

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[1] A Limited Financial Service use is defined as retail uses that provides banking services, when not occupying more than 15 feet of linear frontage or 200 square feet of gross floor area. These tend to be ATMs, but there is nothing in the Code that prevents a small branch from opening under this use category so long as it complies with the size restrictions. This use category would not be included in the Formula Retail definition.

Recent New York Legislation: San Francisco is not unique in dealing with the aesthetic impacts that banks have on neighborhood commercial districts. New York City recently addressed this issue in the Upper West Side neighborhood by limiting the width of bank storefronts to no more than 25' wide. The concern there, however, was that the small fine grained nature of the existing neighborhood commercial district was being eroded by larger storefronts. San Francisco already addresses this issue with non-residential use size limits, and we also have the Limited Financial Services use category.

Currently Regulation of Financial Services: Of the 39[2] Zoning Districts where Formula Retail controls apply, 20 principally permit Financial Services as of right, 7 prohibit them outright and 13 require Conditional Use Authorization. Were this legislation to pass, 21 District would see their Financial Service controls changed. Two NCDs, Hayes-Gough NCD and North Beach NCD, currently prohibit Formula Retail outright but still callow Financial Services either as-of-right, or by CU. The Chinatown Visitors Retail District also prohibits Formula Retail outright, however, financial services are also prohibited; therefore nothing would change in that District with the proposed legislation. Please see the attached matrix for more information.

BASIS FOR RECOMMENDATION

Basis for Approving the Ordinance: As discussed, having an over concentration of Financial Services in an NCD not only erodes the visual uniqueness of that neighborhood, they can also negatively impact street life and vitality. Part of the recommendation to approve this Ordinance is because, the Department believes that it is in the City's interest to include Financial Services in the definition of Formula Retails so that they can be looked at on a case by case basis and issues of over concentration can be adequately analyzed. The Department does not find that requiring a CU to establish a Financial Service is not overly burdensome, and that ensuring our Neighborhood Commercial Districts continue to be unique and vibrant places justifies such a hurdle. Lastly, because Limited Financial Service Uses would allow smaller size financial services with less of an impact on the aesthetic character and vibrancy of a NCD and which would be allowed in the Hayes-Gough NCD and the North Beach NCD, the Department finds that not including them in the definition of Formula Retail is appropriate.

Basis for the Recommended Modification:

The Department is recommending that "sales and service, retail" be eliminated from the list of uses that are included in the formula retail definition because it creates too much ambiguity and confusion. "Sales and service, retail" is not an individual use, but a category of uses in the Planning Code. Several of the uses under this category are called out in the list of uses included in the formal retail controls. Since individual uses are called out under the broader category, the Department has interpreted that only the individual uses that are called out are subject to Formula Retail controls and not the entire use category. Removing the category would clarify how the Department has understood and implemented the Formula Retail controls since they were adopted.

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[2] North Beach NCD is counted twice in some of these figures because it has the "North Beach Financial Service, Limited Financial Service and Business or Professional Service Subdistrict," which applies to the portions of the North Beach NCD south of Greenwich Street and prohibits Financial Services and Limited Financial Services at all stories. The rest of North Beach NCD allows Financial Service, Limited Financial Service with CU authorization.

ENVIRONMENTAL REVIEW

The proposal to amend Planning Code Section 703.3(c) to include financial services within the uses subject to formula retail controls in Neighborhood Commercial Districts; to amend Section 806.3(c) to including financial services within the uses subject to formula retail controls in Mixed Use Districts; and to amend Section 303.3(i) making conforming amendments was determined to not be a project and is exempt from environmental review under Section 15060(c)(2) and 15378 of the CEQA Guidelines.

PUBLIC COMMENT

As of the date of this report, the Planning Department has received six emails in support of the proposed legislation. The Department also received a letter from Supervisor Weiner that proposes amendments to the proposed Ordinance. The letter is attached to this case report.

RECOMMENDATION:	**Recommendation of Approval with Modification**

Attachments:

Exhibit A:	Draft Planning Commission Resolution
Exhibit B:	Board of Supervisors File No. 12-0047
Exhibit C:	Chart Detailing Financial Services in NCDs and MUDs
Exhibit D:	Letter from Supervisor Wiener

SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS

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

April 5, 2012

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102-4694

Re: File No. 120047 [Planning Code - Including Financial Services Within Definition of Formula Retail]

Small Business Commission Recommendation: **Approval**

Dear Ms. Calvillo:

On March 12, 2012 the Small Business Commission (SBC) voted 5-0 to recommend approval of File No. 120047.

The Commission found that expanding formula retail controls to include financial services is a reasonable expansion of our existing formula retail laws. By requiring a Conditional Use Authorization in areas where formula retail controls are in place, the Planning Commission can use their discretion to determine the appropriateness of each individual project proposal. The Conditional Use Authorization process will also provide neighborhoods and merchant corridors with an opportunity to comment and participate in the planning process.

Small Businesses are often subject to the cost and time that the Conditional Use Authorization process entails and commissioners stated during the hearing that in addition to the findings above, it is equitable to impose this process on these types of uses, as these businesses have the personnel and resources to navigate the process.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

cc. Jason Elliott, Mayors Office
Supervisors Eric Mar
Aaron Starr, Planning Department