

LEGISLATIVE DIGEST

[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 11 or more outlets worldwide; expand the applicability of Formula Retail controls to other types of uses; exclude Financial Services, Limited Financial Services and Personal Services above the ground floor from the definition of Formula Retail; 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; provide a method for calculating the concentration of formula retail establishments in a certain area; require Planning Department staff to recommend disapproval of new formula retail in the Upper Market Neighborhood Commercial District based on concentration of existing Formula Retail; 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, and for Formula Retail uses of 20,000 gross square feet or greater except for General and Specialty Grocery stores, to require an economic impact study and establish new fees for said study; require 30 days' public notice for conditional use hearings on proposed Formula Retail uses; amend Neighborhood Commercial Districts that required Conditional Use for Financial and Limited Financial Services to principally permit Financial and Limited Financial Services except in the Castro Street Neighborhood Commercial District, Upper Market Neighborhood Commercial Transit District, and 24th Street – Noe Valley Neighborhood Commercial District; require that where there has been a prior determination that a proposed project is a Formula Retail Use and the project sponsor subsequently removes one or more Formula Retail Use features, the project will remain subject to a Conditional Use authorization; delete the Conditional Use requirement for Walk-Up Facilities that are not set back 3 feet; and correct various Code provisions to ensure accuracy of cross-references; and adopting findings, including environmental findings, Planning Code, Section 302 findings, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Existing Law

Existing law regulates formula retail uses in a number of ways. The Planning Code defines a formula retail use 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” and “maintains two or more of the following features: a standardized array of merchandise, a standardized façade, a standardized décor and color scheme, uniform apparel, standardized signage, [and] a trademark or a servicemark.” (Planning Code § 303(i)(1).)

Retail sales activities and establishments included in the definition of formula retail include the following uses, as defined in Articles 7 and 8 of the Planning 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. (Planning Code § 303(i)(2); 790.102; 890.102.)

A formula retail use within any of these categories may be prohibited, conditionally permitted or principally permitted, depending on the zoning district. Formula retail uses generally require a conditional use authorization (CU) in neighborhood commercial districts (NCDs) and certain other districts; are permitted downtown; and are prohibited in the North Beach NCD, Hayes Valley Neighborhood Commercial Transit District, and some areas of Chinatown. (Planning Code § 303(i)(4) and (5).) Other restrictions also apply to particular formula retail uses in certain districts and subdistricts. (Planning Code § 303(i)(4) & (5).)

When a new formula retail use requires a CU, the Planning Commission is required to consider the following criteria, in addition to the criteria that apply to all CUs: the existing concentrations of formula retail uses within the district; the availability of other similar retail uses within the district; the compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the district; the existing retail vacancy rates within the district; and the existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the district. (Planning Code § 303(i)(3).) In addition, in areas in which a conditional use authorization is required for a formula retail use, that requirement generally applies to changes from one formula retail operator to another within the same use category, except in some narrow circumstances. (Planning Code § 303(i)(7).)

Amendments to Current Law

This ordinance would amend formula retail controls in several ways. First, the legislation would define a formula retail use to include “a type of retail sales *or service* activity or retail sales or service establishment” that has eleven or more other establishments worldwide in operation or with local land use or permit entitlements already approved, compared to the current definition, which includes retail sales “activities” or “establishments” with eleven or more other existing establishments or leases in the United States. It would also expand the definition of formula retail to include Limited Financial Service (ATMs), with some exceptions; Personal Service (e.g., salons and certain instructional services); Fringe Financial Service (check cashing establishments); Tobacco Paraphernalia Establishment; and Massage Establishment. (See Planning Code §§ 790 & 890 for definitions of these uses.) Financial Services, Limited Financial Services, and Personal Services above the ground floor would not be considered Formula Retail uses.

Second, the legislation would expand the CU requirements for formula retail establishments and require the Planning Commission to consider a project's compliance with a set of

performance guidelines (to be adopted by the Commission concurrently with this legislation), as well as the CU criteria for formula retail contained in current Planning Code Section 303(i)(3); would require consideration of formula retail impacts within the vicinity of the proposed project, as well as within an NCD; would set forth a method for measuring the concentration of formula retail uses within a certain radius; would codify the Planning Commission's policy directing staff to recommend disapproval of a proposed formula retail use in the Upper Market Street NCD if approval would result in a concentration of formula retail establishments of 20% or above within a 300-foot radius; would require a CU for formula retail establishments in the C-3-G District along a portion of Market Street; would require an economic impact study for proposed large formula retail uses and for formula retail uses of 20,000 gross square feet or more, except for General and Specialty Groceries, seeking a CU; and would require 30 days' public notice prior to a CU hearing for a formula retail use. The legislation would require that where there has been a prior determination that a proposed project is a Formula Retail Use and the project sponsor subsequently removes one or more Formula Retail Use features, the project will remain subject to a Conditional Use authorization. This provision expands interim controls that are currently in place for the Castro Street NCD, making those controls permanent and citywide.

Third, the legislation would authorize the Planning Department and Commission to exercise discretion in reviewing proposed formula retail business signage as part of the CU process, as provided in the Commission's performance guidelines.

Fourth, the legislation would require a CU where an existing formula retail use is proposed to be enlarged or intensified, and delete the existing requirement for a CU for a change of formula retail owner or operator generally. Intensification would include a change of use within the use categories set forth in Planning Code Sections 790.102 and 890.102; a change from one formula retail establishment to another, where the new establishment is a formula retailer that has more locations than the previous establishment; expansion of the use size; installation of a commercial kitchen; and the absence of a conditional use authorization for the previously existing formula retail use. Where a change of formula retail owner or operator does not result in enlargement or intensification of the approved use, the new formula retail establishment would be subject to administrative review for compliance with the Commission's performance guidelines.

Fifth, the legislation would deem a conditional or nonconforming formula retail use to be abandoned if it is discontinued for 18 months.

Sixth, the legislation would eliminate the conditional use requirement for Financial and Limited Financial Services in all NCDs except the Castro Street NCD, Upper Market Neighborhood Commercial Transit District, and 24th Street – Noe Valley NCD, and eliminate the conditional use requirement in NCDs and Neighborhood Commercial Transit Districts for Walk-Up Facilities that are not set back 3 feet.

Background Information

This legislative digest relates to the duplicate file of the formula retail ordinance as amended on October 27, 2014 by the Land Use Committee. The Committee amended the ordinance to: (1) define formula retail to include businesses with eleven or more outlets worldwide; (2) provide a method for calculating the concentration of formula retail establishments within a specified radius of the proposed formula retail use; (3) require that Planning Department staff recommend disapproval of a proposal formula use in the Upper Market Street NCD if the concentration of formula retail would meet or exceed a 20% threshold; (4) retain the requirement that Financial Services and Limited Financial Services receive a conditional use authorization in the Castro Street NCD, 24th Street – Noe Valley NCD, and Upper Market Street Neighborhood Commercial Transit District; (5) require 30 days' public notice for conditional use hearings on proposed formula retail uses; (6) require an economic impact study for proposed formula retail uses of 20,000 gross square feet or more, except for General and Specialty Grocery stores; (7) delete the requirement that an economic impact study for formula retail and large-scale retail uses analyze the project's impact on permanent employment in the impact area; (8) grandfather in applications for formula retail use entitlements that were pending as of October 24, 2014; and (9) move the formula retail provisions of the Planning Code to a new Section 303.1 and make conforming changes.

After making those amendments, the Committee duplicated the file and amended the duplicate ordinance to (1) exclude Financial Services, Limited Financial Services and Personal Services above the ground floor from the definition of Formula Retail, and (2) require that where there has been a prior determination that a proposed project is a Formula Retail Use and the project sponsor subsequently removes one or more Formula Retail Use features, the project will remain subject to a Conditional Use authorization.

The City first adopted formula retail controls in 2004, and has amended these controls several times. A stated purpose of the formula retail controls is to protect the vitality and unique character of the City's NCDs. (See Planning Code § 703.3(a) ["the standardized architecture, color schemes, decor and signage of many formula retail businesses can detract from the distinctive character of certain Neighborhood Commercial Districts" and may "hamper the City's goal of a diverse retail base with distinct neighborhood retailing personalities comprised of a mix of businesses"].)

In 2006, the voters enacted an initiative ordinance known as Proposition G. Proposition G amended the City's formula retail controls to require that all formula retail uses in the City's NCDs obtain a CU from the Planning Commission. (See Planning Code § 703.4.) Proposition G also allowed the Board of Supervisors to adopt more restrictive measures applicable to formula retail, or to prohibit these uses altogether in NCDs. (Planning Code § 703.4(c).)

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