



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Proposed Commission Policy

HEARING DATE: APRIL 11, 2013

*Project Name:* **Planning Commission Policy on Upper Market Formula Retail Concentration**

*Case Number:* 2013.0398U

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*Recommendation:* **Recommend Approval**

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### SUMMARY OF PROPOSED POLICY

Working closely with the Duboce Triangle Neighborhood Association (DTNA), the Planning Department (Department) developed a method to determine the concentration of Formula Retail and the appropriate level of concentration of Formula Retail in the Upper Market Neighborhood. Under the proposed policy, Planning Department staff would recommend disapproval of any project that brings the concentration of Formal Retail within 300 feet of the subject property to 20% or greater. The Department would still evaluate the proposed Formula Retail application based on the other applicable criteria in the Planning Code to aid the Commission's deliberation, and the Commission would still retain its discretion to approve or disapprove the use. If the concentration were determined to be lower than 20%, the Department would evaluate the proposed Formula Retail application based on the other applicable criteria in the Planning Code and recommend approval or disapproval accordingly. Please see Exhibit B for a complete outline of the proposed policy.

#### The Way It Is Now:

- All formula retail applications in the Upper Market Neighborhood Commercial Transit District require Conditional Use authorization.
- Each Conditional Use application for Formula Retail is evaluated by the following five criteria:
  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.

- While criterion 1 requires staff to evaluate the existing concentrations of Formula Retail uses within the district, there is no direction given on the appropriate level of Formula Retail concentration and no prescribed method for determining the concentration of Formula Retail.

#### **The Way It Would Be:**

- Formula Retail applications would still be evaluated by the 5 criteria in the Planning Code; however the proposed Planning Commission policy would prescribe a standardized method for determining Formula Retail concentration and set an appropriate concentration for Formula Retail in the Upper Market Neighborhood.
- If a Formula Retail application would bring the Formula Retail concentration to 20% or above, staff would recommend disapproval to the Planning Commission, which would then have the ability to approve or disapprove the application.
- If the application did not bring the Formula Retail concentration to 20% or above, staff would evaluate the application based on criteria in the Code and recommend approval or disapproval accordingly. The Commission would still be able to approve or disapprove the application.

## **ISSUES AND CONSIDERATIONS**

### **Upper Market Neighborhood**

Upper Market is going through a tremendous period of transformation, with close to 1,000 units of new housing and thousands of square feet for retail spaces currently under construction or entitled from Octavia Boulevard to Castro Street. The majority of these new projects are on corner lots providing large and prominent ground floor retail spaces that are particularly attractive to Formula Retail. Some of these locations have already been leased to Formula Retail establishments. Out of a concern that their neighborhood would be oversaturated with Formula Retail, particularly at these new corner locations, the Duboce Triangle Neighborhood Association approached Supervisor Wiener's office and the Planning Department with a proposal to determine concentration and set a maximum threshold for Formula Retail in their neighborhood. Working closely with the DTNA, the Planning Department refined their proposal so that it fit more with current practices and within the resources of the Planning Department. The Planning Department also recognized this as an opportunity to address some of the short comings of our current Formula Retail evaluation process and to develop a process that could easily be transferred to the neighborhoods if it proves to be successful.

### **Formula Retail: Past and Present**

The City has been struggling with how to regulate Formula Retail at least since the 1980s when the Neighborhood Commercial (NC) Districts were added to the Code. At that time, the main concern was over chain fast-food restaurants, so various restaurant definitions were added to the Code to either prohibit larger chain fast-food restaurants or limit them through the Conditional Use process. In 2004, the Board of Supervisors adopted San Francisco's first official Formula Retail use controls that established a Formula Retail definition and prohibited Formula Retail in one district while requiring Conditional Use authorization in another. In 2007, San Francisco voters approved Proposition G, which required any Formula Retail use desiring to locate in any NC district to obtain Conditional Use authorization. Most recently the Board of Supervisors passed an Ordinance (BF 120047) expanding the definition of Formula

Retail so that it included Financial Services (most commonly, banks). Yet despite these efforts, Formula Retail proliferation continues to be a concern in many communities.

### **Current Challenges and Solutions**

One of the difficulties with our current process is that some of the criteria for evaluating Formula Retail in the Planning Code are not based on quantified methods, especially criterion 1 which reads as follows: "The existing concentrations of Formula Retail uses within the Neighborhood Commercial District." This criterion provides neither quantitative measure nor qualitative method for determining Formula Retail concentration.

The Department currently determines Formula Retail concentration by counting the number of Formula Retail establishments in the subject Neighborhood Commercial District (NCD). While this is a fairly quick and easy method, it doesn't effectively demonstrate concentration. A store located on the corner with 100 feet of frontage is given the same weight as a small midblock store with only 15 feet of frontage. A more accurate way to determine concentration would be to measure the length of each storefront and determine the concentration based on linear footage; however the Planning Department doesn't currently have the capabilities or resources to put this method into practice. Further, it would be extremely time-consuming and costly for planners to go out and measure storefronts each time they analyzed a Conditional Use application.

Another issue is determining how much area should be included in the Department's analysis of concentration. Finding 1 suggests that the entire NCD should be looked at; however some districts can run for several miles, such as the NCDs along Geary Boulevard, while others may only be a couple of blocks long. Currently, the Department uses its best judgment when deciding how much of an area to analyze depending on the NCD. For larger Districts, a ¼ of a mile radius is often used because it represents the standard distance people will walk, while smaller districts may include the entire district. This lack of a standard makes it difficult to apply recommendations consistently throughout the various NCDs.

In response to the first challenge, the Department devised a method to approximate the linear footage concentration without needing to measure each individual storefront. Widths would be approximated by taking the length of the parcel facing the street and dividing that by the number of storefronts. For example, if a parcel had 80 feet of frontage facing the street and four storefronts, each storefront would be given a frontage of 20 feet. While not as exact as measuring each store front, it does provide a better approximation of Formula Retail concentration than simply counting the number of Formula Retail in a particular district. It also places greater weight on larger corner parcels that have a bigger impact on the visual character of a neighborhood. The Department is working on a way to track the length of each store front in NC Districts, but so far only a few districts have been evaluated and there is a lack of resources that would permit continual tracking and updating of this information.

To address the second challenge, the Department is proposing that the Commission adopt a 300 foot radius standard for the area of analysis. Using this standard has several benefits, the first of which is consistency with other Code provisions; it is the same radius used for Conditional Use notification and the radius used to evaluate the concentration of eating and drinking uses for Conditional Use

applications. It also reduces the complexity of the Conditional Use application because the applicant is already producing the 300 foot radius map. Finally, it is similar to the area proposed by DTNA in their original proposal. The Planning Department simply altered their original concept to fit with our current practices and standards.

### **Setting a Threshold**

How much Formula Retail concentration there should be in a neighborhood is a question that is also not addressed in the Planning Code or the General Plan. It's assumed that some amount of Formula Retail may be necessary or desirable, but that an over concentration erodes neighborhood character. To determine the appropriate concentration in Upper Market, the Planning Department and DTNA utilized the methodology described above on several different parcels in the neighborhood. In areas that DTNA felt had too much Formula Retail the concentration tended to be above 20%, while areas with more acceptable levels of Formula Retail the concentration was under 20%. The Department is recommending a 20% threshold for Upper Market; moreover this percentage can be adjusted to meet the needs of each neighborhood if this method is employed elsewhere.

### **Formula Retail Bans**

Of the 27 individually named neighborhood commercial districts only two, the Hayes Valley NCD and the North Beach NCD, have chosen to ban Formula Retail entirely. This is a simple and effective solution to the problem of over concentration, but it does present some challenges. Banning Formula Retail means that most if not all large groceries stores and banks are prohibited from moving into a neighborhood because there are very few large grocery stores and banks that are not Formal Retail. This problem could be further exacerbated if the list of uses included in the Formula Retail definition is expanded, as was recently done for Financial Services. Once the ban is in place it's very difficult to overturn should the needs of a neighborhood change. Currently the Hayes Valley Neighborhood Association is considering providing an exemption in their current ban so that a grocery store could be more easily located at the 555 Fulton site.

Another difficulty with Formula Retail bans is that not all Formal Retail is valued equally by the community. The Department evaluates each application based on the Planning Code and the General Plan, and cannot place a value judgment on the type of business or its business model; however, community members often decide which Formula Retail to support or oppose based on those factors. The Commission's role is to take staff's professional analysis as well as public comment into consideration when making its decision. Strict Formula Retail bans remove the Commission's ability to take community sentiment into consideration and prohibit some desirable locally owned or unique business from establishing in these neighborhoods that a community may want or need.

## **REQUIRED COMMISSION ACTION**

The proposed Policy is before the Commission so that it may adoption, rejection, or adoption with modifications.

## **RECOMMENDATION**

The Department recommends that the Commission *Adopt* the proposed Commission Policy

## **BASIS FOR RECOMMENDATION**

- The proposed policy was developed in close partnership with the DTNA. It has the support of DTNA, Supervisor Wiener's office and the Planning Department.
- Upper Market is going through a period of rapid and unprecedented growth, making the need for this policy even greater. If not addressed head on, the neighborhood could become oversaturated with Formula Retail risking the character and vibrancy of the Upper Market Neighborhood and wasting a unique opportunity.
- Adopting this as a Commission Policy will allow the methodology to be implemented immediately and tested over time. Future refinements could be made more easily than with the legislative process associated with Planning Code amendments.
- The Department views the adoption of this policy in the Upper Market neighborhood as a way to test this method of measuring Formula Retail concentration. If successful, it could be adopted as part of the Planning Code and transferred to other neighborhoods.
- How much concentration of Formula Retail there should be in a neighborhood is not addressed in the Planning Code or the General Plan. The proposed policy sets a level of concentration based on current concentrations in the Upper Market neighborhood and can be adjusted to fit other NC Districts should this policy be adopted in other areas of the City.
- The Planning Code and General Plan do not provide a way to calculate concentration of Formula Retail. The proposed policy addresses this issue by providing a clear and consistent way to determine concentration that is based on current practices and standards.

## **ENVIRONMENTAL REVIEW**

The proposed policy is not an action subject to CEQA.

## **PUBLIC COMMENT**

The proposed Policy was developed in concert with the DTNA. No other comments have been received by the Department.

<b>RECOMMENDATION:</b>	<b>Recommendation of Approval</b>
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### **Attachments:**

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Outline of Proposed Commission Policy



# SAN FRANCISCO PLANNING DEPARTMENT

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## Draft Planning Commission Resolution

HEARING DATE: APRIL 11, 2013

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Upper Market Formula Retail Concentration**

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*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
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*Recommendation:* **Recommend Approval**

ADOPTING A POLICY THAT ESTABLISHES A METHOD FOR DETERMINING THE CONCENTRATION OF FORMULA RETAIL AND THE APPROPRIATE LEVEL OF FORMULA RETAIL CONCENTRATION IN THE UPPER MARKET NEIGHBORHOOD; AND ADOPTING 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, on the Duboce Triangle Neighborhood Associate (hereinafter DTNA) approached Supervisor Weiner and the Planning Department (hereinafter Department) with a proposal to better regulate Formula Retail in the Upper Market Neighborhood; and

Whereas, the Department worked closely with the DTNA and Supervisor Wiener's office to refine DTNAs proposal so that it fit more with current Department practices and within the resources available to the Department; and

Whereas, the Upper Market Neighborhood, which is centered along Market Street from Octavia Boulevard to Castro Street is going through a tremendous period of transformation, with thousands of square feet of retail spaces currently under construction or entitled; and

Whereas, many of these new commercial spaces are located on prominent corners that are typically attractive to Formula Retail establishments; and

Whereas, the Planning Code and General Plan do not establish an appropriate level of Formula Retail concentration for the Upper Market Neighborhood or prescribed a method for determining the concentration of Formula Retail; and

Whereas, the San Francisco Planning Commission (hereinafter "Commission") wants a more systematic and consistent way to evaluate Formula Retail in the Upper Market neighborhood; and

Whereas, the proposed policy is not an action subject to CEQA; and

Whereas, on April 11, 2013 the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Policy and adopted the proposed policy; 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 the public, 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 Policy; and

**MOVED**, that the Commission hereby adopts the proposed Policy attached to this Resolution as Exhibit A.

## **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:

- The proposed Policy was developed in close partnership with the DTNA. It has the support of DTNA, Supervisor Wiener's office and the Planning Department.
- Upper Market is going through a period of rapid and unprecedented growth, making the need for this Policy even greater. If not addressed head on, the neighborhood could become oversaturated with Formula Retail risking the character and vibrancy of the Upper Market Neighborhood and wasting a unique opportunity.
- Adopting this as a Commission Policy will allow the methodology to be implemented immediately and tested over time.
- How much Formula Retail concentration there should be in a neighborhood is not addressed in the Planning Code or the General Plan. The proposed policy sets a level of concentration based on existing concentrations in the Upper Market neighborhood and can be adjusted to fit other NCD should this policy be adopted in other areas of the City.
- The Planning Code and General Plan do not provide a way to calculate the concentration of Formula Retail. The proposed policy addresses this issue by providing a clear and consistent way to determine concentration that is based on current Department practices and standards.
- Under the proposed Policy, the Department would still evaluate the proposed Formula Retail application based on the other applicable findings in the Planning Code to aid the Commission's deliberation, and the Commission would still retain its discretion to approve or disapprove the use.

1. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

**I. COMMERCE & INDUSTRY ELEMENT**

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

**OBJECTIVE 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. Adopting a Policy that is intended to temper the influx of Formula Retail to the Upper Market Neighborhood could help make it easier for locally emerging economic activities to find more affordable spaces to lease.*

**OBJECTIVE 6**

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

**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 Policy is intended to create a balance between Formula Retail and locally owned businesses by establishing a concentration threshold for the former. Having a healthy mix of these two types of businesses would promote a vital neighborhood commercial district in the Upper Market Neighborhood, which could help foster small business enterprises and entrepreneurship.*

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:

*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. By adopting this policy, which sets a concentration threshold for Formula Retail in the Upper Market Neighborhood, the Commission intends to help preserve and enhance existing neighborhood-serving retail uses in the Upper Market Neighborhood.*

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

*The proposed Policy would have no impact on existing housing. By setting a threshold for Formula Retail in the Upper Market neighborhood, the Planning Commission's intends to conserve and protect neighborhood character by ensuring that an over concentration of Formula Retail doesn't erode existing neighborhood character.*

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

*The proposed Policy 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:

*The proposed Policy will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

- 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 Policy would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.*

- 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 by the proposed Policy. 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 Policy. Should a proposed use be located within a landmark or historic building, such site would be evaluated under typical 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 proposed Policy. 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 April 11, 2013.

Jonas P Ionin  
Acting Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: April 11, 2013

**Exhibit B**  
**Proposed Planning Commission Policy:**  
**Determining Formula Retail Concentration in the Upper Market NCD & NCT**

For ground floor Formula Retail application in the Upper Market NCD and NCT, the applicant shall evaluate the concentration of Formula Retail establishments in the immediate vicinity by utilizing the following method. The information provided by the applicant will be verified by the assigned planner.

**Defining the Area**

Include all parcels that are wholly or partially located within the 300-foot radius map required for Conditional Use application notification and also zoned neighborhood commercial. If analyzing a corner parcel, include all corner parcels at the subject intersection in addition to properties within 300'.

**Determining Linear Frontage**

For each property, including the subject property, divide the total linear frontage of the lot facing a public right-of-way by the number of store fronts. For example, if a property has 80 feet of street frontage and four store fronts, each store front is considered to have 20 feet of frontage. Separate the Formula Retail store fronts and their total linear frontage from the non-Formula Retail establishments and their linear frontage. Calculate the percentage of the total linear frontage for Formula Retail and Non-formula Retail. ½ of a percentage shall be rounded up.

If the percentage of Formula Retail establishments greater than or equal to 20%, the Planning Department shall recommend disapproval to the Planning Commission, although staff shall evaluate the Formula Retail Conditional Use application against all the criteria in Planning Code Section 303(i)(3) to aid the Commission in its deliberations. If the total linear frontage for Formula Retail establishments is less than 20%, Planning Department staff shall evaluate the Formula Retail Conditional Use application against the criteria in Planning Code Section 303(i)(3) and recommend approval or disapproval accordingly.

**Special Lot Situations**

- Vacant store fronts are included in the calculation and are counted as Non-formula Retail.
- If the Planning Commission has granted Conditional Use authorization for a Formula Retail establishment that store front is counted as Formula Retail.
- Vacant lots are counted as Non-formula Retail frontage.
- Parking lot frontage is included with the use that it serves.
- All street frontages for corner lots are included in the calculation.
- Residential buildings with no store fronts are excluded from the calculation.
- For through lots, only frontages that contain storefronts are included in the calculations. For example, if a through lot has storefronts on street A but only service doors or garage doors fronting on street B, then only frontage along street A is included in the calculation.
- Second story store fronts are excluded from the calculation. Formula Retail applications that seek approval for a second floor store front won't be evaluated by this method; only the standard criteria found in Section 303 of the Planning Code will apply.

**Definition of Formula Retail**

Formula Retail is defined in Planning Code Section 703.3. Any nonresidential use on the ground floor not defined as Formula Retail per section 703.3 shall be counted as non-Formula Retail.