# SAN FRANCISCO
# PLANNING DEPARTMENT

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July 18, 2014

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 Department Case Number 2013.0936UT**
**Formula Retail and Large-Scale Retail Controls**
**Planning Commission Recommendation: Approval**

Dear Ms. Calvillo,

On July 17, 2014, the Planning Commission conducted a duly noticed public hearing at regularly scheduled meeting to consider the proposed Ordinance, introduced by the Planning Department, which would amend the definition of formula retail and expand controls. The Commission voted to recommend that Board of Supervisors **approve** the proposed Ordinance.

The proposed Ordinance was determined not to be a project per State CEQA Guidelines, Section 15060(c)(2) and 15378.

Please find the attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

Aaron Starr
Acting Manager of Legislative Affairs

cc:
Victoria Wong, Deputy City Attorney
Andrea Ausberry, Office of the Clerk of the Board

Attachments
Planning Commission Resolution 19193
Planning Commission Executive Summary

SAN FRANCISCO
**PLANNING DEPARTMENT**

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

HEARING DATE: JULY 17, 2014

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|---|---|
| *Date:* | July 18, 2014 |
| *Project Name:* | **Formula Retail & Large-Scale Retail Controls** |
| *Case Number:* | 2013.0936UT |
| *Initiated by:* | Planning Department |
| *Staff Contact:* | Kanishka Burns, Project Manager<br>kanishka.burns@sfgov.org , 415-575-9112 |
| *Reviewed by:* | AnMarie Rodgers, Senior Policy Advisor<br>anmarie.rodgers@sfgov.org, 415-558-6395 |
| *Recommendation:* | Adoption of Planning Code Text Changes |

**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;"[1] and

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

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

Whereas, 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 forseeable 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.[2]

- The Planning Department commissioned a report by Strategic Economics that found the existing formula retail Conditional Use process creates a disincentive for formula retailers to be located in the NCDs.[3] This report also found formula retail controls continue to be a useful tool in promoting small, startup businesses.

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[2] City and County of San Francisco, Office of the Controller, Office of Economic Analysis, "Expanding Formula Retail Controls: Economic Impact Report", February 12, 2014 http://www.sf-planning.org/ftp/files/legislative_changes/form_retail/formretail_130788_economic_impact_final.pdf

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

- 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[4]. 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[5].

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

[5] 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

- 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[6]. 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[7]. 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 SUPPPORT SYSTEMS THAT CONSTITUE SAN FRANCISCO'S EMPLOYMENT AND SERVICE BASE.

   **OBJECTIVE 2**

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[6] 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.

[7] 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 aesthesis 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[8]. Formula retailers will typically be better equipped to sign long term leases and can provide the stability and activation that lenders seek[9]. In addition, formula retailers often serve as an anchor to energize a new development and bring foot traffic to a redevelopment area[10]. 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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[8] Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 64.

[9] Planning Department and OEWD Developer Roundtable, March 28, 2014

[10] 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

FILE NO. ORDINANCE NO.

[Planning Code – Formula Retail and Large-Scale Retail Controls]

**Ordinance amending the Planning Code 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 the intersection of Market Street, 12th Street and Franklin 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, Section 302 findings and findings of consistency with the General Plan and Planning Code Section 101.1.**

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

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 Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. _____ and is incorporated herein by reference. The Board of Supervisors hereby affirms this determination.

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

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

Section 2. The Planning Code is hereby amended by moving Subsection 303(i) to new Section 303.1 and amending those provisions to read as follows, and revising Section 303 to read as follows:

**Section 303. CONDITIONAL USES.**

* * * *

**(i) Formula Retail Uses.** *See Section 303.1 for 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, 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 Sales Activity or Retail Sales Establishment." For the purposes of subsection (i), 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," "Sales and Service, Other Retail," "Restaurant," "Limited Restaurant," "Take-Out Food," "Sales and Service, Retail," "Service, Financial," "Movie Theater," and "Amusement and Game Arcade."~~

~~(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 Section 840;~~

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

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

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

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

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

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

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

~~(J) Limited Conforming Use/Non-Conforming Use in RH RM RTO and RED~~

~~*Districts.*~~

~~*(K) Third Street Formula Retail Restricted Use District, as defined in Section 786.*~~

~~*(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;*~~

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

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

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

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

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

~~*(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 to changes from 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, including but not limited to the signage for the premises, the name of the premises and the general merchandise offered on the premises.*~~

~~*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".*~~

(j) **Large-Scale Retail Uses.** With respect to applications for the establishment of large-scale retail uses under Section 121.6, *except for General or Specialty Grocery stores as*

*defined in Articles 2, 7 and 8,* in addition to the criteria set forth in Subsections (c) and (d) above, the Commission shall consider the following:

(1) The extent to which the retail use's parking is planned in a manner that creates or maintains active street frontage patterns;

(2) The extent to which the retail use is a component of a mixed-use project or is designed in a manner that encourages mixed-use building opportunities;

(3) The shift in traffic patterns that may result from drawing traffic to the location of the proposed use; ~~and~~

(4) The impact that the employees at the proposed use will have on the demand in the City for housing, public transit, childcare, and other social services~~.~~*; and*

*(5) **An economic impact study.** The Planning Department shall prepare an economic impact study using qualified city staff or shall select a consultant from a pool of pre-qualified consultants to prepare the economic impact study required by this subsection. The analysis, in the form of a study, shall be considered by the Planning Commission in its review of the application. The applicant shall bear the cost of paying the consultant for his or her work preparing the economic impact study, and any necessary documents prepared as part of that study. The applicant shall also pay an administrative fee to compensate Planning Department and City staff for its time reviewing the study, as set forth in Section 359 of this Code. The study shall evaluate the potential economic impact of the applicant's proposed project, including:*

*(A) **Employment Analysis.** The report shall include the following employment information: a projection of both construction-related and permanent employment generated by the proposed project; an analysis of whether the proposed project will result in a net increase or decrease in permanent employment in the impact area; and a discussion of whether the employer of the proposed project will pay a living wage, inclusive of non-salary benefits expected to be provided, relative to San Francisco's cost of living.*

*(B) **Fiscal Impact.** The report shall itemize public revenue created by the proposed project and public services needed because of the proposed project, relative to net fiscal impacts to the General Fund. The impacts to the City's public facilities and infrastructure should be estimated using the city's current assumptions in existing nexus studies (including area plan, transit, open space in-lieu fee and other impact fees), and should account for any contributions the proposed project would make through such impact fee payments.*

*(C) **Leakage Analysis Study.** This portion of the report shall be twofold: both quantitative and qualitative. The quantitative portion shall provide an analysis of whether the proposed project will result in a net increase or decrease in the capture of spending by area residents on items that would otherwise be purchased outside the area. The area to be studied for potential economic impacts of the proposed project shall be determined by the City in consultation with the expert conducting the study as different sizes of study areas would be pertinent depending on a multitude of factors including but not limited to size and type of the proposed store. This quantitative leakage analysis should be paired with a qualitative assessment of whether the proposed use would complement existing merchandise selection in the area by adding greater variety of merchandise, bolstering the strength of an existing retail cluster, or matching evolving consumer preferences.*

* * * *

***SEC. 303.1. FORMULA RETAIL USES.***

*(a) **Findings.***

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

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

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

*(4 Formula Retail businesses are increasing in number in San Francisco, as they are in cities and towns across the country.*

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

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

*(7) The increase of Formula Retail businesses in the City's neighborhood commercial areas, if not monitored and regulated, will hamper the City's goal of a diverse retail base with distinct neighborhood retailing personalities comprised of a mix of businesses. Specifically, the unregulated and unmonitored establishment of additional Formula Retail uses 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 formula retailers in lieu of unique or start-up retailers, thereby decreasing the diversity of merchandise available to residents and visitors and the diversity of purveyors of merchandise.*

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

*(9) 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. 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 completely overlapping.*

*(10) 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.*

*(11) Formula retailers are establishments with multiple locations and standardized features or a recognizable appearance. Recognition is dependent upon 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 of certain land use controls and General Plan Policies which value unique community character and therefore need controls, in certain areas, to maintain neighborhood individuality.*

*(12) 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 services, both independent and standardized.*

*(13) Due to the distinct impact that Formula Retail uses have on a neighborhood, these uses are the 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 re-evaluated for concentration and compatibility within a neighborhood.*

*(14) According to an average of ten studies done by the firm Civic Economics and published by the American Independent Business Alliance in October of 2012, spending by independent retailers generated 3.7 times more direct local spending than that of Formula Retail chains.*

*(15) Money earned by independent businesses is more likely to circulate within the local neighborhood and City economy than the money earned by Formula Retail businesses which often have corporate offices and vendors located outside of San Francisco*

*(16) According to a 2014 Study by the San Francisco Office of Economic Analysis (OEA) report "Expanding Formula Retail Controls: Economic Impact Report" 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.*

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

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

*independent retailers, lowering the risk that the tenant will be unable to pay its rent. The existing land use controls for Formula Retail may create a disincentive for formula retailers to locate where the formula retail controls apply.*

*(b) **Definition.** A Formula Retail use is hereby defined as a type of retail sales or service activity or retail sales or service establishment that has nineteen or more other retail sales establishments in operation, or with local land use or permit entitlements already approved, located anywhere in the world. In addition to the nineteen establishments either in operation or with local land use or permit entitlements approved for operation, the business maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, 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 furnishings, which may include but is not limited to, style of furniture, wall coverings or permanent fixtures.*

*(5) 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.*

*(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.*

*(c) **"Retail Sales or Service Activity or Retail Sales or Service Establishment."** For the purposes of this Section 303.1, a retail sales or service activity or retail sales or service establishment shall include the following uses whether functioning as a principal or accessory use, as defined in Articles 1, 2, 7, and 8 of this Code:*

*(1) Bar;*

*(2) Drive-up Facility;*

*(3) Eating and Drinking Use;*

*(4) Liquor Store;*

*(5) Sales and Service, Other Retail;*

*(6) Restaurant;*

*(7) Limited-Restaurant;*

*(8) Take-Out Food;*

*(9) Sales and Service, Retail;*

*(10) Service, Financial;*

*(11) Movie Theater;*

*(12) Amusement and Game Arcade;*

*(13) Service, Limited Financial, except single automated teller machines at the street front that meet the Commission's adopted Performance-Based Design Guidelines and automated teller machines located within another use that are not visible from the street;*

*(14) Service, Business or Professional;*

*(15) Service, Fringe Financial;.*

*(16) Tobacco Paraphernalia Establishment;*

*(17) Massage Establishment; and*

*(18) Service, Personal.*

*(d)* ***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 Section 303, the criteria below and the Performance-Based Design Guidelines adopted by the Planning Commission to implement the criteria below.*

*(1) The existing concentrations of Formula Retail uses within the district and within the vicinity of the proposed project.*

*(2) The availability of other similar retail uses within the district and within the vicinity of the proposed project.*

*(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 and within the vicinity of the proposed project.*

*(5) The existing mix of Citywide-serving retail uses and daily needs-serving retail uses within the district and within the vicinity of the proposed project.*

*(6) Additional relevant data and analysis set forth in the Performance-Based Design Guidelines adopted by the Planning Commission.*

*(7) If required by Section 303(j) for Large Retail Uses, preparation of an economic impact study.*

*(8) Notwithstanding anything to the contrary contained in Planning Code Article 6 limiting the Planning Department's and Planning Commission's discretion to review signs, the*

*Planning Department and Planning Commission may review and exercise discretion to require changes in the time, place and manner of the proposed signage for the proposed Formula Retail use, applying the Performance-Based Design Guidelines.*

*(e) **Conditional Use Authorization Required.** A Conditional Use Authorization shall be required for a Formula Retail use in the following zoning districts unless explicitly exempted:*

*(1) All Neighborhood Commercial Districts in Article 7;*

*(2) All Mixed Use-General Districts in Section 840;*

*(3) All Urban Mixed Use Districts in Section 843;*

*(4) All Residential-Commercial Districts as defined in Section 206.3;*

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

*(6) Chinatown Community Business District as defined in Section 810.1;*

*(7) Chinatown Residential/Neighborhood Commercial District as defined in 812.1;*

*(8) Western SoMa Planning Area Special Use District as defined in 823;*

*(9) Residential Transit-Oriented Districts as defined in 206.4 and 206.5;*

*(10) Limited Conforming Use/Non-Conforming Use in RH-RM-RTO and RED Districts;*

*(11) Third Street Formula Retail Restricted Use District, as defined in Section 786;*

*(12) The C-3-G District with frontage on Market Street, between 6th Street and the intersection of Market Street, 12th Street and Franklin Street.*

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

*(1) Hayes-Gough Neighborhood Commercial Transit District;*

*(2) North Beach Neighborhood Commercial District;*

*(3) Chinatown Visitor Retail District;*

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

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

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

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

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

*(9) Chinatown Mixed Use District does not permit Formula Retail uses that are also Restaurant or Limited-Restaurant uses as defined in Section 790.90 and 790.91.*

*(g) **Neighborhood Notification and Design Review.** Any application for a Formula Retail use as defined in this section shall be subject to the notification and review procedures of Section 312 of this Code.*

*(h) **Determination of Formula Retail Use.** In those areas in which Formula Retail uses are subject to the provisions of Subsections 303.1(d) or (e), any application for an entitlement or determination 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 entitlement approved or determination made 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 an entitlement or determination, or an application*

*for the same, is for a Formula Retail use, the applicant or holder of the entitlement bears the burden of proving to the City that the proposed or existing use is not a Formula Retail use.*

*(i) **Performance-Based Design Guidelines**. All new, enlarged, intensified or non-intensified Formula Retail uses or establishments must comply with the Commission's adopted Performance-Based Design Guidelines for Formula Retail, as directed by the Planning Department and Planning Commission.*

*(j) **Change of Use.** Changes of Formula Retail establishments are generally described below, except that a change of a Formula Retail use that is also a nonconforming use pursuant to Section 182 is prohibited. In all other instances, changes of Formula Retail establishments from one use category to another, including a change from one use to another within the sub-categories of uses set forth in Planning Code Section 790.102 and Section 890.102, require a new Conditional Use authorization as a new Formula Retail use. Changes of Formula Retail owner or operator within the same use category that are determined to be an enlargement or intensification of use pursuant to Subsection 178(c) are required to obtain Conditional Use authorization and shall meet the Commission's adopted Performance-Based Design Guidelines for Formula Retail. In cases determined not to be an enlargement or intensification of use, the Performance-Based Design Guidelines for Formula Retail may be applied and approved administratively by the Planning Department, unless the applicant requests a Conditional Use Hearing at the Planning Commission. The applicant shall also pay an administrative fee to compensate Planning Department and City staff for its time reviewing the project under this subsection, as set forth in Section 360 of this Code.*

*(k) **Accessory uses.** Conditional use authorization shall be required for all accessory uses within those use categories subject to Formula Retail controls as defined in this Section (303.1), except for the following:*

*(1) Single automated teller machines falling within the definition of Limited Financial Services that are located at the street front that meet the Commission's adopted Performance-Based Design Guidelines for automated teller machines;*

*(2) Automated teller machines located within another use that are not visible from the street;*

*(3) Vending machines that do not exceed 15 feet of street frontage or occupy more than 200 square feet of area facing a public right of way.*

Section 3. The Planning Code is hereby amended by revising Subsection 178 to read as follows:

**SEC. 178. CONDITIONAL USES.**

The following provisions shall apply to conditional uses:

(a) **Definition**. For the purposes of this Section, a permitted conditional use shall refer to:

(1) Any use or feature authorized as a conditional use pursuant to Article 3 of this Code, provided that such use or feature was established within the time limits specified as a condition of authorization or, if no time limit was specified, within a reasonable time from the date of authorization; or

(2) Any use or feature which is classified as a conditional use in the district in which it is located and which lawfully existed either on the effective date of this Code, or on the effective date of any amendment imposing new conditional use requirements upon such use or feature; or

(3) Any use deemed to be a permitted conditional use pursuant to Section 179 of this Code.

(b) **Continuation**. Except as provided for temporary uses in Section 205 of this Code, and except where time limits are otherwise specified as a condition of authorization, any permitted conditional use may continue in the form in which it was authorized, or in the form in

which it lawfully existed either on the effective date of this Code or the effective date of any amendment imposing new conditional use requirements upon such use or feature, unless otherwise provided in this Section or in Article 2 of this Code.

(c) **Enlargements or Alteration**. A permitted conditional use may not be significantly altered, enlarged, or intensified, except upon approval of a new conditional use application pursuant to the provisions of Article 3 of this Code. With regard to an Internet Services Exchange as defined in Section 209.6(c), any physical alteration which will enlarge or expand the building for the purpose of intensifying the use shall be deemed to be significant under this section, and any increase in the size of electrical service to the building which will require a permit from the Department of Building Inspection shall be deemed to be significant under this section.

*With regard to Formula Retail uses, a change of owner or operator of a Formula Retail establishment is determined to be an intensification of use and a new Conditional Use authorization shall be required if one or more of the following occurs:*

*(1) Change of use category, including a change from one use to another within the sub-categories of uses set forth in Planning Code Section 790.102 and Section 890.102;*

*(2) Expansion of use size;*

*(3) Change to a Formula Retail establishment that has more locations than the existing Formula Retail establishment, which results in an increase in visual homogeneity;*

*(4) Installation of a commercial kitchen, including but not limited to: ovens, open ranges or stoves, fryers, oven hoods or kitchen ventilation systems, heating stations, steam tables or cabinets, cold food storage, increased food preparation areas or self-service drink dispensers.*

*(5) A pre-existing Formula Retail use that had not previously been authorized via a Conditional Use from the Commission.*

(d) **Abandonment**. A permitted conditional use which is discontinued for a period of three years, or otherwise abandoned, shall not be restored, except upon approval of a new conditional use application pursuant to the provisions of Article 3 of this Code. For purposes of this Subsection, the period of nonuse for a permitted conditional use to be deemed discontinued in the North Beach, Castro Street Neighborhood Commercial Districts, and the Jackson Square Special Use District shall be eighteen (18) months, except that in the North Beach Neighborhood Commercial District, the period of non-use for a Restaurant use, as defined in Section 790.91, to be deemed discontinued shall be three years.

*A permitted conditional Formula Retail use which is discontinued for a period of 18 months, or otherwise abandoned, shall not be restored, except upon approval of a new conditional use application pursuant to Article 3 of this Code.*

(e) **Changes in Use**. The following provisions shall apply to permitted conditional uses with respect to changes in use, *except as further limited by the change of use procedures for Formula Retail uses set forth in Section 303.1 of this Code*:

(1) A permitted conditional use may be changed to another use listed in Articles 2, 7 or 8 of this Code as a principal use for the district in which it is located and the new use may thereafter be continued as a permitted principal use.

(2) A permitted conditional use may be changed to another use listed in Articles 2, 7 or 8 of this Code as a conditional use for the district in which the property is located, subject to the other applicable provisions of this Code, only upon approval of a new conditional use application, pursuant to the provisions of Article 3 of this Code.

(3) A permitted conditional use may not be changed to another use not permitted or prohibited by Articles 2, 7 or 8 of this Code. If a permitted conditional use has been wrongfully changed to another use in violation of the foregoing provisions and the violation is not immediately corrected when required by the Zoning Administrator, the wrongful

change shall be deemed to be a discontinuance or abandonment of the permitted conditional use.

(4) Once a permitted conditional use has been changed to a principal use permitted in the district in which the property is located, or brought closer in any other manner to conformity with the use limitations of this Code, the use of the property may not thereafter be returned to its former permitted conditional use status, except upon approval of a new conditional use application pursuant to the provisions of Article 3 of this Code.

(5) In the North Beach Neighborhood Commercial District, any use that exceeds the use size provisions of Section 121.2(a) or 121.2(b) may be changed to a new use only upon approval of a new conditional use application. The Commission's approval of such conditional use application shall explicitly address the use size findings of Section 303(c).

(6) In the Castro Street Neighborhood Commercial District, any use that exceeds the use size provisions of Section 121.2(a), but is smaller than the maximum use size limit of Section 121.2(b), may be changed to a new use only upon approval of a new conditional use application. The Commission's approval of such conditional use application shall explicitly address the use size findings of Section 303(c).

(f) Notwithstanding the foregoing provisions of this Section 178, a structure occupied by a permitted conditional use that is damaged or destroyed by fire, or other calamity, or by Act of God, or by the public enemy, may be restored to its former condition and use without the approval of a new conditional use application, provided that such restoration is permitted by the Building Code, and is started within 18 months and diligently pursued to completion. Except as provided in Subsection (g) below, no structure occupied by a permitted conditional use that is voluntarily razed or required by law to be razed by the owner thereof may thereafter be restored except upon approval of a new conditional use application pursuant to the provisions of Article 3 of this Code.

(g) None of the provisions of this Section 178 shall be construed to prevent any measures of construction, alteration or demolition necessary to correct the unsafe or dangerous condition of any structure, other feature, or part thereof, where such condition has been declared unsafe or dangerous by the Superintendent of the Bureau of Building Inspection or the Chief of the Bureau of Fire Prevention and Public Safety, and where the proposed measures have been declared necessary, by such official, to correct the said condition; provided, however, that only such work as is absolutely necessary to correct the unsafe or dangerous condition may be performed pursuant to this Section.

Section 4. The Planning Code is hereby amended by revising Sections 182, 183 and 186.1 to read as follows:

**SEC. 182. NONCONFORMING USES: CHANGES OF USE.**

The following provisions shall apply to nonconforming uses with respect to changes of use:

(a) A nonconforming use shall not be changed or modified so as to increase the degree of nonconformity under the use limitations of this Code, with respect to the type of use or its intensity except as provided in Section 181 for nighttime entertainment activities within the RSD, MUG, MUR, or SLR Districts. The degree of nonconformity shall be deemed to be increased if the new or modified use is less widely permitted by the use districts of the City than the nonconforming use existing immediately prior thereto. *For purposes of this section, intensification of a Formula Retail use as defined in section 178(c) is determined to be a change or modification that increases the degree of nonconformity of the use.*

(b) Except as limited in this Subsection, a nonconforming use may be reduced in size, extent or intensity, or changed to a use that is more widely permitted by the use districts of the

City than the existing use, subject to the other applicable provisions of this Code. Except as otherwise provided herein, the new use shall still be classified as a nonconforming use.

(1) A nonconforming use in a Residential District (other than a Residential-Commercial Combined District), which use is located more than ¼ mile from the nearest Individual Area Neighborhood Commercial District or Restricted Use Subdistrict described in Article 7 of this Code, may change to another use which is permitted as a principal use at the first story and below in an NC-1 District, or it may change to another use which is permitted as a conditional use at the first story and below in an NC-1 District only upon approval of a conditional use application pursuant to the provisions of Article 3 of this Code. If the nonconforming use is seeking to change in use to a retail sales activity or retail sales establishment which is also a *F*~~f~~ormula *R*~~r~~etail use, as defined in Section 703.3 of this Code, it shall comply with the provisions of Section 703.3 of this Code. The nonconforming use shall comply with other building standards and use limitations of NC-1 Districts, as set forth in Sections 710.10 through 710.95 of this Code.

If the nonconforming use is located within ¼ mile from any Individual Area Neighborhood Commercial District or Restricted Use Subdistrict described in Article 7 of this Code, the nonconforming use may change to another use which is permitted as a principal use at the first story and below in an NC-1 District and in the Individual Area Neighborhood Commercial District or Restricted Use Subdistrict or Districts within ¼ mile of the use, or it may change to another use which is permitted as a conditional use at the first story and below in an NC-1 District and in the Individual Area Neighborhood Commercial District or Districts within ¼ mile of the use only upon approval of a conditional use application pursuant to the provisions of Article 3 of this Code. If the nonconforming use is seeking to change in use to a retail sales activity or retail sales establishment which is also a *F*~~f~~ormula *R*~~r~~etail use, as defined in Section 703.3 of this Code, it shall comply with the provisions of Section 703.3 of

this Code. The nonconforming use shall comply with other building standards and use limitations of NC-1 Districts and any Individual Area NC District or Districts located within ¼ mile of the use, as set forth in Article 7 of this Code.

(2) A nonconforming use in a Residential-Commercial Combined District may be changed to another use listed in Articles 2 or 7 of this Code as a principal use for the district in which the existing use would first be permitted as a principal or conditional use.

(3) A nonconforming use in a Neighborhood Commercial District may be changed to another use as provided in Subsections (c) and (d) below or as provided in Section 186.1 of this Code.

(4) A nonconforming use in any district other than a Residential, Downtown Residential, or Neighborhood Commercial District may be changed to another use listed in Articles 2 or 7 of this Code as a principal use for the district in which the existing use would first be permitted as a principal use.

(5) A nonconforming use in any South of Market Mixed Use District may not be changed to an office, retail, bar, restaurant, nighttime entertainment, adult entertainment, hotel, motel, inn, hostel, or movie theater use in any district where such use is otherwise not permitted or conditional, except as provided in Subsection (f) below.

(c) A nonconforming use may be changed to a use listed in Articles 2 or 7 of this Code as a conditional use for the district in which the property is located, subject to the other applicable provisions of this Code, without the necessity of specific authorization by the City Planning Commission except where major work on a structure is involved, and the new use may thereafter be continued as a permitted conditional use, subject to the limitation of Section 178(b) of this Code.

(d) A nonconforming use may be changed to a use listed in Articles 2, 7 or 8 of this Code as a principal use for the district in which the property is located, subject to the other

applicable provisions of this Code, and the new use may thereafter be continued as a permitted principal use.

(e) A nonconforming use in an R District subject to termination under the provisions of Section 185 of this Code may be converted to a dwelling unit without regard to the requirements of this Code with respect to dwelling unit density under Article 2, dimensions, areas and open space under Article 1.2, or off-street parking under Article 1.5, provided the nonconforming use is eliminated by such conversion, provided further that the structure is not enlarged, extended or moved to another location, and provided further that the requirements of the Building Code, the Housing Code and other applicable portions of the Municipal Code are met.

(f) Once a nonconforming use has been changed to a principal or conditional use permitted in the district in which the property is located, or brought closer in any other manner to conformity with the use limitations of this Code, the use of the property may not thereafter be returned to its former nonconforming status, except that:

(1) Any area which is used as a live/work unit shall be allowed to return to its former nonconforming status.

(2) Within any South of Market Mixed Use District, any area occupied by a nonconforming office use which is changed to an arts, home and/or business service use falling within zoning categories 102.2 or 816.42 through 816.47 or a wholesale, storage or light manufacturing use falling within zoning categories 816.64 through 816.67 shall be allowed to return to its former nonconforming office use.

(3) Upon restoration of a previous nonconforming use as permitted by Subsection (1) or (2) above, any modification, enlargement, extension, or change of use, from circumstances which last lawfully existed prior to the creation of the live/work unit, or prior to the change from office use, shall be subject to the provisions of this Article, and the restored

nonconforming use shall be considered to have existed continuously since its original establishment, prior to the live/work unit or change to office use, for purposes of this Article.

(g) If a nonconforming use has been wrongfully changed to another use in violation of any of the foregoing provisions, and the violation is not immediately corrected when required by the Zoning Administrator, the wrongful change shall be deemed to be a discontinuance or abandonment of the nonconforming use under Section 183 of this Code.

*(h) If a nonconforming use is a Formula Retail use in a District that prohibits Formula Retail uses, the Formula Retail use is deemed abandoned if it is discontinued for a period of 18 months or more, or otherwise abandoned. The Formula Retail use shall not be restored.*

*(1) Change of one nonconforming Formula Retail use to another Formula Retail use that is determined to not be an enlargement or intensification of use, as defined in Subsection 178(c), is subject to the Commission's adopted Performance-Based Design Guidelines for Formula Retail, which may be applied and approved administratively by the Planning Department. Non-conformance with the Performance-Based Design Guidelines for Formula Retail as required by the Department may result in termination of the nonconforming Formula Retail use.*

*(2) Change of one nonconforming Formula Retail use to another Formula Retail use that is determined to be an enlargement or intensification of use, as defined in Subsection 178(c), is not permitted.*

**SEC. 183. NONCONFORMING USES: DISCONTINUANCE AND ABANDONMENT.**

***(a) Discontinuance and Abandonment of a Nonconforming Use, Generally.*** Whenever a nonconforming use has been changed to a conforming use, or discontinued for a continuous period of three years, or whenever there is otherwise evident a clear intent on the part of the owner to abandon a nonconforming use, such use shall not after being so changed, discontinued or abandoned be reestablished, and the use of the property thereafter shall be in

conformity with the use limitations of this Code for the district in which the property is located. Where no enclosed building is involved, discontinuance of a nonconforming use for a period of six months shall constitute abandonment. Where a massage establishment is nonconforming for the reason that it is within 1,000 feet of another such establishment under Section 218.1 of this Code or because it is no longer permitted within the district, discontinuance for a continuous period of three months or change to a conforming use shall constitute abandonment.

***(b) Discontinuance or Abandonment of a Nonconforming Formula Retail Use.*** *Notwithstanding subsection (a) of this Section, when a nonconforming Formula Retail use has been changed to a conforming use or discontinued for a period of 18 months, or whenever there is otherwise evident a clear intent on the part of the owner to abandon a nonconforming Formula Retail use, such use shall not be reestablished after being so changed, discontinued or abandoned, and the use of the property thereafter shall be in conformity with the use limitations of this Code for the district in which the property is located.*

**SEC. 186.1. EXEMPTION OF NONCONFORMING USES IN NEIGHBORHOOD COMMERCIAL DISTRICTS.**

The purpose of this Section is to provide for the further continuance in NC Districts of nonconforming uses created by adoption of Ordinance No. 69-87, as herein described, and subsequent ordinances that change the uses allowed in NC Districts, which are beneficial to, or can be accommodated within the neighborhood commercial areas in which they are located.

It is hereby found and declared that certain uses which traditionally have been permitted to locate in neighborhood commercial areas can be beneficial to a neighborhood commercial area in small or limited numbers, but which if allowed to proliferate, can disrupt

the balanced mix of neighborhood-serving retail stores and services. It is further found and declared that in order to prevent undesirable over concentrations of such uses, the establishment of additional such uses shall be prohibited pursuant to controls governing uses in NC Districts. At the same time, however, it is desirable to provide for the further continuance, expansion, enlargement, alteration, changes, discontinuance, and relocation of such existing uses, which are nonconforming as a result of zoning controls governing uses in NC Districts.

The following provisions shall govern with respect to nonconforming uses and features located in Neighborhood Commercial Districts to the extent that there is a conflict between the provisions of this Section and other Sections contained in this Article 1.7.

(a) **Expansion.** A nonconforming use may expand~~: *(1)*~~ in floor area as provided in Subsection (b) below, but may not expand beyond the lot which it occupies, nor may the boundaries of such lot be expanded for purposes of expanding the use; nor may the use expand upward above the story or stories which it lawfully occupies, except as provided in Section 186.2 below.

(b) **Enlargements or Alteration.**

(1) A nonconforming use may not be significantly altered; enlarged or intensified, except upon approval of a conditional use application pursuant to the provisions of Article 3 of this Code, provided that the use not have or result in a greater height, bulk or floor area ratio, less required rear yard or open space, or less required off-street parking space or loading space than permissible under the limitations set forth in this Code for the district or districts in which such use is located.

(2) A nonconforming use may expand to include public sidewalk space provided that such space is only occupied with tables and chairs as permitted by this Municipal Code.

(3) No existing use or structure which fails to meet the requirements of this Code in any manner as described above in this Subsection (b) shall be constructed, reconstructed, enlarged, altered or relocated so as to increase the discrepancy, or to create a new discrepancy, at any level of the structure, between existing conditions on the lot and the required standards for new construction set forth in this Code.

(c) **Changes in Use.** A nonconforming use may be changed to another use or feature as described below.

(1) A nonconforming use may be changed to a use listed in Article 7 of this Code as a principal use for the district in which the property is located, and the new use may thereafter be continued as a permitted principal use.

(2) A nonconforming use may be changed to a use listed in Article 7 of this Code as a conditional use for the district in which the use is located, only upon approval of a conditional use application pursuant to the provisions of Article 3 of this Code, and the new use may thereafter be continued as a permitted conditional use, subject to the provisions of Section 178 of this Code.

(3) A nonconforming use may be changed to a use which is not permitted in that Neighborhood Commercial District as described below, only upon approval of a conditional use application, pursuant to the provisions of Article 3 of this Code:

(A) Any use described in zoning categories .41, .43 or .44, as defined in Sections 790.22, 790.90 and 790.91, respectively, may change to another use described in zoning categories .41 or .44, even though such other use is not permitted in that Neighborhood Commercial District, unless such other use is located in an Alcohol Restricted Use Subdistrict and is prohibited by the provisions governing that Alcohol Restricted Use Subdistrict.

(B) Any use described in zoning categories .51, .52 or .53, as defined in Sections 790.114, 790.116 and 790.108 respectively, may change to another use described in zoning categories .51, .52 or .53, even though such other use is not permitted in that Neighborhood Commercial District.

(C) Any use described in zoning categories .57, .58 or .59, as defined in Sections 790.14, 790.17 and 790.15 respectively, may be demolished and reconstructed as the same use or may change to another use described in zoning categories .57, .58 or .59, even though such other use is not permitted in that Neighborhood Commercial District.

The new use shall still be classified as a nonconforming use.

The changes in use described in this Paragraph 3 shall include remodeling activities involving the demolition and replacement of structures which result in a change of use.

*(D) With regard to Formula Retail uses, a change of owner or operator of a Formula Retail establishment is determined to be an intensification of use and a new Conditional Use authorization shall be required if one or more of the following occur:*

*(i) Change of use category, including a change from one use to another within the sub-categories of uses set forth in Planning Code Section 790.102 and Section 890.102;*

*(ii) Expansion of use size;*

*(iii) Change to a Formula Retail establishment that has more locations than the existing Formula Retail establishment, which results in an increase in visual homogeneity;*

*(iv) Installation of a commercial kitchen, including but not limited to: ovens, open ranges or stoves, fryers, oven hoods or kitchen ventilation systems, heating stations, steam tables or cabinets, cold food storage, increased food preparation areas or self-service drink dispensers;*

*(v) A pre-existing Formula Retail use which had not previously been authorized via a Conditional Use from the Commission.*

(4) In the North Beach Neighborhood Commercial District, any use that exceeds the use size provisions of Section 121.2(a) or 121.2(b) may be changed to a new use only upon the approval of a new conditional use application. The Commission's approval of such conditional use application shall explicitly address the use size findings of Section 303(c). In the North Beach Neighborhood Commercial District, a nonconforming use cannot be changed to any use which is not a permitted use under Section 722 (North Beach Controls).

(5) In the Castro Street Neighborhood Commercial District, any use in this district that exceeds the maximum use size limit of Section 121.2(b), may be not changed to a new use. The only method for changing a nonconforming use identified in this Subsection is to reduce the nonconforming use:

(A) to a conforming use size or

(B) to a size specified in Subsection 121.2(a) pursuant to conditional use authorization.

Notwithstanding the above, any use in this District that exceeds the maximum use size limit of Section 121.2(b) and is categorized in the Other Retail Sales and Services zoning classification, as defined in Section 790.102, may change to another use category enumerated in Section 790.102 as long as the use size is not increased and the Commission approves a conditional use application for such change. The Commission's approval of such conditional use application shall explicitly address the use size findings of Section 303(c).

(d) **Discontinuance.** A nonconforming use which is discontinued for a period of three years, or otherwise abandoned or changed to another use which is listed in Article 7 of this Code as a principal or conditional use for the district in which the use is located shall not be reestablished. For purposes of this Subsection, the period of nonuse for a nonconforming use to be deemed discontinued in the North Beach and Castro Street Neighborhood Commercial Districts, and in the Haight Street Neighborhood Commercial District, the Lower Haight Street

Tobacco Paraphernalia Restricted Use Subdistrict, and the Polk Street Neighborhood Commercial District for Tobacco Paraphernalia Establishments, as defined in Sections227(v) and 790.123 of this Code, only, shall be eighteen (18) months, except in the North Beach Neighborhood Commercial District, the period of non use for a Restaurant use, as defined in Section 790.91, to be deemed discontinued shall be three years. *For Formula Retail uses in any District that prohibits or requires Conditional Use authorization for Formula Retail uses, the period of non-use to be deemed discontinued is 18 months.*

(e) **Relocation.** A nonconforming use in a Neighborhood Commercial District may be reestablished at another location within that Neighborhood Commercial District only upon approval of a new conditional use application pursuant to the provisions of Article 3 of this Code, provided that the following conditions are met:

(1) The original premises shall not be occupied by an establishment of the same type of use as the relocating use unless by another establishment that is relocating from within the district; and

(2) No final permits to operate the relocated use at the new premises are granted prior to the issuance of a certificate of final completion of any work to the original premises which is required as conditions attached to the approval of the conditional use application; and

(3) Deed restrictions are recorded for the original premises in the Official Records of the City and County of San Francisco, which restrictions prohibit for the duration of the Code sections prohibiting the use for the district in which the use is located, the establishment and operation of a new use of the same type of use as the relocated use, unless such new use is relocating from within the district.

Section 5. The Planning Code is hereby amended by revising Sections 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732,733, 733A, 734, 735, 736, 737, 738, 739, 740, 741, 742, 742, and 745 and Tables 743 and 744 to read as follows:

**SEC. 710. NEIGHBORHOOD COMMERCIAL CLUSTER DISTRICT NC-1**

**ZONING CONTROL TABLE**

| | | | NC-1 |
|---|---|---|---|
| ***No.*** | ***Zoning Category*** | ***§ References*** | ***Controls*** |
| * * * * | * * * * | * * * * | * * * * |
| 710.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.;*~~ ~~*C if not recessed*~~ ~~*§ 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

**SEC. 711. SMALL-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT NC-2**

**ZONING CONTROL TABLE**

| | | | NC-2 |
|---|---|---|---|
| ***No.*** | ***Zoning Category*** | ***§ References*** | **Controls** |
| * * * * | * * * * | * * * * | * * * * |
| 711.26 | Walk-Up | § 790.140 | P ~~*if recessed 3 ft.;*~~ |

| | | | |
|---|---|---|---|
| | Facility | | ~~*C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

## SEC. 712. MODERATE-SCALE NEIGHBORHOOD COMMERCIAL DISTRICT NC-3 ZONING CONTROL TABLE

| | | | NC-3 |
|---|---|---|---|
| ***No.*** | ***Zoning Category*** | ***§ References*** | **Controls** |
| * * * * | * * * * | * * * * | * * * * |
| 712.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.;*~~ ~~*C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

## SEC. 713. NEIGHBORHOOD COMMERCIAL SHOPPING CENTER DISTRICT NC-S ZONING CONTROL TABLE

| | | | NC-S |
|---|---|---|---|
| ***No.*** | ***Zoning Category*** | ***§ References*** | **Controls** |
| * * * * | * * * * | * * * * | * * * * |
| 713.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.;*~~ ~~*C if not recessed § 145.2(b)*~~ |

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|---|---|---|---|
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## SEC. 714. BROADWAY NEIGHBORHOOD COMMERCIAL DISTRICT

## ZONING CONTROL TABLE

| | | | Broadway |
|---|---|---|---|
| **No.** | **Zoning Category** | **§ References** | **Controls** |
| * * * * | * * * * | * * * * | * * * * |
| 714.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.;*~~ ~~*C if not recessed*~~ ~~*§ 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

| ***No.*** | ***Zoning Category*** | ***§ References*** | ***Broadway*** | | |
|---|---|---|---|---|---|
| | | | ***Controls by Story*** | | |
| | | § 790.118 | ***1st*** | ***2nd*** | ***3rd+*** |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |
| 714.49 | Financial Service | § 790.110 | ~~*C*~~*P* | | |
| 714.50 | Limited Financial Service | § 790.112 | ~~*C*~~*P* | | |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |

## SEC. 715. CASTRO STREET NEIGHBORHOOD COMMERCIAL DISTRICT

## ZONING CONTROL TABLE

| | | | Castro Street |
|---|---|---|---|
| ***No.*** | ***Zoning Category*** | ***§ References*** | **Controls** |
| * * * * | * * * * | * * * * | * * * * |
| 715.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.;*~~<br>~~*C if not recessed*~~<br>~~*§ 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

| **No.** | **Zoning Category** | **§ References** | **Castro Street** | | |
|---|---|---|---|---|---|
| | | | **Controls by Story** | | |
| | | § 790.118 | 1st | 2nd | 3rd+ |
| * * * * | * * * * | * * * | * * * * | * * * * | * * * * |
| 715.49 | Financial Service | § 790.110 | ~~P~~C | C | |

| | | | | | |
|---|---|---|---|---|---|
| 715.50 | Limited Financial Service | § 790.112 | P~~C~~ | | |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |

**SEC. 716. INNER CLEMENT STREET NEIGHBORHOOD COMMERCIAL DISTRICT**

**ZONING CONTROL TABLE**

| | | | Inner Clement Street |
|---|---|---|---|
| **No.** | **Zoning Category** | **§ References** | **Controls** |
| * * * * | * * * * | * * * * | * * * * |
| 716.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.;*~~ ~~*C if not recessed*~~ ~~*§ 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

| **No.** | **Zoning Category** | **§ References** | **Castro Street** | | |
|---|---|---|---|---|---|
| | | | Controls by Story | | |
| | | § 790.118 | 1st | 2nd | 3rd+ |
| * * * * | * * * * | * * * * | * * * * | | |

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|---|---|---|---|---|---|
| 716.50 | Limited Financial Service | § 790.112 | P~~C~~ | | |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |

**SEC. 717. OUTER CLEMENT STREET NEIGHBORHOOD COMMERCIAL DISTRICT**

**ZONING CONTROL TABLE**

| | | | Inner Clement Street |
|---|---|---|---|
| **No.** | **Zoning Category** | **§ References** | **Controls** |
| * * * * | * * * * | * * * * | * * * * |
| 717.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.;*~~ ~~*C if not recessed*~~ ~~*§ 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

| **No.** | **Zoning Category** | **§ References** | **Castro Street** | | |
|---|---|---|---|---|---|
| | | | **Controls by Story** | | |
| | | § 790.118 | 1st | 2nd | 3rd+ |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |
| 717.49 | Financial Service | § 790.110 | P~~C~~ | | |
| 717.50 | Limited Financial | § 790.112 | P~~C~~ | | |

| | | | | | |
|---|---|---|---|---|---|
| | Service | | | | |
| **** | **** | **** | **** | **** | **** |

## SEC. 718. UPPER FILLMORE STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE

| | | | Upper Fillmore Street |
|---|---|---|---|
| ***No.*** | ***Zoning Category*** | ***§ References*** | **Controls** |
| ***** | **** | **** | **** |
| 718.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.;*~~ ~~*C if not recessed*~~ ~~*§ 145.2(b)*~~ |
| **** | **** | **** | **** |

| ***No.*** | ***Zoning Category*** | ***§ References*** | ***Upper Fillmore Street*** | | |
|---|---|---|---|---|---|
| | | | ***Controls by Story*** | | |
| | | § 790.118 | ***1st*** | ***2nd*** | ***3rd+*** |
| **** | **** | **** | **** | **** | **** |
| 718.49 | Financial Service | § 790.110 | *P* ~~*C*~~ | | |
| 718.50 | Limited Financial Service | § 790.112 | *P* ~~*C*~~ | | |
| **** | **** | **** | **** | **** | **** |

## SEC. 719. HAIGHT STREET NEIGHBORHOOD COMMERCIAL DISTRICT

## ZONING CONTROL TABLE

| | | | Haight Street |
|---|---|---|---|
| *No.* | *Zoning Category* | *§ References* | Controls |
| * * * * | * * * * | * * * * | * * * * |
| 719.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.; C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

## SEC. 720. HAYES-GOUGH NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT

## ZONING CONTROL TABLE

| | | | Hayes-Gough Transit |
|---|---|---|---|
| *No.* | *Zoning Category* | *§ References* | Controls |
| * * * * | * * * * | * * * * | * * * * |
| 720.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.; C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

## SEC. 721. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL DISTRICT

## ZONING CONTROL TABLE

| | | | Upper Market Street |
|---|---|---|---|
| *No.* | *Zoning Category* | *§ References* | Controls |
| * * * * | * * * * | * * * * | * * * * |
| 721.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.; C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

| No. | Zoning Category | § References | Upper Market Street | | |
|---|---|---|---|---|---|
| | | | Controls by Story | | |
| | | § 790.118 | 1st | 2nd | 3rd+ |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |
| 721.49 | Financial Service | § 790.110 | P~~C~~ | C | |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |

## SEC. 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT

## ZONING CONTROL TABLE

| No. | Zoning Category | § References | Polk Street Controls |
|---|---|---|---|
| * * * * | * * * * | * * * * | * * * * |
| 723.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.; C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

| No. | Zoning Category | § References | Polk Street | | |
|---|---|---|---|---|---|
| | | | Controls by Story | | |
| | | § 790.118 | 1st | 2nd | 3rd+ |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |
| 723.49 | Financial Service | § 790.110 | P~~C~~ | C | |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |

## SEC. 724. SACRAMENTO STREET NEIGHBORHOOD COMMERCIAL DISTRICT

## ZONING CONTROL TABLE

| No. | Zoning Category | § References | Sacramento Street Controls |
|---|---|---|---|
| * * * * | * * * * | * * * * | * * * * |
| 724.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.; C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

| No. | Zoning Category | § References | Sacramento Street | | |
|---|---|---|---|---|---|
| | | | Controls by Story | | |
| | | § 790.118 | 1st | 2nd | 3rd+ |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |
| 724.49 | Financial Service | § 790.110 | P~~C~~ | | |
| 724.50 | Limited Financial Service | § 790.112 | P~~C~~ | | |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |

**SEC. 725. UNION STREET NEIGHBORHOOD COMMERCIAL DISTRICT**

**ZONING CONTROL TABLE**

| No. | Zoning Category | § References | Union Street Controls |
|---|---|---|---|
| * * * * | * * * * | * * * * | * * * * |
| 725.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.;*~~ ~~*C if not recessed*~~ ~~*§ 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

| No. | Zoning Category | § References | Union Street | | |
|---|---|---|---|---|---|
| | | | Controls by Story | | |
| | | § 790.118 | 1st | 2nd | 3rd+ |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |
| 725.49 | Financial Service | § 790.110 | P~~C~~ | C | |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |

## SEC. 726. VALENCIA STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT ZONING CONTROL TABLE

| No. | Zoning Category | § References | Valencia Street Transit Controls |
|---|---|---|---|
| * * * * | * * * * | * * * * | * * * * |
| 726.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.;*~~ ~~*C if not recessed*~~ ~~*§ 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

## SEC. 727. 24TH STREET – MISSION NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT ZONING CONTROL TABLE

| No. | Zoning Category | § References | 24th Street – Mission Transit Controls |
|---|---|---|---|
| * * * * | * * * * | * * * * | * * * * |
| 727.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.;*~~ ~~*C if not recessed*~~ ~~*§ 145.2 (b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

## SEC. 728. 24TH STREET – NOE VALLEY NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE

| No. | Zoning Category | § References | 24th Street – Noe Valley Controls |
|---|---|---|---|
| * * * * | * * * * | * * * * | * * * * |
| 728.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.;*~~ ~~*C if not recessed*~~ ~~*§ 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

| No. | Zoning Category | § References | 24th Street – Noe Valley | | |
|---|---|---|---|---|---|
| | | | Controls by Story | | |
| | | § 790.118 | 1st | 2nd | 3rd+ |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |
| 728.49 | Financial Service | § 790.110 | P~~C~~ | | |
| 728.50 | Limited Financial Service | § 790.112 | P~~C~~ | | |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |

**SEC. 729. WEST PORTAL AVENUE NEIGHBORHOOD COMMERCIAL DISTRICT**

**ZONING CONTROL TABLE**

| No. | Zoning Category | § References | West Portal Avenue Controls |
|---|---|---|---|
| * * * * | * * * * | * * * * | * * * * |
| 729.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.;*~~ ~~*C if not recessed*~~ ~~*§ 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

| No. | Zoning Category | § References | West Portal Avenue | | |
|---|---|---|---|---|---|
| | | | Controls by Story | | |
| | | § 790.118 | 1st | 2nd | 3rd+ |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |
| 729.50 | Limited Financial Service | § 790.112 | P~~C~~ | | |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |

## SEC. 730. INNER SUNSET NEIGHBORHOOD COMMERCIAL DISTRICT

## ZONING CONTROL TABLE

| | | | Inner Sunset |
|---|---|---|---|
| *No.* | *Zoning Category* | *§ References* | Controls |
| * * * * | * * * * | * * * * | * * * * |
| 730.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.; C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

## SEC. 731. MODERATE-SCALE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT

## NCT-3 ZONING CONTROL TABLE

| | | | NCT-3 |
|---|---|---|---|
| *No.* | *Zoning Category* | *§ References* | Controls |
| * * * * | * * * * | * * * * | * * * * |
| 731.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.; C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

## SEC. 732. PACIFIC AVENUE NEIGHBORHOOD COMMERCIAL DISTRICT

## ZONING CONTROL TABLE

| | | | Pacific Avenue |
|---|---|---|---|
| *No.* | *Zoning Category* | *§ References* | Controls |
| * * * * | * * * * | * * * * | * * * * |
| 732.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.; C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

| No. | Zoning Category | §References | Pacific Avenue | | |
|---|---|---|---|---|---|
| | | | Controls by Story | | |
| | | § 790.118 | 1st | 2nd | 3rd+ |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |
| 732.49 | Financial Service | § 790.110 | *P~~C~~* | | |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |

**SEC. 733. UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT ZONING CONTROL TABLE**

| No. | Zoning Category | § References | Upper Market Street Transit Controls |
|---|---|---|---|
| * * * * | * * * * | * * * * | * * * * |
| 733.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.;*~~ ~~*C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

| No. | Zoning Category | § References | Upper Market Street Transit | | |
|---|---|---|---|---|---|
| | | | Controls by Story | | |
| | | § 790.118 | 1st | 2nd | 3rd+ |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |
| 733.49 | Financial Service | § 790.110 | *P~~C~~* | C | - |
| * * * * | * * * * | * * * * | * * * * | * * * * | * * * * |

## SEC. 733A. NEIGHBORHOOD COMMERCIAL TRANSIT CLUSTER DISTRICT NCT-1

## ZONING CONTROL TABLE

| | | | NCT-1 |
|---|---|---|---|
| *No.* | *Zoning Category* | *§ References* | Controls |
| * * * * | * * * * | * * * * | * * * * |
| 733A.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.; C if not recessed*~~ |
| * * * * | * * * * | * * * * | * * * * |

## SEC. 734. SMALL-SCALE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT NCT-2

## ZONING CONTROL TABLE

| | | | NCT-2 |
|---|---|---|---|
| *No.* | *Zoning Category* | *§ References* | Controls |
| * * * * | * * * * | * * * * | * * * * |
| 734.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.; C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

## SEC. 735. SOMA NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT

## ZONING CONTROL TABLE

| | | | SoMa *Transit* |
|---|---|---|---|
| *No.* | *Zoning Category* | *§ References* | Controls |
| * * * * | * * * * | * * * * | * * * * |
| 735.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.; C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

## SEC. 736. MISSION NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT

## ZONING CONTROL TABLE

| | | | Mission Street Transit |
|---|---|---|---|
| *No.* | *Zoning Category* | *§ References* | Controls |
| * * * * | * * * * | * * * * | * * * * |
| 736.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.; C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

## SEC. 737. OCEAN AVENUE NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT

## ZONING CONTROL TABLE

| | | | Ocean Avenue Transit |
|---|---|---|---|
| *No.* | *Zoning Category* | *§ References* | Controls |
| * * * * | * * * * | * * * * | * * * * |

| | | | |
|---|---|---|---|
| 737.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.; C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

**SEC. 738. GLEN PARK NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT ZONING CONTROL TABLE**

| | | | ***Glen Park Transit*** |
|---|---|---|---|
| ***No.*** | ***Zoning Category*** | ***§ References*** | **Controls** |
| * * * * | * * * * | * * * * | * * * * |
| 738.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.; C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

**SEC. 739. NORIEGA STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE**

| | | | ***Noriega Street*** |
|---|---|---|---|
| ***No.*** | ***Zoning Category*** | ***§ References*** | ***Controls*** |
| * * * * | * * * * | * * * * | * * * * |
| 739.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.; C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

## SEC. 740. IRVING STREET NEIGHBORHOOD COMMERCIAL DISTRICT

## ZONING CONTROL TABLE

| | | | *Irving Street* |
|---|---|---|---|
| ***No.*** | ***Zoning Category*** | ***§ References*** | ***Controls*** |
| * * * * | * * * * | * * * * | * * * * |
| 740.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.; C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

## SEC. 741. TARAVAL STREET NEIGHBORHOOD COMMERCIAL DISTRICT

## ZONING CONTROL TABLE

| | | | *Taraval Street* |
|---|---|---|---|
| ***No.*** | ***Zoning Category*** | ***§ References*** | ***Controls*** |
| * * * * | * * * * | * * * * | * * * * |
| 741.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.; C if not recessed § 145.2(b) )*~~ |
| * * * * | * * * * | * * * * | * * * * |

## SEC. 742. JUDAH STREET NEIGHBORHOOD COMMERCIAL DISTRICT

## ZONING CONTROL TABLE

| | | | *Judah Street* |
|---|---|---|---|
| ***No.*** | ***Zoning Category*** | ***§ References*** | ***Controls*** |
| * * * * | * * * * | * * * * | * * * * |
| 742.26 | Walk-Up Facility | § 790.140 | P ~~*if recessed 3 ft.; C if not recessed § 145.2(b)*~~ |
| * * * * | * * * * | * * * * | * * * * |

## Table 743

## FOLSOM STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT

## ZONING CONTROL TABLE

| | | | *Folsom Street* |
|---|---|---|---|
| ***No.*** | ***Zoning Category*** | ***§ References*** | ***Controls*** |
| * * * * | * * * * | * * * * | * * * * |
| 743.26 | Walk-Up Facility | §§ 145.2(b), 790.140 | P ~~*if recessed 3 ft.; C if not recessed)*~~ |
| * * * * | * * * * | * * * * | * * * * |

## Table 744

## REGIONAL COMMERCIAL DISTRICT ZONING CONTROL TABLE

| | | | *Regional Commercial* |
|---|---|---|---|
| ***No.*** | ***Zoning Category*** | ***§ References*** | ***Controls*** |

| | | | |
|---|---|---|---|
| * * * * | * * * * | * * * * | * * * * |
| 744.26 | Walk-Up Facility | §§ 145.2(b), 790.140 | P ~~*if recessed 3 ft.; C if not recessed*~~ |
| * * * * | * * * * | * * * * | * * * * |

**SEC. 745. EXCELSIOR OUTER MISSION STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE**

| | | | ***Excelsior Outer Mission Street*** |
|---|---|---|---|
| ***No.*** | ***Zoning Category*** | ***§ References*** | ***Controls*** |
| * * * * | * * * * | * * * * | * * * * |
| 745.26 | Walk-Up Facility | §§ 145.2(b), 790.140 | P ~~*if recessed 3 ft.; C if not recessed*~~ |
| * * * * | * * * * | * * * * | * * * * |

Section 6. The Planning Code is hereby amended by revising Section 145.2 to read as follows:

**SEC. 145.2. OUTDOOR ACTIVITY AREAS ~~*AND WALK-UP FACILITIES*~~ IN NC DISTRICTS.**

The following provisions governing outdoor activity areas ~~*and walk-up facilities*~~ shall apply in NC Districts.

~~*(a) Outdoor Activity Areas.*~~ In order to provide for limited commercial outdoor activity areas, which promote active street life, but do not detract from the livability of surrounding uses, outdoor activity areas, as defined in Section 790.70 of this Code, in NC Districts shall be regulated below, except in the Outer Clement Street Neighborhood Commercial District, where outdoor activity areas shall be a principal permitted use if they existed prior to 1985.

These provisions shall not apply to those uses excepted from the requirement for location in an enclosed building, as set forth in Section 703.2(b) of this Code.

*(a)* ~~*(1)*~~ An outdoor activity area operated by a commercial use is permitted as a principal use if located outside a building and contiguous to the front property line of the lot on which the commercial use is located.

In NC-S Districts, an outdoor activity area is permitted as a principal use if located within the boundaries of the property and in front of the primary facades which contain customer entrances and if it does not obstruct pedestrian traffic flow between store entrances and parking facilities.

*(b)* ~~*(2)*~~ An outdoor activity area which does not comply with the provisions of Paragraph 1 of this Subsection is permitted as a conditional use, subject to the provisions set forth in Sections 316 through 316.8 of this Code.

In addition to the criteria of Section 303(c) of this Code, the City Planning Commission shall find that:

*(1)* ~~*(A)*~~ The nature of the activity operated in the outdoor activity area is compatible with surrounding uses;

*(2)* ~~*(B)*~~ The operation and design of the outdoor activity area does not significantly disturb the privacy or affect the livability of adjoining or surrounding residences;

*(3)* ~~*(C)*~~ The hours of operation of the activity operated in the outdoor activity area are limited so that the activity does not disrupt the viability of surrounding uses.

~~*(b) **Walk-up Facilities.** In order to maintain free flows of pedestrian circulation in the Neighborhood Commercial Districts, walk-up facilities, as defined in Section 790.140 of this Code, shall be regulated in all NC Districts as provided below:*~~

~~*(1) A walk-up facility operated by a commercial use is permitted as a principal use if:*~~

~~*(A) Recessed at least three feet from the property line of the lot on which the commercial use is located; and*~~

~~*(B) Where a vehicular circulation area or parking area separates the building from the property line, the walk-up facility is designed and located so that the users of the facility do not impede pedestrian circulation on the lot nor create conflicts between pedestrian and vehicular circulation flows; or*~~

~~*(C) The proposed walk-up facility is located on a block frontage which is totally in a Neighborhood Commercial District.*~~

~~*(2) A walk-up facility which does not comply with the provisions of Paragraph 1 of this Subsection is permitted only upon approval of a conditional use application pursuant to the provisions set forth in Sections 316 through 316.8 of this Code.*~~

Section 7. The Planning Code is hereby amended by moving the Findings in Section 703.3 to new Section 303.1 and amending those Findings, and amending Section 703.3 to read as follows:

**SEC. 703.3. FORMULA RETAIL USES.**

(a) **Findings.** *The findings for Formula Retail controls are set forth in Section 303.1.*

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

~~*(2) San Francisco needs to protect its vibrant small business sector and create a supportive environment for new small business innovations. One of the eight Priority Policies of the City's General Plan resolves that "existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced."*~~

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

~~(4) Formula retail businesses are increasing in number in San Francisco, as they are in cities and towns across the country.~~

~~(5) Money earned by independent businesses is more likely to circulate within the local neighborhood and City economy than the money earned by formula retail businesses which often have corporate offices and vendors located outside of San Francisco.~~

~~(6) Formula retail businesses can have a competitive advantage over independent operators because they are typically better capitalized and can absorb larger startup costs, pay more for lease space, and commit to longer lease contracts. This can put pressure on existing businesses and potentially price out new startup independent businesses.~~

~~(7) San Francisco is one of a very few major urban centers in the State in which housing, shops, work places, schools, parks and civic facilities intimately co-exist to create strong identifiable neighborhoods. The neighborhood streets invite walking and bicycling and the City's mix of architecture contributes to a strong sense of neighborhood community within the larger City community.~~

~~(8) Notwithstanding the marketability of a retailer's goods or services or the visual attractiveness of the storefront, the standardized architecture, color schemes, decor and signage of many formula retail businesses can detract from the distinctive character of certain Neighborhood Commercial Districts.~~

~~(9) The increase of formula retail businesses in the City's neighborhood commercial areas, if not monitored and regulated, will hamper the City's goal of a diverse retail base with distinct neighborhood retailing personalities comprised of a mix of businesses. Specifically, the unregulated and unmonitored establishment of additional formula retail uses 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, thereby decreasing the diversity of merchandise available to residents and visitors and the diversity of purveyors of merchandise.*~~

~~*(10) If, in the future, neighborhoods determine that the needs of their Neighborhood Commercial Districts are better served by eliminating the notice requirements for proposed formula retail uses, by converting formula retail uses into conditional uses in their district, or by prohibiting formula retail uses in their district, they can propose legislation to do so.*~~

(b) **Formula Retail Use.** Formula retail use is ~~*hereby*~~ defined *in Section 303.1.* ~~*as a type of retail sales activity or retail sales establishment which, along with eleven or more other retail sales establishments located, 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.*~~

~~*(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.~~

~~(c) "Retail Sales Activity or Retail Sales Establishment" shall include the uses defined in Section 303(i)(2) of this Code.~~

~~(d) Formula Retail Uses Permitted. Any use permitted in certain districts defined in Section 303(i)(5)(A), which is also a "formula retail use" as defined in this Section, is hereby permitted.~~

~~(e) Formula Retail Use Prohibited. Notwithstanding subsection (d), certain districts may prohibit formula retail uses or a subset of formula retail uses as described in Section 303(i)(5).~~

~~(f) Conditional Uses. Notwithstanding subsections (d) or (e), a Conditional Use Authorization shall be required for a formula retail use in the zoning districts listed in Section 303(i)(4) unless explicitly exempted. Additional criteria to be used by the Planning Commission when considering granting conditional use permits to formula retail uses in these districts are listed in Section 303(i).~~

~~(g) Neighborhood Commercial Notification and Design Review. After the effective date of this Ordinance, any building permit application for a use permitted in a Neighborhood Commercial District which is also a "formula retail use" as defined in this section shall be subject to the Neighborhood Commercial Notification and Design Review Procedures of Section 312 of this Code.~~

~~(h) Discretionary Review Guidelines. The Planning Commission shall develop and adopt guidelines which it shall employ when considering any request for discretionary review made pursuant to this Section. These guidelines shall include but are not limited to consideration of the following factors:~~

~~(1) Existing concentrations of formula retail uses within the Neighborhood Commercial District.~~

~~(2) Availability of other similar retail uses within the Neighborhood Commercial District.~~

~~(3) Compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the Neighborhood Commercial District.~~

~~(4) Existing retail vacancy rates within the Neighborhood Commercial District.~~

~~(5) Existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the Neighborhood Commercial District.~~

~~(i) Determination of Formula Retail Use. After the effective date of this Ordinance, 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 after the effective date of this Ordinance 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.~~

~~After the effective date of this Ordinance, in those areas in which "formula retail uses" are subject to the Neighborhood Commercial Notification and Design Review provisions of subsection (g), 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. After the effective date of this Ordinance, any building permit approved that is determined by the City to be for a "formula retail use" that does not identify the use as a "formula retail use" must complete the Neighborhood Commercial Notification and Design Review required in subsection (g).~~

~~*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 applicant or holder bears the burden of proving to the City that the proposed or existing use is not a "formula retail use."*~~

Section 8. The Planning Code is hereby amended by revising Section 803.6 to read as follows:

**SEC. 803.6. FORMULA RETAIL USES IN *ARTICLE 8 DISTRICTS*~~*THE MUG DISTRICT, UMU DISTRICT, CHINATOWN MIXED USE DISTRICTS AND IN THE WESTERN SOMA SPECIAL USE DISTRICT*~~*.**

(a) **Findings.** *The findings for Formula Retail controls are set forth in Section 303.1.*

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

~~*(2) San Francisco needs to protect its vibrant small business sector and create a supportive environment for new small business innovations. One of the eight Priority Policies of the City's General Plan resolves that "existing neighborhood serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced."*~~

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

~~*(4) Formula retail businesses are increasing in number in San Francisco, as they are in cities and towns across the country.*~~

~~*(5) Money earned by independent businesses is more likely to circulate within the local neighborhood and City economy than the money earned by formula retail businesses which often have corporate offices and vendors located outside of San Francisco.*~~

~~*(6) Formula retail businesses can have a competitive advantage over independent operators because they are typically better capitalized and can absorb larger startup costs, pay more for lease space, and commit to longer lease contracts. This can put pressure on existing businesses and potentially price out new startup independent businesses.*~~

~~*(7) San Francisco is one of a very few major urban centers in the State in which housing, shops, work places, schools, parks and civic facilities intimately co-exist to create strong identifiable neighborhoods. The neighborhood streets invite walking and bicycling and the City's mix of architecture contributes to a strong sense of neighborhood community within the larger City community.*~~

~~*(8) Notwithstanding the marketability of a retailer's goods or services or the visual attractiveness of the storefront, the standardized architecture, color schemes, decor and signage of many formula retail businesses can detract from the distinctive character of certain neighborhood commercial and mixed use districts.*~~

~~*(9) The increase of formula retail businesses in the City's neighborhood commercial areas, if not monitored and regulated, will hamper the City's goal of a diverse retail base with distinct neighborhood retailing personalities comprised of a mix of businesses. Specifically, the unregulated and unmonitored establishment of additional formula retail uses 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, thereby decreasing the diversity of merchandise available to residents and visitors and the diversity of purveyors of merchandise.*~~

(b) **Formula Retail Uses.**

(1) **Formula Retail Uses Permitted as a Conditional Use.** *Section 303.1 sets forth the requirements for conditional use authorization for* Formula Retail uses *within Article 8 districts.* ~~*are permitted in the MUG District, UMU District, Western SoMA Special Use District, the*~~

~~*Chinatown Community Business District and the Chinatown Residential Neighborhood Commercial District only as a conditional use. When considering an application for a conditional use permit under this Section, the Planning Commission shall consider the criteria defined in Section 303(i) of this Code.*~~

(2) **Formula Retail Uses Prohibited.** The establishment of new Formula Retail uses *within Article 8 districts may be prohibited, as set forth in Section 303.1.* ~~*in the Chinatown Visitor Retail District is prohibited. The establishment of new Restaurant or Limited Restaurant uses that are also defined as formula retail in any Chinatown Mixed Use Districts is prohibited.*~~

(c) **Formula Retail Use Defined.** Formula retail use is hereby defined *in Section 303.1.* ~~*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 Sales Activity or Retail Sales Establishment" shall include the uses defined in Section 303(i)(2).*~~

(d) **Determination of Formula Retail Use.** *Section 303.1 establishes the process for correcting omissions on any application for an entitlement, permit or other action determined by the City to be a Formula Retail use that does not identify the use as a Formula Retail use.* ~~*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 applicant or holder bears the burden of proving to the City that the proposed or existing use is not a "formula retail use."*~~

~~*(e) **Permit Application Processing.** After the effective date of this ordinance, 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.*~~

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

**SEC. 350. FEES, GENERAL**

Fees shall be imposed in order to compensate the Planning Department for the cost of processing applications and for the development and revision of land use controls. Fees shall

be charged and collected as indicated for each class of application, permit, filing request or activity listed in Sections 351 through ~~358~~*360* below.

* * * *

(g) **Fee Adjustments.**

(1) The Controller will annually adjust the fee amounts specified in Sections 350-~~358~~*360* by the two-year average consumer price index (CPI) change for the San Francisco/San Jose Primary Metropolitan Statistical Area (PMSA). For a listing of the Department's current fees inclusive of annual indexing for inflation, reference the Schedule of Application Fees available on the Department website.

* * * *

Section 10. The Planning Code is amended by adding new Sections 359 and 360 to read as follows:

***SEC. 359. ECONOMIC IMPACT STUDY FOR LARGE SCALE RETAIL USE.***

*The fee to review an economic impact study, as required by Section 303(j), shall be $3,500.00, plus any additional time and materials as set forth in Section 350.*

***SEC. 360. PERFORMANCE REVIEW FOR FORMULA RETAIL USE.***

*The fee to provide performance review for Formula Retail uses as required by Section 303.1, shall be the standard building permit fee, plus time and materials as set forth in Section 350(c).*

Section 11. The Planning Code is amended by revising Section 209.8 to read as follows:

**SEC. 209.8. COMMERCIAL ESTABLISHMENTS IN R DISTRICTS.**

| RH-1(D) | RH-1 | RH-1(S) | RH-2 | RH-3 | RM-1 | RM-2 | RM-3 | RM-4 | RTO | RTO-M | RC-3 | RC-4 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | P | P | SEC. 209.8. COMMERCIAL ESTABLISHMENTS.<br>(a) Except for massage establishments as noted in Section 218.1, retail, personal service or other commercial establishment is permitted as a principal use on the ground floor or below of a building if permitted as a principal use on the ground floor in an NC-3 District, unless otherwise specified in this Code. |
| | | | | | | | | | | | C | C | (b) Except for massage establishments as noted in Section 218.1, retail, personal service or other commercial establishment is permitted as a conditional use on the ground floor or below of a building if permitted as a conditional use on the ground floor in an NC-3 District, unless otherwise specified in this Code. |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | C | C | (c) Except for massage establishments as noted in Section 218.1, retail, personal service or other commercial establishment is permitted as a conditional use above the ground floor of a building if permitted as a principal or conditional use on the ground floor in an NC-3 District, unless otherwise specified in this Code. |
| | | | | | | | | | | | C | C | (d) Formula Retail Use, as defined in Section ~~*703.3(b)*~~ *303.1* of this Code. |
| | | | | | | | P | P | P | P | | | (e) Any use meeting the standards and limitations set forth in Section 231: Limited Corner Commercial Uses in RTO Districts. |
| | | | | | | | | | | | C | C | (f) Non-residential use exceeding 6,000 gross square feet. |
| | | | | | | | | | | | P | P | (g) Liquor Store on the ground floor, as defined in Section 790.55 of this Code, unless otherwise specified in this Code. |
| | | | | | | | | | | | | | (h) Drive-up Facility, as defined in Section 790.30 of this Code. |
| | | | | | | | | | | | P | P | (i) Walk-up Facility, as defined in Section 790.140 of this Code~~*, is permitted as a principle use on the ground floor if recessed 3 feet; requires a conditional use if not recessed*~~. |

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|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | P | P | (j) Outdoor Activity Area, as defined in Section 790.70 of this Code, if in front; requires a conditional use if elsewhere. |

Section 12. The Planning Code is amended by revising Section 212 to read as follows:

**SEC. 212. ADDITIONAL REQUIREMENTS FOR USES IN CERTAIN C AND M DISTRICTS.**

In the following C and M Districts, the permitted uses indicated in Sections 215 through 227 shall be subject to the additional requirements contained in this Section 212.

(a) **Uses in Enclosed Buildings.** In C-2 Districts, all permitted uses, and all storage, servicing, fabricating, processing or repair uses accessory thereto, shall be conducted within enclosed buildings, with the exceptions of:

(1) Those uses indicated by an asterisk (*) in the column for the district;

(2) Accessory off-street parking and loading areas where permitted;

(3) Accessory outdoor dining areas where permitted;

(4) Accessory recreation areas where permitted; and,

(5) Mobile Food Facilities as defined in Section 102.34.

(b) **Drive-up Facilities.** In C-3 Districts, a Drive-up Facility, as defined in Section 790.30 of this Code, shall not be permitted.

(c) **Required Ground-floor Commercial Frontage in C-3 Districts.**

(1) **Purpose.** The purpose of this section is to assure continuity of retail and consumer service uses in the C-3-R District, and in other important commercial streets in C-3 Districts.

(2) **Applicability.**

(A) In the C-3-R District, along any block frontage that is entirely within such district or partly in such district and partly in the C-3-O District, where such block

frontage faces a street 40 feet or more in width;

(B) On building frontages facing Destination Alleyways, as defined in the Downtown Streetscape Plan;

(C) Along any street frontage facing Market Street in all C-3 Districts except the Van Ness and Market Downtown Residential Special Use District.

(3) **Controls.**

(A) **Ground Story.** Permitted uses listed in Sections 218 and 221 shall be located facing such street in the ground story of any building. At least 1/2 the total width of any new or reconstructed building, parallel to and facing such street, shall be devoted at the ground story to entrances, show windows or other displays of such uses.

(B) **All Levels.** All other permitted uses shall be located either on stories above or below the ground story or at a distance of not less than 20 feet behind each street frontage at the ground story. No more than 1/3 the width of any lot, parallel to and facing such street, shall be devoted to entrances to such other permitted uses.

(d) **Hazardous, Noxious, or Offensive Uses Prohibited.** No use listed as permitted in any C District or M-1 District shall include any use that is hazardous, noxious or offensive for reasons described in Section 202(c) of this Code.

*(e) **Formula Retail Uses.** Formula Retail uses, as defined in Section 303.1, with frontage on Market Street between 6th Street and the intersection of Market Street and the intersection of Market Street, 12th Street and Franklin Street, are subject to Conditional Use authorization as specified in Sections 303 and 303.1*

Section 13. The Planning Code is amended by revising Section 218 to read as follows:

**SEC. 218. RETAIL SALES AND PERSONAL SERVICES.**

| C-2 | C-3-O | C-3-O (SD) | C-3-R | C-3-G | C-3-S | C-M | M-1 | M-2 | PDR-1-G | PDR-1-D | PDR-1-B | PDR-2 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | | | **SEC. 218. RETAIL SALES AND PERSONAL SERVICES.** |
| | | | | | | | | | | | | | The uses specified in this Section shall not include any use first specifically listed in a subsequent Section of this Code. |
| P | P | P | P | P,# | P | P | P | P | P, under 2,500 gsf per lot; C above for Grocery stores, as defined in Section 790.102 (a) and Health club, fitness, gymna- | P, under 5,000 gsf per lot; C above for Grocery stores, as defined in Section 790.102 (a) and Health club, fitness, | P, under 2,500 gsf | P, under 2,500 gsf per lot*# | (a) Retail business or personal service establishment.<br><br>*Subject to the limitations of Section *121.6 and* 121.8<br><br>*#C for the establishment of new Formula Retail use, as described in* |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | sium, or exercise facility when including equipment and space for weight-lifting and cardio-vascular activities | gymna-sium, or exercise facility when including equip-ment and space for weight-lifting and cardio-vascular activities | | | *Section 303.1, with frontage on Market Street between 6th Street and the intersection of Market Street and the intersection of Market Street, 12th Street and Franklin Street.* |

Section 14. The Planning Code is amended by revising Section 219 to read as follows:

**SEC. 219. OFFICES.**

| C-1 | C-2 | C-3-O | C-3-O(SD) | C-3-R | C-3-G | C-3-S | C-M | M-1 | M-2 | PDR-1-G | PDR-1-D | PDR-1-B | PDR-2 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | | | | SEC. 219. OFFICES. |
| P | P | P | P | P# | P | P | P | P | P | NP, unless in a designated landmark building. P in designated landmark buildings. | NP, unless in a designated landmark building. P in designated landmark buildings. | P*# | P*# | (a) Professional and business offices, as defined in 890.70, not more than 5,000 gross square feet in size and offering on-site services to the general public. |
| P | P | P | P | C# | P | P | P | P | P | NP, unless in a designated landmark building. P in designated landmark buildings. | NP, unless in a designated landmark building. P in designated landmark buildings. | | | (b) Professional and business offices, as defined in 890.70, larger than 5,000 gross square feet in size and offering on-site services to the general public. |
| P | P | P | P | C# | P | P | P | P | P | NP, unless in a designated | NP, unless in a designated | P under 5,000 | P under 5,000 | (c) Other professional and business offices, as defined in 890.70, |

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | landmark building. P in designated landmark buildings. | landmark building. P in designated landmark buildings. | gsf *# | gsf *# | above the ground floor. In the C-3-R District, in addition to the criteria set forth in Section 303, approval shall be given upon a determination that the use will not detract from the district's primary function as an area for comparison shopper retailing and direct consumer services. |
| P | P | C | C | # | C | C | P | P | P | NP, unless in a designated landmark building. P in designated landmark buildings. | NP, unless in a designated landmark building. P in designated landmark buildings. | P under 5,000 gsf *# | P under 5,000 gsf *# | (d) Other professional and business offices, as defined in 890.70 at or below the ground floor. |
| | | | | | | | | | | | | | | Subject to limitations of Section 121.8. *#C for the establishment of new Formula Retail use, as described in Section 303.1, with frontage on Market Street between 6th Street and the intersection of Market Street and the intersection of Market Street, 12th Street and Franklin Street.* |

Section 15. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

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

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

By: _____
VICTORIA WONG
Deputy City Attorney

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SAN FRANCISCO
**PLANNING DEPARTMENT**

# Memo to the Planning Commission

HEARING DATE: JULY 17, 2014

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| | |
|---|---|
| *Date:* | July 10, 2014 |
| *Project Name:* | **Formula Retail and Large-Scale Retail Controls** |
| *Case Number:* | **2013.0936UT** |
| *Initiated by:* | Planning Department |
| *Staff Contact:* | Kanishka Burns, Project Manager |
| | kanishka.burns@sfgov.org , 415-575-9112 |
| *Reviewed by:* | AnMarie Rodgers, Senior Policy Advisor |
| | anmarie.rodgers@sfgov.org, 415-558-6395 |
| *Recommendation:* | Adoption of Planning Code Text Changes |

## Summary

The following report "Policy Discussion and Adoption of Planning Code Text Changes" related to Formula Retail and Large-Scale Retail Controls is the complete Planning Department Formula Retail report. It represents a comprehensive study of formula retail in San Francisco, drawing on the Department's Study of formula retail, as well as related local and national studies. The ensuing policy recommendations are representative of the Planning Departments desire to put forth a balanced policy proposal designed to regulate formula retail in a manner that encourages economic development and job creation while maintaining the unique and distinctive nature of San Francisco's neighborhoods. For a concise comparison of the way formula retail is currently regulated and the Planning Departments proposal, please see the attached table.

## Since Commission Initiation

Since the Commission initiated the ordinance on May 22, 2014, Planning Department staff have continued to meet with interested parties. In response to these discussions and additional research, the following elements have been added or changed:

- Revisions to the economic impact study for large retail uses.
- The addition of a fully articulated Commission Policy for formula retail. This document serves as a detailed explanation of two topics discussed at the initiation hearing:
    - Commission direction on how to consider the five codified criteria for review of formula retail
    - Performance-Based Design Review for Formula Retail
- Expanding the land use categories regulated as formula retail
- Replacing the proposed Administrative Performance Based Review process with a new definition for changes of formula retail uses
- Removing restrictions on independent financial and limited financial services
- Permitting some ATMs visible from the street without a Conditional Use authorization
- While not codified in the attached draft ordinance, the Department supports Supervisor Mar's proposal to refrain from regulating subsidiaries at this point and instead convene a committee to explore the topic for a six-month time period

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# Existing and Proposed Formula Retail Controls

| Existing | Proposed | Basis for Recommendation |
|---|---|---|
| **Definitional Changes** | | |
| 11 locations with two standardized features (CU required for 12th location) | 19 locations with two standardized features (CU required for 20th location) | • Of all existing FR in SF, only 5% have fewer than 20 locations<br>• Small businesses like Blue Bottle and Philz Coffee with 14 locations currently are reviewed under the same process as Subway and Starbucks with over 20,000 locations.<br>• Raising the threshold to would allow for greater small business development in SF |
| Count only locations in the United States | Count all locations, internationally | • Of all existing FR in SF, 10% are headquartered outside the U.S. and many of these are already U.S. based chains<br>• International flagship stores are likely to locate downtown/Union Square where they are permitted and more compatible<br>• The combined change to 20 international locations isn't expected to capture more FR, altogether it will be a balanced way to promote small business growth while maintaining unique neighborhood character. |
| Count leases held as potential locations | Count entitled or permitted locations as potential locations | • Addresses concerns of proposed locations not being counted in manner that is enforceable (leases can't be independently verified but entitlements can)<br>• Entitled/permitted operations are planned operations while leases can be held for years without operation |
| Do not count subsidiaries | Continue to not count subsidiaries at this time. Form a working group to study best practices for regulation of subsidiaries and report to the Planning Commission within 6 months. | • Subsidiaries that aren't FR on their own don't meet the standardized features part of the definition of FR and therefore don't contribute to homogenization/visual impacts<br>• San Francisco is unique positioned to attract innovative business development and should encourage the testing of new concepts, as they can attract additional visitors and businesses on their own<br>• Spin-off or subsidiary retail brands are designed to be brick and mortar competition to e-commerce and should be encouraged as a way to fill vacancies<br>• Parent companies of FR chains are often corporations that have no brick and mortar presence and can therefore not be counted as FR anyway.<br>• Likely to affect only 3% of existing business in SF |
| Existing Use Categories: | Add the following Uses: | |
| Eating and Drinking Uses (bars, cafés & restaurants); Liquor Stores, Retail, banks, Movies Theaters, Amusement & Game Arcades and Trade Shops | • Limited Financial (ATMs) | • Analogous to Financial Services (banks) which already are FR and when located at the street front, detract from active street vibrancy and have maximum signage contributing to visual homogeneity |
| | • Fringe Financial (Check Cashing) | • Heavily restricted uses and part of interim controls on Market Street demonstrating community concern for their proliferation. |
| | • Business & Professional Services (H&R Block, State Farm, Coldwell Banker) | • In many cases, function like an office use at the ground floor and have standardized features similar to existing FR uses. |
| | • Personal Services (gyms, hair salons and nail salons) | • Are generally thought of as formula retail uses, particularly in regards to gyms.<br>• Growth of small fitness studio uses as franchises and chains is expected to increase. |
| | • Tobacco Paraphernalia Establishment | • An undesired use that is already heavily regulated. |
| | • Massage Establishment | • Heavily regulated use, demonstrating a desire to discourage proliferation |
| **Market Street** | | |
| Interim Controls on Market St. btwn Van ness and 6th for specific FR uses | CU required for FR on Market St. btwn 12th St and 6th St. for all FR | • Market Street is the City's premiere street and should retain SF character<br>• Central Market is a burgeoning neighborhood with 17 new companies since 2011, over 5,500 units under construction or approved and 40 additional development projects in the pipeline making this the ideal time to apply controls intended to guide the development of neighborhood character.<br>• Interim controls demonstrate community concern, permanent controls would address them. |

# Existing and Proposed Formula Retail Controls

| Existing | Proposed | Basis for Recommendation |
|---|---|---|
| **Conditional Use Review Process** | | |
| CU Criteria | CU Criteria + Performance Based Design Guidelines specified in Commission Guide for Formula Retail | • CU Process is working as evidenced by the low concentration of FR in districts with controls<br>• The Commission is influenced by the local community in their decisions<br>• The Code requires the development of guidelines for existing CU criteria<br>• Overall strengthening of controls by applying rigorous, data driven review applied consistently |
| Analyze concentrations and use mix within the District | Analyze concentrations and use mix within the district as well as the vicinity of the project. Further clarified in the Commission Guide for Formula Retail | • Zoning Districts can be miles long, not analogous and unfamiliar to residents<br>• ¼ mile is the generally accepted walking radius that people identify with and 300 feet is a better radius for smaller zoning districts<br>• The vicinity calculation will capture all commercial uses that service and impact residents, regardless of zoning district and the zoning district calculation will provide 2 different measures of analysis. |
| Analyze mix of Citywide-serving and neighborhood-serving retail | Analyze mix of Citywide-serving and daily needs serving retail | • "Neighborhood serving" is defined elsewhere in the code and not applicable to this analysis<br>• NCDs are intended to serve the needs of residents living in the surrounding neighborhood. Providing daily needs within an appropriate vicinity of a ¼ mile or 300 feet.<br>• If proposed FR is meeting a daily need they would be fulfilling a need that is currently unmet while those that are detracting from existing daily needs services would be identified. |
| Signage deferred to Article 6 | Performance-Based Design Review | • Sign controls are administrative and permissive, allowing no discretion. Commission may engage in discussions of signage at hearings but signage is permitted separately through the administrative process.<br>• Focus on minimized signage, maximized transparency and pedestrian friendly design |
| **Super Stores** | | |
| • CU required for any single retail use over 50,000sq in all but C3 Zoning District; over 120,000sf prohibited<br>• C3 – requires CU over 120,000sf<br>• CU considerations: parking, active street frontage, mixed use encouraged, traffic impacts, and employee demand on housing, transit, child care and social services | Require economic impact report with CU review for all super stores to include:<br>• Expected employment benefits<br>• Fiscal Impact<br>• Leakage study<br>• Does not apply to grocery stores | • Superstores can initially bring an influx of jobs but gains can be nullified over time by impacts on small businesses<br>• Tax revenue doesn't generally benefit the economy because Super Stores are single story and mixed use development has the greatest tax revenue<br>• Large parking lots with vehicular focus has significant visual impacts and detracts from City's transit first and pedestrian friendly goals |
| **Change of Formula Retail Operator where a CU has been granted** | | |
| New CU required – unless it's triggered by a chain being bought by another chain and no other changes are proposed, contradictory to other parts of the Code and established land use law | If new FR use is an intensification as defined:<br>• Larger use size<br>• Change of use category<br>• Change to a chain with more locations, worldwide<br>• Installation of commercial kitchen features | • Consistent with established land use law and the Planning Code<br>• Clear cut definition of intensification allows for new CU analysis based on a new or intensified use<br>• Able to apply Performance-Based Design Guidelines, regardless of previous approvals and conditions of approval |
| | If new FR use is not an intensification, administrative review of building permit to ensure compliance with Performance-Based Design Guidelines | • Use has already been evaluated through original CU approval; existing conditions of approval would continue to apply<br>• Incentivize FR to improve pedestrian friendly design, storefront transparency and reduce signage to avoid review of full CU criteria<br>• Use mix has previously been evaluated, changes of tenant/operator will only have visual impact so analysis is focused on visual impacts and improving storefronts<br>• Opportunity to improve design of shopping centers that are heavily FR and often change tenants |
| **Change of Formula Retail Operator where a CU has NEVER been granted** | | |
| New CU required – unless it's triggered by a chain being bought by another chain and no other changes are proposed, contradictory to other parts of the Code and established land use law | First CU required to allow for compatibility and use mix analysis of FR use | • Use has never been evaluated against CU criteria and Design Guidelines.<br>• Existing code language is contradictory. This update clarifies that FR uses that predate CU requirement are required to get a new CU when the FR changes.<br>• A location is not "lost" to FR |

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**Attachments (located behind primary report)**


Exhibit A: Background Documenting the History of San Francisco's Formula Retail Controls
Exhibit B: Market Street Map
Exhibit C: Draft Commission Guide for Formula Retail
Exhibit D: Public Comment
Exhibit E: Draft Planning Commission Resolution Adopting Planning Code Text Changes
Exhibit F: Draft Planning Commission Ordinance

SAN FRANCISCO
PLANNING DEPARTMENT

# Executive Summary
# Policy Discussion and
# Adoption of Planning Code Text Changes

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HEARING DATE: JULY 17, 2014

| | |
|---|---|
| *Date:* | July 10, 2014 |
| *Project Name:* | **Formula Retail and Large-Scale Retail Controls** |
| *Case Number:* | **2013.0936UT** |
| *Initiated by:* | Planning Department |
| *Staff Contact:* | Kanishka Burns, Project Manager<br>kanishka.burns@sfgov.org , 415-575-9112 |
| *Reviewed by:* | AnMarie Rodgers, Senior Policy Advisor<br>anmarie.rodgers@sfgov.org, 415-558-6395 |
| *Recommendation:* | Adoption of Planning Code Text Changes |

## Proposed Policy Changes and Planning Code Amendments

**The Way It Is Now:**

**Definition:** The Planning Code includes an identical definition of "Formula Retail[1]" in three locations: Section 303(i)(1), 703.3, and 803.6(c). The definition of formula retail hinges on the following 3 characterizations:

1. **Number of Establishments:** The Planning Code defines a formula retail use as retail sales activity or retail sales establishment with 11 or more other retail sales establishments located in the United States, including leases held[2].

2. **Features:** A formula retail use maintains two or more of the following features:
   - a standardized array of merchandise,

[1] Formula Retail is defined in Section 703.3 of the Planning Code as : "a type of retail sales activity or retail sales establishment which, along with eleven or more other retail sales establishments located in the United States, maintains two or more of the following features: a standardize array of merchandise, a standardized façade, a standardized décor and color scheme, a uniform apparel, standardized signage, a trademark or a servicemark."

[2] On June 19, 2013, the Board of Appeals adopted findings related to Appeal No. 13-030 that set a precedent to consider lease agreements equivalent to brick and mortar store that should count towards the threshold for becoming a formula retailer. http://www.sfgov3.org/Modules/ShowDocument.aspx?documentID=4949

- a standardized façade,
- a standardized décor and color scheme,
- a uniform apparel,
- standardized signage, a trademark or a servicemark.

3. **Use Category.** In addition, the Planning Code adds the following uses to the definition of retail, for purposes of formula retail regulation. 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 (Section 790.30);
   - Eating and Drinking Use, Take Out Food, Limited Restaurants, and Restaurants (Sections 790.34, 790.122, 790.90 and 790.91);
   - Liquor Stores (Section 790.55);
   - Sales and Service, Retail (Section 790.104);
   - Financial Service (Section 790.110);
   - Movie Theatre, Amusement & Game Arcade (Sections 790.64 and 790.4), and
   - Trade Shop (Section 790.14)[3]

The formula retail controls described in Articles 7 and 8 refer to 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.[4]

**Zoning Districts that Control Formula Retail.** Retail uses that fall into the category of formula retail, may be permitted, prohibited, or may require Conditional Use 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 districts.

Controls for formula retail uses are summarized in Figure 1 and Table 1, which show that formula retail uses typically require Conditional Use authorization in NC districts; are generally not permitted in residential districts;[5] and are permitted in downtown and South of Market industrial districts.

---

[3] Trade Shops are only defined as Formula Retail uses in Taraval Street NCD, Noriega Street NCD and Irving Street NCD.

[4] 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, 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.

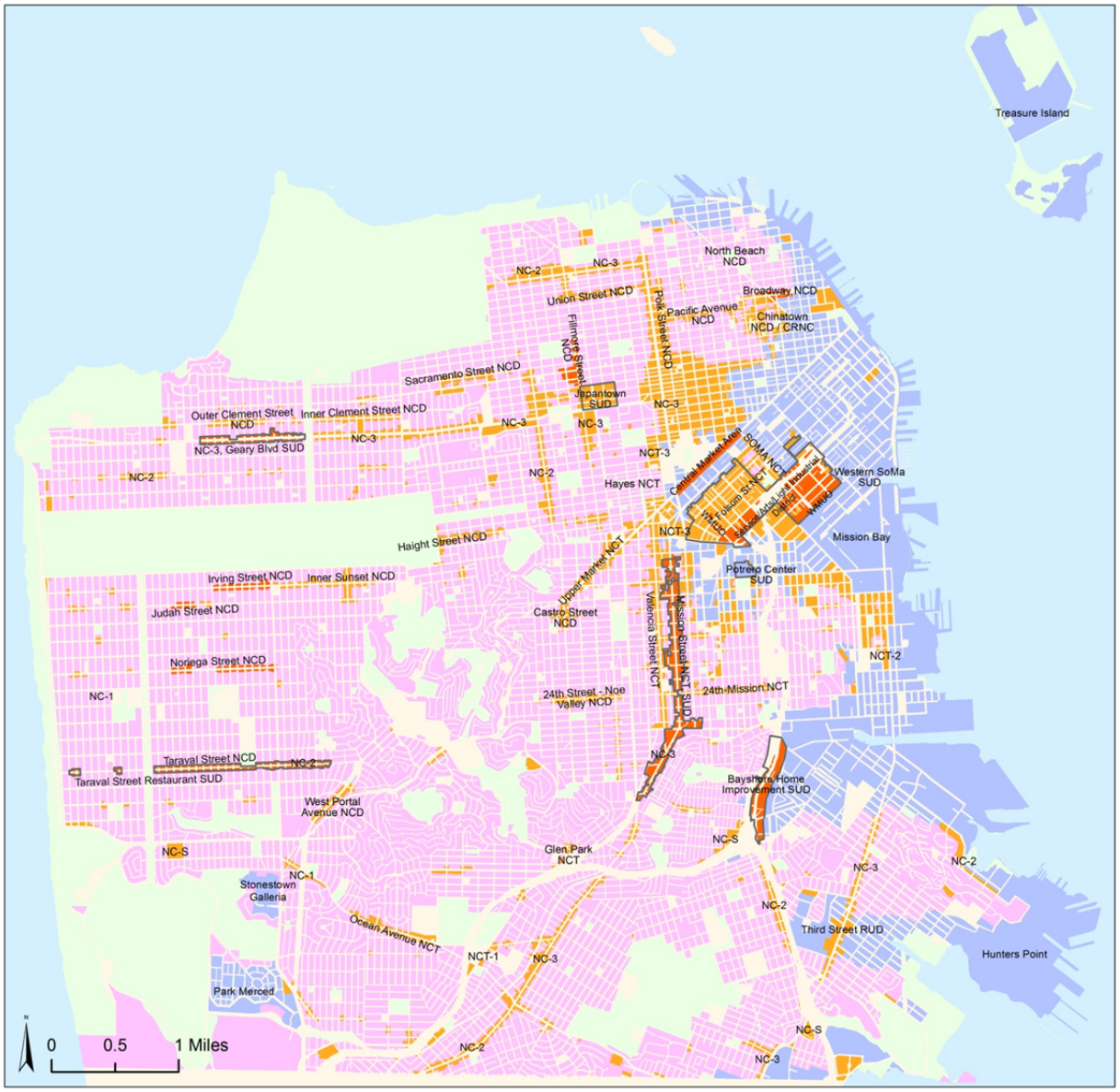
[5] Planning Code Section 209.8 prohibits commercial establishments in R Districts, with the exception of Limited Corner Commercial Uses in RTO Districts (Section 231). Commercial establishments are permitted in RC-3 and RC-4 Zoning Districts.

Within a number of zoning districts formula retail controls are further refined and differ from the basic uses and controls that apply to formula retail, as shown in the "Specific Restrictions" column of Table 1. These controls have typically been added in response to concern regarding over-concentration of certain uses, perceived threats to independent business and the related threat of neighborhood homogenization, or the impacts to neighborhood character caused by large use sizes within geographic area. Examples of these specific controls 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 1. Summary of Existing Specific Formula Retail Controls Applicable in Individual Zoning Districts**

| Zoning District | Underlying formula retail Control | Specific Restriction |
|---|---|---|
| **Upper Fillmore NCD** | Conditional Use | Formula retail Restaurants and Limited Restaurants not permitted |
| **Broadway NCD** | Conditional Use | Formula retail Restaurants and Limited Restaurants not permitted |
| **Mission Street formula retail Restaurant SUD** | Conditional Use | Formula retail Restaurants and Limited Restaurants not permitted |
| **Taraval Street Restaurant SUD** | Conditional Use | Formula retail Restaurants and Limited Restaurants not permitted |
| **Geary Boulevard formula retail Pet Store and Restaurant SUD** | Permitted | Formula retail Pet Supply Store not permitted; Formula retail Restaurants and Limited Restaurants not permitted |
| **Taraval Street NCD** | Conditional Use | Trade Shops are subject to formula retail controls |
| **Noriega Street NCD** | Conditional Use | Trade Shops are subject to formula retail controls |
| **Irving Street NCD** | Conditional Use | Trade Shops are subject to formula retail controls |
| **WSoMa Mixed-Use Office District (WMUO)** | Conditional Use | Formula retail not permitted if use is over 25,000 square feet |
| **Service/Arts/Light Industrial District (SALI)** | Conditional Use | Formula retail not permitted if use is over 25,000 square feet |
| **Upper Market NCT** | Conditional Use | CU required for Limited Financial Services and Business or Professional Services (18-month interim control) |
| **Central Market Area** | Permitted | CU required for formula retail fronting on Market Street between 6th and Van Ness (18-month interim control) |
| **Bayshore Boulevard Home Improvement SUD** | Permitted | formula retail over 10,000 square feet requires CU |
| **Third Street Formula Retail RUD** | Mixed zoning: in some zoning districts within this SUD formula retail | Any new formula retail requires CU |

| | | |
|---|---|---|
| | requires CU and in some districts formula retail is permitted. | |
| **Potrero Center Mixed-Use SUD** | Conditional Use | Relieves formula retail requirements for parcels which would otherwise require a CU |




New FR Not Permitted
Specific FR Controls
New FR Requires CU
New FR Permitted
Public or Unknown
FR-Related Special Use District

FR: Formula Retail
CU: Conditional Use authorization

P-zoned districts at times defer to the controls of the nearest Neighborhood Commercial district; see Planning Code Section 234.

See Figure 2 for explanation of specific restrictions in individual zoning districts.

Interim Draft

Strategic Economics, 2014;
Data: City and County of San Francisco, 2013.

*Figure 1. Existing Formula Retail Controls in San Francisco*

**Conditional Use Criteria.** When hearing a request for Conditional Use (hereinafter "CU") authorization for a formula retail use, Section 303(i)(3) outlines five criteria the Commission is required to consider in addition to the standard CU criteria set forth 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 CU authorization. In addition, a new CU authorization is required when the use remains the same, but the operator changes, except if the new retailer meets the following two criteria:

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, including but not limited to signage for the premises, the name of the premises and the general merchandise offered on the premises."

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

**Large-Scale Retail Uses.** Planning Code Section 121.6 establishes controls for large-scale retail uses as follows:

- All districts, except the C-3: require CU authorization for any retail use between 50,000-120,000sf. Retail uses above 120,000 sf are prohibited.
- C-3 District: require CU authorization for any retail use over 120,000sf. In addition, the establishment of a single retail use in excess of 120,000 gross square feet in a C-3 Zoning District shall be prohibited if it would sell groceries; contain more than 20,000 Stockkeeping Units (SKUs); and devote more than five percent (5%) of its total sales floor area to the sale of non-taxable merchandise.

When the Commission considers such large-scale retail uses, Section 303(j) provides that in addition to the standard CU criteria, the Commission shall also consider:

1. The extent to which the retail use's parking is planned in a manner that creates or maintains active street frontage patterns;
2. The extent to which the retail use is a component of a mixed-use project or is designed in a manner that encourages mixed-use building opportunities;

3. The shift in traffic patterns that may result from drawing traffic to the location of the proposed use; and
4. The impact that the employees at the proposed use will have on the demand in the City for housing, public transit, childcare, and other social services.

### The Way It Would Be:

The Planning Department is proposing that the Commission consider the following changes to formula retail controls.

1. **Refine the definition of formula retail, while maintaining a balance.**
    - **A. Numerical Threshold and Definition.** Increase numerical threshold and broaden definition to include more uses and business types.
    - **B. Location of Establishments.** Expand the definition of formula retail by including international locations and entitled locations.
    - **C. Use Categories.** Expand the definition of formula retail to include the following uses as formula retail uses:
        1. Limited Financial Service
        2. Fringe Financial Service
        3. Business and Professional Service
        4. Personal Services
        5. Massage Establishment
        6. Tobacco Paraphernalia Establishment
    - **D. Subsidiaries.** In response to significant public concern, establish a taskforce to further study the impact of subsidiary businesses and how these businesses may be regulated within the formula retail framework.
2. **Expand formula retail controls to areas of concern**
    - **A. Require Conditional Use authorization for formula retail establishments with frontage on Market Street between 6th Street and the intersection of Franklin Street, 12th Street and Market Street, in the C-3-G District.** Permanent controls to replace the existing interim controls on this portion of Market Street regarding specific formula retail uses.[6]
3. **Focus review on issues of most importance to residents.**
    - **A. Strengthen review criteria and process for new formula retail in districts with controls.** The existing Code provides a loose framework for formula retail review that has been applied inconsistently. Adopt Commission Guide for Formula Retail (see Exhibit C) as directed by the Code, which includes guidance on

[6] Resolution Number 305-13 [Board File No. 130712] is available online: https://sfgov.legistar.com/View.ashx?M=F&ID=2588632&GUID=63B9534F-8427-400B-A2FF-A17A25081C23

implementation of the Planning Code criteria as well as Performance-Based Design Guidelines (hereinafter "Commission Guide").

B. **Look more closely at Super Stores.** Require an economic impact statement to evaluate large-scale retail uses. Exempt grocery stores from submitting such reports required by other large-scale retail uses.

4. **Define specific circumstances where a change of Formula Retail operator should be considered a change of use.** Require a new CU authorization if there is a change of use category (including certain use subcategories); an increase in size of use; an intensification of a use; and where no CU has been previously granted. In all instances, ensure aesthetic impacts are minimized through compliance with the Commission Guide.
5. **Small Business Support**.
   A. **Outreach and Education.** Small businesses contribute significantly to the unique neighborhood character of each district. The Department recommends further outreach and education by OWED to maximize utilization of their programs to support neighborhood serving businesses.
   B. **Remove restrictions on independent financial services.** Allow non-formula retail financial and limited financial services to operate in NCDs that current require a CU for these services. Formula retail financial and limited financial services would still be subject to CU.
   C. **Allow walk-up facilities without a three foot setback.** The Planning Code currently requires walk-up facilities that are not recessed three feet from the front property line to get CU authorization. This requirement applies to ATMs. In addition to allowing one ATM to be visible from the street and in compliance with the Performance-Based Design Guidelines, the Department proposes to remove the CU requirement for walk-up facilities not recessed three feet from the front property line.

## BACKGROUND

Formula retail controls have been in effect in San Francisco since 2004. In the summer of 2013 a number of Supervisors introduced legislation to amend formula retail controls only in certain zoning districts. In response, the Planning Commission directed staff to conduct a study of formula retail controls before putting forth a Planning Department policy response. A detailed account of the background of formula retail controls can be found in Exhibit A.

## ISSUES AND CONCERNS

Formula Retail controls began in selected areas in 2004 and were adopted citywide as the Small Business Protection Act in 2006[7]. Now that the Department and the Commission have had 10 years of experience applying the formula retail controls and with benefit of the recent local studies, we can review the intent of the law and evaluate the effectiveness. It seems many of the concerns identified by the voters remain relevant in today's discussion. From the focus groups and public hearings this year, it seems the primary concerns with formula retail include 1) a displacement of critical goods and services to meet daily needs within the neighborhood; 2) a homogenization of the neighborhood's aesthetic; 3) a belief that formula retailers are of less economic benefit than nonformula retailers; and 4) assertions that formula retailers have an unfair competitive advantage over independent businesses. These expressed concerns are amplified as the use size of the formula retailer and the number of outlets increases. The issues and potential impacts are subjective. As such, the Conditional Use process provides the best remedy as this process allows for case by case analysis and the discretion of the Commission. Our department's core findings are that the existing conditional use process is working and can be adjusted to better serve the residents.

San Francisco's retail brokers completed a study of 28 neighborhood commercial streets in early 2014 and found that successful retail districts include the characteristics described below. All of these characteristics were further emphasized in similar studies conducted by the Office of Economic Analysis, the Planning Department and San Francisco Budget and Legislative Analyst.

- Massing: two blocks of shops have greater potential to become a popular shopping destination than two stores on a residential street;
- Tenant Mix: 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;
- Visibility: particularly if a store is on a corner, will impact whether shoppers will visit and increase the perceived presence of the establishment in the neighborhood;[8]

**Importance of Distinct & Diverse Neighborhoods to the City.** The Office of Economic Analysis (OEA) report "Expanding Formula Retail Controls: Economic Impact Report" (hereinafter "The OEA Report") found that formula retail controls may have an effect on the City's economy, through their effect on the City's neighborhoods. Proposition G was passed by a wide majority and can be read as evidence that many residents do not favor the unrestricted growth of formula retail in their neighborhoods. The OEA Report's analysis of the Bay Area housing market

[7] Proposition G, added 11/7/2006

[8] 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

suggests that San Francisco residents pay a premium to live in the City and neighborhood quality is included in the price of housing. However, the OEA is unable to quantify the impact of the presence of formula retailers on this neighborhood premium, if any. Consequently, the OEA Report recommends that the impact of formula retailers on neighborhood quality be weighed by directing the Commission to consider both the opinions of neighborhood residents and whether a proposed store could prevent "blight"[9].

As the center of neighborhood activity and through the shared use of commercial facilities, the commercial street plays the vital sociological role of linking neighborhood residents to one another and to the neighborhood.[10] Indeed, the orientation and development of a commercial street is a significant factor in determining a successful and interesting neighborhood.[11] The commercial street is perhaps the greatest source of vitality and character of a city neighborhood.[12] Neighborhood character is intimately related to a variety of commercial uses, and leads to broader diversity as Jane Jacobs observed in *The Death and Life of Great American Cities:*

> *Whenever we find a city district with an exuberant variety and plenty of commerce, we are apt to find that it contains a good many kinds of diversity also, including variety of its population and other uses. This is more than a coincidence. The same physical and economic conditions that generate diverse commerce are intimately related to the production, or the presence of other kinds of city variety.*[13]

As early as the Planning Commission recommendations made in May 1980 to the Board of Supervisors, the importance of the sociological function a locally-oriented commercial street performs was recognized[14]. The Neighborhood Commercial Rezoning Study found that such character and orientation should be preserved and encouraged.[15] San Francisco is a city of surprises. Its diverse and distinct neighborhoods are identified in large part by the character of their commercial areas. This feeling of surprise invites both residents and visitors alike to explore

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[9] Expanding Formula Retail Controls: Economic Impact Report, Office of Economic Analysis, February 12, 2014, Pages 20 and 28.

[10] Suzanne Keller, The Urban Neighborhood: A Sociological Perspective 1968, page 103.

[11] Mark Cohen, San Francisco's Neighborhood Commercial Special Use District Ordinance: An Innovative Approach to Commercial Gentrification, Golden Gate University Law Review, Vol. 13, Issue 2, September 3, 2010, Page 367 http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1300&context=ggulrev

[12] Jane Jacobs, The Death and Life of Great American Cities (1961) page 148

[13] Jane Jacobs, The Death and Life of Great American Cities, (1961), page 148.

[14] San Francisco Board of Supervisors Res. 432-80, 451-80 through 457-80 (1980).

[15] San Francisco Dept. of City Planning, Neighborhood Commercial Rezoning Study: Proposed Article of the Planning Code for Neighborhood Commercial Districts (January 1983); Department of City Planning, City and County of San Francisco, Memorandum to Dean Marcris (March 7, 1983).

the City. The recommendations put forth by the Planning Department today seek to continue working toward the ideal balance of commercial diversity to create and maintain unique neighborhoods as they evolve.

**Small Businesses.** Existing formula retail controls generally consider the neighborhood impacts when formula retailers locate in San Francisco neighborhoods. However, if the City also wants to protect the small business sector, there should be a focus on supporting small businesses to make them more competitive rather than hindering formula retailers. Through the process of developing the "San Francisco Formula Retail Economic Analysis" (The Department's Study), staff and consultants conducted one on one interviews and worked with small groups including independent retailers, small business owners, merchants associations, formula retailers, commercial brokers, neighborhood representatives and other stakeholders. The Department's Study found that landlords often perceive a benefit in renting to large established chains, which typically have better credit and can sign longer leases than independent retailers, lowering the risk that the tenant will be unable to pay its rent[16]. Conversely, the formula retail Conditional Use process may create a disincentive for formula retailers to be located in areas with controls.

**Economic Viability.** Small businesses have raised concerns that formula retailers are willing and able to pay higher rents than independent retailers, contributing to rapidly rising rents in the City's NCDs. Stakeholders have also raised concerns that some landlords prefer formula retailers or other established brands over independent retailers[17].

The development conditions and constraints of small infill sites may be one explanation. In terms of redevelopment potential, some vacant retail buildings that are too big for independent retailers are located on parcels that are too small to support enough residential units to justify the expense of demolition and new construction. Vacant retail buildings may present other challenges for redevelopment, based on location, adjacent uses, historical preservation and cost.

Department policy encourages mixed use developments, with ground floor retail and housing above. In Neighborhood Commercial Districts where height limits typically only allows four stories, the ground floor retail space accounts for a quarter of the entire development. For these projects, developers report difficulty in securing financing from a bank without a stable, known tenant. Developers must secure financing partners and lenders who want the stability of a commercial tenant with a strong credit rating as well as branding and name recognition. San Francisco developers prefer to have a mix of commercial tenants (both independent and formula

[16] Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 64.

[17] Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 64.

retailers), however the credibility of the formula retailer is what provides confidence for the lender. Formula retailers will typically be better equipped to sign long term leases and can provide the stability and activation that lenders look for[18]. In addition, formula retailers often serve as an anchor to energize a new development and bring foot traffic to a redevelopment area[19]. Sophisticated developers recognize that part of what makes San Francisco a desirable place is to live is the unique nature of its neighborhoods and seek to find a balance between formula retailers that can activate a neighborhood, energize lenders and anchor independent retailers to create a thriving district.

**Changing Nature of Retail.** As San Francisco continues to grow, underutilized parcels redeveloped as mixed use developments increase the amount of available commercial space[20]. As of 2012, 26 percent of the 55,471 establishments in San Francisco were retail establishments[21]. Commercial uses occupy 17 percent of the City's 46.9 square miles of land area and mixed uses occupy and additional seven percent (7%)[22]. Combined with the increasing amount of commercial space, residents express concern over the long-term commercial vacancies in some NCDs, as evidenced by the request of Supervisor Mar's office to prepare a policy analysis report on preventing and filling commercial vacancies. The Budget and Legislative Analyst report on commercial vacancies found that some reasons for commercial vacancies include building owners that purposely keep their retail space vacant to avoid investment and/or speculate that rents will increase significantly in the near future, absentee landlords who are less fervent about keeping their property occupied and large formula retail establishments resulting in the closure of nearby small non-formula retail establishments[23].

Real estate brokers report that the formula retail controls make it more difficult to fill vacancies, particularly of large spaces (more than 3,000 square feet). Cities across the country are finding it increasingly difficult to fill retail space with retail stores (i.e. businesses selling goods directly to consumers) as the number of potential retail tenants has shrunk due to competition with e-commerce and the consolidation of national retail brands[24]. As consumers seek an experience

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[18] Planning Department and OEWD Developer Roundtable, March 28, 2014

[19] Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 27.

[20] San Francisco is not alone in this trend. Nationwide the amount of retail space per person is increasing (http://urbanland.uli.org/economy-markets-trends/the-future-of-the-strip/).

[21] San Francisco Planning Department, Commerce and Industry Inventory, 2012, Page 18.

[22] San Francisco Planning Department, Commerce and Industry Inventory, 2012, Page 20.

[23] San Francisco Budget and Legislative Analyst, "Preventing and Filling Commercial Vacancies in San Francisco," August 20, 2013.

[24] Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 11.

rather than a specific product, real estate professionals note a nationwide shift toward retail uses that do not compete directly with online sales[25]. Uses which may be appropriate in retail spaces include eating and drinking uses, grocery stores, personal services, financial advising, automotive services and dry cleaners.[26]

The Department's Study reviews the Ocean Avenue NCT and found that the total number of stores reporting sales tax revenues declined from 62 in 2002 to 47 in 2013. The overall decline in stores may be linked to national trends including e-commerce competition and the consolidation of national retail brands. Traditional retail spaces across the country are increasingly being filled with service-oriented uses such as personal, financial and medical service uses[27]. These findings indicate that service-oriented uses play an important role in both filling vacancies and meeting the daily needs of neighborhood residents.

**Retail Clusters.** Comparison goods are products like clothes, shoes, furniture and cars. They are items shoppers like to test and compare before purchasing. Comparison retailers, such as apparel and accessories stores, are especially likely to cluster together in concentrated nodes. Comparison retailers are particularly likely to benefit from co-locating with similar retailers in destinations where shoppers can walk from store to store. We see this trend not only in the Downtown and Union Square area but also in some Neighborhood Commercial Districts like the Upper Fillmore and Hayes Valley. These retail clusters can provide convenience to shoppers and help to create a neighborhood identity.

At the same time, there is growing concern that such clusters, both formula and independent, are increasingly serving a luxury or high-end market and may be displacing businesses that serve residents' daily needs. Stakeholders, including people from both the Upper Fillmore and Hayes Valley neighborhoods, have observed that long-standing retail uses that once provided affordable goods and services to serve daily needs are being replaced by stores that predominantly sell jewelry, clothing, shoes and furniture – items that most households purchase

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[25] ChainLinks Retail Advisors, Fall/Winter 2013 Retail Review and Forecast.

[26] Stakeholders have expressed concern over e-commerce grocery services such as Amazon Fresh and Google Express. However, both of these services shop at local stores in many instances and make brick and mortar supplied specialty products delivery available through their websites. Amazon Fresh does maintain its own grocery distribution centers which compete directly with brick and mortar grocers. (https://fresh.amazon.com/Category?cat=spotlight&appendmp=true&pf_rd_s=center-5&pf_rd_p=1808047122&pf_rd_t=101&pf_rd_i=1&pf_rd_r=15QK7R6BD56K84GC450Y; http://online.wsj.com/news/articles/SB10001424127887324798904578526820771744676; https://www.google.com/shopping/express/?gclid=CLiu2r2HrL4CFQGTfgodJEgAZA#HomePlace:s=0&c=24&mall=SanFrancisco)

[27] Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 94.

only occasionally[28]. The shift towards higher-end, comparison shopping stores may in part reflect a regional and national decline in consumer demand from the middle class, accompanied by strong growth in retail sectors serving either the most affluent households or struggling low-income households[29].

**Parent and Subsidiary Companies.** Some of the pending Ordinances include expanding the definition of formula retail to include subsidiary companies. Subsidiaries are defined as establishments "where 50 percent 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 11 retail sales establishments located anywhere in the world."[30] The Department's Study found that expanding the definition to include establishments that are majority-owned by formula retail businesses is also likely to affect a small number of potential new businesses[31]. This proposed policy change is designed to address several recent cases of new or proposed establishments that did not have to go through the formula retail Conditional Use process even though they were owned by formula retailers, such as the Jack Spade store in the Mission (owned by Fifth and Company, the same holding company that owns Kate Spade an established formula retailer), and Athleta and Evolution Juice in the Upper Fillmore (owned by The Gap and Starbucks, respectively). However, based on the businesses that are already located in San Francisco, this proposed change is unlikely to have a wide-ranging effect. Citywide, subsidiaries account for only three percent of retail businesses in San Francisco that have 12 or more corporate family members. Most of these would already qualify as formula retail under the existing Planning Code, because they have 12 or more locations of the same trade name in the United States[32].

The Department believes that San Francisco is an international city that seeks to attract innovative business development[33]. San Francisco is attractive to start ups and experimental

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[28] Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 11.

[29] Nelson D. Schwartz, "The Middle Class is Steadily Eroding. Just Ask the Business World", The New York Times. February 2, 2014, www.nytimes.com/2014/02/03/business/the-middle-class-is-steadily-eroding-just-ask-the-business-world.html.

[30] Board File No. 130486 Legislative Digest https://sfgov.legistar.com/View.ashx?M=F&ID=2516654&GU-ID=F9DAA5F2-CDBF-4089-AFAE-3BA772DCADDE

[31] Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 117.

[32] Note that because the majority of subsidiaries have at least 12 outlets in the U.S., these businesses were generally considered to be "formula retail" for the purposes of the study.

[33] The Atlantic, "The World's 26 Best Cities for Business, Life and Innovation" by Derek Thompson published on May 6, 2011 lists San Francisco as the 3rd most successful international city, ranked #1 in percent of population with higher education and #2 in entrepreneurial environment and life satisfaction

services based on its ideal nature of a densely packed city with a high concentration of educated, young, urban professionals and its relationship to the greater Bay Area region[34]. Many established corporations choose San Francisco as one of their primary testing locations for new concepts[35]. Gap Inc. opened its first Athleta store in San Francisco in 2011. There are now over 50 Athleta locations across the country. Starbucks opened its second Evolution Fresh location in San Francisco in 2012 and even today there are only four locations. Starbucks is a Seattle based company (the three other Evolution Fresh stores are in Washington) with its Evolution Fresh production facility located outside Los Angeles[36]. Black Fleece, a subsidiary of formula retailers Brooks Brothers, opened its second location in San Francisco in 2009. There are still only two Black Fleece locations (the other is in New York City). These concept stores were tested in San Francisco and continue to be successful. At the time of their opening, they did not have standardized features meeting the formula retail definition and with the exception of Athleta, they still do not. Without the standardized features, these businesses do not contribute to the homogenization of a street face and neighborhood. In fact, the businesses are unique and draw people who are attracted to a new concept that can only be found here to the neighborhood

As specialty retailers face more and more competition from fast-fashion and online retailers, spin-off brands have become more ubiquitous. The Ann Taylor brand launched Loft in 1996, J. Crew launched Madwell in 2009 and Kate Spade has Kate Spade Saturday. The spin off brands are intended to capture the interest of younger customers or in some cases retain customers as they age. Spin off brands "give consumers a reason to shop at their physical stores once again with a new brand" and can help to retain brick and mortar retailers[37]. Proponents of regulating subsidiaries argue that an established formula retail chain could create a subsidiary that has the same offerings with a different name and distinguishing features, allowing this subsidiary to have an unfair advantage over independent retailers. Typically formula retail chains are heavily

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(http://www.theatlantic.com/business/archive/2011/05/the-worlds-26-best-cities-for-business-life-and-innovation/238436/#slide24). San Francisco ranked #6 in Price Waterhouse Coopers 2012 analysis of a city's performance and functionality by evaluating ten indicators across 60 variables to reveal how well-balances a city is for both businesses and residents (http://www.baruch.cuny.edu/nycdata/world_cities/cities-favorable_characteristics.htm). The Office of Economic and Workforce Development houses an International Trade and Commerce Division to attract new international business (http://www.oewd.org/International.aspx).

[34]Mike Elgan, "Why San Francisco Today is Like Every City Tomorrow" September 28, 2013, http://www.computerworld.com/s/article/9242772/Why_San_Francisco_today_is_like_every_city_tomorrow

[35]The New York Times, David Leonhardt, January 23, 2014 http://www.nytimes.com/2014/01/23/business/upward-mobility-has-not-declined-study-says.html?_r=0

[36] Los Angeles Times, Tiffany Hsu, October 8, 2013 http://www.latimes.com/business/money/la-fi-mo-starbucks-evolution-fresh-juice-20131008,0,1952256.story#axzz30Trx6E29

[37] Fashionista, Lauren Sherman, March 26, 2014 "Spin-Off Brands Are on the Rise" http://fashionista.com/2014/03/the-rise-of-spin-off-brand#awesm=~oD1KVicGqViw3J

invested in their brand recognition and do not make it common practice to create subdivisions with the same offerings and different branding.

The inherent advantage that large companies have over small independent companies, based on economies of scale and purchasing power, are mitigated through other regulatory avenues. Labor and benefit laws are one example of laws that exempt small businesses from having to provide employment benefits that large companies are required to provide, as further discussed in the Employment subsection of this document. Regulating land use based on ownership in an attempt to level the competitive retail playing field is a slippery slope to regulating the user rather than the use. Formula Retail controls in San Francisco have been successfully implemented for ten years.

While generally, subsidiaries are thought of as large established corporations funding a new concept to compete with existing businesses; subsidiary regulations can also affect small business owners. A local business owner, Adriano Paganini, owns 14 restaurants including seven Super Duper Burgers. The remaining restaurants are neighborhood serving unique restaurant concepts including Beretta, Delarosa, Starbelly, Pesce, Lolida and most recently, Uno Dos Tacos. Per Mr. Paganini's letter to the Board, he prides himself on crafting one-of-a-kind concepts to unique neighborhoods[38]. While Super Duper Burgers is not currently a formula retail use, it is on its way to becoming one if more than 11 locations open. If the definition of formula retail is expanded to include subsidiaries, all restaurants that Mr. Paganini owns more than 50 percent of may be considered formula retail establishments (after Super Duper Burgers reaches 11 locations) and any new restaurant concepts would be subject to Conditional Use authorization. If Mr. Paganini wished to open a clothing store it would also be considered formula retail because he also owns at least 50 percent of a formula retail chain.

Including subsidiaries is not only counter intuitive to small business growth and active neighborhood commercial districts; but it would also be extremely challenging to apply consistently. The formula retail evaluation process would require applicants to complete an affidavit certifying that the proposed business is not 50 percent or more owned by a company that also owns a formula retail use. In order to evaluate the application, the Department would need to evaluate the concentration of formula retail existing within the district. To truly assess these existing levels, it seems the Department should confirm that the ownership of all of the other retail sales and service establishments. The Planning Department would only investigate and verify these statements based on complaints. The Department would not be able to verify ownership stakes in companies that are not publically traded. Including subsidiaries would mostly affect large corporations whose ownership structures are subject to change at any time.

[38] Adriano Paganini, Letter to the Board of Supervisor (Attached in Public Comments)

When Jack Spade was trying to open in the Mission it was owned by Liz Claiborne Inc., which also owned Kate Spade. In February 2014 the ownership company was known as Fifth and Pacific Companies and is now known as Kate Spade & Company. Fifth and Pacific Companies is not a formula retailer, so again, the proposed definition to capture subsidiaries would not capture Jack Spade as it's owning corporation is not a formula retailer. Further, these large corporations regularly change names, ownership structures and buy and sell subsidiaries. Corporations could easily create separate holding companies to avoid formula retail controls.

The very definition of "formula retail" requires standardized features that make a use a "formula" use. In this case, the effort to include subsidiaries seems to conflict with the defining characteristics of the use. Further, review of a proposed formula retail use is identifying the concentration of formula retail uses within a given area. However, because Staff cannot review every potential business to determine their ownership structure, this concentration number would not be accurate. The proposed use would be considered formula retail by one part of the definition (ownership and financing) while the other uses in the area would be considered formula retail by another part of the definition (number of locations and standardized features). Expanding the formula retail definition 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.

**Recirculation of Local Dollars.** Often called the "multiplier effect", recirculation describes higher spending by local, non-formula retailers, generating positive multiplier effects as dollars circulate throughout the local economy, further expanding both spending and employment. One of the main concerns voiced by the public at both the Commission hearings and stakeholder meetings is that formula retailers do not recirculate tax revenue within the local economy. According to an average of ten studies conducted by Civic Economics, a much cited firm that produces studies comparing independent and formula retailers, spending by independent retailers generated 3.7 times more direct local spending than that of national chains.[39] Studies by this firm indicate that the percentage of revenue returned to the local economy may be as high as 52 percent for local businesses, and 13.6 percent for national chains[40]. When it comes to restaurants, 78.6 percent of independent restaurant revenue is returned to the local economy compared to 30.4 percent of restaurant chains[41]. The OEA Report found that formula retail controls primarily affect the economy by changing the retail prices paid by consumers, the

[39] The American Independent Business Alliance. "Ten New Studies of the 'Local Economic Premium". Published October 2012. Retrieved at http://www.amiba.net/resources/studies-recommended-reading/local-premium on 5/10/14.

[40] Civic Economics, "Indie Impact Study Series", Summer 2012, retrieved from http://www.localfirst.org/images/stories/SLC-Final-Impact-Study-Series.pdf

[41] Civic Economics, "Indie Impact Study Series", Summer 2012, retrieved from http://www.localfirst.org/images/stories/SLC-Final-Impact-Study-Series.pdf

amount of local spending by retail businesses, commercial rents and vacancy rates and the perceptions of neighborhood quality. In general, chain stores charge lower prices, but may spend less within the local economy. Research by the Office of Economic Analysis suggests that local retailers may spend up to 9.5 percent more within the local economy than chain stores, but charge prices that average 17 percent more. In stark contrast to the Civic Economic Reports, the OEA Report determined that, on balance, the economic benefits of greater local spending by non-formula retailers are outweighed by higher consumer prices[42].

**Employment**. The public has voiced concerns about differences in hiring practices and the quality of jobs offered by formula and independent retailers. As gathered from public comment at Planning Commission hearings and focus group meetings, the overwhelming public sentiment is that formula retail in San Francisco is more diverse in hiring practices and more willing to hire workers without experience and provide training. However, it has been difficult to substantiate these experiences with data. Studying employment and job quality factors as they related to formula retail has proved challenging. The Department's Study found relatively few sources that provide data on employment at the local level. The data found was limited by the need to protect the privacy of workers and firms. As a result of these constraints, detailed data on the demographics of workers or part-time versus full-time status are only available at the national level, through sources that do not distinguish between independent and formula retailers. Adding to this challenge, the definition of "formula retail" in our Planning Code is very specific and is neither reflected in the literature on retail employment nor possible to exactly replicate with available data sources.

The Department's Study found that nationally, retail stores and restaurants tend to provide workers with lower wages, more limited benefit coverage and fewer and more irregular work hours compared to other industries. These industries face pressure to compete on low pricing and customer convenience (e.g. to be open long hours and on weekends and holidays).[43] There is also significant variation in pay and job quality within the retail sectors. For example, some firms

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[42] 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

[43] Francoise Carre, Chris Tilly and Diana Denham, "Explaining Variation in the Quality of U.S. Retail Jobs" (presented at the Annual Meeting of the Labor and Employment Relations Association, Denver, CO, 2010), http://www.russellsage.org/sites/all/files/Carre-Tilly-Retail%20job%20quality-LERA-01.03.10-final-rev2.pdf; Francoise Carré and Chris Tilly, *Short Hours, Long Hours: Hour Levels and Trends in the Retail Industry in the United States, Canada, and Mexico*, Upjohn Institute Working Paper 12-183 (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research., 2012), http://www.econstor.eu/handle/10419/64322; Annette D. Bernhardt, *The Future of Low-Wage Jobs: Case Studies in the Retail Industry*, IEE Working Paper (Institute on Education and the Economy, Teachers College, ColumbiaUniversity,1999), http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.41.885&rep=rep1&type=pdf.

pay more and provide better benefits to attract better talent, reduce turnover and increase productivity. Examples include many electronics, hardware and high-end clothing stores that compete for customer business based on quality of service and where knowledgeable salespersons are often highly valued. In contrast, other stores put a higher priority on low costs and low prices, and tend to pay lower wages.[44] Walmart is the classic example; workers there earn approximately 12 percent less than other retail workers and 14.5 percent less than workers at large retailers and rely heavily on public programs for health care and other needs.[45] Beyond business strategy, other factors that influence retail job quality include state and local labor laws, unionization, and the competitiveness of the local labor market.[46]

Nationally, retail firms with fewer than 10 outlets tend to pay higher average wages than firms with more than 10 outlets. Studies have shown that large firms are generally more likely to offer better health care coverage, hire more minorities and comply with labor laws compared to smaller firms[47]. A 2001 national survey of employers and households found that larger firm size was associated with hiring significantly more African-Americans[48]. These differences between small and large firms may have to do with a number of factors, including awareness of labor laws, hiring methods and financial resources.

While there is significant variation in the provision of benefits and hiring practices, San Francisco's progressive labor laws raise the floor for all workers. San Francisco is nationally known for its progressive laws improving pay, access to health care and paid sick leave for all workers, particularly lower-wage workers.[49] Table 2 shows the required provisions of employment benefits in San Francisco based on firm size and employment status. Because benefits such as paid sick leave and health care are applicable based on the number of employees, firms with more employees will be required to provide more benefits. Most formula retailers are likely to be subject to the Health Care Security and Family Friendly Workplace Ordinance given that they have more than 11 locations and therefore will have more than 20 employees.

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[44] Carré, Tilly, and Denham, "Explaining Variation in the Quality of U.S. Retail Jobs."

[45] Ken Jacobs, Dave Graham-Squire, and Stephanie Luce, *Living Wage Policies and Big-Box Retail: How a Higher Wage Standard Would Impact Walmart Workers and Shoppers*, Research Brief (UC Berkeley Center for Labor Research and Education, 2011), http://www.mef101.org/Issues/Resources/11-0428%20-%20Bigbox%20Living%20Wage%20Policies.pdf.

[46] Carré, Tilly, and Denham, "Explaining Variation in the Quality of U.S. Retail Jobs."

[47] Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 53.

[48] Philip Moss and Chris Tilly, *Stories Employers Tell: Race, Skill, and Hiring in America* (Russell Sage Foundation, 2001).

[49] Michael Reich, Ken Jacobs, and Miranda Dietz, eds., *When Mandates Work: Raising Labor Standards at the Local Level*, 2014, http://www.ucpress.edu/book.php?isbn=9780520278141.

**Table 2: San Francisco Labor Laws**

| Law | Employer Applicability | Requirement | Effective Date |
|---|---|---|---|
| **Minimum Wage Ordinance** | All employers with employees who work in San Francisco more than two hours per week, including part-time and temporary workers* | All employees who work in San Francisco more than two hours per week, including part-time and temporary workers, are entitled to the San Francisco minimum wage ($10.74 per hour as of January 2014). | February 2004 |
| **Paid Sick Leave Ordinance** | All employers** with employees who work in San Francisco, including part-time and temporary workers | All employees who work in San Francisco, including part-time and temporary workers, are entitled to paid time off from work when they are sick or need medical care, and to care for their family members or designated person when those persons are sick or need medical care. | February 2007 |
| **Health Care Security Ordinance** | Employers with 20 or more employees nationwide, including part-time and temporary workers (and non-profit employers with 50 or more employees) | Employers must spend a minimum amount (set by law) on health care for each employee who works eight or more hours per week in San Francisco. The expenditure rate varies by employer size; in 2014, for-profit businesses with 20 to 99 employees nationwide are required to spend $1.63 per worker per hour paid; employers with 100+ employees nationwide are required to spend $2.44 per worker per hour paid. | January 2008 |
| **Family Friendly Workplace Ordinance** | Employers with 20 or more employees nationwide, including part-time and temporary workers | Employers must allow any employee who is employed in San Francisco, has been employed for six months or more by the current employer, and works at least eight hours per week on a regular basis to request a flexible or predictable working arrangement to assist with care-giving responsibilities. | January 2014 |

**Neighborhood Character & Homogenization.** The intent of the neighborhood commercial districts is to provide convenience retail goods and services, primarily during the daytime hours. As the commercial intensity of the district varies, each district has its own scale and character description in the zoning control table. The districts feature commercial on the lower floors with residential uses above. The largest of these districts not only serve the immediate neighbors but also may offer a wide variety of comparison and specialty goods and services for the surrounding neighborhoods. Even in these cases, however, the Code is clear that a special emphasis on neighborhood-serving businesses is paramount[50]. Beyond that, each district begins with a description of the character so that future development can be compatible with the overall

[50] Planning Code Section 710-745. The largest NC district, NC-3, maintains an emphasis on neighborhood serving businesses.

character. The very nature of the Commission's discretion on Conditional Use applications requires that neighborhood compatibility be considered with each authorization. Certain neighborhoods may be more defined by uniqueness than other neighborhoods. For instance, the vice president of the Valencia Street Merchants Association described the relationship between formula retail and this neighborhood by stating, "We appreciate you can go a mile on Valencia Street and not see one formula-retail store," in the New Yorker[51]. As quoted earlier in this report, the OEA Report described an economic value to San Francisco that is inherent in its desirability as a unique city. This sentiment is reflected in other cities too. "The reaction is largely driven by sameness," says Dick Outcalt, a partner in Outcalt & Johnson Retail Strategists in Seattle. "The populace is more empowered protecting the feel of a community because they realize that commercially, aesthetically and from the property value standpoint, uniqueness has value[52]."

While homogenization is a factor, community participation is also part of neighborhood character. During the Department's focus group meetings, stakeholders reported difficulty in garnering the involvement of formula retail managers who often needed remote approval from corporate offices. The Department's Study found that community members in the Ocean Avenue NCT note that it is challenging to establish ongoing relationships with formula retailers because the managers rotate between stores or do not have the authority to make decisions[53]. New York City also had concern about the loss of "mom-and-pop" stores being replaced by Whole Foods, TJ Maxx, and Sephora. When asked by the New York Times about the issue, a neighbor replied, "We've lost a lot of feeling of being a community. There's a sense of community that comes from living with small merchants whom you get to know[54]."

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

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[51] Lauren Smiley. "What It Means to Keep Chain Stores Out of San Francisco" September 20, 2013.*The New Yorker*. Retrieved from http://www.newyorker.com/online/blogs/currency/2013/09/what-it-means-to-keep-chain-stores-out-of-san-francisco.html

[52] Haya El Nasser. "Cities put shackles on chain stores" July 20, 2004. *USA Today*. Retrieved from http://sustainableconnections.org/ex-pdfs/USA%20Today%20Cities%20put%20shackles.pdf

[53] Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 91.

[54] Joseph Berger. "Fear (and Shopping) When Big Stores Move In" June 4, 2010. *The New York Times*. Retrieved from http://www.nytimes.com/2010/06/05/nyregion/05metjournal.html?_r=2&

providing clear branding for consumers, counters the general direction of 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.

This effect has an impact on tourists and locals alike. A quick stroll through "Yelpers" review of Fisherman's Wharf elicits the following quotes[55]:

- *"This place is gross… and reeks of chain restaurants and poor examples of badly executed notions of Americana."*
- *"This area has some restaurants but they are chains or have only average food."*
- *"Restaurants are a mix of chains and tourist favorites."*
- *"Understandably, there are cheesy chain restaurants, expensive ventures for the kids and family, and more people crammed into one area than all of the rest of the city. There will be lots of distractions, gimmicky souvenirs to be sold, but that's not to say it's all a bad time."*
- *"It is fun to walk and window-shop here. Also, you can chose between fine seafood restaurants and street kiosk to satisfy any craving. The problem: too many chain restaurants spoil an area that should be an authentic neighborhood of San Francisco."*

While Fisherman's Wharf is not subject to formula retail controls, the sentiment above is a good indicator of some general reactions to a perceived overabundance of formula retail.

**The Existing Conditional Use Process.** The Department's Study and the OEA Report found that the Conditional Use process is working to retain unique neighborhood character. The relatively low concentration of formula retail in commercial and mixed-use neighborhoods with formula retail controls in places suggest that the controls are successful in limiting the amount of formula retail in the City's Neighborhood Commercial Districts[56]. The Conditional Use process creates disincentives for formula retailers to locate in NCDs. The upfront time and financial investment required to go through the Conditional Use process results in many formula retailers being unwilling to consider locating in the NCDs. However, formula retailers are more likely to submit applications in neighborhoods with strong market demand for new retail and where they anticipate a positive reception by the community. The process empowers the local community by giving community members the power to keep unwanted formula retail uses out. Excluding pending applications, 75 percent of formula retail Conditional Use applications have been

[55] User reviews from Fisherman's Wharf Yelp! page. Retrieved on May 9, 2014 from http://www.yelp.com/biz/fishermans-wharf-san-francisco-3

[56] Page 28 of The Department's Study determined that formula retailers account for ten percent of the retail establishments in commercial/mixed-use districts with controls in place, while they account for 25 percent of the retail establishments in commercial/mixed-use districts without controls.

approved[57]. In cases where community members have reached a clear consensus that a proposed formula retailer is not desirable and appeared at Planning Commission hearings, the applications have often been denied or withdrawn. In general, community reaction to formula retail Conditional Use applications appears to depend on factors such as the potential impacts on existing and beloved businesses and whether the prospective formula retail tenants are filling long-standing vacancies and/or meeting unmet community needs.

Conversely, the City's formula retail controls may be a contributing factor in some long-term vacancies, particularly of larger storefronts. Brokers report that large, deep spaces may sit empty for extended periods of time if a formula retail Conditional Use application is disapproved or withdrawn, and that these vacant spaces can act as a drag on the vibrancy and overall performance of the surrounding district. Formula retailers can generally fill more floor space than independent retailers, and can more often afford to make needed tenant improvements and pay rents required to lease larger storefronts. While formula retail controls may make leasing some spaces more challenging, obsolete building designs, significant maintenance needs and challenging locations also likely contribute to long-term vacancies in many cases. There are significant limitations to the approach that formula retail controls encourage property owners to subdivide or redevelop large, vacant retail spaces. Some large retail buildings are not possible to subdivide into multiple smaller storefronts that would be more suitable for independent businesses because of structural or design issues[58].

The Conditional Use process allows evaluation on a case by case basis and for consideration of community input. One recent example is Pet Food Express, a locally based chain that would have activated a long vacant building, potentially promoted additional commercial investment, provided two services that were not being provided in the neighborhood, increased street front transparency and improved the streetscape[59]. The project sponsor provided an economic impact study and had 42 speakers in favor of the project and 41 speakers opposed[60]. The controversial project was ultimately found to not be necessary or desirable and was disapproved.

## REQUIRED COMMISSION ACTION

The Commission is being asked to adopt the attached Ordinance and associated Commission Guide for Formula Retail.

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

[58] Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 6.

[59] Case No. 2013.0128C, heard on August 8, 2013

[60] Planning Commission Minutes for Case No. 2013.0128C heard on August 8, 2013

## POLICY RECOMMENDATIONS AND BASIS FOR RECOMMENDATIONS

The Department recommends that the Commission retain the existing framework of Conditional Use authorization, while making some changes to better respond to issues of concern and to facilitate consideration of formula retail uses which enrich a neighborhood. The proposal seeks to maintain the original intent of formula retail controls while adding rigor and consistency to the process. The specific recommendations of the Department and a discussion of why the changes are being proposed follows:

1. **Refine the definition of formula retailer, while maintaining a balance.** Increase the numerical threshold from 11 to 20 and broaden the definition to include more use types and businesses located outside of United States. In addition to physical establishments, locations that are permitted or entitled by the local jurisdiction would now be added toward the threshold for formula retail. The Department recommends not counting merely signed leases without any land use entitlements towards this threshold.

   **A. Numerical Threshold.** Formula retail is currently defined as a retail establishment which, along with 11 or more retail sales establishments located in the United States, maintains two or more standardized features. When a qualifying use applies for the twelfth or more location and the new application is located in a zoning district with formula retail controls, it is required to procure Conditional Use authorization from the Planning Commission. When the original formula retail legislation was proposed in 2003, the definition of formula retail was four or more locations[61]. Through the Board of Supervisor's review of the ordinance, the number was increased to 11 to avoid negatively impacting small businesses.

   Blue Bottle and Philz Coffee recently reached 14 locations and San Francisco Soup Company has 16 locations. These businesses are now considered formula retail and reviewed under the same process as much larger businesses such as Starbucks (over 20,000 locations) and Subway (over 40,00 locations). According to the San Francisco Formula Retail Economic Analysis, approximately half of San Francisco's formula retail establishments are associated with companies that have more than 1,045 branches and subsidiaries. Only five percent of formula retail establishments in San Francisco are associated with businesses with fewer than 20 total branches[62]. Raising the number of locations to 20 would mean that relatively small businesses such as Blue Bottle Coffee, Philz Coffee and Patxi's Pizza are no longer considered formula retail. The formula retail definition would continue to capture the majority of well-known formula retailers (such

[61] Board File No. 031501 https://sfgov.legistar.com/View.ashx?M=F&ID=704645&GUID=36C7A18F-7673-4720-BDCD-8A7F0FCE9DC6

[62] This number is based on the number of existing formula retailers in San Francisco, i.e. those with more than 11 locations.

as Safeway, Wells Fargo, Peets Coffee, Gap) as well as some medium-sized businesses that have grown substantially, such as Umami Burger, Boudin, Extreme Pizza and the Cheesesteak Shop. Retailers such as Steven Alan, James Perse and Athleta would continue to be defined as formula retailers. Meanwhile, the number of smaller businesses such as Super Duper Burger and San Francisco Soup Company can continue to grow in San Francisco[63].

The Department recommends counting locations that are permitted or entitled towards the numerical threshold. As previously discussed, a Board of Appeals ruling required that leases held count as potential locations toward meeting the formula retail threshold. However, leases are private agreements between landlords and tenants and cannot be independently verified. Leases are sometimes held for years before a retailer operates in a location. The long vacant former Walgreens on Ocean Avenue and the proposed Pet Food Express location on Lombard Street are local examples of this phenomenon. An entitled or permitted location is one that has already been approved to operate by a local jurisdiction. The proposed establishment would have at this point invested time and money in ensuring an operation. Further, entitlements and permits are public record and can be independently verified. These pending locations which have received land use approvals have a much greater likelihood of coming to fruition and should therefore be counted toward the numerical threshold of 20. This proposed change should address the concern of formula retail establishments coordinating their openings in an effort to circumvent San Francisco's formula retail controls.

**B. Location of Establishments.** Similarly, including international locations toward the 20 locations would balance the increase in number of locations while still allowing small businesses to grow. Data on the number of establishments located internationally were not available; however, by looking at the headquarters of formula retailers we can get an approximation of where retailers are primarily located. According to the Department's Study, within San Francisco, only 10 percent of businesses with 12 or more corporate family members are part of a corporation that is headquartered outside the United States[64]. A vast majority of these have long established presences in the U.S. and already qualify as formula retail under the current Planning Code. For example, highly recognizable brands such as T-Mobile (based in Germany), 7-Eleven (headquartered in Japan), The Body Shop (headquartered in England) and Sephora (based in France) account for many of the 130 businesses headquartered outside of the U.S.

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[63] Numbers are based on individual websites, accessed 4/7/2014.

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

The proposal to include internationally based retailers who desire to open a flag ship U.S. location are unlikely to be hindered by formula retail controls, as flagship stores are likely to be located in a major regional shopping center such as Union Square, which does not have formula retail controls. When Japan-based Uniqlo opened its first west coast store in Union Square, it had 1,132 stores in 13 countries. The U.S. COO said, "We chose San Francisco because it's a hotbed of global technological innovation.[65]" San Francisco is a desired retail location and will continue to be so.

By increasing the number of global locations to 20, businesses such as Uniqlo, Muji, Daiso, Loving Hut, Aesop and Oska would continue to be formula retailers. The proposed increase can expect to capture approximately the same number of formula retailers that are currently captured. The number of retailers that would newly be captured by counting international locations is very small[66].

**C. Use Categories.** The Department recommends expanding the definition of formula retail to include Limited Financial Service, Fringe Financial Service, Business and Professional Service, Tobacco Paraphernalia Establishments, Massage Establishments, and Personal Services.

1. **Limited Financial Service** is defined in Planning Code Section 790.112 as "*A retail use which provides banking services, when not occupying more than 15 feet of linear frontage of 200 square feet of gross floor area. Automated teller machines, if installed within such facility or on an exterior wall as a walk-up facility, are included in this category; however, these machines are not subject to the hours of operation…*" These uses tend to be ATMs but there is nothing in the Code that prevents a small branch from opening under this use category and it is therefore analogous to Financial Services, which are already subject to formula retail controls. The number of Limited Financial Service uses that would be captured by this definition change are not available because the data combines this use category with Financial Services in general. Supervisor Weiner's Interim Controls in the Upper Market Street NCT currently requires Conditional Use authorization for all Limited Financial Service uses, indicating a community desire to more heavily regulate these uses.

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[65] Carolyn Said, "Uniqlo Opens S.F. Store," *SFGate*, October 4, 2012, http://www.sfgate.com/business/article/Uniqlo-opens-S-F-store-3919489.php#src=fb.

[66] Strategic Economics reported that almost all (if not all) of the businesses with locations in San Francisco that are headquartered outside the U.S. and are currently captured by the definition of formula retail would still be captured by the definition of formula retail if the threshold was raised to 20 locations worldwide. Only one instance of an internally based retailer that may not meet the 20 location threshold was found. This example was Sheng Kee Bakery, which has 12 U.S. locations but is headquartered in Taiwan. The company appears to have locations in Taiwan, Singapore and Canada but it is unclear if they are all actually the same company. If they are the same company, there are fewer than 8 locations outside the U.S. (Reported via email on May 6, 2014.

The proposal includes an exemption for Limited Financial Services that are located within another use and that are not visible from the street and for a single exterior ATM that follows the draft Commission Guide for Formula Retail (Exhibit C) for Limited Financial Services. ATMs are currently further regulated as walk-up facilities and require a Conditional Use authorization if they are not recessed three feet from the front property line. The proposal includes removing this CU requirement, further discussed under Small Business Support. Board File No, 12-0047, which adopted Financial Services as a use category subject to formula retail controls found that Limited Financial Service uses would allow smaller size financial services with less of an impact on the aesthetic character and vibrancy of a NCD. While banking services are a desired neighborhood serving use, a row of ATMs or an ATM vestibule do not contribute to the vibrancy of street activity. Limited Financial Services, similar to Financial Services, tend to include maximum signage serving as advertising and branding on a street face. The proposed Commission's Guidelines include specific guidance to minimize ATM signage and design them to be pedestrian scaled. San Francisco is not unique in dealing with the aesthetic impacts that banking services have on neighborhood commercial districts. New York City addressed this issue in the Upper West Side neighborhoods 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's NCDs generally feature storefronts that are 15 to 25', necessitating further controls applied to Limited Financial Services.

2. **Fringe Financial Service.** Fringe Financial Service is defined in Planning Code Section 790.111 as "*A retail use that provides banking services and products to the public and is owned or operated by a "check casher" as defined in California Civil Code Section 1789.31, as amended from time to time, or by a "licensee" as defined in California Financial Code Section 23001(d), as amended from time to time.*" Fringe Financial Services are regulated within the Fringe Financial Service Restricted Use District (Sec. 249.34 of the Planning Code) because they have the "*potential to displace other financial service providers, including charter banks, which offer a much broader range of financial services, as well as other desired commercial development in the City, which provides a broad range of neighborhood commercial goods and services.*" The Fringe Financial Service RUD only applies to the Mission Alcoholic Beverage District SUD, the North of Market Residential SUD, the Divisadero Street Alcohol RUD, the Third Street Alcohol RUD and the Haight Street Alcohol RUD. By applying the definition of formula retail to Fringe Financial Services, the Department will be better equipped to evaluate future locations in Neighborhood Commercial Districts, as well as evolving Mixed Use Districts. Supervisor Kim's Interim Zoning Controls on Market Street require

Conditional Use authorization for new Fringe Financial Services that front on Market Street between 6th Street and Van Ness Avenue, demonstrating a community desire to further control Fringe Financial Services. Currently, there are 10-20 fringe financial uses within San Francisco that have more than 20 locations[67].

3. **Business and Professional Service.** Defined in Planning Code Section 790.108 as "*A retail use which provides to the general public, general business or professional services, including but not limited to, architectural, management, clerical, accounting, legal, consulting, insurance, real estate brokerage, and travel services. It also includes business offices of building, plumbing, electrical, painting, roofing, furnace or pest control contractors…It does not include research service of an industrial or scientific nature in a commercial or medical laboratory, other than routine medical testing and analysis by a health-care professional or hospital.*" Business and professional services such as tax preparation firms, realtors and insurance agencies offer a retail sale or service and making them subject to formula retail controls would be consistent with the spirit and intent of the Act. Independent business and professional services account for approximately 95 percent of existing business and professional services in San Francisco. The remaining five percent bear the hallmarks of formula retail uses with standardized signage, décor and services[68].




**Figure 2: State Farm Insurance offices (Business and Professional Service)**

[67] Source: Dun & Bradstreet, 2012; Strategic Economics, 2014. Based on Dun & Bradstreet business data that have not been independently verified; all numbers are approximate and includes branches or subsidiaries located anywhere in the world.

[68] Dun & Bradstreet, 2012; Strategic Economics, 2014. Based on Dun & Bradstreet business data that have not been independently verified; all numbers are approximate.

Expanding the definition of formula retail to include business and professional services will apply to businesses such as H&R Block, and real estate and insurance offices such as Coldwell Banker and State Farm Insurance. These businesses often seem to present the standardized features that determine when multiple outlets should be considered formula retail and therefore should be captured in the definition.

4. **Tobacco Paraphernalia Establishment.** Defined in Planning Code Section 790.123 as *"a retail use where more than 10% of the square footage of occupied floor area, as defined in Section 102.10, or more than 10 linear feet of display area projected to the floor, whichever is less, is dedicated to the sale, distribution, delivery, furnishing or marketing of Tobacco Paraphernalia from one person to another…"* Tobacco paraphernalia establishments, like liquor stores are generally not permitted or require a CU in most zoning districts. The Department is aware of two tobacco paraphernalia establishments that would also be Formula Retail uses, however, neither one is located in San Francisco.

5. **Massage Establishments.** Currently there are two avenues to seek an entitlement to operate a massage operation. The process heavy Conditional Use (CU) authorization for "Massage Establishment" required in all NC and mixed use, commercial, and PDR Zoning Districts (Planning Code Sections 790.60, 890.54, 281.1). This process requires filing with the Department of Public Health (for back ground checks and completion of rigorous DPH licensing requirements of therapists) then completing the CU process which requires a neighborhood notification (per Planning Code Section 311) and a public hearing in front of the Planning Commission; or, a massage operator may seek a building permit to operate under the Planning Code's Medical Service use (Planning Code Sections 790.114, 890.114) if all massage therapists are CA State certified via the state's Massage Therapy Council (CAMTC). Most massage establishments, including the recognizable establishments such as Massage Envy and Burke Williams, have elected to establish under the easier Medical Service use entitlement process. Under the proposal, all massage establishments not classified as a Medical Service use would be subject to FR CU controls. While the Department is unaware of any formula retail Massage Establishments, due to nuisance concerns it is appropriate to regulate these establishments as formula retail if the defining features of formula retail are present.

6. **Personal Service.** Personal service is defined in Planning Code Section 790.116 as "*a retail use which provides grooming service to the individual, including salons, cosmetic services, tattoo parlors and health spas or instructional services not certified by the State Educational Agency, such as art, dance, exercise, martial arts and music classes*". Personal

service includes uses such as gyms, fitness studios, and hair and nail salons. While personal services are a desired daily needs use in many neighborhoods, gyms in particular, are generally thought of as chains with the standardized features as seen in traditional formula retailers. Gyms range from large use sizes such as 24 Hour Fitness, Equinox and Crunch, however, the trend of smaller boutique fitness studios is emerging in most metropolitan cities[69]. These smaller (use size) fitness studio chains such as Pop Physique, Soul Cycle and Dailey Method can have the same standardizing impact on a neighborhood as they grow and proliferate. Dailey Method and Bar Method are San Francisco based businesses now with more than 55 locations each. Additional fast growing fitness studio companies such as CrossFit, Pop Physique, and Soul Cycle are more likely to be aesthetically compatible with a NCD due to their use size as well as their ability to serve the daily needs of residents[70]. However, they should still be subject to the same review process as other chain retail sales and services.

Other personal service uses such as hair and nail salons that have grown to become formula retail uses should be treated as such. Hair salons include Dry Bar (37 U.S. locations) and Super Cuts. Nail salons are not as well known, however Regal Nails is approaching 1,000 franchised locations and Dashing Diva has 18 locations. There is a demonstrated interest in successfully creating a formula retail nail salon concept[71]. Together, these uses can have the same homogenizing effects of traditional formula retail stores offering goods rather than services. Their success is based on brand recognition and formulaic offerings and should be regulated as such.

## 2. Expand formula retail controls to areas of concern.

**A. Require Conditional Use authorization for formula retail establishments with frontage on Market Street between 6th Street and 12th Street.** Long-standing policies adopted in the General Plan acknowledge the importance of Market Street as the city's

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[69] Pop Physique is currently in 17 U.S. locations with 3 new locations opening soon. Soul Cycle has 29 U.S. locations. Soul Cycle is now owned by Equinox.

[70] Kate Rockwood, "The World's Top 10 Most Innovative Companies in Fitness", *Fast Company*, February 11, 2013 http://www.fastcompany.com/most-innovative-companies/2013/industry/fitness. CrossFit opened 1000 United States locations between 2012-2013 and Soul Cycle has 60 locations planned by 2015.

[71] Lydia Dishman "Meet the Woman Who Wants to Make MiniLuxe the "Starbucks of Nail Salons"", *Fast Company*, May 30, 2012, http://www.fastcompany.com/1838616/meet-woman-who-wants-make-miniluxe-starbucks-nail-salons and Sree Roy, "Can One of These Emerging Salon Chains Become the "Starbucks of Nails"?", *Nails Magazine,* September 1, 2007, http://www.nailsmag.com/article/40304/can-one-of-these-emerging-salon-chains-become-the-starbucks-of-nails both discuss how nail salons can be franchise concepts similar to Starbucks based on standardized features and characteristics.

cultural and ceremonial spine. Given this elevated importance to the image of the City, the Department recommends permanent formula retail controls to replace the current interim controls along Market Street and expanding the area of controls from Van Ness to 12th Street. In January 2010, the Mayor's Office of Economic and Workforce Development launched the Central Market Partnership, a public/private initiative to renew and coordinate efforts to revitalize the Central market neighborhood. In November 2011, the Mayor released the Central Market Economic Strategy. In July 2013, Supervisor Kim sponsored legislation to place interim formula retail controls on Market Street between Van Ness and 6th Street in order to ensure that new development retained a unique neighborhood character.

This portion of Market Street is zoned C-3-G: Downtown General Commercial and had no restrictions on formula retail uses, prior to the adoption of interim controls. The C-3-G District is described in Planning Code Section 201.3, "This district covers the western portions of downtown and is composed of a variety of uses: Retail, offices, hotels, entertainment, clubs and institutions, and high-density residential. Many of these uses have a Citywide or regional function, although the intensity of development is lower here than in the downtown core area. As in the case of other downtown districts, no off-street parking is required for individual commercial buildings. In the vicinity of Market Street, the configuration of this district reflects easy accessibility by rapid transit."

Between 2011 and 2013, 17 new companies moved into the Central Market area. As this area experiences major growth, now is the time to ensure the land use controls create a neighborhood that is worthy of the importance of the street. Over 5,571 residential units are under construction or approved and 40 additional development projects are in the pipeline[72]. Central Market is a burgeoning mixed-use neighborhood and formula retail controls will help shape the future development of the community. The Department recommends applying the existing Conditional Use process to formula retail establishments that front on Market Street between 12th Street and 6th Street in order to ensure the development of balanced neighborhood character rather than producing a bland or generic retail presence. The approach itself is balanced in applying only to storefronts with a frontage on Market Street rather than the entire Central Market area. Key to this proposal is careful review of the uses visible from the right-of-way. The Conditional Use process will ensure that formula retail

[72] Central Market Turnaround 2011 – 2013, San Francisco Office of Economic and Workforce Development, November 1, 2013. (Attached)
http://www.oewd.org/media/docs/Central%20Market/CENTRAL%20MARKET%20TURNAROUND%2011-1-13.pdf

establishments that locate visibly on the central part of Market Street will be compatible with the development of neighborhood character and uses.

As the City continues to attract new businesses to this emerging retail corridor, there is a desire to preserve and attract neighborhood retail that is in keeping with the character of this historic area. Since 2011, 13 new small businesses have located in the Central Market area, with five additional businesses planning to open soon[73]. Through the Department's Study, merchants voiced concern that they see a pattern of independent startup businesses that turn a neighborhood around and are then forced out through rent increases. Startups take the risk of locating in transitional neighborhoods and help to improve the neighborhood through their presence and investment. This is generally due to these more risky neighborhoods being affordable to startup businesses. They draw in more foot traffic and as the neighborhood improves and becomes less risky, established businesses want to locate there. These established businesses tend to be formula retailers and are typically better capitalized, have better credit and can pay higher rents and commit to longer leases which may negatively impact the start-up businesses that played a key role in revitalizing a neighborhood. In the Central Market area there are already ten formula retail limited restaurants (fast food) and two formula retail pharmacies[74]. The unregulated and unmonitored establishment of additional formula retail uses may unduly limit or eliminate business establishment opportunities for startup businesses, many of which tend to be non-traditional or unique. Recent additions to this part of Market Street include Littlejohn's Candies, Beer Hall, Huckleberry Bicycles, Alta and Little Griddle. These business owners took a risk and made an investment on a transitional part of Market Street and are paving the way for future economic development in the City's historic core. Their efforts should not be hampered by a proliferation of formula retailers that can significantly alter neighborhood character.

The Department further recommends expanding formula retail Conditional Use controls beyond the interim control boundary of Van Ness Avenue to 12th Street and Franklin Street as the western boundary. Franklin Street and 12th Street are divide the

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[73] Central Market Turnaround 2011 – 2013, San Francisco Office of Economic and Workforce Development, November 1, 2013. (Attached)
http://www.oewd.org/media/docs/Central%20Market/CENTRAL%20MARKET%20TURNAROUND%2011-1-13.pdf

[74] Interim Zoning Controls – Specific Formula Retail Uses on Market Street, from 6th Street to Van Ness Avenue, Board File No. 130712, Resolution No. 305-13, page 2 https://sfgov.legistar.com/View.ashx?M=F&ID=2588632&GUID=63B9534F-8427-400B-A2FF-A17A25081C23

NCT-3 zoning district in the Upper and Central Market neighborhoods and should be included in the permanent controls to ensure consistent application on Market Street.

## 3. Focus review on issues of most importance to residents.

**A. Strengthen review criteria and process for new formula retail in Districts with formula retail controls in place.** The existing Code establishes that the "Planning Commission shall develop and adopt guidelines which it shall employ when considering any request for discretionary review." The Code then lays out five criteria for consideration, which have not been interpreted or clarified. Review of previous staff prepared case reports indicates inconsistent application of these criteria.

The Department proposes developing formula retail review guidelines in a Commission Guide for Formula Retail document as directed by the current Code. The Commission Guide for Formula Retail (The Guide) will provide clarity to staff and increase rigor in the implementation of the five existing Conditional Use criteria.

**Consistent Data & Description Contextualized, When Possible.** The Commission Guide for Formula Retail will include direction to staff on how to construct consistent reports for the Commission's consideration. The reports for the Commission should include uniform assessments of key neighborhood features such as demographics, trends, a qualitative characterization the nature of the District, including massing, use size, anchors, and clusters. Data on the retail character should consistently describe vacancies, the amount of formula and non-formula retailers, as well as the prevalence of uses that meet daily needs. The data should be contextualized with comparisons to City-wide data and other Districts, where available. The Guide will provide interpretation and guidance to staff, applicants, and the public about how to apply the existing formula retail Conditional Use review criteria as detailed below.

**Area of Comparison: Zoning District and Appropriate Vicinity.** The existing codified evaluation criteria require analyzing the proposed use in the context of the entire zoning district. Most residents can identify their Neighborhood Commercial District; however Eastern Neighborhoods and Mixed Use Zoning Districts are not linear districts that residents can easily identify. Even NCDs that are linear can stretch over a mile, much greater than typical walking distance or a perceived "neighborhood". In addition to evaluating the zoning district, the Department recommends evaluating an appropriate vicinity, which may be a quarter mile or 300 feet, depending on the size and location of the zoning district. A distance of a quarter-mile is a standard metric to describe comfortable walking distance that would generally be appropriate. However, for very small districts such as the Upper Market NCT, a quarter mile would be approximately half of the district and therefore a reduced radius of 300 feet would provide a greater differentiation of the area from the larger district. Larger districts and districts that are

adjacent to or near other commercial districts should use the larger quarter mile radius to describe vicinity. Using an appropriate radius will capture uses in the walkable area that are not in the same District. For example, Mission and Valencia are parallel adjacent NCDs but currently, a formula retail proposal in the Mission NCT would not evaluate uses in the Valencia NCD even though they are separated by a block. Similarly, the NC-3 zoning district on Geary Boulevard stretches over two miles. The western side of Geary is very different from the middle and eastern sides. But residents along middle Geary Boulevard are very likely to consider middle Clement Street their neighborhood. Evaluating uses in the vicinity would provide a better comparison to the district and provide an analysis of all walkable commercial uses near a proposed formula retailer. Allowing staff to determine appropriate vicinity based on the zoning district will allow for more meaningful analysis based on locational context. Again, a literal interpretation of the existing criterion may to a meaningless evaluation of formula retail throughout the "zoning district" which may include parcels as far away as those on Geary Street in the Richmond with parcels having the same zoning designation on Mission Street in the Outer Mission neighborhood.

**Specifically, how the existing criteria would be evaluated.** Below is a discussion of the existing criteria with the proposed changes as well as a further guidance to staff that would be provided in the Commission Guide. No thresholds are provided that would require staff to recommend approval or disapproval on any one criterion, rather guidance is provided to ensure review of the project, the District and the immediate area holistically.

1. **The existing concentrations of formula retail uses within the district and within the vicinity of the proposed project.** Staff will inform the Commission discussion of concentration of formula retail by providing:
   - **a.** The concentration of formula retail uses as a percentage of all ground floor commercial uses within the district.
   - **b.** The concentration of formula retail uses as a percentage of all ground floor commercial uses within the appropriate vicinity of the proposed project. The appropriate vicinity, as previously discussed could be 300 feet or a quarter mile, based on the district.
   - **c.** A discussion of linear frontage concentration of formula retail establishments based on the Upper Market NCD and NCT methodology, adopted as policy by this Commission on April 11, 2013. This methodology has been incorporated into the draft Commission Guide (Exhibit C). Staff will be directed to calculate the concentration of formula retail linear frontage in the vicinity of the proposed project. By counting linear frontage, corner parcels are more heavily weighted due to their greater aesthetic impacts.
   - **d.** The Department does not identify an ideal concentration threshold because it varies significantly by Neighborhood Commercial District. This variation is based on pre-

existing uses, massing and use sizes and what the neighborhood demonstrates a need for.

2. **The availability of other similar retail uses within the district <u>and within the vicinity of the proposed project.</u>** This criterion directs staff to review whether the goods and/or services proposed are currently being proved in the district. There is no additional direction provided on how these similar retail uses are dispersed within the district as well as no analysis of similar retail uses in commercial areas immediately adjacent to the district or even the proposed location in some cases. For this criterion as well as number 1, it seems that the important question is not whether these goods are provided anywhere within the zoning district, but rather within an easy walk. As such, the Commission Guide includes further guidance on applying this criterion as discussed below:
   a. A discussion of similar retail uses within the district and vicinity as well as mapping their location within the vicinity. Similar retail uses include those within the same land use category as well as retailers that provide similar goods and/or services. A comparison of similar uses and their locations will demonstrate how uses are scattered throughout the walkable area.
3. **The compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the district.** Most formula retail CU applications include solely interior tenant improvements and signage. Signage is administratively approved per Planning Code Article 6 and generally permitted separate from the CU authorization. However, the CU process allows for the Commission to exercise discretion and negotiate reduced visual impacts with the project sponsor. Given the concerns around potential homogenization of neighborhoods by formula retail, more specific aesthetic and architectural features of concern should be identified under review of this criterion. The Commission Guide for Formula Retail will include direction on the following:
   a. Compare the aesthetic characteristics of proposed formula retail to the nature of the district, addressing whether or not the use size is consistent with existing character, whether signage is appropriate and compatible, and whether the storefront design is more or less pedestrian-scaled than the district as a whole.
   b. Provide discussion of the visual impact of the proposed formula retail location including identifying its place in the District (corner, anchor, recessed from street) and whether it is in a protected viewshed in the General Plan.
   c. **<u>Apply the proposed Performance-Based Design Guidelines to all Formula Retail Applications</u>**. These criteria would include specifications on how the façade appears and would include; signage, storefront transparency and pedestrian-oriented design.
      i. **Minimized Standard Business Signage.** Signage controls exist in Article 6 of the Planning Code to protect the distinctive appearance of San Francisco and its unique geography, topography, street patterns, skyline and architectural features.

These controls encourage sound practices and lessen objectionable effects in respect to the size and placement of signs. Signage creates visual impacts which play a role in the attraction of tourists and other visitors who are so important to the economy of the City and County. Signs serve as markers and create individual identities for businesses that add to the greater identity of a neighborhood and district[75]. The Department recommends adoption of signage guidelines as part of the Commission Guide that would also apply to all Conditional Use review for formula retail. Formula retailers going through the Conditional Use process would have to comply with these guidelines and conform to Department discretion regarding signage.

ii. **Maximized Storefront Transparency and Pedestrian-oriented Design.** The vitality of a district's streetscape is dependent on the existence and success of business storefronts. In response to changing marketing and advertising strategies designed to draw in customers, storefronts are the most commonly altered architectural feature in commercial buildings. The purpose of storefront design standards are to protect and enhance the character of a neighborhood by encouraging storefront design that allows tenants to successfully convey their image and products, compliment the public realm and respect the architectural features of the building and character of the district[76]. A transparent storefront welcomes customers inside with products and services on display, discourages crime with more "eyes on the street", reduces energy consumption by letting in natural light, and enhances curb appeal and value of the store and the entire neighborhood[77]. The Planning Department strives to ensure that tenant spaces remain transparent to the exterior, contribute to the activity of the public realm and do not evolve into de facto sign boards for tenants. Planning Code Section 145.1(c)(6) requires that "frontages with active uses that are not residential or PDR must be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building". While this code section is reviewed as part of the Conditional Use review process for formula retail uses, businesses are not required to alter their storefronts to meet the Code requirement. In most cases, a business will occupy an existing storefront that does not meet the requirement and cannot make significant alterations to a potential historic resource. However, if the

[75] San Francisco Planning Department, General Planning Information, Signs, November 2012.

[76] San Francisco Planning Department, Design Standards for Storefronts for Article 11 Conservation Districts, Draft November 2012.

[77] San Francisco Planning Department, Standards for Storefront Transparency, Planning Code Requirements for Commercial Businesses, November 2013.

existing storefront has opaque glazing or security gates or grillwork that obscures visibility, adoption of the Performance-Based Design Guidelines would require altering the storefront, where possible, to meet the Code requirement.

4. **The existing retail vacancy rates within the district and within the vicinity of the proposed project.** Like most data, vacancy rates are most useful when comparisons can be drawn. There is currently minimal tracking of vacancy rates in commercial districts and it is not maintained consistently. There is also no comparison to healthy vacancy a rate. The Department has access to vacancy rates in both the Retail Broker's Study and the Invest in Neighborhoods project. Using these existing data sources as a starting point, vacancies should be considered in relation to the proximity to the proposed site. The Department should work to update this information with each formula retail application and through subsequent studies so that time-series data may be established to demonstrate how neighborhoods change over time. The Commission Guide will specify the following with respect to this criterion:
   a. Identify current vacancy rates in district and appropriate vicinity and historic vacancy rates, as this information becomes available in the future.
   b. Identify commercial spaces that are long term vacancies and analyze potential factors contributing to long term vacancies
5. **The existing mix of Citywide-serving retail uses and ~~neighborhood-serving~~ daily needs serving retail uses within the district and within the vicinity of the proposed project.** This criterion in particular seems to be difficult to interpret and apply consistently. The Code has an existing definition of "neighborhood serving" but no definition of "citywide-serving". Neighborhood Commercial Districts are intended to serve the daily needs of residents living in the immediate neighborhood. The Department's Study found that formula retail can often serve the function of meeting daily needs; however, some Districts report loss of daily needs uses due to an inundation of formula retailers that target larger citywide or regional audiences. The City strives to ensure that goods and services that residents need for daily living are available within an easy walking distance and at an affordable price. These establishments include: corner markets and grocery stores, cafés and limited restaurants, drug stores and pharmacies, hardware and general variety stores, dry cleaners and laundry facilities, banking and financial institutions, personal services and some trade shops such as those that provide tailoring, alterations, shoe repair and furniture repair. Establishments that serve daily needs and those that are considered formula retail are neither mutually exclusive nor overlapping categories. For example, banks and financial institutions are subject to formula retail controls; however, most people value having a bank within walking distance of their residence and workplace. Pharmacies and drug stores also tend to predominantly be formula retailers but are a desired use in NCDs. Pharmacies, grocery stores, banks and other uses that serve

residents' daily needs account for much of the formula retail in NCDs and other mixed use districts with formula retail controls in place[78].

To apply the principles behind this criterion and the intent of NCDs, the Department recommends changing the criterion as follows:

**a.** Establish a definition of "Daily Needs" with the following use types as adopted in the Commission Guide.[79] The Department cautions against codifying this definition as resident needs are evolving and the intent of the Guide is to be responsive to these changes. For example, if Wells Fargo filed a Conditional Use application and it was found that the neighborhood lacked financial services, Wells Fargo would be providing a daily needs serving use and be more desirable.

1. Limited Restaurant, as defined by Planning Code Sec. 790.90
2. Specific Other Retail, Sales and Services as defined by the following subsections of Planning Code Sec. 790.102
   - (a) General Grocery;
   - (b) Specialty Grocery;
   - (c) Pharmaceutical drugs and personal toiletries;
   - (e) Self-service Laundromats and dry cleaning;
   - (f) Household goods and services;
   - (g) Variety merchandise, pet supply stores and pet grooming services;
   - (l) Books, music, sporting goods, etc.
3. Personal services, as defined by Planning Code Sec. 790.116
4. Limited Financial Service (Planning Code Sec. 790.1120) and/or Financial Service (Planning Code Sec. 790.110)
5. Specific Trade Shops as defined by the following subsections of Planning Code Sec. 790.124
   - (1) Repair of personal apparel, accessories, household goods, appliances, furniture and similar items, but excluding repair of motor vehicles and structures;
   - (6) Tailoring

**b.** Evaluate the provision of daily needs for the 1/4-mile radius in relation to the district's defined intent. If the district is intended only to support residents, the mix of uses should reflect that. Conversely, if it is to meet wider shopping or tourist needs, the mix of uses and retailers should reflect that.

**B. Look more closely at Super Stores with an economic impact report.** Require an economic impact report for big box retail uses that are over 50,000 square feet in most districts and

[78] Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 26.

[79] Corresponding definitions apply to zoning districts within Article 8 of the Planning Code.

that are over 120,000 square feet in the C-3 district, except that the proposal would exempt grocery stores and supermarkets from these requirements. Super Stores or Big Box Stores are physically large retail establishments and usually part of a chain that would be considered a formula retail use. Shared characteristics of Super Stores include:

- Large, free-standing, rectangular, generally single-floor structures;
- Structures that sit in the middle of a large parking lot that is meant to be vehicle accessible rather than pedestrian accessible[80];
- Floor space several times greater than traditional retailers in the sector allowing for a large amount of merchandise[81].

These Super Stores can generally be broken into two categories: general merchandise, which includes stores like Walmart and Target that sell a wide variety of goods and products and specialty stores, such as Best Buy, that focus on a specific type of product, such as technology. Conventionally, super stores are generally more than 50,000 square feet and sometimes approach 200,000 square feet. In San Francisco, single retail uses over 50,000 gross square feet require a Conditional Use authorization in all but the C-3 Zoning District. Single retail uses over 90,000 gross square feet are only permitted in some C-3 zoned areas and require a Conditional Use authorization. Uses over 120,000 gross square feet are prohibited in all but the C-3 Zoning District[82]. Existing large single-retail uses in San Francisco include the Target at City Center and Costco, which are both approximately 120,000 square feet. The Target at Fourth and Mission is approximately 85,000 square feet. Both Best Buy locations in San Francisco are approximately 50,000 square feet[83].

Super Stores can affect the local economy in a variety of ways. They initially bring an influx of jobs to an area, due to the size of their operation compared to small businesses. However, this gain can be nullified over time as smaller businesses are put out of business because of their inability to match the low pricing and wide variety of a super store. A 2005 study found that the opening of a Walmart saw, on average, a 2.7 percent reduction in retail employment in the surrounding County[84]. In terms of tax revenue, studies indicate that

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[80] Douglas Kelbaugh, Repairing the American Metropolis, USA: University of Washington Press (2002) page 165

[81] CQ Researcher: Big-Box Stores. September 10, 2004.

[82] San Francisco Planning Code Section 121.6. Uses over 120,000 gross square feet that sell groceries, contain more than 20,000 Stockpiling Units (SKUs); and devotes more than 5% of its total sales floor area to the sale of non-taxable merchandise are prohibited in San Francisco.

[83] Best Buy on Harrison Street is approximately 46,743 square feet and Best Buy at City Center is approximately 55,000 square feet.

[84] David Neumark, Junfu Zhang and Stephen Circcarella. National Bureau of Economic Research, "The Effects of Wal-Mart on Local Labor Markets" (2005). Page 28 Retrieved from http://www.nber.org/papers/w11782.pdf

mixed-use is the most beneficial to the economy and big-box retailers do not significantly help the economy[85]. 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-use development.

In order to fully evaluate the impact of such a use, the Department recommends requiring a thorough economic impact report as part of the Conditional Use review of any proposed Super Store. The economic impact report would include the following assessments: 1) leakage analysis study; 2) an employment analysis study; and 3) fiscal impact study. Each of these three facets of the proposed study is discussed below.

1. **Leakage analysis study.** A leakage analysis estimates the net impact that a new retail use is likely to have on sales "leakage," defined as the difference between the buying power (demand) of the household and workforce population in a trade area and the actual sales (supply) in that same trade area[86]. For leakage studies, in particular, it's important to establish the appropriate size of the study area. Conducting a leakage study at a neighborhood level may be appropriate for smaller stores as this is the level where impacts may be identified. At the same time, conducting such a study for a wider area, such as at the citywide level, may not provide any information as any impact would be too small to be reliably projected. Further, the trade area of impact varies widely by store type and size and other factors. For this reason, the proposal would maintain flexibility in the size of the area to be studied. This numerical leakage analysis described above should be paired with a qualitative assessment of whether the new business would complement the existing merchandise selection in the area. For example, even in case where there may be no measurable unmet demand for a particular category of goods, a new store may add greater variety in the offerings available to shoppers, helping to bolster the strength of a cluster of similar retailers. In other cases, there may not appear to be any sales leakage because existing stores are capturing all of the expected sales, but the existing stores may not necessarily match evolving consumer preferences. Allowing flexibility for determining the appropriate trade area for analysis of each project and supplementing this number with qualitative assessments are key components to this study.

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[85] Philip Langdon. New Urban News, "Best bet for tax revenue: mixed-use development downtown" (2010) Retrieved from http://bettercities.net/article/best-bet-tax-revenue-mixed-use-downtown-development-13144

[86] Strategic Economics, San Francisco Formula Retail Economic Analysis, prepared for San Francisco Planning Department, June 2014.

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

This work shall be paid for by the applicant and shall be completed under the direction of Planning Department staff by an economic consultant firm identified as a pre-qualified firm by the City Office of Controller.

Lastly, the draft proposal does not include a multiplier study. As discussed earlier in this report multiplier studies provide interesting information on a grand scale. These studies form a solid basis for regulating formula retail differently than independent businesses. However, multiplier studies but cannot reliably project effects on local spending before a new store is open. Even if local spending numbers could be projected for a proposed store, this number would not provide a good framework for decision-makers because local spending by competitors would be unknown. For these reasons, a multiplier study is not included in the Commission's draft proposal.

## 4. Define specific circumstances where a change of Formula Retail operator should be considered a change of use.

The goals of the new definition and process for changes of formula retailers are threefold: 1) address any intensification of a formula retail use; 2) reduce visual impacts of standardization and homogenization by applying the Performance-Based Design Guidelines and 3) address formula retail uses that pre-date current formula retail controls.

**Existing Process.** Currently, the Planning Code requires a new Conditional Use authorization for any change of formula retail operator unless the change meets all the following criteria: 1) the new use must retain the same size, function and general merchandise; 2) the new use must be the result of a business being purchased by another formula retail operator who will retain all components of the existing retailer, including signage, name and general

merchandise. Any new operator is required to comply with all conditions of approval and must conduct the operation in the same general manner[87].

The Planning Code is unclear on how formula retail uses that pre-date the Formula Retail controls are treated. While Planning Code Section 303(i)(7) specifies that any change from one formula retail use to another requires a new CU, it is contradictory to Section 178 which specifies that uses that existing lawfully prior to the requirement for a CU for that use are considered a "permitted conditional use". Permitted conditional uses can change to other uses as they are permitted in the district in which it is located. A strict reading of Section 178 would indicate that formula retail uses that were permitted prior to the formula retail controls went into effect are permitted to continue operation and change uses as dictated by the district in which it is located. Further, Section 182 permits nonconforming uses, such as existing formula retailers in districts that prohibit formula retail, to continue as nonconforming uses for up to 3 years after it ceases to operate. For example, the Walgreens in the Hayes-Gough NCT is a nonconforming use because it was permitted in 1999, prior to the formula retail ban in Hayes Valley. The current code is unclear as to whether Walgreens could change to another formula retail use, such as CVS, or not.

**Proposed Changes.** If a formula retail use is changing operator and not intensifying, the change of use would be an administrative review to ensure compatibility with the Performance-Based Design Guidelines[88]. A formula retail use which is changing operator and intensifying would require a new Conditional Use authorization. Intensification would be defined as any one of the following: 1) increased use size; 2) change of use category, including certain subcategories of uses; 3) change to formula retail chain that has more locations anywhere in the world; and 4) installation of commercial kitchen features. This approach is consistent with City policy and practice that Conditional Use runs with the land. A use cannot be re-evaluated unless it is demonstrated to be an enlargement or intensification of the use. These proposed changes to the processing of changes of formula retail operators will strengthen overall formula retail controls.

In regards to formula retail uses that existed prior to formula retail controls and never received a formula retail CU authorization, a "first" CU would be required. Formula retail, unique from other uses, must not only be determined to be necessary and desirable but also compatible with the district in terms of use concentration, use mix and visual characteristics. As such, if a formula retail use was operating in a district that requires CU authorization for

[87] San Francisco Planning Code Section 303(i)(7)

[88] Performance-Based Design Guidelines that contradict original conditions of approval cannot be enforced. However, the Department believes these occurrences will be limited as aspects of the Performance-Based Design Guidelines are not standard conditions of approval.

formula retail, a first CU could be required when the use changes, whether or not it is determined to be an intensification. The justification for requiring the first CU is that the neighborhood and/or district may have changed significantly and the formula retail use was never evaluated to be compatible with the neighborhood. Following the first CU authorization, the aforementioned process for changes of operator based on intensification or non-intensification would apply.

### 5. Small Business Support.

Small businesses contribute significantly to the unique neighborhood character of each district. Formula retail controls are largely driven by communities desire to level the playing field between large chains and small businesses. The Department has heard the public's concern regarding the challenges that small businesses faces in competing with large chains and recommends utilization of existing City resources as well as minor changes to the Planning Code that will support small businesses in San Francisco.

**A. Utilization of Office of Economic and Workforce Development (OEWD) resources.** The Department recommends further outreach and education to maximize utilization of OWED programs to support neighborhood serving businesses. The Mayor's Office of Economic and Workforce Development offers small business support services intended to make them more competitive with formula retailers. These programs include:

- **Jobs Squad**: A two member team of City staff that conducts door to door outreach to small businesses around the City to connect them with help and information.
- **Technical Assistance Programs**. OEWD, the Small Business Assistance Center in City Hall, and OEWD-funded nonprofit organizations offer technical assistance to entrepreneurs seeking to launch, expand, or stabilize their small business. They also offer legal and leasing assistance.
- **Small Business Loan Programs**. OEWD and its partners offer a variety of loan programs to entrepreneurs seeking to launch, expand or stabilize their business. Loans can range from $5,000 to $1,000,000.
- **SF Shines Façade & Tenant Improvement Program**. SF Shines helps businesses in targeted corridors upgrade their storefront exterior and interior space by providing funding and staff support for design, project management, and construction.
- **Biz Fit SF**. Biz Fit SF provides focused assistance in targeted corridors to existing retailers and restaurants that may be at risk of displacement.
- **Healthy Retail SF**. Healthy Retail SF provides technical assistance in targeted corridors to retailers seeking to increase access to healthy foods.
- **Storefront SF**. Storefront SF is a free internet tool for entrepreneurs seeking to lease or purchase storefront retail space to launch or expand their business.

**B. Remove restrictions on independent financial services.** Prior to formula retail controls Neighborhood Commercial Districts made many uses subject to CU authorization in an attempt to have more discretion in permitting commercial uses in neighborhoods. CUs for financial and limited financial services are on example. Now that formula retail controls

require CU authorization for financial and limited financial services the Department recommends permitted financial and limited financial services in the NCDs where they currently require a CU. This small change would allow independent financial and limited financial service to be permitted administratively and reduce the number of CUs filed, thereby reducing overall CU processing time. Districts that do not permit or have special provisions regarding financial and limited financial services will remain intact.

C. **Allow Walk-Up Facilities without a three foot setback.** A walk-up facility is defined in Planning Code Section 790.140 and 890.140 as "a structure designed for the provision of pedestrian-oriented services when located on an exterior building wall, including window service, self-service operations and automated bank teller machines (ATMs)." In Neighborhood Commercial Districts, walk-up facilities are subject to CU authorization if they are not recessed three feet from the front property line (Section 145.2). It is believed that this requirement was put in place when ATMs were new technology and there was concern that people would queue up to use them and create sidewalk traffic. However, most ATMs are recessed three feet to avoid the CU requirement, resulting in poorly designed and in some cases unsafe or unsanitary ATMs. Review of CU applications since 2008 show that only 12 out of 2,150 (less than 1%) were for walk-up facilities. Only three were clearly for ATMs. The rest were for walk-up windows associated with restaurants or limited restaurants.

   Removing the CU requirement for non-recessed walk-up facilities in combination with permitting a single formula retail ATM, in compliance with the Performance-Based Design Guidelines, is in response to articulated public comments that ATMs support small businesses. This reduction in process for walk-up facilities will benefit small businesses, improve ATM design, and reduce the number of CUs filed. Removing this requirement in conjunction with implementing the Performance-Based Design Guidelines will limit the dead wall space and branding while ensuring that cash for shoppers is easily accessible.

## ENVIRONMENTAL REVIEW

The proposed Ordinance and procedural changes are not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because the proposal does not result in a physical change in the environment.

## PUBLIC COMMENT

The Department conducted extensive public outreach as part of the Department's Study and resulting policy recommendations. The Department has received formal written comments from the following individuals and organizations:

- Coblentz Patch Duffy & Bass LLP, representing the Power Center located at 555 Ninth Street
- The Haight Ashbury Merchants Association

- 48 letters from commercial retail brokers
- Duboce Triangle Neighborhood Association
- Adriano Paganini, owner of Super Duper Burger and six other San Francisco restaurants
- Small Business Commission
- Tom Radulavich, Livable Cities
- Stacy Mitchell, Institute for Local Self-Reliance
- Small Business Commissioner Kathleen Dooley

The Department created a list of stakeholders with input from the Mayor's Office, the Office of Economic and Workforce Development and the Board of Supervisors. The stakeholders included representatives from local neighborhood organizations, merchant organizations, commercial realtors and brokers, formula retailers, independent retailers, the Chamber of Commerce, the Small Business Commission and the Planning Commission. Focus group meetings were conducted in January, March, and May of 2014.

The Department created and maintained a website "Planning Study of Formula Retail" at www.sf-planning.org/formularetail. Any interested party was able to sign up for updates on the Department's Study and resulting policy recommendations via this website. There are approximately 132 subscribers receiving updates from this website.

In addition to public comment received through the focus group process and inquiries from the website, there have been four public hearings at the Planning Commission intended to gather additional public comment. Hearings were held in July 2013 and January, February and April 2014.

Since the hearing on May 22, 2014 additional outreach has been conducted and comments have been received. The Planning Departments proposal was presented to the San Francisco Council of District Merchants and the Chamber of Commerce Small Business Advisory Council. Meetings were conducted and phone calls and emails were exchanged with members of the public. Additional public comments received include:

- Daniel Weaver, Executive Director, Ocean Avenue Association
- Ilene Dick, San Francisco BOMA to the Small Business Commission
- Regina Dick-Endrizzi, Director, Office of Small Business on behalf of the Small Business Commission
- Fillmore Merchants Association
- Fisherman's Wharf District
- International Franchise Association
- Wells Fargo Bank
- Stacy Mitchell, Institute for Local Self-Reliance
- Carleton Hoffman

| | |
|---|---|
| **RECOMMENDATION:** | **Recommendation of Adoption of Proposed Ordinance and Commission Guide for Formula Retail.** |

**Attachments:**

Exhibit A: Background Documenting the History of San Francisco's Formula Retail Controls
Exhibit B: Market Street Map
Exhibit C: Draft *Commission Guide for Formula Retail*
Exhibit D: Public Comment
Exhibit E: Draft Planning Commission Resolution Adopting Planning Code Text Changes
Exhibit F: Draft Planning Commission Ordinance

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# Exhibit A

## BACKGROUND:

## DOCUMENTING THE HISTORY OF SAN FRANCISCO'S FORMULA RETAIL CONTROLS

In 2004, the Board of Supervisors adopted San Francisco's first formula retail 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 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] The Ordinance required Neighborhood Notification pursuant to Planning Code Section 312 for formula retail uses, Conditional Use (CU) Authorization for specific area of Cole and Carl Streets and Parnassus and Stanyan Streets and a prohibition on formula retail in 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.

In 2005:

- Amendments added the requirement for a CU for formula retail uses in the Haight Street NCD and the NC-2 District along Divisadero Street between Haight and Turk Streets[3].
- Amendment added a prohibition on formula retail uses in the North Beach NCD[4].

In 2006:

- Amendment added formula retail CU controls to the Japantown Special Use District (SUD)[5].

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

[2] Planning Code Section 703.3(b)

[3] Ordinance Nos. 8-05 (Haight Street) and 173-05 (Divisadero Street) 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. 180-06, available online at: http://sfgov.legistar.com/Legislation.aspx.

- Planning Code Section 803.6 was added to the Planning Code, requiring CU authorization for formula retail uses in the Western SoMa Planning Area SUD.[6]

In 2007:

- San Francisco voters approved Proposition G, the "Small Business Protection Act" which amended the Planning Code by adding Section 703.4 required CU authorization for formula retail uses (as defined in the Code) proposed in any NCD.[7] Proposition G also noted that nothing precluded the Board of Supervisors from "adopting more restrictive provisions for conditional use authorization of formula retail use or prohibiting formula retail use in any Neighborhood Commercial District."

In 2012:

- The Planning Code was amended to include "Financial Services" as a use type subject to formula retail controls[8].

There have been a number of recently enacted policy and legislative changes to formula retail controls which can be reviewed in Table 1.

On April 11, 2013, the Planning Commission adopted Resolution Number 18843, which set forth a policy that provides the first quantitative measure for concentration in the Upper Market Neighborhood[9]. This Resolution 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 percent of the total linear frontage of all parcels located within 300 feet of the subject property and also zoned neighborhood commercial, the Planning Department staff shall recommend disapproval.

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.

On June 19, 2013, the Board of Appeals ruled 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

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[6] Ordinance No. 204-06. Available online at: http://sfgov.legistar.com/Legislation.aspx.

[7] The text of the Proposition, as well as arguments for (drafted by then-Supervisors Peskin, Sandavol, Ammiano, Daly, Mirkarimi, Gonzalez and the nonprofit San Francisco Tomorrow) and against (draft by then-Supervisors Elsbernd and Alioto-Pier) are available online here: http://smartvoter.org/2006/11/07/ca/sf/meas/G (March 20, 2014)

[8] Ordinance No. 0106-12

[9] The Upper Market Neighborhood is defined in the Resolution as Market Street from Octavia Boulevard to Castro Street. The Resolution is available online at: http://www.sf-planning.org/ftp/files/legislative_changes/form_retail/formretail_18843.pdf

to be considered formula retail[10]. The Board discussed, but did not act on, web-based establishments.

On June 25, 2013 Supervisor Weiner's ordinance amended the Department of Public Works Code to restrict food trucks that are associated with formula retail establishments in the public right-of-way[11]. 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.

On August 7, 2013 Supervisor Kim's Interim Controls for retailers with frontage on a stretch of Market Street were enacted. This Resolution imposed interim zoning controls requiring Conditional Use authorization for certain formula retail uses, as defined, on Market Street, from 6th Street to Van Ness Avenue until February 2015[12]. This resolution expanded formula retail controls to include fringe financial services within the interim control area.

On June 24, 2014, Supervisor Weiner introduced Interim Controls for Formula Retail Uses in the Castro Street NCD. This Resolution imposes interim zoning controls requiring CU 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[13].

**Table 1: Summary of Recent, Proposed and Interim Changes to Formula Retail Controls**

| Legislative or Policy Change | Type of Action | Status |
|---|---|---|
| **Modifies the definition of formula retail in the Upper Fillmore Neighborhood Commercial District** to include retail with 11 or more establishments anywhere in the world, and establishments where 50% or more of stock, shares, etc. are owned by a formula retail use. | BOS Ordinance (Farrell)<br>[BF 130735] | Pending Committee Action |

[10] Appeal No. 13-030 is available online at http://www.sfgov3.org/Modules/ShowDocument.aspx?documentID=4949

[11] Board File No. 120193 is available online at https://sfgov.legistar.com/View.ashx?M=F&ID=2557049&GUID=5250C736-26C0-40EF-B103-4321F058992C

[12] Resolution Number 305-13 [Board File No. 130712] is available online: https://sfgov.legistar.com/View.ashx?M=F&ID=2588632&GUID=63B9534F-8427-400B-A2FF-A17A25081C23

[13] Board File No. 140736 is available online at https://sfgov.legistar.com/View.ashx?M=F&ID=3143384&GUID=DF29D5B2-7B1F-4570-93AE-2DAAC973895F

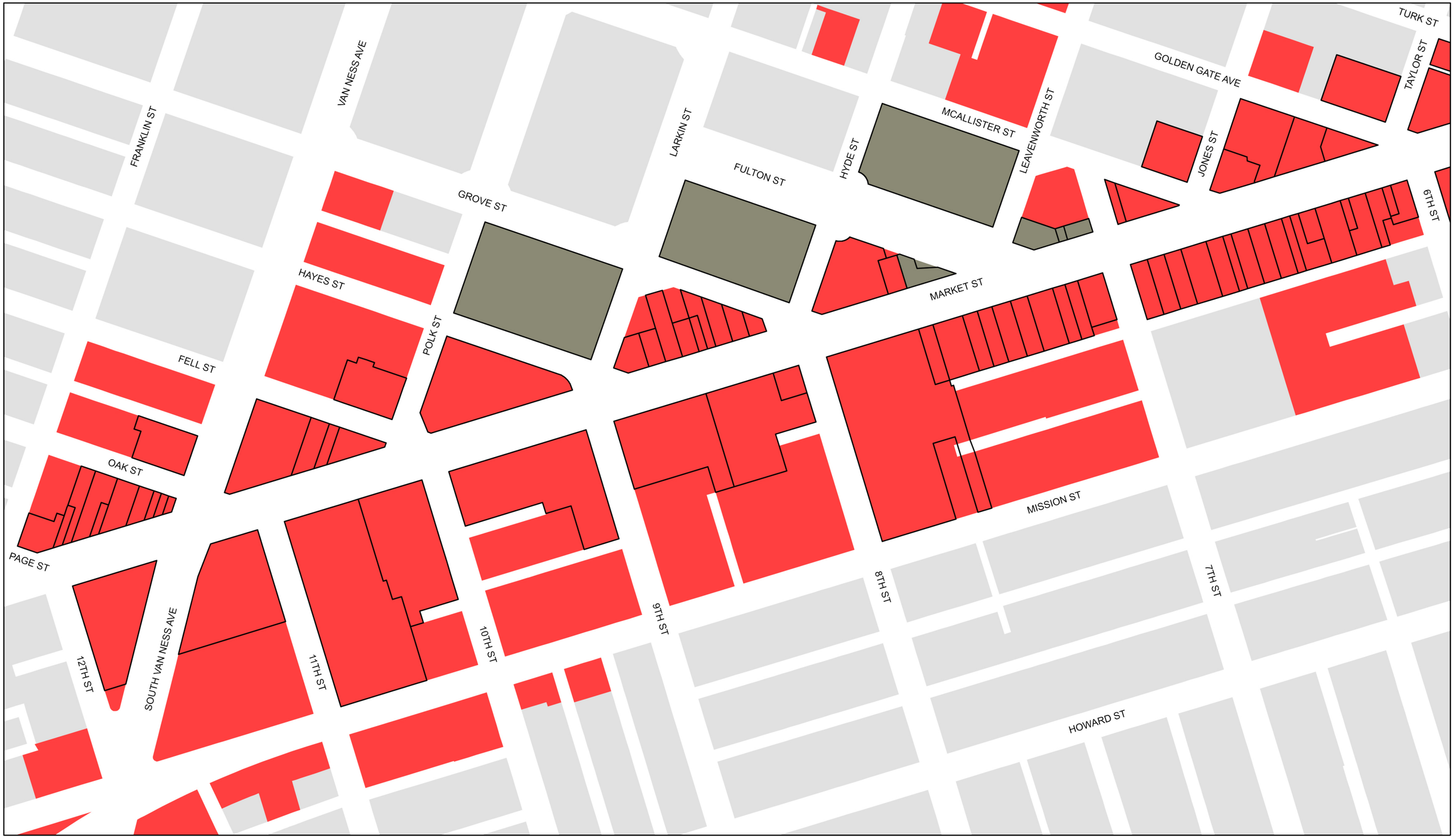
| | | |
|---|---|---|
| **Establishes the Fillmore Street Neighborhood Commercial District** between Bush and McAllister Streets. The proposal seeks to weight the community voice over other considerations, generally weight the hearing toward disapproval, legislate a requirement for pre-application meeting (which is already (Planning Commission policy), and codify criteria for approval related to the concentration of existing formula retail. | BOS Ordinance (Breed)<br>[BF 120814] | Pending Before Board Land Use Committee |
| **Establishes the Divisadero Street Neighborhood Commercial District** between Haight and O'Farrell Streets. The proposal seeks to weight the community voice over other considerations, generally weight the hearing toward disapproval, legislate a requirement for pre-application meeting (which is already Planning Commission policy), and codify criteria for approval related to the concentration of existing formula retail. | BOS Ordinance (Breed)<br>[BF 120796] | Pending Before Board Land Use Committee |
| **Created 18-month interim controls on Market Street** between Sixth Street and Van Ness Avenue (the Central Market area). A conditional use authorization is required for any formula retail fronting on Market Street in this area. | BOS Resolution<br>(Kim)<br>[BF 130712] | Enacted<br>Expires Feb 2015 |
| **Modifies the definition of formula retail in the Hayes-Gough Neighborhood Commercial Transit District** to include retail with 11 or more establishments anywhere in the world, and establishments where 50% or more of stock, shares, etc. are owned by a formula retail use. | BOS Ordinance (Breed)<br>[BF 130468] | Pending Before Board Land Use Committee |
| **Third Street Formula Retail Restricted Use District (RUD)** modifies the zoning controls on Third Street and expands the applicability of Formula Retail controls citywide. This mixed-use district had some parcels where CU was not required for FR. Now all parcels in this RUD require CU for the establishment of CU. Certain changes to existing entitled FR locations citywide now trigger the need for a new CU hearing. | BOS Ordinance (Cohen)<br>[BF 130372] | Enacted |
| **Fulton Grocery Special Use District (SUD).** The Planning Commission recently recommended this SUD, which would create an exception to the current prohibition on Formula Retail in the Hayes Gough NCT so as to allow the Commission to consider a Formula Retail grocer by CU. | BOS Ordinance (Breed)<br>[BF 131085] | Enacted |
| **Expands the Citywide definition of formula retail** to include businesses that have 11 or more outlets worldwide, and to include businesses that are at least 50% owned by a formula retail business; expands application to other types of retail uses (e.g., "Adult Entertainment," "Automobile Service Station," "Hotel, Tourist," "Tobacco Paraphernalia Establishment"); requires the Planning Commission to consider economic impact on other businesses in the area as part of the CU process; expands noticing procedures for formula retail applications. | BOS Ordinance (Mar)<br>[BF 130788] | Pending Before Board Land Use Committee |
| **Creates the first quantitative basis for evaluating concentration of formula retail in the Upper Market Neighborhood Commercial District and Neighborhood Commercial Transit District**. Planning Department staff will recommend disapproval of any project that brings the concentration of formula retail within 300 feet of the subject property to 20% or greater of total linear store frontage. | Planning Commission Policy<br>[Commission Reso. 18843] | Adopted |

| | | |
|---|---|---|
| **Board of Appeals ruling.** Established that if a company has signed a lease for a location (even if the location is not yet occupied), the lease counts towards the 11 establishments needed to be considered formula retail. | Board of Appeals ruling | |
| **Amended the Department of Public Works code to restrict food trucks that are associated with formula retail establishments.** 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. | BOS Ordinance (Wiener) [BF 120193] | Enacted |
| **Interim controls requiring Conditional Use authorization for any use determined to be Formula Retail even if the sponsor subsequently removed distinguishing features in the Castro NCD.** Any use determined to be a formula retail use by the Planning Department that subsequently removes one or more distinguishing formula retail features is still subject to CU authorization in the Castro NCD for a period of 18 months. | BOS Resolution (Weiner) [BF 140736] | Pending Mayor's Signature |

Acronyms:
BOS: Board of Supervisors
BF: Board File Number
CU: Conditional Use authorization
N/A: Not Applicable

Exhibit B: Market Street Map
Hearing Date: July 17, 2014

CASE NO. 2013.0936U
Formula Retail Controls




Market Street Parcels

***ZONING DISTRICT***

- C-3-G
- P

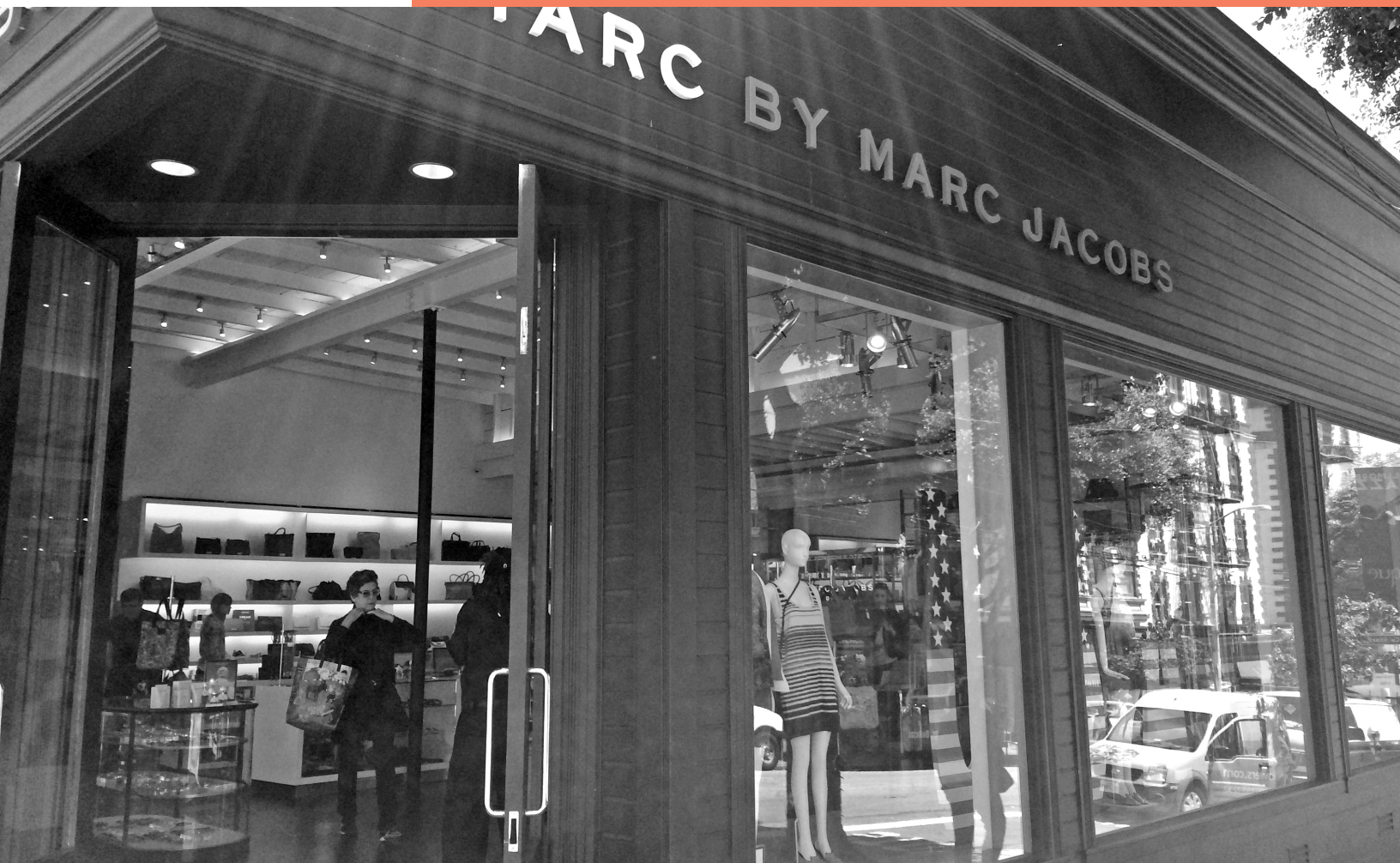
1,000 Feet

SAN FRANCISCO
PLANNING
DEPARTMENT

# Commission Guide for Formula Retail

DETERMINING LOCATIONAL APPROPRIATENESS AND
PERFORMANCE-BASED DESIGN GUIDELINES

San Francisco PLANNING DEPARTMENT | JULY 2014



SAN FRANCISCO
PLANNING
DEPARTMENT


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In addition to the project team, this work was informed by the formula retail stakeholder group and the project consultant, Strategic Economics.


**The purpose of this document is to evaluate the appropriateness of each individual formula retail establishment's use, design, and necessity, to help preserve the character of the City's neighborhoods.**







Photos by Matthew Dito

## PURPOSE

The Commission Guide to Formula Retail is intended to maintain the character and aesthetic qualities of San Francisco neighborhoods. It is designed to encourage harmony between retailers and the districts they reside in.

This document seeks to promote such harmony in two ways. First, the document establishes the methodology the Department will use in evaluating the appropriateness of the formula retail use in the neighborhood. Second, this document articulates Performance-Based Design Guidelines to ensure that the proposed formula retail use is aesthetically compatible with the neighborhood.

### RELEVANT CODE SECTIONS

*Section 303.1:* Conditional Use Authorization for Formula Retail Establishments

*Section 703.3:* Neighborhood Commercial Districts and Formula Retail Uses

*Section 803.6(c):* Formula Retail Uses in the MUG District, UMU District, Chinatown Mixed Use Districts and in the Western SOMA Special Use District

*Article 6:* Signs

*Article 11:* Preservation of Buildings and Districts of Architectural, Historical, and Aesthetic Importance in the C-3 Districts

## INTRODUCTION

Formula retail can act as a homogenizing force in neighborhoods if its presence overwhelms neighborhood character. Formula retail, by nature, is repetitive. If not properly regulated, this repetition can detract from San Francisco's vibrant neighborhoods by inundating them with familiar brands that lack the uniqueness the City strives to maintain.

San Francisco is a city of surprises. Its diverse and distinct neighborhoods are identified in large part by the character of their commercial areas. This feeling of surprise invites both residents and visitors alike to explore the City.

Urban neighborhood streets should invite walking and bicycling. The City's mix of architecture contributes to a strong sense of neighborhood community within the larger City. Many formula retail concepts are developed and refined in suburban locations. Standard store design that primarily accommodates automobile traffic may not work in dense, transit-oriented cities.

The Performance-Based Design Guidelines can improve pedestrian walkability and encourage more walking in neighborhoods by helping to preserve a safe, aesthetically pleasing area that feels connected from beginning to end. This is achieved by improving pedestrian accessibility and by creating stores with unique visual identities that also don't overpower one another.




While any one formula retail establishment may fit well in a neighborhood, overconcentration of formula retail can degrade the character of a street.

Illustration by Raven Keller for The Bold Italic

The increase of formula retail businesses in the City's neighborhood commercial areas, if not monitored and regulated, will hamper the City's goal of a diverse retail base with distinct neighborhood retailing personalities comprised of a mix of businesses.

These standards are intended to lessen the visual impacts that the repetitiveness of formula retail brings by first evaluating whether the formula retail use is either necessary or desirable in the neighborhood. See a discussion of this topic in Part I: Determining Locational Appropriateness. Once the use is deemed appropriate, the next step is to ensure aesthetic compatibility. For more information on this topic, see Part II: Performance-Based Design Guidelines.

While a factor in the homogenization of neighborhoods, formula retail does provide lower-cost goods and services, and is generally recognized to provide more employment opportunities to minorities and low-income workers. Formula retail is neither good nor bad – and it plays an irrefutable role in the City. To best accentuate the benefits of formula retail, the City should regulate it with care, helping to reduce its standardized features.

San Francisco needs to protect its vibrant small business sector and create a supportive environment for new business innovations. One of the eight Priority Policies of the City's General Plan resolves that "existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhances."

The Planning Department recognizes the benefits formula retail can bring to the City. Where the use would provide a necessary or desireable addition to the neighborhood, staff will work with applicants to improve their aesthetics, including signage, storefront design, transparency, and pedestrian accessibility, to help them successfully integrate into San Francisco's neighborhoods.

# I. Determining Locational Appropriateness

For every conditional use authorization the Planning Commission must determine if the prposed use is necessary or desirable for the community and compatible with the neighborhood, per Planning Code Sec. 303(c)(1). Beyond the general consideration of "necessary or desirable," the Commission reviews five more specific criteria in consideration of conditional use authorization for formula retail. This document establishes the methodology the department will use in assessing these five determining criteria, as required by Planning Code Sec. 303.1.

Determining location appropriateness should be by informed quantitative and qualitative analysis. In general, professional discretion should be used to identify factors not specifically required in this document. For example, if a daily need use is located immediately outside the selected appropriate vicinity, it should still be discussed in the case report. In addition to analyzing the five Planning Code required criteria, professional analysis of location appropriateness should include the following:

**A characterization of the district as a whole**, based on the stated intent of the district as well as how the district has evolved since it was created. Describe the scale and massing of buildings and uses. Discuss the dominant design orientation people vs. auto-orientation. Consider if the district can be described in other ways: family oriented, entertainment district, culturally-specific, for example. Determine whether there are capital improvements or large development projects in the pipeline.

**A characterization of the immediate vicinity of the proposed establishment location.** This can be 300 feet or a quarter mile based on the size and nature of the District. A distance of a quarter-mile is a standard metric to describe comfortable walking distance that would generally be appropriate. However, for very small districts such as the Upper Market District quarter mile would be approximately half of the district and therefore a reduced radius such as 300' would provide a greater differentiation of the area from the larger district. Larger

districts and districts that are adjacent to or near other commercial districts should use the larger, quarter mile radius to describe vicinity. The vicinity concentration should include all commercial uses, not just those within the same Zoning District.

A description of the commercial nature of the district. Are there retail anchors or clusters present or developing? Are there retail or other trends emerging?

Identification of long term vacancies and/or any commercial use related issues and concerns.

A characterization of the demographics of the District. Are there a large number of singles, or seniors, or culturally-specific groups? Are there a large number of families with children that may explain a concentration of certain types of retail uses? Demographic trends, where applicable, should also be identified. Is there a demographic shift underway?

Identification of the unique characteristics of the District and/or neighborhood, where appropriate.

The five criteria and methodology for analyzing locational appropriateness should be examined as described below:

Existing concentrations of formula retail uses within general vicinity of the proposed project.

- The concentration of formula retail uses as a percentage of all ground floor commercial uses within the district must first be established.
- Based on the size and nature of the district, identify the appropriate "vicinity" of the proposed project. The measure of vicinity is intended to differentiate the concentration levels near the proposed project from the overall concentration levels of the district. Generally, a comfortable walking distance of ¼ mile should be used. However, for smaller districts concentrations within a ¼ mile may be similar to the district measure, in which case a closer distance of 300' would be more appropriate. Staff discretion in determining the appropriate vicinity is required.
- Calculation shall include all parcels that are wholly or partially located within the selected radius that are also zoned commercial or contain commercial uses.
- An evaluation of the linear frontage concentration of formula retail establishments within the selected vicinity shall be done.
- An evaluation of the linear frontage concentration of formula retail establishments within a ¼ mile walk. Concentration is based on the Upper Market Neighborhood Commercial District methodology, adopted as policy by the Planning Commission on April 11, 2013 per Resolution No. 18843 and as summarized below. Staff will calculate the concentration of formula retail linear frontage within a ¼ mile walk of the subject property. Corner parcels are more heavily weighted when counting linear frontage due to their greater aesthetic impacts.
- The methodology is as follows: for each property, including the subject property, the total linear frontage of the lot facing a public right-of-way is divided by the number of storefronts. Formula retail storefronts and their linear frontage are separated from the non-formula retail establishments and their linear frontage. The final calculations are the percentages (%) of formula retail and non-formula retail frontages (half of a percentage shall be rounded up).
- An evaluation of the number of formula retail uses as a percentage (%) of all commercial uses within the selected vicinity. This calculation will count all ground floor storefronts as a commercial use.
- The Department does not identify an ideal concentration threshold because it varies significantly by Neighborhood Commercial District. This variation is based on pre-existing uses, vacancy rates, massing and use sizes, and neighborhood needs. Comparisons of the formula retail concentration to citywide numbers and to comparable neighborhoods are encouraged.

**The availability of other similar uses within the district and within the vicinity of the proposed project.**

- An evaluation of similar retail uses within the district requires a concentration calculation of retail sales and/or service uses that offer the similar products or services to those being proposed. This concentration shall be based on the number of available uses as a percentage of all commercial uses.
- Using the same selected appropriate vicinity as identified in criterion 1B, an evaluation and accompanying map shall be produced showing the location of similar uses throughout the vicinity. If no similar uses are available within the vicinity or district, the closest offerings may be identified.

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

- Use the Performance-Based Design Guidelines to ensure compatibility with the signage, storefront design, storefront transparency, and pedestrian accessibility.
- Identify the business' place in the District (corner, anchor, recessed from street) and whether it is in a protected viewshed in the General Plan.

**The existing retail vacancy rates within the district.**

- Identify current vacancy rates in district and compared to historic vacancy rates, if this information is available.
- Identify vacancies within the selected vicinity and discuss the conditions and potential impacts of vacant buildings within the selected vicinity.

**The existing mix of Citywide-serving retail uses and daily needs serving retail uses within the appropriate vicinity of the proposed location.** Neighborhood Commercial Districts are intended to serve the daily needs of the neighborhood residents. As such, daily needs service retailers are those that provide goods and services that residents want within walking distance of their residence or workplace.

- The following uses are considered "Daily Needs" uses:
  - Limited Restaurant, as defined by Planning Code Sec. 790.90
  - Specific Other Retail, Sales, and Services, as defined by the following subsections of Planning Code Sec 790.102
    (a) General Grocery
    (b) Specialty Grocery
    (c) Pharmaceutical drugs and personal toiletries
    (e) Self-service Laundromats and dry cleaning
    (f) Household goods and services
    (g) Variety merchandise, pet supply stores, and pet grooming services
    (l) Books, music, sporting goods, etc.
  - Personal services, as defined by Planning Code Sec. 790.116
  - Limited Financial Service, as defined by Planning Code Sec. 790.1120, and/or Financial Service, as defined by Planning Code Sec. 790.110
  - Specific Trade Shops as defined by the following subsections of Planning Code Sec. 790.124
    (1) Repair of personal apparel, accessories, household goods, appliances, furniture and similar items, but excluding repair of motor vehicles and structures
    (6) Tailoring
- Evaluate the provision of daily needs for the immediate vicinity in relation to the district's defined intent. Some districts are intended to only support residents. Conversely, the district may be intended to meet resident needs and wider shopping or tourist needs.

# II. Performance-Based Design Guidelines




**FORMULA RETAIL SIGNAGE**

This section establishes design guidelines to ensure the aesthetic compatibility of formula retail uses.

Signage creates visual impacts which affect how residents feel about their neighborhood and play a role in the attraction of visitors who are important to the City's economy. Signs serve as markers and create individual identities for businesses that add to the greater identity of a neighborhood and district, hence the need for guidelines to ensure compatibility between businesses and their surroundings.

Formula retail uses can have a homogenizing effect on neighborhood character. This is largely due to standardized signage and branded features that promote recognition. These Performance-Based Design Guidelines seek to minimize the uniform aspects of formula retail signage.

Business signs are generally regulated to ensure an appropriate and equitable degree of commercial communication without contributing to visual clutter.

Photos by Matthew Dito




**NOT RECOMMENDED**

Scale of sign is inappropriate and extends beyond the storefront entrance.




**RECOMMENDED**

Sign does not extend out and beyond the width of the storefront opening.

## Signage guidelines for formula retail business signs[1] are as follows:

- Signs should not extend beyond with width of the storefront opening.
- Signage, painted on glass doors, windows, and transoms, where the sign does not exceed 25% of the glazed area, is permitted.
- Sign depth should be reduced by placing the transformer in a remote location and not housed within the sign itself.
- Signs that are located on the inside of a storefront should be setback a minimum of 6" from the display glass.
- Scale of signs and placement on the building should be appropriate to the elements of the building and the character of the neighborhood.
- One sign per tenant shall be permitted. A ground floor establishment with a corner storefront may have one sign on each building façade.
- Upper story establishments with a corner storefront may have one sign adjacent to the building entrance. It should be a small identification sign or plaque, installed adjacent to the ground floor entrances.
- Signs should be constructed of durable high-quality materials that retain their characteristics within a high-traffic area over time.
- Signage is to be scaled and placed primarily for pedestrian legibility, and secondarily for vehicular visibility.
- Materials should be compatible with the craftsmanship, and finishes associated with the District. Glossy or highly reflective surfaces will not be approved.
- Signs should be attached in a manner that avoids damaging or obscuring any of the character-defining features associated with the subject building. Signs should be attached in a manner that allows for their removal without adversely impacting the exterior of the building.

1 A business sign is defined as a sign which directs attention to a business, commodity, service, industry, or other activity which is sold, offered, or conducted, other than incidentally, on the premises upon which such sign is located, or to which it is affixed.

Photos by Matthew Dito




**NOT RECOMMENDED**

There is an excessive number of wall signs attached to the building facade, and the windows are covered, preventing visibility.




**NOT RECOMMENDED**

Sign is directly lit with visible lighting conduits.




**NOT RECOMMENDED**

Scale, placement, and design of sign are inappropriate to the building and its surroundings.




**RECOMMENDED**

A corner storefront with one sign on each building facade, as permitted.




**RECOMMENDED**

Sign is indirectly lit with a reduced profile due to a light emitting diode (LED) method of illumination.




**RECOMMENDED**

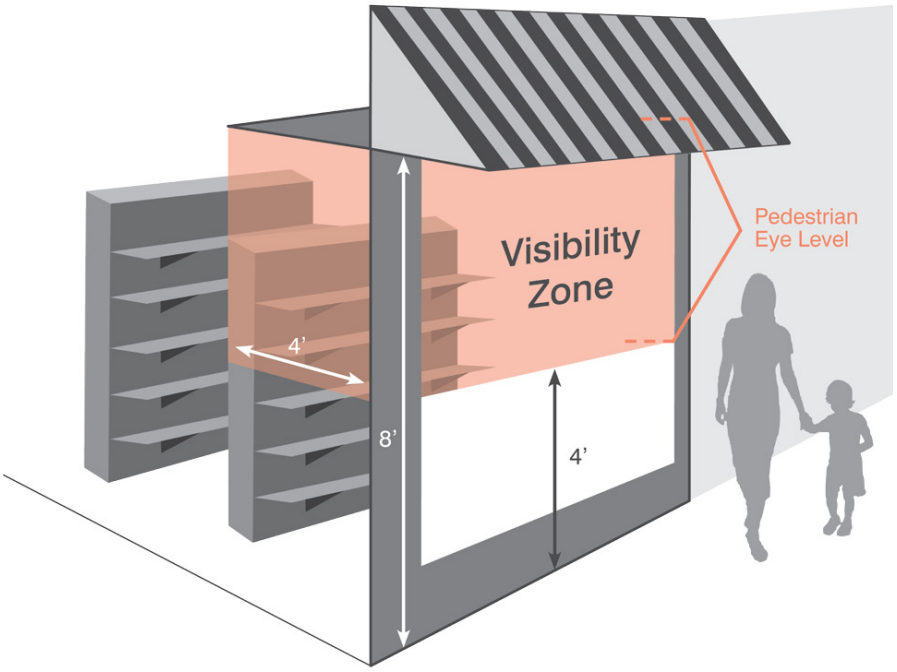
Sign is attached above the entrance bay, and does not detract from the buildings aesthetic qualities.

- Signs should be externally illuminated, or appear to be indirectly illuminated, such as by installing an external fixture to illuminate the sign or by using a reverse channel halo-lit means of illumination.
- Signs should have an opaque background that does not transmit light and text.
- Signs should be minimized in profile or depth, for example, by using a light emitting diode method of illumination.
- Sign legibility shall be of minimum appropriate intensity to be visible while not being visually dominating.
- Signage lights should be dimmed or off when business is closed.
- Businesses should not use exterior digital or LED screens to amplify branding beyond the signage limits.

## FORMULA RETAIL TRANSPARENCY

A transparent storefront welcomes customers inside with products and services on display, discourages crime with more "eyes on the street", reduces energy consumption by allowing natural light into stores, and enhances the curb appeal and value of the store, as well as the entire neighborhood. As mentioned earlier, successful city living depends on surprise to maintain interest. Even if the formula retailer is familiar, a view into the store may spur interest in the people and products inside.

The City strives to ensure that tenant spaces remain transparent to the exterior, contribute to the activity of the public realm and do not devolve into de facto sign boards for tenants.




### Visibility Requirements

To ensure visibility into active spaces, any fenestration provided at eye level must have visibility beyond a window display and into the store.

The following definitions apply:

- **Pedestrian Eye Level:** the space between 4 feet and 8 feet in height above the adjacent sidewalk level, following the slope if applicable.
- **Visibility to the Inside of the Building:** the area inside the building within 4 feet of the window surface at pedestrian eye level must be 75% open to perpendicular view.

Therefore, any fenestration of frontages with active uses must have visibility to the inside of the building with at least 75% open to perpendicular view with a 4-foot by 4-foot "visibility zone" at pedestrian eye level. In addition, 60% of all street frontages must be transparent windows, while any railings or grillwork placed in front of or behind storefront windows must be at least 75% transparent at a perpendicular view.

To ensure visibility, business signs may not exceed 1/3 the area of the window in which the sign is located. The Department will work with applicants to improve visibility wherever possible.

The Performance-Based Design Guidelines require formula retail applicants to work with staff to determine what transparency improvements can be made. Changes required may include converting windows to transparent glazing, relocating shelving and displays away from windows, or removing security grilles and other window coverings.

Photos by Matthew Dito




**NOT RECOMMENDED**

Views through the frontage fenestration are obstructed by advertising signs and business identifiers.




**NOT RECOMMENDED**

The 4-foot by 4-foot visibility zone inside the establishment is obstructed by excessive signage.



**NOT RECOMMENDED**

The security grille does not have at least 75% transparency at a perpendicular view.



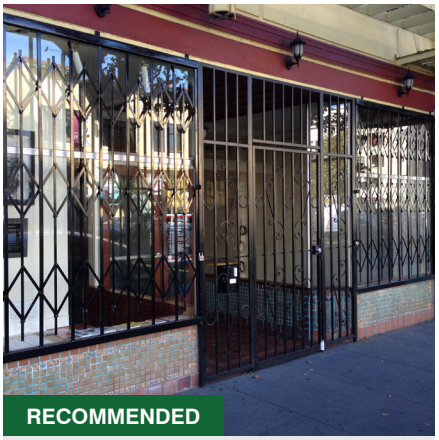

**RECOMMENDED**

The space between 4 feet and 8 feet above the sidewalk has at least 75% of its frontage fenestrations open to perpendicular view.




**RECOMMENDED**

Limited window signage maximizes visilibity inside the store.



**RECOMMENDED**

The security grille allows for visibility of at least 75% at a perpendicular view.

### What This Means For Formula Retail Use

1. Windows that have been covered over with boards, film, or paint must be restored to transparency.
2. Security gates or grillwork on the inside or outside of the window glass must be primarily transparent (at least 75% open to perpendicular view).
3. Shelving, display cases, appliances, and other items placed within four feet of the window glass must be no taller than four feet or be primarily transparent (at least 75% open to perpendicular view).
4. All exterior signs must have a sign permit or must be removed.
5. Business signs affixed to the window (painted or adhered to the glass) can be no larger than one-third the size of the window on which they are placed.

## FORMULA RETAIL STOREFRONT DESIGN

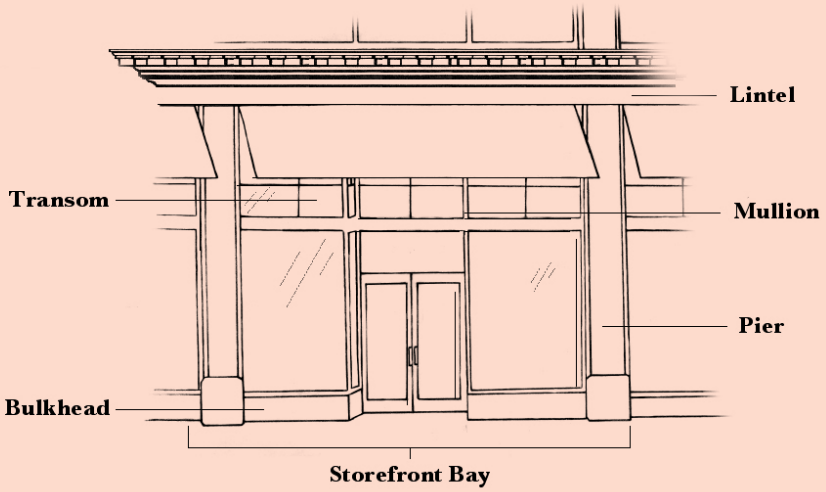
Storefront design can be used to extend branding beyond the dimensions of signage. To maintain emphasis on architecture and to prevent formula retail from overwhelming neighborhood character, it's important to prevent facades from becoming defacto branding opportunities.

Historic qualities present in a storefront should be preserved and maintained, as well as integrated into additions or modifications made to the storefront. The most successful storefronts combine contemporary design with sensitivity to the character defining storefront components.




### Storefront Components

The components of Performance-Based Design Guidelines for Storefront Design are: facades and street walls, corner lots, storefront bays, entrances, bulkheads, and display windows.




**TYPICAL FEATURES INCLUDE:**

**Bulkhead:** The low paneled base of a storefront bay that supports the glazing and elevates merchandise for pedestrian viewing.

**Façade Materials:** Original exterior cladding, typically brick, wood or stone provide a sense of permanence, scale and texture and often convey the work of skilled craftsmen.

**Lintel:** The horizontal structural element that spans above the storefront bays to support the weight of the upper façade.

**Mullion:** The vertical element that separates window units or storefront glazing; typically not a structural support for the building.

**Pier:** The vertical structural or decorative elements, also know as a column, which supports and/or frames the glazing.

**Storefront Bay:** Defined by the height of the lintel and separated by piers, a storefront bay is composed of bulkhead, glazing, transom, and entry.

**Transom:** The small, operable or inoperable framed windows above the glazing and below the lintel that filter light into the ground floor space; sometimes sheltered by awnings.

Photos by Matthew Dito




**NOT RECOMMENDED**

Design, including colors, finish, and texture, is inconsistent with the surrounding buildings.




**RECOMMENDED**

Storefront design is consistent with surrounding buildings, and the setback creates a continuous street wall and edge.

### Façades and Street Walls

The façade is the exterior wall of the building, or frontage, and should utilize traditional building materials such as terra cotta, brick, stone, and scored stucco. The color should be limited to different tones of one color, and said color should be similar in profile to the surrounding buildings. Buildings should have a finished texture that is smooth and painted with a satin or light finish. Color washing an entire storefront to extend branding detracts from the character of a neighborhood and will not be permitted.

The design should remain consistent with surrounding buildings in the neighborhood. As such, the setback should be as such that it creates a consistent, continuous street wall and edge.

### Corner Lots

Many buildings on corner lots exhibit special features that emphasize the corner and add accent to both intersecting streets, providing visual interest to pedestrians. Corner entrances, storefront windows, and displays that extend along both street facades emphasize corner lots are encouraged.

Where entrances are not located at the corner, storefront windows should turn the corner, in addition to windows on each side of the building.

### Storefront Bays

Appropriate alignment and proportions of the storefront bay are critical in creating a unified appearance within the district.

Windows should be consistent in height and design with storefront doors to create a cohesive appearance, however, slight variations in alignment can add visual interest. Piers and lintels should be treated and designed as a single component. The lintel establishes the top of the storefront bay, visually separating it from upper floors. Proper proportions must be maintained between windows and the lintel. Elements such as signs and awnings that obscure the spacing of the bays or other elements that define those bays should be avoided. Colors should be similar in profile to the surrounding buildings, and limited to different tones of one color.

### Entrances

Typically, entrances are recessed by about two to six feet from the sidewalk, allowing for protection from the rain, providing additional display frontage, and creating a rhythm of defined commercial spaces. Together, these features can establish a sense of scale and identify business entrances. In San Francisco, entrances for people should be emphasized and entrances for cars should be minimized.

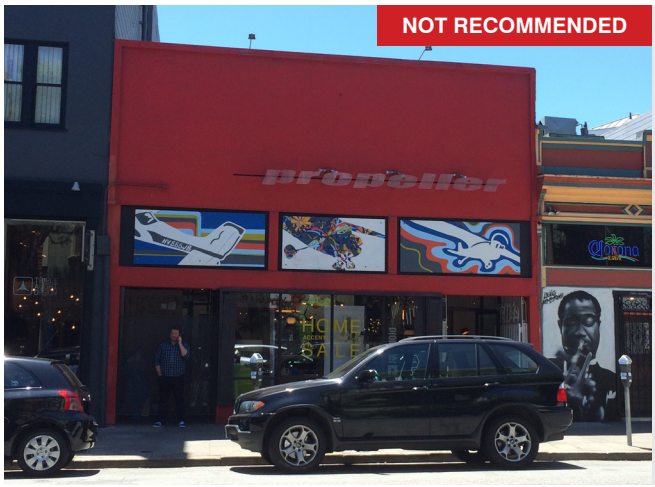
A service door may also exist for access to building systems.

### Bulkhead

The bulkhead is the one to two foot high based of the building, upon which the storefront display window is placed. Traditionally, bulkheads are made of painted wood, decorative metal, small ceramic tiles, or masonry. Replacements should match or be compatible with original materials. Bulkheads should be consistent with surrounding buildings in the neighborhood, and are typically between 18 inches and 24 inches.

### Storefront Displays

Storefront display windows typically consist of large panes of plate glass set in metal or wood frames, with the primary purpose of allowing passerby to see goods or services available inside. Individual panes of a window are separated by mullions, which should be as narrow and as limited in number as possible. This maximizes visibility into interior activity and merchandising.




Colorwashing a building facade in branded color serves as oversized signage and is not permitted.




Transparent display with simple, effective signage on the bulkhead.




While the establishment utilizes the corner lot with its entrance, the facade and bulkhead are incompatible with the surrounding buildings.

Photos by Matthew Dito

## PEDESTRIAN ACCESSIBILITY

Ensuring that businesses are easily accessible creates a more inviting environment in commercial neighborhoods. For smaller formula retail establishments, pedestrian acessibility is usally not a problem. Larger formula retail establishments, however, tend to limit and control entrances. A suburban design may cater to those who arrive by car. In order to preserve the City's walkable character, formula retail in particular must be designed for pedestrians. Entrances that are distinguishable from the façade of a building invite and allow pedestrian access. Entrances should be located in a manner that keeps with the rhythm established by surrounding buildings. This consistency creates a familiarity that draws the attention of pedestrians.

Requirements for pedestrian accessibility are as follows:

- All businesses must have an ADA compliant entrance
- Corner lot locations should have at least an entrance on the corner, or one on each street
- Improve the pedestrian environment with clearly visible, easy, safe routes to business entries, including through parking lots and to the public sidewalk and transit stops.
- Provide pedestrian access onto the site from the main street on which the business is located.
- All existing street-facing doors, with the exception of emergency and service entrances, shall remain unlocked and open to the public during regular business hours.




The business entrance is not distinguishable from the corner lot window, and is located in a manner that does not utilize or promote pedestrian access to the building.




Business entrances are distinguishable from the building facade with a consistent rhythm that creates a familiarty to draw attention of pedestrians. Entrances are also visually compatible with the entrances to upper residencies.

Photos by Matthew Dito

## LIMITED FINANCIAL SERVICES

Limited Financial Services are defined in Planning Code Sections 790.111 and 890.111 as a retail use which provides banking services, when not occupying more than 15 feet of linear frontage or 200 square feet of gross floor area. Automated teller machines (ATM), if installed within such a facility or on an exterior wall as a walk-up facility, are included in this category. A Conditional Use authorization is required for all Limited Financial Services that are also a formula retail use, with the exception of single automated teller machines located within another use that are not visible from the street [Sec. 303.1(b)(13)].

When placing an ATM, the feature should be integrated into the overall composition of the storefront, so as to not detract from the architecture of the quality of the pedestrian experience.

A single ATM at a street façade may be permitted without conditional use authorization if the machine meets the Performance-Based Design Guidelines in this document. A single automated teller machine may not be permitted at the street front if it compromises the storefronts ability to meet other Performance-Based Design Guidelines, including visibility and transparency goals.




This illustration represents the design guidelines for ATMs.

General guidelines for ATMs are as follows:

- Minimize lighting elements and brightness intensity.
- Areas using materials that need to be lit, or backlit, should be minimized.
- ATMs should be proportionate to the storefront or building facade.
- Framing elements should be used, as appropriate, to integrate ATMs into the facade composition.
- Architectural quality should be maximized.

Photos by Matthew Dito




NOT RECOMMENDED

This requires a conditional use permit because there is more than one ATM at the street front.




NOT RECOMMENDED

Colorwashing a building facade in branded color serves as oversized signage and is not permitted.

SAN FRANCISCO
PLANNING
DEPARTMENT

**FOR MORE INFORMATION:**
**Call or visit the San Francisco Planning Department**


**Central Reception**
1650 Mission Street, Suite 400
San Francisco CA 94103-2479

TEL: **415.558.6378**
FAX: **415.558.6409**
WEB: **http://www.sfplanning.org**

**Planning Information Center (PIC)**
1660 Mission Street, First Floor
San Francisco CA 94103-2479

TEL: **415.558.6377**

*Planning staff are available by phone and at the PIC counter.*
*No appointment is necessary.*

SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS

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

June 30, 2014

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

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

Small Business Commission Recommendation: **No Recommendation**

Dear Ms. Calvillo:

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

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

On June 9, 2014, the Small Business Commission moved to approve a related proposal put forth by the Planning Department to amend formula retail controls. The Commission suggested the legislative sponsor continue his dialogue with the Planning Department to unify both proposals. The Commission found many valuable aspects in the Planning Department's legislation, and believes it should be possible to align both pieces of legislation into a single proposal.

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

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

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

cc: Jason Elliot, Mayor's Office
Nick Pagoulatos, Office of Supervisor Eric Mar
Aaron Starr, Planning Department
Kanishka Burns, Planning Department
AnMarie Rodgers, Planning Department
Andrea Ausberry, Office of the Clerk of the Board

## Burns, Kanishka (CPC)

**Subject:** FW: formula retail written agreements with neighborhood organizations

**From:** Ocean Avenue CBD [mailto:info.oacbd@gmail.com]
**Sent:** Friday, June 20, 2014 6:26 PM
**To:** Rodgers, AnMarie (CPC)
**Subject:** Re: formula retail written agreements with neighborhood organizations

While transparency (windows) and signage are important, from my perspective of trying to establish a relationship with a giant retail chain that will involve our part of that chain in the affairs of the community, this does not really help much. These new regulations should help neighborhoods in establishing rules of relationship and engagement with large corporations. If a chain has a regular manager, that manager usually has to ask someone higher up to approve virtually anything. Another answer to a request is that no funding is available for anything having to do with community things. For example, I have been advised that the Target foundation only gives funding to projects in Minneapolis. Apparently they do fund things like the Yerba Buena Family Day, or a big piece of it. But those details are not readily available to try and establish a relationship because there are no records. From my research, the relationship between public sector and the profit focused private businesses is not defined well in most San Francisco neighborhoods, and not defined at all in regards to the CU process. Many chain stores do not offer any way to communicate with them without the intervention of City Hall. At some places like 24 Hour Fitness, if you ask to speak to a manager, they say no manager is available. When you ask for a call back, it never happens. Dan

Daniel Weaver
Executive Director
Ocean Avenue Association
t: 650-273-6223
e: info.oacbd@gmail.com

On Fri, Jun 20, 2014 at 2:28 PM, Rodgers, AnMarie (CPC) <anmarie.rodgers@sfgov.org> wrote:

Ahh, thanks for clarifying. Would you like to meet or have a phone conversation about the proposal? Pasted below is a brief summary. We're in the process of reviewing public comment on the proposal below for potential revisions and would like your input if possible. Here's a link to further info too: http://commissions.sfplanning.org/cpcpackets/2013.0936T.pdf

To help us get it right, community input and thorough research has guided the establishment of our four primary recommendations: Adjust the Definition, Establish Performance Standards, Reduced Process and Super Stores:

1. **Adjust the definition of formula retail.** We would overall strengthen the definition of "formula retail" by counting international locations and entitled but not yet built locations toward the new maximum of 20 retail establishments. We would also add new use categories to the definition to capture brands that are

not currently considered formula retail. This will enable smaller businesses room to grow while allowing for appropriate regulation of larger international brands and those that are more rapidly expanding with multiple un-built sites. We would also expand the controls of formula retail to Mid-Market, an area that calls for careful consideration during this period of rapid change and growth.

2. We recommend that **performance standards** be established for the Commission's review. In terms of aesthetics, we'll add pedestrian-friendly requirements, minimized signage and increased transparency.

3. **Reduced process when appropriate.** For sites that have previously been approved as formula retail, review would be centered on the aesthetic standards. If no objection is made after public notice, complying with the performance standards would signal the end of review. However, if a request has been made for further consideration, a full hearing before the commission would be scheduled.

4. Larger stores (over 50,000 in most districts and 120,000 downtown) would need to complete an **economic impact study** to inform the City of potential changes to tax revenue, employment levels, costs of public services needed by employees, and an examination of whether local spending would increase or decrease.

**AnMarie Rodgers**
**Senior Policy Advisor**

Planning Department | City and County of San Francisco
1650 Mission Street, Suite 400, San Francisco, CA 94103
Direct: 415.558.6395 | Fax: 415.558.6409

Email: anmarie@sfgov.org

Web: http://www.sf-planning.org/Legislative.Affairs

Property Info Map: http://propertymap.sfplanning.org/

**From:** Ocean Avenue Association [mailto:info.oacbd@gmail.com]
**Sent:** Friday, June 20, 2014 2:06 PM

**To:** Rodgers, AnMarie (CPC)
**Cc:** Burns, Kanishka (CPC)
**Subject:** Re: formula retail written agreements with neighborhood organizations

I was not at the 2nd meeting when new proposal was introduced. And no I do not understand what the changes are in the new version. Dan

Sent from my iPhone

On Jun 20, 2014, at 12:00 PM, "Rodgers, AnMarie (CPC)" <anmarie.rodgers@sfgov.org> wrote:

> Hi Dan,
>
> Were you able to attend our stakeholder meeting where we described the proposal? Do you as ED of Ocean Ave understand the proposal? Let us know if you have questions or need information. I'd like to get your opinion.
>
> Thanks,
>
> **AnMarie Rodgers**
> **Senior Policy Advisor**
>
> Planning Department | City and County of San Francisco
> 1650 Mission Street, Suite 400, San Francisco, CA 94103
> Direct: 415.558.6395 | Fax: 415.558.6409
>
> Email: anmarie@sfgov.org
>
> Web: http://www.sf-planning.org/Legislative.Affairs
>
> Property Info Map: http://propertymap.sfplanning.org/
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> <image001.png> <image002.png> <image003.png> <image004.png>
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> ---
>
> **From:** Ocean Avenue Association [mailto:info.oacbd@gmail.com]
> **Sent:** Friday, June 20, 2014 11:54 AM
> **To:** Rodgers, AnMarie (CPC)
> **Cc:** Burns, Kanishka (CPC)
> **Subject:** Re: formula retail written agreements with neighborhood organizations
>
> People do not know about the proposed changes
>
> Sent from my iPhone

On Jun 20, 2014, at 11:50 AM, "Rodgers, AnMarie (CPC)" <anmarie.rodgers@sfgov.org> wrote:

> Thanks for the note, Dan. Can you tell me, in general, what is the Ocean Ave reaction to the Commission's proposed changes to formula retail controls?

**AnMarie Rodgers**
**Senior Policy Advisor**

Planning Department | City and County of San Francisco
1650 Mission Street, Suite 400, San Francisco, CA 94103
Direct: 415.558.6395 | Fax: 415.558.6409

Email: anmarie@sfgov.org

Web: http://www.sf-planning.org/Legislative.Affairs

Property Info Map: http://propertymap.sfplanning.org/

<image001.png> <image002.png> <image003.png> <image004.png>

**From:** Ocean Avenue CBD [mailto:info.oacbd@gmail.com]
**Sent:** Thursday, June 19, 2014 7:19 PM
**To:** Burns, Kanishka (CPC); Rodgers, AnMarie (CPC)
**Subject:** Re: formula retail written agreements with neighborhood organizations

I reviewed Geary Blvd. and found nothing related to the community except that meetings were held. I assume there is no document relating to the Yerba Buena Target. Although I also found out that Target funds all or a big part of the YB CBD Family Day. Dan

Daniel Weaver

Executive Director

Ocean Avenue Association

t: 650-273-6223

e: info.oacbd@gmail.com

FARELLA BRAUN + MARTEL LLP

**ILENE DICK**
idick@fbm.com
D 415.954.4958

June 23, 2014

*Via E-Mail regina.dick-endrizzi@sfgov.org*

Stephen Adams, President
San Francisco Small Business Commission
Room 110 , City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA. 94102

Re: Expanding Formula Retail Controls: BOS File No. 130788
Item No. 5: June 23, 2014 Commission Meeting

Dear President Adams, Vice-President White and Commissioners:

We represent BOMA-San Francisco ("BOMA") with regard to the various amendments to existing formula retail controls proposed by the Planning Department and members of the Board of Supervisors. BOMA's membership is keenly interested in this issue since its members are the owners and managers of most of the buildings in the downtown/SOMA C-3 districts. These buildings are often chosen by many formula retailers because of their proximity to large numbers of people who benefit from having such products available within walking distance of their jobs and/or homes. Because of BOMA's interest, we are submitting our opposition to Sup. Mar's proposed amendment to formula retail controls to you by way of this letter.

I appeared before you on June 9, 2014 on behalf of BOMA to support the Planning Department's proposed amendments to formula retail legislation. As I stated then, the Planning Department's proposed amendments were based on data review and analysis of the various features of formula retail. Based on that data, the Planning Department proposed modest modifications that would address the issues of greatest concern to the neighborhoods and that could reasonably and fairly be administered by Planning staff without creating a tremendous barrier to formula retail stores located in San Francisco.

At that meeting, this Commission recommended approval of the Planning Department legislation by a 4-2 vote. During your deliberations, you noted that the Planning Department's proposal consisted of revisions to the existing scope of formula retail and addressed the main concern of many neighborhood opponents—aesthetic character of the proposed formula retail store's façade and design. You also commended the Planning staff on it "data-driven" approach to analyzing how to best regulate the number and location of formula retail establishments.

In contrast, rather than modify formula retail regulations to address existing problems with the administration of formula retail based on hard data, Sup. Mar's proposed legislation is a "solution in search of a problem." As Planning staff noted in its formula retail study, 75% of conditional use applications for formula retail stores are approved. The public benefits of conditional use is that it allows for case-by-case oversight of proposals based on their location and real, as opposed to, perceived impacts. Despite the fact that the conditional use process appears to be working to minimize impacts created by formula retailers, Sup. Mar's proposed overhaul to expand the coverage and scope of review of formula retail regulation will result in conditional use approval for formula retail being the rule rather than the exception.

Under long-standing land use principles, conditional use review is intended to provide additional oversight only when a particular use has potentially negative impacts different than neighboring uses. Existing Planning Code Section 303(i) and the Planning Department's proposed amendments to increase the minimum number of formula retail establishments subject to conditional use review to 20 and to exclude "subsidiaries" of formula retail stores from regulation, more than adequately enables the Planning Commission to impose conditions tailored to particular formula retail use in a specific location. If the current review system was not working as intended, which is the basis for Sup. Mar's far-reaching changes, all formula retail applications would be approved by the Planning Commission.

In place of the limited expansion of conditional use review proposed by the Planning Department, Sup. Mar would open the flood gates to subject far greater numbers of proposed retailers to Planning Commission review and to impose onerous requirements. You heard testimony during your June 9th hearing from Planning staff and the public that Planning staff is ill-equipped to determine whether a retailer is a "subsidiary" of an existing formula retailer. At that hearing, we and others also stated our support for the increase to a minimum of 20 stores internationally, as that number was based on the Planning Department's economic study. Despite that study and the fact that the "11" minimum formula retailers currently in the Planning Code was never based on any hard data, Sup. Mar seeks to retain that unsubstantiated number.

Sup. Mar's legislation will lead to Planning staff undertaking tasks outside their land use expertise. For example, the requirement that subsidiaries be included in formula retail regulation will require Planning staff to determine whether an entity is a subsidiary. This is not an easy task. Public information is not always available on corporate businesses. And if it were, it could require a corporate lawyer to trace the links of ownership to determine if an entity was a "subsidiary" as defined by Sup. Mar's legislation.

Another burdensome piece of Sup. Mar's legislation is the requirement that an economic impact study be prepared for formula retail uses based solely on the size of the store sought to be occupied. Sup. Mar requires increasingly more detailed studies for sites depending only on the size of the store.[1] This recommendation is made without any data to support it other than a

[1] Sup. Mar's proposal would require that a potential formula retail use of between 3000-10,000 square feet study its economic impacts of a 2.5 mile radius. A store greater than 10,000 square feet would be subject to citywide study economic impact study.

simplified approach that store size, without regard to the intensity or type of use, is significant enough to merit an economic impact study. Like searching for subsidiaries, Planning staff does not regularly engage in economic impact studies, since they include data that is generally outside Planning's land use purview. Yet, in recognition of the value an economic impact study could provide for "superstore" formula retail proposals, the Planning Department is recommending economic impact studies only for stores greater than 50,000 square feet in most districts and 120,000 downtown. We believe that if economic impact studies are to be required, they should be reserved only for these larger size stores.

Given the central role economic analysis plays in Sup. Mar's proposal, we want to share with this Commission the City Economist's conclusions regarding its review of Sup. Mar's legislation.[2] If Sup. Mar heeded these observations, we believe that he would agree with BOMA's recommendations.

•Formula retail controls primarily affect the economy by changing the retail prices paid by consumers, the amount of local spending by retail businesses, commercial rents and vacancy rates, and perceptions of neighborhood quality.

•In general, chain stores charge lower prices, but may spend less within the local economy, and can be unpopular with some residents because they can be seen to diminish the character of the neighborhood. On the other hand, limiting chain stores can reduce commercial rents and raise vacancy rates.

•Research by the Office of Economic Analysis suggests that local retailers may spend up to 9.5% more within the local economy than chain stores, but charge prices that average 17% more. On balance, the economic benefits of greater local spending by non-formula retailers are outweighed by higher consumer prices.

Based on the above, we oppose all of the proposed changes to formula retail controls sought by Sup. Mar. Thank you in advance for considering BOMA's position on this important public policy issue.

Sincerely,

Ilene Dick

ID

[2] See "Expanding Formula Retail Controls: Economic Impact Report, Office of the Controller-Office of Economic Analysis, February 12, 2014" p. 2. The bases of these conclusions of the potential economic impact of Sup. Mar's legislation have not changed since Sup. Mar first introduced his legislation on July 30, 2013. http://sfcontroller.org/Modules/ShowDocument.aspx?documentid=5119

cc: Ken Cleaveland, BOMA-SF
Regina Dick-Endrizzi, Director, Small Business Commission
AnMarie Rodgers, Senior Policy Advisor, Planning Department
Kanishka Burns, Planning Staff

**FILLMORE MERCHANTS ASSOCIATION**

2184 Sutter Street #155
San Francisco, CA 94115
415.441.4093

*Dedicated to making the Fillmore a still better place to live and do business*

June 26, 2014

To the Planning Commission:

Re: Formula Retail

Your study conducted by Economic Analysts did an excellent job of identifying the issues created by the formula retail ordinance on Fillmore Street. While it is a no-brainer to add international stores, the proposed amendments to the Planning Code fail to address the issues the study identified on Fillmore Street in two important ways:

First, the proposed changes do not address the influx of fashion and cosmetics brands already sold in their own boutiques within department stores around the world, but just now opening stand-alone stores. If subsidiaries are not to be included, then some other way should be found to include these "stores within stores."

Second, the proposed changes do nothing to address the race the study identified by fashion and cosmetics brands to open on Fillmore before they "get to 11." Instead, by raising the number to 20 to accommodate a tiny fraction of businesses, the changes would encourage the race to continue to 20.

Sincerely,

FILLMORE MERCHANTS ASSOCIATION
/s/ Thomas R. Reynolds, President

**From:** Stacy Mitchell
**To:** Rodgers, AnMarie (CPC)
**Subject:** formula business policy recommendation
**Date:** Wednesday, May 28, 2014 12:18:29 PM

---

AnMarie,

Just wanted to say that I thought the department recommendations looked very solid. I'll be interested to see how this all plays out!

Very best,
Stacy

+
Stacy Mitchell
Institute for Local Self-Reliance
http://www.ilsr.org

Tel: 207-774-6792
Twitter: https://twitter.com/stacyfmitchell

**The Hometown Advantage Bulletin**
http://bit.ly/hometown-advantage

**TEDx Talk: Why We Can't Shop Our Way to a Better Economy**
http://www.ilsr.org/ted

July 1, 2014

John Rahaim
Director, San Francisco Planning Department
City of San Francisco
1 Dr. Cartlon B.Goodlett Place
San Francisco, CA 94102

**Re: Formula Retail in the C-2 / Fisherman's Wharf District**

Dear Mr. Rahaim:

We understand that as part of the Planning Department's recent study on formula retail, extending formula retail controls into the Fisherman's Wharf District was considered but omitted from the final recommendations. We wanted to let you and your staff know that we were very grateful for this decision since our district is not advocating for this and is actually strongly opposed to creating these type of controls at the wharf.

With 6 large shopping centers that have their own parking garages/lots and half a dozen block long shopping centers, formula retail is essential to the mix of retail, restaurants and services offered at the wharf. We recently conducted our own survey of the district and learned that it contains only *13% formula retail by current definitions which is less than the city average. The mix currently serves the 10 - 12 million annual visitors who often decide with their wallets what retail and restaurant establishments stay and go in this highly competitive neighborhood.

Just as Union Square has been carved out of formula retail controls, Fisherman's Wharf needs to be omitted from any future considerations. That said, we understand that standardized signage would help the overall aesthetics of our district which is why the FWCBD is convening a special committee to work with property owners, the Port of San Francisco and the Zoning Administrators Office on a comprehensive signage package for the district. In addition, we would also like to work on legislation to make Fisherman's Wharf a Special Use District to ensure that it remains a family friendly destination by banning adult entertainment and other businesses that could detract from Fisherman's Wharf standing as the #2 tourist destination in the State of California.

We look forward to continuing our collaboration with city staff and on behalf of the Fisherman's Wharf Community Benefit District (FWCBD), and its Board of Directors, thank you again for removing formula retail controls from your recent presentation to the City Planning Commission and for your continued support of Fisherman's Wharf.

Thank You,





Lou Cuneo
President

Troy Campbell
Executive Director

Cc: David Chiu, President of the Board Of Supervisors
The San Francisco Planning Commission

**This number did not include PIER 39, the 4 large retailers in the district (Safeway, Ross, Cost Plus World Market, Orchard Hardware) and formula retail located inside of North-Point Shopping Center.*

## Burns, Kanishka (CPC)

**From:** Carleton Hoffman <carletonhoffman@gmail.com>
**Sent:** Sunday, July 06, 2014 6:51 PM
**To:** Burns, Kanishka (CPC)
**Cc:** Carleton Hoffman
**Subject:** chain stores, Philz, Starbucks

hello,
i hope i have reached the right person.
i am regarding a quote in the SF Bay Guardian: "Right now, we would treat Philz the same way we treat Starbucks".
i want to encourage the Planning Department to do exactly that since my one experience with this place years ago left me with one disappointing cup of coffee containing cardamon i didn't ask for and i am sick and tired of all the publicity this place gets and its reputation as a trendy place to be seen. not only is the coffee not good but these places are increasing in number and, since apparently this guy wants to be as ubiquitous as Starbucks, the City should treat him as it does the huge international chain.
thank you for your attention.

Carleton Hoffman,

San Francisco

SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS

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

May 14, 2014

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

**Subj: Small Business Commission Response to Planning Department's "San Francisco Formula Retail Economic Analysis"**

Dear President Wu:

The Small Business Commission conducted detailed discussions of the Planning Department's "San Francisco Formula Retail Economic Analysis" at its regular meetings on April 28 and May 5, 2014, voting 7-0 on the latter date to adopt the recommendations contained herein. The Commission is grateful to have had the expert assistance of Planning Department staff Kanishka Burns and AnMarie Rodgers during the formula retail (FR) working groups held over several months while developing the Analysis as well as for the presentation by Ms. Burns at the Commission's April 28 meeting. With their guidance, the Commission reached consensus on many specific policy topics presented in the Analysis or otherwise known to be under consideration in the various pending legislative proposals to amend FR controls.

You are surely aware of the Commission's interest in formula retail regulations and their impacts on small businesses. It is from this position of great interest that the Commission offers its recommendations on many specific and a few general matters relating to potential amendments to FR controls. Wherever possible, the Commission has attempted to inform its recommendation with the quantitative and qualitative findings of the Formula Retail Economic Analysis. It is the Commission's belief that reforms to the controls will be most successful if based on data rather than preconceived notions or unsubstantiated claims. I thank you in advance for your serious consideration of the Small Business Commission's positions as communicated in this letter.

## SMALL BUSINESS COMMISSION RECOMMENDATIONS

*Formula Retail Controls – Overall*

Generally, the Commission agreed that existing controls were functioning as designed and allowing for substantial community input into the decision making process of whether to grant a conditional use (CU) authorization. The relatively low prevalence of FR uses in most areas of the City when compared to national statistics is suggestive of the efficacy of the controls. Thus, the Commission perceived little need to dramatically reform existing FR controls at this time.

SMALL BUSINESS COMMISSION
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MONETTA WHITE
REGINA DICK-ENDRIZZI, DIRECTOR

*Conditional Use Authorization Process*

Despite the generally well-structured FR controls in place currently, the Commission observed another statistic suggesting the CU review process continues to be problematic for many business types, including formula retailers. The Analysis found the typical timeframe for CU review of FR uses ranging from 6 to 12 months, and associated costs reaching into the tens of thousands of dollars. Such protracted reviews, when compared to relatively high approval rates upwards of 75 percent, indicate a CU review process that can function more efficiently with little chance of detriment to community character.

Formula retail applicants should be afforded the opportunity to request review under a process similar to that of the Planning Commission's Small Business Priority Processing Pilot Program ("SB4P"). Reviewing FR applications under such a process would expedite reviews for those uses a neighborhood deems desirable, while reserving the greatest scrutiny for controversial applications. Under an SB4P-type process, applicants that have satisfied neighborhood concerns would reduce by months their entitlement review timeline, while neighborhoods would reserve the opportunity to oppose an FR application and request a full review by the Planning Commission. To safeguard against frivolous requests for full review, the Planning Commission should consider establishing a minimum threshold for the number of appellants, possibly related to a proportion of population or to the number of parcels within a certain distance. The process should remain accessible for the community, but not prone to abuse.

Should it prove undesirable or infeasible to allow all FR applications to proceed under an expedited process, then the procedure should at a minimum apply to the subset of applications for like-to-like FR uses triggered by a change in business name or ownership that currently must undergo the full CU process.

*Conditional Use Authorization Findings*

As part of its concerns related to the CU process, the Commission identified the first finding required by Planning Code Section 303(c) to be particularly problematic. The Commission identified the requirement that a proposed FR use be "necessary or desirable" for the neighborhood or community too indefinite to be of much help to the Planning Commission when deciding whether a use is appropriate in a given location. Rather, the Commission suggested supplementing findings required for an FR use with a more specific standard that such use is "unavailable within walking distance" of the proposed location. A common measure of walking distance is one-quarter mile, which if adopted in this context, would add a quantitative component to the highly qualitative set of findings currently associated with CU review of FR uses.

*Worldwide Locations*

The Commission determined that worldwide locations should be considered in the calculation of 11 or more establishments used to determine whether a business is subject to FR controls. While the report suggested this could impact as few as 10 percent of formula retailers, it is a sensible application of the regulations used to identify branded entities with formulaic characteristics, especially in a globally connected city such as San Francisco.

*Subsidiary Ownership*

The Commission determined that subsidiaries majority-owned by one or more parent entities that would themselves be subject to FR controls should be subject to same. Again, while the report identified 3 percent of FR establishments that would be impacted by such a change, it is a reasonable extension of the regulations to prevent evasion of FR controls through creative corporate structuring. Subsidiary businesses that are

sufficiently unique from their parent entities and that do not exhibit two or more standardized features common with 11 or more other locations would remain exempt from FR controls, regardless of their parent ownership. Adopting this change would simply place the burden on majority FR-owned businesses to demonstrate their uniqueness as part of the review process rather than being exempt from FR regulations entirely.

*Expanding Controls to Additional Service Uses*

The Commission determined that the FR definition should include an expanded list of personal service, business service, and medical service uses. A primary focus of the FR controls in place currently is to retain "distinct neighborhood retailing personalities" while minimizing "standardized architecture, color schemes, décor and signage … that can detract from the distinctive character" of neighborhoods. To the extent this focus continues to be relevant, service uses must be included.

The Analysis cautions that expanding FR controls to include more service uses may exacerbate vacancy rates in neighborhoods where services are playing an increasingly important role. The Commission disagrees with this contention as other findings in the report suggest that rents and vacancy rates are more closely correlated to overall macroeconomic conditions. Furthermore, the Commission believes that distinct neighborhood architecture and unique retail and service offerings provide the greatest chance for long-term commercial corridor viability.

*Concentration*

The Commission believes that controls relating to density, concentration, and/or distance between FR uses should be set within specific NCD zoning districts, not in a citywide standard. The Analysis suggests that development patterns, population density, and other unique neighborhood characteristics make application of a uniform density standard problematic. The Commission agrees with this assertion. It also interprets the report's findings that clustering of FR uses within a merchant corridor makes locating there more attractive to other formula retailers. Thus, adjusting controls to reduce the density of FR in a corridor may reduce future pressure from additional formula retailers.

ADDITIONAL CONSIDERATIONS

The Commission acknowledges that the Analysis was designed to assess only the current extent of FR in San Francisco and the impacts of the City's existing FR controls. In the pursuit of that goal, its authors proved relatively successful. In addition to the topics presented above that have recently been the subject of discussion among the Board of Supervisors and Planning Commission, the Small Business Commission would also like to provide some suggestions of areas for future study, as follows:

*Commercial Lease Provisions*

The City should investigate the possibility of regulating certain provisions of leases for commercial retail spaces. Requirements related to security deposits, letters of credit, pre-paid rent, and so-called "key money" deserve special attention. The Analysis identified some evidence that landlords are requiring substantial security deposits, letters of credit for 6-12 months rent, and additional fees before agreeing to leases. All of these factors skew in favor of formula retailers to the disadvantage of independent businesses. Perhaps it is possible to amend the City's Administrative Code to regulate the content of leases to restore a more balanced competitive environment for businesses of all sizes and to remove excessive requirements that stifle competition.

*New Criterion for Formula Retailers*

The Analysis describes a well-known trend towards online retail for the purchase of an increasingly broad array of goods. Previously restricted to so-called "comparison" goods, online retailers have recently begun expansion into same-day delivery of groceries and other every day convenience items. Should this trend continue, the prevalence of retailers in neighborhood commercial districts might begin to diminish. In their place, service uses – which are difficult to replicate online – may play a larger role in neighborhood corridors.

As the influence of online retailers with large sales volumes but few physical locations continues to increase, it may be prudent to develop a new method of regulating such uses. Since their adoption, FR controls have evolved beyond a mere mechanism to preserve unique neighborhood aesthetics into a tool for ensuring a balanced variety of goods and services offered by businesses of all sizes. The changing nature of neighborhood retail as well as a shift in the focus of FR controls may require a revised methodology for identifying FR uses.

The Planning Department has previously communicated its perceived limitations in regulating certain business characteristics via land use controls. It believed that crafting land use regulations based on business revenue or net income, for instance, could prove challenging due to limited access to such information and unfamiliarity of Planning Department staff with business-centric data. Therefore, any newly developed regime for FR regulation built on these elements may be best situated in another City agency.

Future analysis should be conducted to inform the development of an expanded methodology for defining and regulating FR uses. The Commission found itself dissatisfied with the adequacy of using physical locations as the primary measure of a FR business. In the Commission's view, an online business's fleet of delivery trucks or deployment of unmanned merchandise pickup locations are equally as indicative of a formula retailer as are physical locations. It believed there are additional criteria to rely upon in making a determination of FR status, but lacked sufficient information to make a recommendation on what those criteria are at this time.

More study is necessary to keep pace with the changing dynamics of retail as the influence of online businesses increases. An effort of this sort would benefit from being relieved of the particular time constraints impacting the current evaluation of FR controls.

*Adopting New Redevelopment Tools*

The Analysis describes the effect large vacant spaces can have on neighborhood commercial corridors. It found that nearly 85 percent of formula retailers occupy more than 3,000 square feet, while 80 percent of independent retailers occupy 3,000 square feet or less. More often than not, these spaces are suitable only for formula retailers whose standard floor plans rely on large floor areas, and whose corporate resources can sustain the increased monthly per-square foot rents. Vacancies tend to persist until an interested formula retailer is identified.

Property owners frequently cite architectural challenges as the main reason preventing them from demising such spaces into small business-friendly storefronts. When creating smaller storefronts is possible, it may be too expensive to make economical sense for some property owners. In other cases, structural elements of a building may truly prove infeasible to overcome. In either case, the City can do more to incentivize the redevelopment of these types of properties that drag on the vibrancy of neighborhood commercial districts.

The Planning Department should partner with the Office of Economic and Workforce Development to assess the feasibility of developing tailored redevelopment tools to assist property owners with large-scale reconfiguration or redevelopment of their difficult to lease buildings. It may be possible to provide grants or low-cost loans to reduce owner barriers to reconfiguring those buildings with potential for reuse but for lack of

owner funding and/or skilled architectural expertise. For those buildings that truly cannot be reconfigured, one of the following options may be appropriate:

1. Provide a housing density bonus to mixed-use property owners that commit to redeveloping their properties and to reserving ground floor commercial space in suite sizes of 2,500 square feet or less. Redevelopment under these parameters would provide right-size space for independent retailers as well as provide additional housing units.

2. Establish a certification process for buildings deemed truly too difficult to reconfigure, or unsuitable for density bonus redevelopment, to allow them to retain their large spaces. Criteria applied to review these properties should be very restrictive.

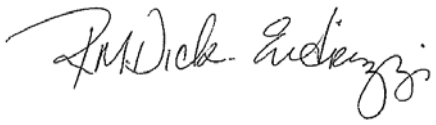
The City can be more actively involved in seeking better outcomes for outmoded buildings in neighborhood commercial corridors.

*Improved Monitoring of Changes in FR Uses*

The Planning Department may consider developing improved monitoring procedures for FR uses once they have been approved. Several examples exist where formula retailers, generally in the pharmacy or food market categories, have expanded into new product lines that were not initially considered during their CU reviews. A common example is that of a large pharmacy which indicated sales of medicine and sundries when first reviewed, but that has since expanded into selling alcohol, groceries, and other items unrelated to those originally reviewed. Neighborhoods deserve a right to individually consider those expanded uses. The FR controls should explicitly indicate expansions of approved uses require new CU review, and a periodic reinspection program may prove useful to identify violators.

Thank you for considering the Small Business Commission's comments on this very important topic. I applaud the Planning Commission and Planning Department for their thoughtful attention to this matter, which has been part of a long-running conversation among the small business community and at the Small Business Commission. Please feel free to contact me should you have any questions.

Sincerely



Regina Dick-Endrizzi
Director, Office of Small Business

cc: Jason Elliot, Mayor's Office
Todd Rufo, Office of Economic and Workforce Development

INTERNATIONAL FRANCHISE ASSOCIATION

Franchising®
Building local businesses, one opportunity at a time.

July 8, 2014

San Francisco Planning Department

**RE: The International Franchise Association's Position on Formula Retail Control Proposals**

Dear Members of the San Francisco Planning Commission:

On behalf of the International Franchise Association (IFA), I write to express our position on the recent proposals by the San Francisco Planning Department and Supervisor Mar regarding policy changes and policy code amendments to formula retail controls.

As you know, recommendations by the San Francisco Planning Department and Supervisor Mar have been proposed to the Planning Commission which will consider action on formula retail controls on June, 10. The recommendations related to this issue will deeply impact the current and future development of franchising within the city, and potentially damage the equity that current franchises have in their local businesses. Conversely, the Commission could move to enact recommendations that would encourage and streamline formula retail procedures, growth and economic opportunity.

Currently, franchising in the city of San Francisco accounts for a significant part of the city's small businesses, or formula retail stores. Collectively, it generates more than $2 billion in economic output through 1,435 franchise locations which employ nearly 16,000 employees. With an irrefutable impact on the city, franchising provides many San Franciscans with job opportunities and important goods and services. For this and other reasons set forth, the recommendations put forth by the Planning Department should encourage policy changes that promote and enhance formula business growth.

The IFA is generally supportive of the Planning Commission's recommendations. Specifically, lifting the longstanding formula retail threshold from 11+ to 20+ locations will allow for new business opportunity, job creation and robust economic growth. Notwithstanding, a less intensive administrative review and permit evaluation criteria will streamline business review processes. The current formula retail permit evaluation criteria are unfair to businesses in similar business format categories. Additionally, an evaluation process that considers specific variables rather than hard and fast concentration percentages will prevent discrimination and permitting delays.

Where significant concerns lie for the IFA, is within Supervisor Mar's proposed legislation. For example, requiring formula retailers to commission an "economic impact report" on locations with spaces greater than 3000 square feet, will delay processing and administrative reviews ultimately slowing franchise development. Locally owned franchise small businesses shouldn't be unfairly treated in regards to subsidiary retail definition.

The franchise small business model provides nearly 16,000 jobs to local San Franciscans and helps franchise owners achieve their entrepreneurial dreams. So, as you consider both proposals the IFA respectfully urges you not pick winners and losers among businesses, and support the Planning Commission's recommendations.

Please do not hesitate to contact me with any questions or further information.

Thank you,

Dean a. Heyl

Dean Heyl
Vice President, State Government Relations, Public Policy & Tax Counsel
International Franchise Association

CC: Dee Dee Workman, San Francisco Chamber of Commerce

## Burns, Kanishka (CPC)

**From:** Thomas Reynolds <trr@thomasreynolds.com>
**Sent:** Thursday, June 26, 2014 12:02 PM
**Cc:** Burns, Kanishka (CPC); Rodgers, AnMarie (CPC); Farrell, Mark (BOS)
**Subject:** Re: Proposed Changes to Formula Retail Controls
**Attachments:** fillmores-fashion.jpg; ATT00001.htm; chains6-26.pdf; ATT00002.htm

**Follow Up Flag:** Follow up
**Flag Status:** Flagged

To the Planning Commission:

Your study conducted by Economic Analysts did an excellent job of identifying the issues created by the formula retail ordinance on Fillmore Street. While it is a no-brainer to add international stores, the proposed amendments to the Planning Code fail to address the issues the study identified on Fillmore Street in two important ways:

First, the proposed changes do not address the influx of fashion and cosmetics brands already sold in their own boutiques within department stores around the world, but just now opening stand-alone stores. If subsidiaries are not to be included, then some other way should be found to include these “stores within stores.”

Second, the proposed changes do nothing to address the race the study identified by fashion and cosmetics brands to open on Fillmore before they “get to 11.” Instead, by raising the number to 20 to benefit a tiny fraction of businesses, the changes would encourage the race to continue to 20. The article below from Women's Wear Daily makes clear that the Fillmore fashion race is still on.

Thomas R. Reynolds, President
FILLMORE MERCHANTS ASSOCIATION
2184 Sutter Street #155
San Francisco, CA 94115
415.441.4093

http://www.FillmoreStreetSF.com

CLOSE PRINT PREVIEW X

May 19, 2014

# Keeping Fillmore Street's Fashion Flavor

*By* KHANH T.L. TRAN

## Burns, Kanishka (CPC)

**Subject:** FW: ATM's should not be included in CU process

-----Original Message-----
From: Alfredo.Pedroza@wellsfargo.com [mailto:Alfredo.Pedroza@wellsfargo.com]
Sent: Thursday, May 29, 2014 8:07 PM
To: Cohen, Amy (MYR)
Subject: ATM's should not be included in CU process

Amy,

With 25% deposit market share (or thereabouts), we provide the ability for 1 in 4 residents in SF to access cash for free.

Merchants avoid paying interchange fees related to card swipes when cash is used for purchases.

Economic Benefits of having an ATM in the area for small businesses · Drives customer traffic to the area (helps drive business) o Provides local customers with a convenient distribution point to bank o We advertise the location to our customers in the surrounding areas o ATM will show up on our locator tool when customers search for an ATM in the area. Time Savings for business customers (time=money) o Nearby convenient location to make deposits means less time away from their business · Safety o Nearby ATMs provide business owners the convenience of making deposits throughout the day – less cash on hand and provides an option making deposits during daylight hours versus evening hours.
· Provides customers convenient cash access o Potentially savings from cash purchases for retailers versus credit card

Benefits of an ATM for business customers that bank with WF · Cash o ATMs provide immediate credit for cash deposits o Provides the customer with a breakdown of the bills on screen and will print the details on the receipt
· Checks o Later cut-off times than the store for same day deposit (9PM) o Provides the customer with images of checks on the receipt · Convenience (time savings) o ATMs are available 24/7 and provides a convenient/easy way to make deposits without having to travel to a store o Able to make multiple deposits easily throughout the day

---
Alfredo Pedroza
Senior Vice President
California Director
Local Government Relations

Alfredo.Pedroza@wellsfargo.com

Typed with thumbs on a tiny blackberry - so please excuse my typos and my brevity.