



SOPHIE HAHN

Berkeley City Council, District 5
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
(510) 981-7150
shahn@cityofberkeley.info

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: **October 29, 2019**

Item Number: **34**

Item Description: **Proposed Formula Retail (Chain Store) Regulations**

Submitted by: **Councilmember Sophie Hahn**

- Add Councilmember Kate Harrison as a Co-Sponsor
- Add New Section, “Policy Committee Track”, and designate referral of this item to the [Land Use, Housing & Economic Development Policy Committee](#)
- Minor, non-substantive edits throughout report



SOPHIE HAHN
Berkeley City Council, District 5
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
(510) 981-7150
shahn@cityofberkeley.info

ACTION CALENDAR
October 29, 2019

To: Honorable Members of the City Council
From: Councilmembers Sophie Hahn and Kate Harrison
Subject: Proposed Formula Retail (Chain Store) Regulations

RECOMMENDATION

1. Refer to the City Manager and Planning Commission to finalize and return to the City Council for adoption an Ordinance and related amendments to the Berkeley Municipal Code, if any, based on the Draft Formula Retail Ordinance attached hereto, to establish Formula Retail regulations for Commercial and Manufacturing Districts in the City of Berkeley.
2. Refer to the City Manager and Planning Commission to:
 - a. Recommend establishment of Business District boundaries and names, as provided for in Section 23E.18.030(B) of the proposed Formula Retail Ordinance, and
 - b. Through a process that includes public notice and input, as described in the proposed Formula Retail Ordinance, recommend for each Business District whether to allow unlimited Formula Retail, limited Formula Retail (some or all use categories allowed with a Use Permit, Neighborhood Notice, Design Review and findings) or to prohibit Formula Retail.

POLICY COMMITTEE TRACK

Land Use, Housing & Economic Development Policy Committee

SUMMARY STATEMENT

Small businesses are the backbone of Berkeley's economic health, and represent a significant portion of our living-wage jobs. Unfortunately, they are threatened by increasing costs, displacement, and growing competition from online stores and chain retailers. Though chain or "Formula Retail" establishments have an important role in the mix of businesses operating in Berkeley, an oversaturation of Formula Retail can negatively impacts the local character of

business districts and makes it more difficult for small businesses to become established, to survive, and to thrive.

Berkeley can strengthen protections for small, local and diverse businesses by limiting the number and location of Formula Retail uses in each-certain business districts. Formula Retail restrictions, in place in San Francisco for over 15 years and operative in other California cities that value local business and character, are simple and flexible, and tailored to meet the unique needs, values and sensibilities of each business district.

Formula Retail restrictions establish a definition of Formula Retail and then determine, on a business district by business district basis, whether the district will allow an unlimited amount of Formula Retail; limited Formula Retail; Formula Retail only under specified conditions; or whether a business district will prohibit Formula Retail entirely. Where Formula Retail is limited or allowed only under specified conditions, a Use Permit to establish a Formula Retail Use is required. In districts where no Formula Retail is allowed, or where unlimited Formula Retail is allowed, a Formula Retail Use Permit is not required. Businesses that do not meet the definition of Formula Retail -- smaller and local businesses, including small local chains with up to 20 outlets -- have no new requirements under the regulations.

San Francisco's Formula Retail Ordinance is an excellent model for Berkeley to adapt and carefully tailor to fit Berkeley's specific qualities and needs and follow. It has been in place for more than 15 years, and was the subject of a comprehensive evaluation, which resulted in a revised -- and improved -- regulatory framework. This item proposes that the City of Berkeley implement Formula Retail legislation, patterned after San Francisco, to limit saturation of Formula Retail, support small and local businesses, and preserve the character and quality of our business districts and neighborhood shopping areas.

BACKGROUND

Berkeley's unique character is owed in large part to the presence of small businesses, and these businesses contribute significantly to the economic and cultural vitality of the City. However, small and locally owned businesses face significant challenges due to increasing costs of doing business, constraints of available space, and growing competition from online stores and expanding chain retailers.

Challenges Facing Small and Local Businesses

A basic challenge that many small and local businesses face is finding an affordable location. Commercial rents throughout the Bay Area, including in Berkeley, have risen dramatically in recent years. One estimate found that between 2016 and 2018 office rents in Berkeley increased 15% to 20%.¹ Small businesses are much less likely than chain stores to be able to afford high initial rents when finding new space or to endure annual rent increases, while chain stores are well-equipped to negotiate better rents or afford higher ones. Berkeley's rent

¹ https://www.cityofberkeley.info/uploadedFiles/Manager/Economic_Development/2017-01-16%20WS%20Item%2001%20Economic%20Development%20Worksession.pdf

stabilization ordinance, which protects and regulates residential rents, does not apply to commercial property as commercial rent control is prohibited by the State.

Some small businesses also struggle to find appropriately-sized store-fronts. In the Bay Area, 80% of local, independent businesses occupy locations smaller than 3,000 square feet, while 85% of chain retailers occupy a space larger than 3,000 square feet.² As demand for small commercial space has increased in urban neighborhoods, supply has not kept pace. In addition, once a space has been occupied by a chain store, or several spaces have been combined for a chain store, and the space has been changed to suit larger-scale needs, it is less likely that a smaller retailer will be able to occupy the space in the future. Thus, storefronts that have been occupied by chain stores can prohibit small businesses from taking hold, even when a property is vacant.

Because most many existing commercial spaces in neighborhood commercial districts are small, the proliferation of larger-floorplate uses -- whether through the combination of existing spaces or construction of new buildings -- not only displaces existing neighborhood businesses but can permanently destroy-change the character and scale of the district.

With the benefits of global supply chains, public subsidies, and, often, reduced competition, chain and online stores are often able to undercut small and independent businesses. A study of West Side Chicago businesses found that the opening of a Walmart in 2006:

"led to the closure of about one-quarter of the businesses within a four-mile radius [...] By the second year, 82 of the businesses had closed. Businesses within close proximity of Walmart had a 40 percent chance of closing. The probability of going out of business fell 6 percent with each mile away from Walmart."³

This data suggests that large chain retailers negatively impact surrounding businesses because they undercut prices. However these reduced prices do not last for long:

"Once the chain has eliminated the local competition, prices tend to rise. In Virginia, a survey of several Walmart stores statewide found prices varied by as much as 25 percent. The researchers concluded that prices rose in markets where the retailer faced little competition. A similar conclusion was reached in a survey of Home Depot. Prices were as much as 10 percent higher in Atlanta compared to the more competitive market in Greensboro, North Carolina."⁴

Local independent businesses are also threatened by online platforms and online marketing by

² <https://ilsr.org/watch-san-franciscos-anmarie-rodders-on-how-the-citys-formula-business-policy-works/>

³ <http://journals.sagepub.com/doi/abs/10.1177/0891242412457985>

⁴ Elizabeth Humstone and Thomas Muller, "Impact of Wal-Mart on Northwestern Vermont," prepared for the Preservation Trust of Vermont, the Vermont Natural Resources Council, and Williston Citizens for Responsible Growth, 1995; Chris Rouch, "Home Depot using predatory pricing tactics, critics say," *Atlanta Journal & Constitution*, March 18, 1995, p. 1B.

chain retailers. For example, one study showed that 55% of online shoppers search for products directly on Amazon, bypassing search engines that may show local results. This means a local retailer wishing to sell its products and services online can easily potentially be undercut and driven out of business, even if demand for their products persists in their community. In part due to market consolidation, the number of new businesses launched each year has fallen by nearly two-thirds in recent decades. Between 2005 and 2015, the number of small retailers fell by 21%.

Large chains and online retailers are able to absorb costs and suffer losses where small and local businesses cannot. Amazon, as an extreme example, can regularly undercut other online prices for extended periods of time to drive out competition, even if it means taking a temporary loss on those items; monopoly pricing on other items is a more than adequate offset. By contrast, small businesses often run on razor-thin margins, lack the necessary financial and structural cushions to survive even a few months' downturn in sales or rise in rent, and cannot match anti-competitive pricing at below cost levels.

Benefits of Small and Local Businesses

Small and locally-owned businesses provide numerous benefits to the communities they serve through the creation of locally-owned supply chains and investment in local employees. In fact, they stimulate local economies to a greater degree than chains. Small businesses reinvest a higher percentage of their profits into the local economy than chains, recirculating 45% of their revenue back into the local economy, compared to 17% recirculated locally by chain stores.⁵ A study in Austin, Texas, showed that independent book and music stores returned more than three times as many dollars to the local economy than a proposed large chain book and music outlet would have returned.⁶

Local businesses tend to purchase goods and services from other local businesses, while large chains leverage global supply chains and sometimes even global workforces. Chains have little reason to invest capital in a local economy when more profitable alternatives exist elsewhere, which leads to a lower percentage of their revenue recirculating into the local economy.⁷

Besides contributing to local economic activity, the presence of small and locally-owned businesses results in higher incomes and lower levels of poverty in their communities, while big-box retailers depress wages and benefits for retail employees. Workers in chain retailers also rely more heavily on government subsidies and public assistance, due to the low wages they receive. In Massachusetts, a report showed that of the 50 companies that had the most employees enrolled in the state's low-income and safety net health insurance programs, about half were employees of retail and restaurant chains.⁸

5

<http://nebula.wsimg.com/31f003d5633c543438ef0a5ca8e8289f?AccessKeyId=8E410A17553441C49302&disposition=0&alloworigin=1>

⁶ <https://www.amiba.net/resources/multiplier-effect/>

⁷ http://www.independentwestand.org/wp-content/uploads/ThinkingOutsidetheBox_1.pdf

8

<http://ilsr.org/wp-content/uploads/2011/12/massachusetts-50-plus-employers.pdf>

Beyond economic factors, small and locally-owned businesses also contribute to vibrant and engaged commercial centers and neighborhoods. High concentrations of small businesses can lead to improved public health outcomes,⁹ stronger social ties, higher levels of civic engagement, and more resilient communities overall.¹⁰ Data from three major cities (San Francisco, Seattle, and Washington D.C.) showed that commercial districts within cities with fewer chain stores and more local businesses performed better in certain economic, social, and environmental outcomes, by increasing the walk and transit score of the city, offering business districts that are more affordable and flexible to a larger variety of entrepreneurs, and helping the local economy thrive by providing more jobs per square foot.^{11,12}

What is Formula Retail?

Formula retailers -- chain stores -- are establishments with multiple locations that utilize standardized features or a recognizable appearance to encourage patronage. Recognition is dependent upon the repetition of characteristics of one store in multiple locations. Though formula retailers can serve a role within a shopping district, an oversaturation of formula retail outlets reduces the unique character of a district and can contribute to reduced economic activity overall, and make it more difficult for small businesses to survive. Moreover, the generic quality of formula retail runs contrary to General Plan and other Berkeley policies which support enhancement of the unique character of shopping districts and a diversity of business types.

Regulating Formula Retail

Communities across the country have employed different strategies to address **problems** **challenges** raised by over-concentration of formula retail. Formula retail legislation typically seeks to define the following factors:

- Number of worldwide locations a retailer must have to qualify as a “formula retailer”
- Characteristics that create a recognizable brand across multiple locations, including standardized features, employee uniforms, products, displays, or signage
- Types of retail uses or services that are subject to formula retail legislation and districts where formula retail is limited or prohibited, and
- Administrative process for prohibiting, managing, or modifying formula retail across the community or in specific districts.

San Francisco’s Formula Retail Framework

⁹ “The Health and Wealth of US Counties: How the Small Business Environment Impacts Alternative Measures of Development,” Troy C. Blanchard, et al., *Cambridge Journal of Regions, Economy, and Society*, 2011

¹⁰ <https://ilsr.org/why-care-about-independent-locally-owned-businesses/>

¹¹

<http://forum.savingplaces.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=b73e8fc7-7fb2-0fc7-202c-d0ed58ff3089&forceDialog=0>

¹² <https://www.frbatlanta.org/community-development/publications/discussion-papers/2013/01-do-local-business-ownership-size-matter-for-local-economic-well-being-2013-08-19.aspx>

Of the many communities that have implemented a formula retail ordinance, San Francisco has most fully articulated these principles in crafting its policies. Because of the significant resources San Francisco has committed to formula retail regulation, and the length of time regulations have been in place, its regulatory framework has been subject to improvements over time, and provides an excellent a sound model for Berkeley to adapt and carefully tailor to fit Berkeley's specific qualities and needs ~~and follow~~.

In 2004, San Francisco first enacted legislation to regulate formula retail. The ordinance was revised in 2014, reflecting recommendations outlined in a study of the first ten years of the policy.¹³ The ordinance remains in force, and is an effective deterrent against a proliferation of chain stores. Thanks in part to its formula retail policies, San Francisco has more independent businesses and fewer chains per capita than other big cities.¹⁴

The San Francisco ordinance establishes a conditional use application process for any retail store or restaurant that meets the definition of formula retail. A formula retailer is defined as:

*"a type of retail sales activity or retail sales 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 the **eleven or more** other retail sales establishments located in the World, 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." In other words, retail stores with multiple locations and a recognizable "look" or appearance." (SF Planning Code, § 303.1)*

In certain districts, formula retail is unrestricted (e.g., the downtown district) or entirely disallowed (e.g., North Beach, parts of Chinatown). In most of San Francisco, including the city's Neighborhood Commercial Districts, formula retail is allowed through a conditional use process in which the business application is reviewed by the SF Planning Commission, discussed at a public hearing, and approved (or denied) on a case-by-case basis. Each application is evaluated based on a number of factors:

- Existing concentration of formula retail businesses within the neighborhood
- Availability of similar goods or services within the area
- Compatibility of the proposed business with the character of the neighborhood (including aesthetic features)
- Retail vacancy rates in the area, and
- The balance of neighborhood-serving versus citywide or regional-serving businesses.¹⁵

¹³ http://208.121.200.84/ftp/files/legislative_changes/form_retail/Final_Formula_Retail_Report_06-06-14.pdf

¹⁴ <https://ilsr.org/rule/formula-business-restrictions/2321-2/>

¹⁵ <https://ilsr.org/rule/formula-business-restrictions/2321-2/>

This process allows the SF Planning Commission to exercise discretion and respond to on a case-by-case basis to each business district's unique character and mix of businesses. By limiting formula retail, rents have remained lower in some districts, reducing costs for independent retailers.¹⁶ San Francisco's conditional use permits allow the City to require formula retailers to have pedestrian friendly designs, aesthetics that do not detract from local character, and meet other aesthetic standards.¹⁷ Of the applications submitted by formula retailers during 2004-14, approximately 70% were approved, often with modifications, demonstrating that the conditional permit process is well crafted to balance interests, without unduly restricting formula retail.

Research conducted by San Francisco in 2014 found that only 5% of "chains" had 20 or fewer worldwide locations.¹⁸ While San Francisco did not adopt 20 as the threshold for defining a formula retail activity or enterprise, we are proposing 20 as the threshold to ensure that fast-growing start-ups in the region can grow and thrive. Many small businesses that originate in Berkeley or the Bay Area establish outlets region-wide to help make their businesses sustainable. Berkeley can benefit by having these local emerging small chains in our community while still receiving the economic benefits of local or regional ownership.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

General Plan

The City of Berkeley has taken an active role in economic development and legislation to better serve the needs of the small and local business community, and to promote the positive economic and social outcomes associated with a thriving small business environment. The policies of the General Plan and Office of Economic Development guide the City's actions towards actively promoting community and neighborhood values with independent, locally owned, and neighborhood-serving businesses.

- Goal #1 of the General Plan is to "Preserve Berkeley's unique character & quality of life", which includes protecting the City's economic diversity.
- Goal #2 of the General Plan also identifies supporting local businesses and neighborhood-serving businesses as a key step toward ensuring Berkeley's supply of decent housing, living-wage jobs, and businesses providing basic goods and services, further stating that a limited number of chain stores "contribut[es] to the vitality of Berkeley's commercial areas".¹⁹

¹⁶ http://default.sfplanning.org/legislative_changes/form_retail/Final_Formula_Retail_Report_06-06-14.pdf

¹⁷ <https://ilsr.org/watch-san-franciscos-anmarie-rodgers-on-how-the-citys-formula-business-policy-works/>

¹⁸ http://default.sfplanning.org/legislative_changes/form_retail/Final_Formula_Retail_Report_06-06-14.pdf

¹⁹

https://www.cityofberkeley.info/Planning_and_Development/Home/General_Plan_-_Economic_Development_and_Employment_Element.aspx

- More specifically, Economic Development Actions ED-3 and ED-4 directly address retaining and developing businesses that serve local neighborhood needs, implementing a small business preference program, and utilizing zoning mechanisms to limit “development of undesirable chain stores, formula businesses, and big-box developments” while enabling the expansion of local businesses.²⁰

Berkeley Policies that Support Small Businesses

The City of Berkeley has taken action in the past to support local business and limit chains by banning new fast food chains, limiting the number of pharmacies in close proximity to each other, establishing a maximum square footage for big box stores and imposing quotas in commercial districts.

In response to merchant concerns about rising rents demanded by commercial landlords, the City Council in 1985 enacted the “Telegraph Urgency Ordinance”.²¹ At the time, the ordinance was the nation’s only program of commercial rent regulation. After commercial rent control was outlawed by the State, Berkeley enacted quotas on various use types in some retail districts, which were intended to preserve diversity and local ownership among businesses and discourage unwanted commercial uses as defined in each commercial district’s purposes. These quotas, which could be violated with a Use Permit and were often exceeded, were eventually removed or greatly simplified.²²

Berkeley has also acted to limit the size, number and concentration of drugstores that can operate in the City.²³ This was done to prevent pharmacy chains from opening too close to each other while leaving other areas of Berkeley underserved and to preserve a diversity of uses in neighborhood business districts, allowing them to retain their unique character.²⁴

In April 2017, the City Council approved a Small Business Support Package, authored by Councilmember Hahn and Mayor Arreguin, to support new and sustain existing small and locally-owned businesses.²⁵ The package included measures to provide financial support to small businesses and nonprofits impacted by development projects; fees on vacant storefronts and empty lots; a local business advocacy center; streamlining of zoning, permitting, and licensing for small businesses; strengthening Berkeley’s Revolving Loan Fund program; expanding Buy Local preferences; and exploring a Legacy Business-type program for Berkeley.

²⁰ https://www.cityofberkeley.info/Planning_and_Development/Home/General_Plan_-_Economic_Development_and_Employment_Element.aspx

²¹ https://www.cityofberkeley.info/Planning_and_Development/Home/Southside_Plan_-_DSS_6_Economic_Development.aspx

²² https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2015-12-16_Item%209_Quotas-Combined.pdf

²³ https://www.cityofberkeley.info/Clerk/City_Council/2014/07_Jul/Documents/2014-07-01_Item_01_Ordinance_7354.aspx

²⁴ <https://www.cityofberkeley.info/recordsonline/export/16418086.pdf>

²⁵ https://www.cityofberkeley.info/Clerk/City_Council/2017/04_Apr/Documents/2017-04-25_Item_41_Small_Business.aspx

In April 2019, the Council approved another important measure to support Berkeley businesses interested in the worker cooperative ownership model.²⁶ Owned and run by employees, worker cooperatives typically provide higher wages, benefits, professional development, job security, and upward mobility for low to moderate income people. Also, these small businesses provide a diversity of locally owned services. In Berkeley, worker cooperatives such as The Cheese Board Collective, Biofuel Oasis, and Missing Link Bicycle Cooperative have become an integral part of the community's fabric. These and other worker owned businesses create higher quality jobs, increase local reinvestment, and have demonstrable positive impact on business retention.

According to the City of Berkeley's Office of Economic Development (OED),

"small businesses are a critical part of our local economy: they provide access to essential goods and services, create jobs and economic opportunities, and make essential contributions to Berkeley's vitality and distinct character. In recent years, the viability of small businesses has been threatened by a broad range of issues including the increasing costs of doing business, physical conditions of commercial districts, competition from the Internet, and difficulty engaging with the City of Berkeley."

The OED is focused on supporting small and local businesses, cooperatives, not for profits and arts organizations -- which make up the majority of Berkeley enterprises. In response to Council direction, and in light of the important role of these types of enterprises in the economic and cultural vitality of the City, the OED has launched five new policy initiatives²⁷:

- Improve outreach and communications with small businesses
- Increase support for businesses navigating the permitting process
- Recommend modifications to the zoning ordinance to support small businesses
- Pilot small business retention programs, and
- Support independently owned retailers with marketing, networking and education.

The objectives of these programs include boosting the profitability and sustainability of small businesses, preventing the closure and displacement of small businesses, sustaining and growing business-related municipal revenues, and improving Berkeley's reputation as a place to do business.

ACTIONS/ALTERNATIVES CONSIDERED

San Francisco, Sausalito, San Juan Bautista, Pacific Grove, and other cities across the country have passed legislation regulating formula retailers, tailored to the unique character and needs of their communities. Nantucket, MA, banned all formula retail from its historic downtown district. Cities such as San Francisco, Ojai, and Arcata, CA, and Bristol, RI, have implemented a

²⁶ https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Revised_Packet_2019-02-26_Item_A_Referral_Response_Supporting_Worker_Cooperatives_pdf.aspx

²⁷ https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-05_WS_Item_02_Referral_Response_Small_Business_pdf.aspx

conditional use framework to limit the number of formula retailers allowed in their commercial districts. Rather than impose outright bans or quotas on formula retail, these cities have a special application process and require robust findings for formula retailers to operate in regulated districts.

Communities have the power to maintain their integrity and character as set forth by their general plans. Only one formula retail ordinance has been challenged and overturned. Islamorada, a vacation destination in the Florida Keys, implemented formula retail restrictions nearly a decade ago. The court reviewing a legal challenge to the ordinance found it would fail to “help the town preserve its character,” noting for the record that Islamorada “has not demonstrated that it has any small town character to preserve”.²⁸

The goal of formula retail legislation is not to eliminate formula retail entirely. A key to crafting effective formula retail regulations is to avoid arbitrary quotas or limits on formula retailers, to be responsive to existing community and local flavor, and to adapt any regulations accordingly.

As noted above, Berkeley has experimented with commercial rent control and quotas, among other measures, but currently has very limited regulations in place to ~~support the establishment and continuation of small, local and diverse businesses and~~ curtail the proliferation of chains. Currently, formula retail regulation is considered to be the best tool to achieve these goals.

CONSULTATION/OUTREACH OVERVIEW AND RESULTS

Because this item proposes an Ordinance, it will be ~~routed-referred~~ to a Council [Policy Committee](#) (~~the Land Use, Housing & Economic Development Policy Committee~~) for discussion. Through this process we will reach out to small businesses and property owners to invite them to bring their comments to the committee. In addition, this item is a referral to the City Manager and Planning Commission. Assuming it is sent from the policy committee with a positive recommendation to the City Council and is referred by Council to the City Manager and Planning Commission, there will be many opportunities for citizen, business and property-owner input through the many public meetings envisioned to make this ordinance a reality.

RATIONALE FOR RECOMMENDATION

Berkeley’s small businesses, which are vital to the city’s character and economic health, are threatened by the growth of online stores and chain retailers. Other communities have successfully protected their small and independent businesses by placing restrictions on formula retail. San Francisco’s comprehensive, longstanding and carefully crafted formula retail regulations are an appropriate model for Berkeley -- adapted and carefully tailored to fit Berkeley’s specific qualities and needs, and to help preserve the important character and quality of the City’s commercial districts and neighborhood shopping areas.

This item refers to the City Manager and Planning Commission to undertake all elements necessary to craft and implement successful formula retail regulations in Berkeley.

²⁸ <https://ilsr.org/bloomberg-restrict-chains/>

A draft ordinance is provided, starting the process of adapting San Francisco's formula retail regulations to Berkeley's existing regulatory framework and processes. The City Manager and Planning Commission are tasked with completing the ordinance and preparing any complementary code amendments necessary to achieve the full regulatory framework. It is expected that the "Uses Permitted" Section of each Commercial and Manufacturing District will require small amendments to reflect the addition of the new Formula Retail Use.

The City Manager is further requested to recommend boundaries and names, if applicable, for Business Districts and, through a process that includes robust community outreach, to recommend for each Business District whether formula retail will be allowed without restriction; allowed with a Use Permit, Neighborhood Notification, Design Review and findings; or disallowed.

Public meetings to discuss whether a Business District should allow, disallow or allow with a Use Permit the establishment of formula retail uses are expected to be organized by the Office of Economic Development and/or Planning Department in collaboration with Councilmember representatives of Business Districts. Notice for such meetings shall, at a minimum, be the same as the notice proposed to obtain a Use Permit for Formula Retail. Several Business Districts can be considered at one meeting, so long as each Business District and surrounding area are noticed.

Notice to obtain a Use Permit for Formula Retail includes the following:

In addition to the public notice requirements for a Use Permit pursuant to Section 23B.32.020, public notice shall include all businesses and residents (all mailing addresses) and all owners of properties within the Business District where the Formula Retail use is proposed and within a 500 foot radius of the proposed Formula Retail use.

Formula retail legislation, modeled after San Francisco's policy, will help Berkeley maintain the unique character of its business districts and complement existing efforts and policies to support independent and local merchants. By carefully tailoring Formula Retail legislation to Berkeley's specific needs, the City can ensure a balanced mix of national brands while making sure that small and local businesses lacking the economic muscle to pay high rents and weather downturns still have a chance to thrive.

IMPLEMENTATION, ADMINISTRATION, AND ENFORCEMENT

At the outset, implementation will require creating new forms to be filled out by applicants for business licenses to establish new business or new ownership of existing businesses in Berkeley and zoning permits for new or expanded uses. These can be adapted from San Francisco's forms. Additional forms may require amendment, and some training will be required for staff who process licenses and permit applications.

Once in place, Use Permits for Formula Retail will be administered in the same manner as all other Use Permits and Design Review will also be undertaken in the usual manner. Enhanced notice requirements will require more notices to be sent than in the usual case for a Use Permit, representing minor additional costs.

Regular fees for a Use Permit will be required, ensuring that the Planning Department's costs are covered by the Formula Retail applicant. It is not expected that a large number of applications for Formula Retail Use Permits will be processed in any given year, as a limited number of new businesses open each year and many will not meet the definition of Formula Retail. For those that do meet the definition, only a subset, those that seek to establish themselves in business districts that limit formula retail, will be required to obtain a Use Permit.

ENVIRONMENTAL SUSTAINABILITY

This item supports the Berkeley General Plan goal to protect local and regional environmental quality, as local stores help to sustain vibrant, compact, walkable town centers, which in turn are essential to reducing sprawl, automobile use, habitat loss, and air and water pollution. As stated in a recent OED report, "small businesses often contribute to sustainable transportation and consumer behavior by providing opportunities for residents to shop locally in neighborhood commercial districts that are accessible by foot, bicycle and transit. Successful initiatives that support small businesses in turn promote both environmental and economic sustainability."

FISCAL IMPACTS

By regulating formula retail, Berkeley should reap the well-documented benefits of local ownership. As noted above, small and locally-owned businesses stimulate local economies to a greater degree than chain retailers, increasing tax revenues overall. Automobile sales, one of the largest sales-tax generating use uses in Berkeley, is not subject to Formula Retail regulations; income from this sector would not be impacted.

Once established, formula retail regulations will require limited additional staff time to implement, in the form of new Use Permits being processed by the Planning Department. A new form will need to be created for businesses seeking permits to attest to the number of outlets affiliated with their establishment. This and other forms and administrative regulations are easily adapted from San Francisco's models.

Processing of Formula Retail Use Permits will be done simultaneously with other permit processing, and will only be required in the few instances where a Formula Retail use is seeking to establish itself in a business district that requires a Use Permit for formula retail. In these instances, applicants will pay the usual fees for Use Permit processing, which cover the costs of permit administration.

All non-Formula Retail uses *are exempt* from these regulations, so their permitting process will not be impacted in any way, other than needing to fill out a new form attesting that they do not meet the definition of Formula Retail. A successful formula retail policy will provide significant community and economic benefits and help realize Berkeley's strong commitment to supporting

small and local businesses; incurring few costs for the City of Berkeley and increasing economic activity overall.

OUTCOMES AND EVALUATION

San Francisco ~~did~~ conducted an evaluation of their original Formula Retail regulations ten years after the program was in place. The evaluation resulted in improvements to their ordinance. The version of the San Francisco ordinance proposed for adoption in Berkeley reflects those improvements.

Berkeley's Formula Retail regulations will be considered successful if the business community and neighborhoods surrounding Berkeley's business districts have had the opportunity to weigh in on the appropriateness of bringing specific Formula Retail uses into the business district, and some, but not all, Formula Retail businesses will have received Use Permits. In addition, it is hoped that the implementation of these regulations will result in less rapid inflation of rents, which often reflect rental rates that can be sustained by chains, but are prohibitive for locally owned businesses.

Data about regarding Formula Retail and the impacts of these regulations should be included in the Office of Economic Development's Economic Dashboards and other reports to the City Council.

CONTACT INFORMATION

Councilmember Sophie Hahn, Council District 5, (510) 981-7150

ATTACHMENTS/SUPPORTING MATERIALS

1. Draft Formula Retail Ordinance for Berkeley
2. Commission Guide for Formula Retail, San Francisco Planning Department, August 2018
3. San Francisco Planning Code Section 303.1: Formula Retail Uses
4. San Francisco Municipal Code Section 703.4: Conditional Use Authorization for Formula Retail Uses
5. San Francisco Municipal Code Section 803.6: Formula Retail Uses in Article 8 Districts
6. Stacy Mitchell, Institute for Local Self-Reliance, "The Impact of Chain Stores on Community"
7. Marie Donahue, Institute for Local Self-Reliance, "Why Care about Independent, Locally Owned Businesses?"