Board of Supervisors Enacts Tighter Chain Store Regulations after Two Years of Debate

On November 18, 2014 the San Francisco Board of Supervisors (“BOS”) gave final passage to a much debated ordinance to further restrict chain stores, known as “formula retail” stores. The changes will: (1) expand the definition of formula retail to those stores with at least eleven locations *worldwide*, rather than just in the U.S.; (2) include new types of retail (see below); (3) expand geographic areas in which the formula retail rules apply; (4) require 30 days notice to neighbors prior to a formula retail hearing at the Planning Commission; and (5) clarify when the right to a formula retail use is lost from lack of use. The ordinance is expected to become effective in January, and will affect all applications submitted after October 24, 2014.

Formula retailers are defined as retail sales and services, bars, restaurants, liquor stores, financial services and movie theatres maintaining consistency in products and merchandising among its stores. Formula retail use is either approved through a conditional use hearing or is prohibited depending on the district. The ordinance adds to formula retail “personal service” uses (salons, spas, cosmetics, tattoo shops and classes such as art, music, dance), check cashing and other small financial uses, and massage and tobacco paraphernalia stores. Chinatown Mixed Use Districts will now prohibit most formula retail restaurant uses.

All “accessory uses” which fall into the category of a formula retail use will now require conditional use authorization as well. An “accessory use” is one which takes place in the same location and is part of and related to the main use, but much smaller in size and perhaps not allowed in the zoning district. Such a minor or accessory use can take up a quarter or a third of the principal use, depending on the zoning district.

For the first time, the area in which the formula retail restrictions apply will expand beyond Neighborhood Commercial and Mixed Use Districts. It will now include a portion of the downtown commercial zoning district (C-3-G) along Market Street between 6th Street and the intersection with Franklin and 12th Street.

The City will require an economic impact study for any large scale retail business prior to considering approval. Large scale retail includes any retail business greater than 50,000 square feet (except in C-3 district where the threshold is 90,000 square feet).
The ordinance sets the size threshold to 20,000 square feet for formula retail businesses.

The Planning Department will consider whether there is an over concentration of formula retail uses within 300 feet of the proposed new use, or within a quarter mile of it, at the Planning Department discretion. A formula retail use will now be considered abandoned after 18 months of non-use (rather than the typical three years). A site can change to a new formula retailer without a new conditional use approval if the new use is the same type and size as the pre-existing retailer and has no more locations than the pre-existing retailer.

One of the most significant opponents of formula retail, Supervisor Eric Mar, has indicated that he may initiate further amendments to the restrictions which will address the impact on successful local retailers such as Pet Food Express and San Francisco Soup Company.

Formula retailers will face further restrictions in six months through a pair of ordinances sponsored by Mar and David Chiu that obtained final passage on November 25, 2014. The ordinances create protections for employees of formula retailers with at least 20 San Francisco employees. These new worker protections include (i) requiring 2 weeks’ notice of work schedules and compensation for changes to schedules made with less than 7 days notice; (ii) requiring pay for on-call shifts in which an employee is not called in; (iii) providing part-time employees access to the same hourly pay rate, promotion opportunities, and paid and unpaid time off (prorated) as full time employees; (iv) offering additional work to part-time employees before hiring new employees or utilizing a temporary staffing agency; and (v) after a transfer of ownership, requiring that employees be retained for 90 days after the opening of the new business.

For more information, please contact:

**M. Brett Gladstone**, Partner
415-995-5065
bgladstone@hansonbridgett.com

**DISCLAIMER**: This publication does not constitute legal advice. Readers should consult with their own legal counsel for the most current information and to obtain professional advice before acting on any of the information presented. Copyright © Hanson Bridgett LLP