



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: JANUARY 21, 2016
CONTINUED FROM NOVEMBER 19, 2015

Project Name: Expand Formula Retail to Include Subsidiaries
Case Number: 2015-011449PCA [Board File No. 150731]
Initiated by: Supervisor Mar / Introduced July 7, 2015
Staff Contact: Aaron Starr, Manager of Legislative Affairs
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Reviewed by: AnMarie Rodgers, Senior Policy Advisor
Recommendation: **Recommend Disapproval**

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PLANNING CODE AMENDMENT

The proposed Ordinance amends the Planning Code to revise the definition of Formula Retail to include subsidiaries or affiliates of Formula Retail meeting certain criteria.

The Way It Is Now:

A Formula Retail is defined as a type of retail sales or service activity or retail sales or service establishment that has eleven 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 be defined as Formula Retail, the business must maintain 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 service mark.

The Way It Would Be:

In addition to the criteria listed above, Formula Retail would also include a retail sales or service activity or retail sales or service establishment that meets all three of the following criteria: (A) fifty percent (50%) or more of the stock, shares, or any similar ownership interest of such establishment is owned by an existing Formula Retail use, or a subsidiary, affiliate, or parent of an existing Formula Retail use; (B) there are three or more other retail sales establishments already in operation anywhere in the world; and (C) the retail establishment 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.

BACKGROUND

A Brief History of 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." 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.” 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.

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. 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.”

On July 25, 2013, the Planning Commission passed Resolution No. 18931, recommending to the Board of Supervisors that the issue of Formula Retail be further studied to increase understanding of the issue overall and to examine potential economic and visual impacts of proposed controls before any new legislation was enacted. The Planning Department selected Strategic Economics Consulting Group from the City’s pre-qualified economic consultant list maintained by the Controller’s Office to carry out the study.

Funded in its entirety by the Planning Department, the study was completed in June 2014. The Department used the data in the report to analyze existing policy and controls to determine whether changes to the definition, process, or applicable geographic areas would improve neighborhood character and economic vitality. The result of that effort was Board File 140844, Formula Retail and Large-Scale Retail Controls. This ordinance was recommended for approval by the Planning Commission on July 17, 2014, and became effective on December 26, 2015. The new ordinance changed the existing formal retail changes in the following ways:

1. Formula Retail controls previously only applied to business with 11 or more locations in the United States. The ordinance amended the Code so that Formula Retail Controls apply to all business with 11 or more stores anywhere in the world.
2. Applied Formula Retail controls to Limited Financial, Fringe Financial, Tobacco Paraphernalia, Massage and Personal Services. Previously Formula Retail controls applied to only Drive-up Facilities, Eating and Drinking Uses; Liquor Stores; General Retail and Service, Financial Services, Movie Theater and Amusement and Game Arcades.
3. Applied Formula Retail controls to the C-3-G zoned parcels with frontage on Market Street between 12th Street and 6th Street, but only for uses that front onto Market Street.
4. Added two criteria to the existing five that the Commission considers for Formula Retail CUs. One of which requires Formula Retail uses over 20,000 gross square feet, except for grocery stores, to provide an economic impact study pursuant to Sec. 303(i) as part of the CU evaluation. The other requires staff to refer to the Commission Guide for Formula Retail for additional

information on applying the criteria, as well as expanded signage controls for Formula Retail uses.

5. Codified a previously uncoded methodology for calculating the concentration of Formula Retail uses in a neighborhood.
6. Required a full 30-day mailed notice for Formula Retail CU; previously this was only a 20-day notice.
7. CUs were previously required for walk-up facilities, such as ATMS, that were not recessed 3' from the property line. The ordinance eliminated this CU requirement, but subjected ATMs new Performance Based Design Guidelines promulgated in the Planning Commission's Guide to Formula Retail. Further, a single ATM is only subject to the Performance Based Design Guidelines and do not require Formula Retail CU as a Limited Financial Use.
8. Amended the Planning Code to address changes of Formula Retailers, nonconforming uses and abandonment in the following ways:
 - a. A new CU is required for Formula Retailers if they change to another Formula Retailer and meet the definition of intensification. Intensification is defined as changing to a retailer with more locations, expansion of use size, adding a commercial kitchen or change of use category, including retail subcategories.
 - b. An existing Formula Retail use that was never granted a CU cannot change to another Formula Retail use without a CU.
 - c. Change of Formula Retailers that are not determined to be an intensification or enlargement are still subject to the Performance Based Design Guidelines, applied and approved administratively.
 - d. Abandonment for Formula Retail uses is defined as 18 months instead of three years (36 months).

Formula Retail Subsidiary Working Group

One controversial topic that was left outstanding from the Formula Retail legislation is the regulation of subsidiaries. Both Supervisor Mar and Planning Department staff found the proposed regulation of subsidiaries to be complicated and contentious. Therefore, Supervisor Mar formed a working group made up of various stakeholders to further explore the topic and make recommendations to the City's Small Business and Planning Commission about the viability of further regulation. Twenty individuals were invited to participate in the group; including representatives from seven neighborhoods organizations, four San Francisco business groups, two small business owners, one representative from a national Formula Retailer, two public officials, one person from the Office of Economic and Workforce Development, one representative from the real estate industry, and one local resident.

The group had four meetings between January 28 and March 25, 2015. During those meetings the group heard presentations from planning staff and the city attorney's office. The group discussed what a subsidiary is and how it should be defined, how large of a threat subsidiaries are to neighborhood character, the experience of independent businesses, and possible solutions to regulating subsidiaries. Members of the working group maintained diverse views on whether and how the City should regulate subsidiaries; however, there was consensus that existing Formula Retail legislation is important for the vitality of the City's neighborhood commercial districts. Some from the group questioned how large of a threat subsidiaries are to character, and had a difficult time naming more than a few subsidiaries that could threaten neighborhood character. Others were already convinced that subsidiaries were a threat to

neighborhood character. And, as this subset of the group felt that this threat may increase over time, the City should expand the existing formula retail regulation to include subsidiaries. After hearing the dialog and debate, the Supervisor Mar drafted the ordinance before you today.

ISSUES AND CONSIDERATIONS

Why Formula Retail is Regulated

Formal Retail uses are regulated in San Francisco in order to protect the uniqueness of San Francisco's neighborhood commercial districts. According to the Findings in Section 303.1, "Formula Retail uses, 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." Findings in Section 303.1 further state that "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," and that Formula Retail establishment detract "from the unique community character of its impact on the homogenization." The Findings in Section 303.1 set out the intention behind regulating Formal Retail, which is not based on who owns the business, but is based on the physical impacts that Formula Retail have and the potential homogenization of the neighborhood caused by Formula Retail businesses.

Parent and Subsidiary Companies

The proposed Ordinance is designed to address a few 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). Athleta would now already be defined as Formula Retail under the City's existing controls. However, based on the businesses that are already located in San Francisco, this proposed change is unlikely to have a wide-ranging effect. According to the Department's study¹ citywide, subsidiaries account for only three percent of retail businesses in San Francisco that have 12 or more corporate family members.

While generally subsidiaries are thought of as large established corporations funding a new concept to compete with existing businesses, the Department's 2014 Study found that expanding the definition to include establishments that are majority-owned by Formula Retail businesses subsidiary regulations could also affect small business owners². For example, a local business owner, Adriano Paganini, owns 14 restaurants including 10 Super Duper Burgers. The remaining restaurants are neighborhood serving unique restaurant concepts including Beretta, Delarosa, Starbelly, Lolida and most recently, Uno Dos Tacos. 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, any business that Mr. Paganini owns more than 50 percent of would be considered Formula Retail once it has

¹ "San Francisco Retail Economic Analysis". A report prepared for the San Francisco Planning Department by Strategic Economics. June 2014.

² Strategic Economics, "San Francisco Formula Retail Economic Analysis", prepared for San Francisco Planning Department. April 10, 2014 Draft Document, Page 117.

three or more locations if those businesses also maintain 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. Yet other businesses with a different owner or ownership structure would be considered Formula Retail only once they have 11 or more locations.

How Uses Are Defined in the Planning Code

In the Planning Code, all regulated uses are defined solely by their physical characteristics or land use impacts; aspects that are verifiable and have a clear and direct connection to the land use. Even Formula Retail uses rely on physical characteristics to define the use; if the Formula Retail use is owned as a franchisee or a major corporation it is still regulated in the same manner. The proposed Ordinance would change that physical, land use-based set of considerations and require the Planning Department to consider who owns the business, how much of a percentage each investor has in the business, and if any of those investors have other business that qualify as Formula Retail. This type of regulation is entirely new for the Planning Department and outside of our area of expertise.

It's also not clear that this information would be readily available to the Department should we be required to confirm the ownership of a business during the permitting process or when investigate a complaint. 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. 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. For non-public companies, this information would not necessarily be readily available and difficult to verify in the event of a dispute about the ownership definition.

Additional Findings for Section 303.1

The proposed Ordinance also adds additional findings to Section 303.1 that are intended to support the addition of subsidiaries to the Formula Retail controls. The new findings are included below, but in short the findings state that these businesses should be regulated like Formula Retail because they are likely to implement existing practices that they have experience with in their other Formula Retail establishments; that the likelihood that the number of subsidiary retail outlets will increase rapidly is great; and that spin-off businesses that are owned by a business defined as Formula Retail will have impacts on a neighborhood that are similar to the impacts caused by the "parent" Formula Retail outlets themselves.

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

Additional Finding #20: Even where a Formula Retailer's subsidiary or spin-off retail establishment does not have 11 or more retail outlets already, the likelihood that the number of subsidiary retail outlets will increase rapidly is great. The adverse impact may be delayed, but the impact on neighborhood character

will be the same. Many Formula Retail businesses expand rapidly once they introduce a new retail outlet line.

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

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend *disapproval* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

The Planning Department’s strongly supports the regulation of Formula Retail as a way to enhance and preserve the unique character of our neighborhoods. The Planning Department has been at the forefront of regulating Formula Retail for the past 11 years and we continue be open to new ways to improve upon our current regulations. However, the Department is concerned that the proposal to regulate subsidiaries would set a precedent for the Department to start regulating businesses by ownership or ownership structure rather than land use impacts, unlike every other use in the Planning Code.

The Department is also concerned that this ordinance would put in place a large regulatory burden that we would not be able to effectively enforce for a relatively small problem. This form of regulation requires a level of expertise that the Department does not have. Businesses are required to file a Formula Retail affidavit with their application stating whether or not they are a Formal Retail use; however, the Department only investigates and verifies these statements based on complaints. If a complaint is filed and the Department asked for verification of ownership structure, the Department would not be able to determine if the information provided does verify whether or not the majority owner of the business also owns a Formula Retail business. The Department would also not be able verify ownership stakes in companies that are not publically traded because of different reporting requirements, and large corporation ownership structures are subject to change at any time.

The proposed Ordinance would also place a greater regulatory burden on businesses with only three locations than a business with 11 locations based on the “likelihood” that these businesses would become successful and expand. The Department is not qualified to evaluate the “likelihood” of future expansions. It is unlikely that even experienced business professions could effectively determine which businesses will succeed and which will fail. Further, many businesses started in San Francisco and later became Formula Retail even though these were not started by other Formula Retail businesses. The likelihood of expansion is not necessarily based on ownership structure; it’s based on how successful the business model is and the interest the owners have in expanding the business. Further, not all businesses that are

owned by existing Formula Retail do expand to 11 or more locations; Black Fleece and Evolution Fresh mentioned above are still under the 11 store threshold.

If the Board adopts these additional controls, the Department recommends that the ordinance include a clear statement that the existing formula retail provisions should be preserved even without the additional restrictions on subsidiaries, in the event that the restrictions on subsidiary businesses are challenged in court. The current Formula Retail restrictions have been in place for a long time in San Francisco, and we think it would be beneficial that the Board of Supervisors is clear that these new restrictions should not affect or call into question the City's long-standing formula retail controls.

ENVIRONMENTAL REVIEW

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

PUBLIC COMMENT

Since this case report was initially published last year, the Department and the Commission have received a letter of support for the Department's disapproval recommendation from the SF Chamber of Commerce and a letter of support of the ordinance from the North Beach Business Association.

RECOMMENDATION: Recommendation of Disapproval

Attachments:

Exhibit A: Draft Planning Commission Resolution
Exhibit B: Board of Supervisors File No. 150731



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Resolution

HEARING DATE JANUARY 21, 2016

Project Name: Expand Formula Retail to Include Subsidiaries
Case Number: 2015-011449PCA [Board File No. 150731]
Initiated by: Supervisor Mar / Introduced July 7, 2015
Staff Contact: Aaron Starr, Manager of Legislative Affairs
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Reviewed by: AnMarie Rodgers, Senior Policy Advisor
anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation: **Recommend Disapproval**

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RECOMMENDING THAT THE BOARD OF SUPERVISORS DISAPPROVE A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO REVISE THE DEFINITION OF FORMULA RETAIL TO INCLUDE SUBSIDIARIES OR AFFILIATES OF FORMULA RETAIL MEETING CERTAIN CRITERIA; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on July 7, 2015 Supervisors Mar introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 150731, which would amend the Planning Code to revise the definition of Formula Retail to include subsidiaries or affiliates of Formula Retail meeting certain criteria;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on November 19, 2015; and,

WHEREAS, the proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment; and

WHEREAS, the Planning 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, 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 Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **disapprove** the proposed ordinance.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Planning Commission strongly supports the regulation of Formula Retail as a way to enhance and preserve the unique character of our neighborhoods. San Francisco has been at the forefront of regulating Formula Retail for the past 11 years and the Commission continues to be open to new ways to improve upon our current regulations. However, the Commission is concerned that the proposal to regulate subsidiaries would set a precedent for the Planning Department to start regulating businesses by ownership or ownership structure rather than land use impacts, unlike every other use in the Planning Code.
2. The Commission finds that this ordinance would put in place a large regulatory burden that the Department would not be able to effectively enforce for a relatively small problem.
3. The Commission finds that the proposed Ordinance would also place a greater regulatory burden on businesses with only three locations than a business with 11 locations based on the "likelihood" that these businesses would become successful and expand. The Department and the Commission are not qualified to evaluate the "likelihood" of future expansions. It is unlikely that even experienced business professionals could effectively determine which businesses will succeed and which will fail. Further, many businesses started in San Francisco and later became Formula Retail even though these were not started by other Formula Retail businesses.
4. The Commission finds that if the Board adopts these additional controls, the Commission recommends that the ordinance include a clear statement that the existing formula retail provisions should be preserved even without the additional restrictions on subsidiaries, in the event that the restrictions on subsidiary businesses are challenged in court. The current Formula Retail restrictions have been in place for a long time in San Francisco, and we think it would be beneficial that the Board of Supervisors is clear that these new restrictions should not affect or call into question the City's long-standing formula retail controls.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board DISAPPROVE the proposed Ordinance described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on November 19, 2015.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: January 21, 2016

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

2

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

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

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

16

17 Section 1. Findings.

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

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

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

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

9 SEC. 303.1. FORMULA RETAIL USES

10 (a) Findings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (b) Definitions.

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

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

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

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

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

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

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

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

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

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

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

6 * * * *

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

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

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

21 By: _____
22 KATE H. STACY
23 Deputy City Attorney

24 n:\legana\as2015\1500873\01029114.docx



North Beach Business Association
PO Box 330187
San Francisco, CA
94133

San Francisco Planning Commission
Jonas Ionin
Commission Secretary

January 6, 2016

Our organization is writing to give our support to Supervisor Mar's proposed Legislative changes to the San Francisco Planning Code to include additional language addressing formula retail corporate subsidiaries under the rules Governing planning applications for formula retail. As a neighborhood that thrives With zoning that does not allow any formula retail in our commercial district, we are pleased that this legislation will address our growing concerns with the possibility of corporate entities , under the guise of a "new" company division, to Occupy space in our district. We have observed the struggles in Hayes Valley, the Mission and the Fillmore as these type of businesses try to take over retail spaces with little or no review, oversight, or input from the community and have been concerned we might be targeted next for another such enterprise. The essence of our neighborhood corridor is its small scale, unique , and independent businesses And we support any legislation that helps maintain our character which attracts visitors from all over the world. Please include this letter of support in the packet for the Planning Commission meeting on January 14, 2016.

Yours,
Fady Zoubi
President

NBBA



SAN
FRANCISCO
**CHAMBER OF
COMMERCE**

November 11, 2015

Mr. Rodney Fong, President
San Francisco Planning Commission
1650 Mission Street, Suite 400
San Francisco, CA 94103

RE: ADOPT STAFF RECOMMENDATION FOR DISAPPROVAL: File #2015-011449PCA/Board File #150731, Planning Code Amendment – Redefine Formula Retail to Include Subsidiaries (**Updated 11/15**)

Dear Commissioner Fong;

The San Francisco Chamber of Commerce, representing over 1,500 businesses, including formula retailers with and without subsidiaries, urges the Planning Commission to adopt the Planning Staff Recommendation to disapprove the ordinance coming before you on Thursday, November 19, 2015 to “Expand Formula Retail to Include Subsidiaries” (Planning File #2015-011449PCA/BOS File #150731).

As you know the Chamber and our partners have been working on formula retail regulation revisions with Planning staff and the Board of Supervisors for several years. Last year we were invited to serve on the Formula Retail Subsidiary Working Group convened by Supervisor Eric Mar and the Planning Department. The Working Group met four times and the Chamber attended every meeting. This legislation, which seeks to regulate subsidiaries of formula retailers as a formula retail use if more than three of a formula retail subsidiary exists anywhere in the world and that subsidiary shares certain common features, was introduced at the Board of Supervisors by Supervisor Mar after the Working Group ceased meeting.

To be clear, there was no consensus achieved or even fundamental agreement among the Working Group members as to whether a problem exists in San Francisco regarding subsidiaries of formula retailers. The number three which appears in this legislation was an arbitrary number suggested at a meeting with no basis or justification. Further, given that this legislation would regulate businesses based on ownership rather than use, it is clearly illegal under land use control laws, which prohibit government regulations used to solely or primarily suppress economic competition.

Land use controls must regulate the use, not the user, of any real property. Permits run with the land and not with the business owner that obtains the permit. This legislation would require Planning Department staff to identify the ownership of any business they perceive could be a subsidiary of a formula retailer. Establishing business ownership is not within the purview of the Planning Department, and is likely not possible in many cases. This legislation therefore not only violates land use laws, it is unenforceable under the Planning Code.

The San Francisco Chamber of Commerce urges the Planning Commissioners to adopt the Planning Staff Recommendation to DISAPPROVE this legislation when it comes before you next week.

Sincerely,

Jim Lazarus
Senior Vice President of Public Policy

cc: Clerk of the Planning Commission, to be distributed to all Commissioners; John Rahaim, Director, San Francisco Planning Commission; AnMarie Rodgers, Aaron Starr, Planning Department; Regina Dick-Endrizzi and Mark Dwight, Small Business Commission