

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

July 14, 2015

File No. 150731

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

Dear Ms. Jones:

On July 7, 2015, the Supervisor Mar introduced the following legislation:

File No. 150731

Ordinance amending the Planning Code to revise the definition of formula retail to include subsidiaries or affiliates of formula retail meeting certain criteria; affirming the Planning Department's determination under the California Environmental Quality Act; making Planning Code, Section 302, findings; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "A. Ausberry".

By: Andrea Ausberry, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

1 [Planning Code - Define Formula Retail to Include Subsidiaries]

2
3 **Ordinance amending the Planning Code to revise the definition of formula retail to**
4 **include subsidiaries or affiliates of formula retail meeting certain criteria; affirming the**
5 **Planning Department’s determination under the California Environmental Quality Act;**
6 **making Planning Code, Section 302, findings; and making findings of consistency with**
7 **the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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

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

16 Section 1. Findings.

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

22 (b) Pursuant to Planning Code Section 302, this Board finds that this Planning Code
23 Amendment will serve the public necessity, convenience, and welfare for the reasons set forth
24 in Planning Commission Resolution No. _____ and the Board incorporates such reasons
25 herein by reference.

1 (c) On _____, 2015, the Planning Commission, in Resolution No. _____, adopted
2 findings that the actions contemplated in this ordinance are consistent, on balance, with the
3 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board
4 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
5 Board of Supervisors in File No. _____, and is incorporated herein by reference.
6

7 Section 2. The Planning Code is hereby amended by revising Section 303.1 to read as
8 follows:

9 SEC. 303.1. FORMULA RETAIL USES

10 (a) Findings

11 (1) San Francisco is a city of diverse and distinct neighborhoods identified in
12 large part by the character of their commercial areas.

13 (2) One of the eight Priority Policies of the City's General Plan resolves that
14 "existing neighborhood-serving retail uses be preserved and enhanced and future
15 opportunities for resident employment in and ownership of such businesses enhanced."

16 (3) Retail uses are the land uses most critical to the success of the City's
17 commercial districts.

18 (4) Formula Retail businesses ~~are increasing~~ continue to increase in number in
19 San Francisco, as they are in cities and towns across the country.

20 (5) San Francisco is one of a very few major urban centers in the State in
21 which housing, shops, work places, schools, parks and civic facilities intimately co-exist to
22 create strong identifiable neighborhoods. The neighborhood streets invite walking and
23 bicycling and the City's mix of architecture contributes to a strong sense of neighborhood
24 community within the larger City community.
25

1 (6) Notwithstanding the marketability of a retailer's goods or services or the
2 visual attractiveness of the storefront, the standardized architecture, color schemes, decor
3 and signage of many Formula Retail businesses can detract from the distinctive character and
4 aesthetics of certain Neighborhood Commercial Districts.

5 (7) The increase of Formula Retail businesses in the City's neighborhood
6 commercial areas, if not monitored and regulated, will hamper the City's goal of a diverse
7 retail base with distinct neighborhood retailing personalities comprised of a mix of businesses.
8 Specifically, the unregulated and unmonitored establishment of additional Formula Retail uses
9 may unduly limit or eliminate business establishment opportunities for smaller or medium-
10 sized businesses, many of which tend to be non-traditional or unique, and unduly skew the
11 mix of businesses towards formula retailers in lieu of unique or start-up retailers, thereby
12 decreasing the diversity of merchandise available to residents and visitors and the diversity of
13 purveyors of merchandise.

14 (8) If, in the future, neighborhoods determine that the needs of their
15 Neighborhood Commercial Districts are better served by *eliminating the notice requirements for*
16 *proposed Formula Retail uses, by converting Formula Retail uses into conditional uses in their district,*
17 *or by prohibiting changing the restrictions applicable to Formula Retail uses in their district,* they
18 can propose legislation to do so.

19 (9) Neighborhood Commercial Districts are intended to preserve the unique
20 qualities of a district while also serving the daily needs of residents living in the immediate
21 neighborhood; however community members have reported loss of daily needs uses due to
22 inundation of formula retailers that target larger citywide or regional audiences. The City
23 strives to ensure that goods and services that residents require for daily living are available
24 within walking distance and at an affordable price. Establishments that serve daily needs and
25 formula retail establishments are neither mutually exclusive nor completely overlapping.

1 (10) The San Francisco retail brokers' study of 28 Neighborhood Commercial
2 Districts conducted in 2014 found that the healthiest and most viable retail environments offer
3 a mix of retailers who vary in size and offerings; including a mix of conventional and cutting
4 edge retailers as well as established players and newcomers.

5 (11) Formula retailers are establishments with multiple locations and
6 standardized features or a recognizable appearance. Recognition is dependent upon the
7 repetition of the same characteristics of one store in multiple locations. The sameness of
8 Formula Retail outlets, while providing clear branding for consumers, counters the general
9 direction of certain land use controls and General Plan Policies which value unique
10 community character and therefore need controls, in certain areas, to maintain neighborhood
11 individuality.

12 (12) The homogenizing effect of Formula Retail, based on its reliance on
13 standardized branding, is greater if the size of the Formula Retail use, in number of locations
14 or size of use or branded elements, is larger. The increased level of homogeneity distracts
15 from San Francisco's unique neighborhoods, which thrive on a high level of surprise and
16 interest maintained by a balanced mix of uses and services, both independent and
17 standardized.

18 (13) Due to the distinct impact that Formula Retail uses have on a
19 neighborhood, these uses are evaluated for concentration as well as compatibility within a
20 neighborhood. As neighborhoods naturally evolve over time, changes and intensifications of
21 Formula Retail uses should also be re-evaluated for concentration and compatibility within a
22 neighborhood.

23 (14) According to an average of ten studies done by the firm Civic Economics
24 and published by the American Independent Business Alliance in October of 2012, spending
25

1 by independent retailers generated 3.7 times more direct local spending than that of Formula
2 Retail chains.

3 (15) *Studies have shown that* money earned by independent businesses is more
4 likely to circulate within the local neighborhood and City economy than the money earned by
5 Formula Retail businesses which often have corporate offices and vendors located outside of
6 San Francisco.

7 (16) According to a 2014 study by the San Francisco Office of Economic
8 Analysis (OEA) report "Expanding Formula Retail Controls: Economic Impact Report" the
9 uniqueness of San Francisco's neighborhoods is based on a combination of unique visual
10 characteristics and a sense of community fostered by small merchants and resident
11 relationships. A Formula Retail establishment is determined by its recognizable look which is
12 repeated at every location, therefore, detracting from the unique community character.

13 (17) The OEA Report found that in general, chain stores charge lower prices
14 and provide affordable goods, but may spend less within the local economy, and can be
15 unpopular with some residents because they can be seen to diminish the character of the
16 neighborhood. At the same time, this OEA Report found that excessively limiting chain stores
17 can reduce commercial rents and raise vacancy rates.

18 (18) Through a 2014 study commissioned by the Planning Department, titled
19 "San Francisco Formula Retail Economic Analysis," staff and consultants conducted one-on-
20 one interviews and worked with small groups including independent retailers, small business
21 owners, merchants associations, formula retailers, commercial brokers, neighborhood
22 representatives and other stakeholders. The Study found that landlords often perceive a
23 benefit in renting to large established chains, which landlords believe typically have better
24 credit and can sign longer leases than local, independent retailers, lowering the risk that the
25

1 tenant will be unable to pay its rent. The existing land use controls for Formula Retail may
2 create a disincentive for formula retailers to locate where the formula retail controls apply.

3 (19) Companies that rely on strong branding to market a variety of items under brand
4 umbrellas will tend to replicate their existing business models as they expand. Subsidiary or spin-off
5 retail outlets may be new, but the company will be inclined to implement existing practices that they
6 have experience with, like their existing Formula Retail business models.

7 (20) Even where a Formula Retailer's subsidiary or spin-off retail establishment does
8 not have 11 or more retail outlets already, the likelihood that the number of subsidiary retail outlets
9 will increase rapidly is great. The adverse impact may be delayed, but the impact on neighborhood
10 character will be the same. Many Formula Retail businesses expand rapidly once they introduce a new
11 retail outlet line.

12 (21) Affiliates, subsidiaries or other spin-off businesses that are owned by a business
13 defined as Formula Retail will have impacts on a neighborhood that are similar to the impacts caused
14 by the "parent" Formula Retail outlets themselves. For all of the reasons specified above, the City
15 needs to protect its vibrant and expanding small business sector, and maintain a supportive
16 environment for new small business innovations. Accordingly, additional restrictions on Formula
17 Retail uses are necessary and desirable where other outlets of Formula Retail subsidiaries already
18 exist and share the common and homogenous features of Formula Retail uses.

19 (b) Definitions.

20 (1) A Formula Retail use is hereby defined as a type of retail sales or service
21 activity or retail sales or service establishment that has eleven or more other retail sales
22 establishments in operation, or with local land use or permit entitlements already approved,
23 located anywhere in the world. In addition to the eleven establishments either in operation or
24 with local land use or permit entitlements approved for operation, the business maintains two
25 or more of the following features: a standardized array of merchandise, a standardized

1 facade, a standardized decor and color scheme, uniform apparel, standardized signage, a
2 trademark or a servicemark.

3 (2) A retail sales or service activity or retail sales or service establishment shall also be
4 defined as a Formula Retail use if it meets all three of the following criteria: (A) fifty percent (50%) or
5 more of the stock, shares, or any similar ownership interest of such establishment is owned by an
6 existing formula retail use, or a subsidiary, affiliate, or parent of an existing formula retail use; (B)
7 there are 3 or more other retail sales establishments already in operation anywhere in the world; and
8 (C) the retail establishment maintains two or more of the following features: a standardized array of
9 merchandise, a standardized facade, a standardized decor and color scheme, uniform apparel,
10 standardized signage, a trademark or a servicemark.

11 (~~1~~ 3) Standardized array of merchandise shall be defined as 50% or more of in-
12 stock merchandise from a single distributor bearing uniform markings.

13 (~~2~~ 4) Trademark shall be defined as a word, phrase, symbol or design, or a
14 combination of words, phrases, symbols or designs that identifies and distinguishes the
15 source of the goods from one party from those of others.

16 (~~3~~ 5) Servicemark shall be defined as word, phrase, symbol or design, or a
17 combination of words, phrases, symbols or designs that identifies and distinguishes the
18 source of a service from one party from those of others.

19 (~~4~~ 6) Decor shall be defined as the style of interior furnishings, which may
20 include but is not limited to, style of furniture, wall coverings or permanent fixtures.

21 (~~5~~ 7) Color Scheme shall be defined as selection of colors used throughout,
22 such as on the furnishings, permanent fixtures, and wall coverings, or as used on the facade.

23 (~~6~~ 8) Facade shall be defined as the face or front of a building, including
24 awnings, looking onto a street or an open space.

1 (7 9) Uniform Apparel shall be defined as standardized items of clothing
2 including but not limited to standardized aprons, pants, shirts, smocks or dresses, hats, and
3 pins (other than name tags) as well as standardized colors of clothing.

4 (8 10) Signage shall be defined as business sign pursuant to Section 602.3 of
5 the Planning Code.

6 * * * *

7
8 Section 3. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor's veto of the ordinance.

12
13 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the "Note" that appears under
18 the official title of the ordinance.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By:

23 
24 KATE H. STACY
25 Deputy City Attorney

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