



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. 19193 Planning Code Amendment Adoption

HEARING DATE: JULY 17, 2014

*Date:* July 18, 2014  
*Project Name:* **Formula Retail & Large-Scale Retail Controls**  
*Case Number:* 2013.0936UT  
*Initiated by:* Planning Department  
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*Recommendation:* Adoption of Planning Code Text Changes

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ADOPTING A RESOLUTION APPROVING AN ORDINANCE THAT WOULD AMEND THE PLANNING CODE TEXT TO AMEND THE DEFINITION OF FORMULA RETAIL TO INCLUDE BUSINESSES THAT HAVE 19 OR MORE OUTLETS WORLDWIDE; EXPAND THE APPLICABILITY OF FORMULA RETAIL CONTROLS TO OTHER TYPES OF USES; REQUIRE CONDITIONAL USE AUTHORIZATION FOR FORMULA RETAIL ESTABLISHMENTS IN THE C-3-G DISTRICT WITH FACADES FACING MARKET STREET, BETWEEN 6TH STREET AND 12TH STREET; DELETE THE REQUIREMENT FOR CONDITIONAL USE AUTHORIZATION WHEN A FORMULA RETAIL ESTABLISHMENT CHANGES OPERATOR BUT REMAINS THE SAME SIZE AND USE CATEGORY; DEFINE INTENSIFICATION AND ABANDONMENT FOR FORMULA RETAIL USES; REQUIRE FORMULA RETAIL USES TO COMPLY WITH PERFORMANCE GUIDELINES; AMEND THE CONDITIONAL USE CRITERIA FOR LARGE-SCALE RETAIL USES EXCEPT FOR GENERAL AND SPECIALTY GROCERY STORES, TO REQUIRE AN ECONOMIC IMPACT STUDY AND ESTABLISH NEW FEES FOR SAID STUDY; AMEND NEIGHBORHOOD COMMERCIAL DISTRICTS THAT REQUIRED CONDITIONAL USE FOR FINANCIAL AND LIMITED FINANCIAL SERVICES TO PRINCIPALLY PERMIT FINANCIAL AND LIMITED FINANCIAL SERVICES; DELETE THE CONDITIONAL USE REQUIREMENT FOR WALK-UP FACILITIES THAT ARE NOT SET BACK 3 FEET; AND ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS; PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE PRIORITY POLICIES OF PLANNING CODE SECTION 101.1.

### **PREAMBLE**

Whereas, in 2004 the Board of Supervisor adopted San Francisco's first formula retail controls in three neighborhoods to provide a definition of formula retail and a regulatory framework that intended to

protect a “diverse base with distinct neighborhood retailing personalities comprised of a mix of businesses;”<sup>1</sup> and

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

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

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

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

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

Whereas, the Board of Appeals ruled on June 19, 2013, that if a company has signed a lease for a location (even if the location is not yet occupied) those leases count toward the 11 establishments needed to be considered formula retail, and, while discussed, no action was taken on web-based establishments; and

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

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

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<sup>1</sup> Ordinance Number 62-04, Board File 031501, available on-line at: <https://sfgov.legistar.com/LegislationDetail.aspx?ID=473759&GUID=A83D3A84-B457-4B93-BCF5-11058DDA5598&Options=ID|Text|&Search=62-04> (March 20, 2014).

Whereas, on August 7, 2013, Supervisor Kim enacted Interim Controls for retailers with frontage on a stretch of Market Street requiring Conditional Use authorization for certain formula retail uses and fringe financial services; and

Whereas, on June 24, 2014, Supervisor Weiner introduced Interim Controls for Formula Retail uses in the Castro Street Neighborhood Commercial District requiring Conditional Use authorization by the Planning Commission for a proposed use that has been determined to be formula retail, even if the project sponsor subsequently removes one or more distinguishing formula retail use features from the project proposal; and

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

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

WHEREAS, on May 22, 2014 the Planning Commission (hereinafter "Commission") approved initiation of an ordinance at duly noticed public hearing at a regularly scheduled meeting to consider adopting the proposed Ordinance amending formula retail controls on or after July 10, 2014; and

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

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

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

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

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

WHEREAS, the Commission has reviewed the proposed Ordinance:

MOVED, that the Planning Commission recommends approval of the above referenced Planning Code amendments contained in the draft ordinance, approved as to form by the City Attorney in **Exhibit F** with the modification to remove the non-severability clause.

## 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:

- With the experience of applying the formula retail controls over the last ten years and the benefit of the recent Study “San Francisco Formula Retail Economic Analysis”, the originally identified concerns of the voters remain relevant. The Departments core findings are that the Conditional Use process is working and can be adjusted to better serve residents.
- Resident concerns include a displacement of critical goods and services to meet the daily needs of the neighborhood, a homogenization of the neighborhood’s aesthetics and that formula retailers are of less economic benefit than nonformula retailers.
- The Office of Economic Analysis (OEA) report “Expanding Formula Retail Controls: Economic Impact Report” was unable to quantify the impact of the presence of formula retailers on premium that residents pay to live in the City’s unique neighborhoods. However, the report found the uniqueness of San Francisco’s neighborhoods is based on a combination of unique visual characteristics and a sense of community fostered by small merchants and resident relationships. A formula retail establishment is determined by its recognizable look which is repeated at every location, therefore, detracting from the unique community character.
- The OEA report found that non-formula retailers may spend up to 9.5 percent more within the City economy than chain stores, but charge prices that average 17 percent more. The Report determined that, on balance, the economic benefits of greater local spending by non-formula retailers are outweighed by higher consumer prices.<sup>2</sup>
- The Planning Department commissioned a report by Strategic Economics that found the existing formula retail Conditional Use process creates a disincentive for formula retailers to be located in the NCDs.<sup>3</sup> This report also found formula retail controls continue to be a useful tool in promoting small, startup businesses.

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<sup>2</sup> City and County of San Francisco, Office of the Controller, Office of Economic Analysis, “Expanding Formula Retail Controls: Economic Impact Report”, February 12, 2014 [http://www.sf-planning.org/ftp/files/legislative\\_changes/form\\_retail/formretail\\_130788\\_economic\\_impact\\_final.pdf](http://www.sf-planning.org/ftp/files/legislative_changes/form_retail/formretail_130788_economic_impact_final.pdf)

<sup>3</sup> Strategic Economics, “San Francisco Formula Retail Economic Analysis”, prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 5.

- Neighborhood Commercial Districts are intended to preserve the unique qualities of a district while also serving the daily needs of residents living in the immediate neighborhood; however community members have reported loss of daily needs uses due to inundation of formula retailers that target larger citywide or regional audiences<sup>4</sup>. The City strives to ensure that goods and services that residents require for daily living are available within walking distance and at an affordable price. Establishments that serve daily needs and formula retail establishments are neither mutually exclusive nor overlapping.
- The San Francisco retail brokers study of 28 neighborhood commercial districts, conducted in 2014 found that the healthiest and most viable retail environments offer a mix of retailers who vary in size and offerings; including a mix of conventional and cutting edge retailers as well as established players and newcomers<sup>5</sup>.
- When considering the appearance for a new formula retail establishment, these businesses, are ubiquitous and diminish the unique qualities of a shopping street. Under the Planning Code, formula retail establishments are defined as “an...establishment which, along with eleven or more other retail sales establishments...maintains two or more [standardized] features”. In other words, formula retailers are stores with multiple locations and a recognizable "look" or appearance. What makes a look recognizable in this case, is the repetition of the same characteristics of one store in multiple locations. The sameness of formula retail outlets, while providing clear branding for consumers, counters the general direction existing land use controls which value unique community character. The standardized characteristics that are found other places provide some level of homogenization. Formula retailers cannot be unique because there are at least 11 others with the same look.
- The homogenizing effect of formula retail, based on its reliance on standardized branding, is greater if the size of the formula retail use, in number of locations or size of use or branded elements is larger. The increased level of homogeneity distracts from San Francisco’s unique neighborhoods which thrive on a high level of surprise and interest maintained by a balanced mix of uses and service, both independent and standardized.
- Due to the distinct impact that formula retail uses have on a neighborhood, these uses are evaluated for concentration as well as compatibility within a neighborhood. As neighborhoods naturally evolve over time, changes and intensifications of formula retail uses should also be evaluated for concentration and compatibility within a neighborhood.

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<sup>4</sup> Strategic Economics, “San Francisco Formula Retail Economic Analysis”, prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 110.

<sup>5</sup> Formula Retail Mapping Project, Colliers International, 2014 [http://www.sf-planning.org/ftp/files/legislative\\_changes/form\\_retail/formretail\\_BOS\\_brokers\\_study\\_Formula\\_Retail\\_Final.pdf](http://www.sf-planning.org/ftp/files/legislative_changes/form_retail/formretail_BOS_brokers_study_Formula_Retail_Final.pdf)

- San Francisco is an international city that seeks to attract innovative business development. Established corporations as well as new startups choose San Francisco to test new concepts and ideas. Citywide, subsidiaries account for only three percent of retail businesses in San Francisco formula retail businesses and most of these would already qualify as formula retail under the existing Planning Code because they have 12 or more locations in the United States. Expanding the definition of formula retail to include subsidiaries is not recommended as it would constrain business development and innovation, be inconsistently applied and further complicate an existing process with minimal, if any, benefit.
  - The National Bureau of Economic Research published a study titled “The Effects of Wal-Mart on Local Labor Markets” examined one specific brand of superstore, Wal-Mart, and found a negative effect on overall retail employment<sup>6</sup>. Specifically, this report found, “The employment results indicate that a Wal-Mart store opening reduces county-level retail employment by about 150 workers, implying that each Wal-Mart worker replaces approximately 1.4 retail workers. This represents a 2.7 percent reduction in average retail employment. The payroll results indicate that Wal-Mart store openings lead to declines in county-level retail earnings of about \$1.4 million, or 1.5 percent.
  - Similarly, studies indicate that in terms of tax revenue, mixed-use is the most beneficial to the economy, while big box retailers do not significantly help the economy<sup>7</sup>. This is largely due to property taxes. The standard for a super store (a large, single-floor structure), does not yield the same multiplier effect that comes from vertical expansion that can be seen in a dense mixed-used development. The sales tax is negligible, because even the increase in sales is offset by lower prices in super stores.
1. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

### **I. COMMERCE & INDUSTRY ELEMENT**

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

### **OBJECTIVE 2**

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<sup>6</sup> David Neumark, Junfu Zhang, and Stephen Ciccarella. National Bureau of Economic Research, “The Effects of Wal-Mart on Local Labor Markets.” Originally published 2005, revised on July 31, 2007. Journal of Urban Economics. Volume 67, Issue 1 (2010). Retrieved from <http://www.nber.org/papers/w11782.pdf>, Page 28.

<sup>7</sup> Philip Langdon. New Urban News, “Best bet for tax revenue: mixed-use downtown development.” Published September 13, 2010. Retrieved from <http://bettercities.net/article/best-bet-tax-revenue-mixed-use-downtown-development-13144> on May 14 2014.

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

**Policy 2.3**

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

*The proposed changes in both the Ordinance and the Commission's review procedures would further strengthen the attractiveness of the City as a unique place to live, work, and pursue recreational interests, by encouraging more diversified business uses, which strengthens the distinct nature of the surrounding neighborhoods. Very large retail sales and service uses should be carefully evaluated for their economic impact on the area.*

**OBJECTIVE 3**

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

**Policy 3.4**

Assist newly emerging economic activities.

*Formula Retail establishments can typically pay more for lease space and commit to longer lease contracts, whereas emerging economic activities typically cannot. Adding rigor to the review of Formula Retail applications could help relieve pressure on emerging economic activities and ease the process of finding affordable commercial spaces to lease.*

**OBJECTIVE 6**

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

**Policy 6.1**

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

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

**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.

*The proposed changes are intended to create a balance between Formula Retail and independent owned businesses by establishing a more rigorous and data driven method of analysis balance with a qualitative analysis of the District, neighborhood and walking area. Having a healthy mix of these two types of businesses would promote vital commercial districts throughout the City, which could help foster small business enterprises and entrepreneurship.*

**Policy 6.7**

Promote high quality urban design on commercial streets.

*The proposed changes to aesthetic review and functionality of the façade would help to clarify design expectations for signage and performance standards. They are intended to help neighborhoods give their commercial areas a lively character and ensure pedestrian-oriented design. By seeking an active visual identity which performs and is distinct from formulaic designs will create an inviting atmosphere beneficial to businesses and neighbors alike.*

**II. TRANSPORTATION ELEMENT**

**Market Street**

Market Street should be honored and protected as San Francisco’s visual and functional spine. The City should engage in a comprehensive redesign of Market Street from the Embarcadero to Castro Street. Improvements to Market Street should emphasize its importance for pedestrians, cyclists, and transit.

**III. URBAN DESIGN ELEMENT**

**Principles for City Pattern 16**

Certain streets, because of unusual width or direction, are important form elements in themselves, giving identity to districts and order to the city structure.

COMMENT: Columbus Avenue and Market Street are examples of such streets. Any major interruptions of these streets would reduce their value as form elements.

**IV. MARKET AND OCTAVIA PLAN**

**Policy 1.1.5**

Reinforce the importance of Market Street as the city’s cultural and ceremonial spine.

Market Street has historically been the city’s most important street. New uses along Market Street should respond to this role and reinforce its value as a civic space. Ground-floor activities should be public in nature, contributing to the life of the street. High-density residential uses are encouraged above the ground floor as a valuable means of activating the street and providing a 24-hour presence. A limited amount of office use is permitted in the Civic Center area as part of the overall mix of activities along Market Street.



*The General Plan recognizes the critical importance of Market Street as the City's "cultural and ceremonial spine". Special care should be given to ensure the retail service and sales offerings enrich both the aesthetics and the function of the spine. The proposed changes include expansion of formula retail controls on a developing portion of Market Street that will function as this burgeoning neighborhoods commercial street and ensures development of unique neighborhood character on this significant street.*

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

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

*Stakeholders have raised concerns that some landlords prefer formula retailers or other established brands over independent retailers<sup>8</sup>. Formula retailers will typically be better equipped to sign long term leases and can provide the stability and activation that lenders seek<sup>9</sup>. In addition, formula retailers often serve as an anchor to energize a new development and bring foot traffic to a redevelopment area<sup>10</sup>. The proposed Ordinance and Commission Guide for Formula Retail include changes that will further a balance of existing and new neighborhood serving uses to meet residents' needs, further small business development, and maximize employment opportunities.*

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

*By adopting the proposed amendments, the Planning Commission's intends to conserve and protect neighborhood character by ensuring a balance of formula and independent retail that does not erode existing neighborhood character and provide uses critical to daily living within an easy walk and without the need for auto-generated trips.*

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

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

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

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<sup>8</sup> Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 64.

<sup>9</sup> Planning Department and OEWD Developer Roundtable, March 28, 2014

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

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

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

*The proposed Ordinance would consider changes to the industrial or service sectors or future opportunities for resident employment or ownership in these sectors, through the addition of an economic analysis of new large retail uses. The changes were designed to increase economic opportunities for all residents through entrepreneurship, business ownership and employment.*

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

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

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

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

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

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

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

Christine Lamorena  
Acting Commission Secretary

AYES: Commission President Wu, Commissioners Antonini, Fong, Hillis and Johnson

NAYS: Commissioners Moore and Sugaya

ABSENT: N/A

ADOPTED: July 17, 2014