



AGENCY: City Council  
MEETING DATE: October 24, 2019  
DEPARTMENT: City Manager  
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## AGENDA ITEM SUMMARY

### **TITLE:**

**Receive Report and Provide Direction on Regulating “Formula Businesses”**

### **ISSUE:**

The City Council asked staff to explore banning box or formula businesses within the City of Fort Bragg. In response, the City Attorney prepared a memo addressing a California city’s authority to regulate these businesses.

According to the Attorney, the short answer is that cities cannot completely prohibit “formula businesses” within their jurisdiction but they may impose additional requirements that limit the number allowed in a given area, impose certain design guidelines and ensure that the formula businesses are compatible with surrounding uses. This is grounded in the City’s extensive authority over land-use matters. That authority does not extend to regulating who or what type of entity can own/use property within the City but the use itself.

The definition of “formula business” can vary by jurisdiction but generally the term refers to any business that is required to maintain a standardized array of services, merchandise, menu, uniform, décor, signage, color scheme, trademark or service mark; and is substantially identical to 25 or more other businesses in the United States.<sup>1</sup>

The discussion this evening is whether or not to pursue an ordinance regulating formula businesses and if so, provide staff direction on how and where such regulation is desired.

### **ANALYSIS:**

While the City does not have the legal authority to ban all formula businesses, the City may take a balanced approach to regulating formula businesses in order to preserve the small-town charm and character of Fort Bragg. Zoning is the primary tool that cities use to exercise authority over land-use matters. There are two basic types of zoning regulations:

1. Site Planning and Project Design Standards, such as those that control setbacks, height, lighting, landscaping and location; and
2. Allowable Land Uses that control what uses are allowed in the designated district or area within the City.

A zoning ordinance will typically set forth a list of permitted uses, as a matter of right, within each zoning district. Other uses may be allowed, not as a matter of right, but with a conditional use permit (CUP)<sup>2</sup>. CUPs add flexibility to zoning and allow for local review to

<sup>1</sup> Port Townsend, Washington’s Ordinance provided helpful detailed definitions of each of the standardized features. This may be something to consider adding if the Council pursues an ordinance. The number of substantially identical businesses that trigger the definition varies from jurisdiction to jurisdiction.

<sup>2</sup> The City of Fort Bragg Land Use & Development Codes refer to this as just a Use Permit or UP.

ensure compatibility with the neighborhood.

CUPs can be used to regulate formula businesses in a legally defensible manner. One key aspect of applying CUPs to formula businesses in a defensible manner is to focus on the use of the land and not on restricting a specific formula business. The purpose of the regulation must also be tied to the long-term commercial health of the city and cannot be discriminatory against a particular business. Long-term commercial health can be tied to preserving the character of the community or city. For example, Coronado, CA was successful in defending its ordinance in part because it set forth a clear purpose. Namely, to maintain and preserve the special seaside tourist village atmosphere with small-scale eclectic ambiance by establishing an appropriate mix of local, regional and national-based businesses and small, medium or large-sized businesses.

### What types of uses do we want to regulate?

Only a few cities regulate all types of formula businesses. The most common target is formula fast-food restaurants, formula restaurants and formula retail. Arcata, Ukiah and Coronado regulate formula fast-food restaurants by limiting the total number allowed in city limits or within a zoning district. This type of cap, when it is set at the current number of formula restaurants (fast-food or otherwise) in operation when the Ordinance is adopted, is in essence a ban on new formula businesses because new formula restaurants are only allowed when space becomes available from closures or sale of an existing formula business.

Other cities regulate where formula restaurants can be located. For example, Sebastopol prohibits formula restaurants in the downtown district but allows them in other districts. Likewise, Solvang bans formula restaurants in their Village District. Coronado does not allow formula fast-food restaurants on street corners and limits a site to just one formula restaurant to control concentration. On the more stringent side, Pacific Grove and Ojai ban formula fast-food restaurants city-wide and Calistoga and Carmel-by-the-Sea ban all formula restaurants.<sup>3</sup> San Juan Bautista bans drive-through formula restaurants everywhere.

Calistoga also bans formula visitor accommodation businesses (chain hotels) and Sebastopol does not allow those in their downtown district but does allow them elsewhere in the city. Coronado allows formula visitor accommodation but only with a major special use permit that is reviewed by the Planning Commission for compatibility with the surroundings and character of the community.

Formula business offices on the ground floor street front are prohibited by Sebastopol in the downtown. This includes formula tax preparation businesses, banks, credits unions and real estate offices.

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<sup>3</sup> In some jurisdictions, existing formula business ordinances appear to exceed what is legally defensible under current law. There is limited case law challenging formula business regulation and these jurisdictions have most likely not been subject to legal challenge. Staff is recommending a more conservative legally defensible approach to formula business regulations.

### Do we want to regulate size?<sup>4</sup>

A common regulation on formula businesses is a limit on the amount of linear feet the business may occupy on any street, particular if located in a downtown, historic or dense commercial district. This typically ranges from 50 feet in Arcata to 25 feet in Ojai. Other regulations on formula businesses included limits on the total square footage. In Ojai, for example, the square footage is limited to 2,000 square feet. Some jurisdictions also limit formula businesses to one story.

Cities concerned with the larger “box” stores may have limitations on formula businesses larger than 20,000, 30,000 or 100,000 square feet. This regulation, especially on the larger size, limits mega or warehouse type stores.

### Do we want to regulate the appearance?

A method to preserve the quaint character or charm of a neighborhood or even the entire city is to strictly regulate the design guidelines so that a theme, character or consistent standard is maintained. A few iconic examples include: Santa Fe, NM; Solvang, CA; Sedona, AZ; Carmel by the Sea, CA; and Nantucket, MA. Formula businesses (or all businesses) can be required by ordinance to develop the site in compliance with certain development standards.

### Do we want to regulate the formula business through CUPs?

San Francisco and San Juan Bautista require essentially all formula restaurants, visitor accommodations and retail businesses to apply for a CUP that is reviewed by the Planning Commission. The Planning Commission in San Francisco reviews all permit applications on a case-by-case basis considering:

1. The existing concentration of formula retail businesses within the neighborhood;
2. Whether similar goods or services are already available within the area;
3. The compatibility of the proposed business with the character of the neighborhood;
4. Retail vacancy rates in the area; and
5. The balance of neighborhood-serving versus citywide or regional-serving businesses.

The Planning Commission in San Juan Bautista requires the following findings to issue a formula business a CUP:

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<sup>4</sup> Fort Bragg code lists “big box retail” as a land use that is only allowable in the CG and CH districts with Use Permit approval. “Big box” is defined as: A large formula retail establishment that is generally located on an arterial or collector roadway, requires a site of 1 acre or larger, and generally contains 1 or several businesses or structures totaling 30,000 or more square feet. They may operate as stand-alone facilities, but also in a type of shopping center called a “power center” or “value mall” having common characteristics including large warehouse-sized buildings and a reliance on auto-borne traffic. Warehouse retail stores that emphasize the packaging and sale of products in large quantities or volumes, some at discounted prices, where products are typically displayed in their original shipping containers. Patrons may be required to pay membership fees.

1. The business offers merchandise and/or services that serve the unmet needs of the population.
2. Although the formula-based business may have other store locations throughout the country, State, or region, the business will complement and enhance the character of the City.
3. Both exterior and interior appearance and presentation of the business are compatible with the existing scale of development, distinctive architecture and pedestrian orientation of the town character and result in an enhancement of the look and feel (i.e., character) of the surrounding area.
4. Signs shall conform to the City sign standards and design guidelines.
5. Drive-through food establishments shall be prohibited.

Sausalito only allows formula retail establishments in the central commercial, shopping center and neighborhood commercial districts and then only with a CUP the following findings:

1. The formula retail establishment will be compatible with existing surrounding uses, and has been designed and will be operated in a non-obtrusive manner to preserve the community's distinctive character and ambiance;
2. The formula retail establishment will not result in an over-concentration of formula retail establishments in its immediate vicinity or the City as a whole;
3. The formula retail establishment will promote diversity and variety to assure a balanced mix of commercial uses available to serve both resident and visitor populations;
4. The formula retail establishment will contribute to an appropriate balance of local, regional or national-based businesses in the community;
5. The formula retail establishment will be mutually beneficial to and would enhance the economic health of surrounding uses in the district;
6. The formula retail establishment will contribute to an appropriate balance of small, medium and large-sized businesses in the community; and
7. The proposed use, together with its design and improvement, is consistent with the unique historic character of Sausalito, and would preserve the distinctive visual appearance and shopping experience of Sausalito for its residents and visitors.

#### How do we want to define "formula business"?

As mentioned under the Issue section of this report, the definition of "formula business" can vary but generally the term refers to any business that is required to maintain a standardized array of services, merchandise, menu, uniform, décor, signage, color scheme, trademark or service mark; and is substantially identical to 25 or more other businesses in the United States.

Some jurisdictions provide a set number, such as two or three, of the standardized features (services, merchandise, menu, etc.) which trigger the definition. The number of substantially identical formula businesses included in the definition also varies from city to city. Some

cities outside of California have this as low as two. Solvang, CA sets this number at 5. San Francisco's limit of 11 had created difficulties for locally grown businesses, such as Blue Bottle Coffee Company, when that businesses' popularity and number of stores exceeded that limit. As a local example, Mendocino County uses ten (10) or more substantially identical businesses and two standardized features as its trigger for meeting its definition of formula business.

If the number of substantially identical formula businesses is set too low, it could block regional businesses, with a handful of locations, from locating in Fort Bragg. One avenue for economic development in Fort Bragg has been to reach out and encourage compatible regional businesses that would provide unique goods or services to expand here.

Another consideration in regulating formula businesses is whether to treat franchises differently than corporate formula businesses. Many franchises are locally owned and managed and support local employees and families. The argument for keeping dollars local and not allowing formula businesses is much less applicable when the business is not part of the corporate structure. A number of existing Fort Bragg's locally owned franchise businesses would be considered a formula business under the typical definition.

### Other Considerations

A criticism of the formula business regulation in San Francisco is the cost and uncertainty tied to the case-by-case review faced by businesses because of the CUP requirement. There is also a concern that the largest threat to independent and small businesses is not formula businesses, but is on-line retailers. Loss of foot traffic from shoppers can adversely impact independent businesses more than formula businesses which have a bigger draw. Less foot traffic equates to less contact and less sales. It is argued that chain anchor stores can generate additional foot traffic that benefits both independent and formula businesses in the area. With the increase in vacant retail space across the United States, this argument is of more concern.

Supporters of formula business regulations champion keeping dollars, particularly profits, local where those dollars support other businesses, jobs and recirculate in the local economy. Many of the cities that have adopted formula business regulations, have unique characteristics that make them desirable destinations and are at least partially reliant on tourism. Other cities cite a desire to avoid homogeneity in the American business landscape and champion unique experiences and businesses. Support and protection for small local businesses<sup>5</sup> is also a goal of formula business regulation. A good balance of businesses supports a healthy local economy, meets the needs of the community and supports sustainability.

### What are the legal concerns?

1. Purpose of the Ordinance. One key to a legally defensible Ordinance is to make

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<sup>5</sup> Support of small businesses can also equate to support of minority, veteran or women owned businesses that may face bigger challenges in establishing and operating a successful enterprise.

extensive findings about the purpose when the formula business Ordinance is adopted and how it furthers the goals identified in the City's General Plan.

2. Establish Clear Criteria. If the City uses the Conditional Use Permit (CUP) tool, clear standards and criteria tied to the land and land use are crucial. Standards and criteria that are specific to the business owner are subject to legal challenge. The standards and criteria need to guide clear findings that further the purpose of the Ordinance and the City's General Plan.
3. Connect the Specific Regulations. The City should be able to draw a clear connection between the stated purpose of the Ordinance and the regulations applicable to formula businesses and state how these will achieve the purpose.
4. Cannot Discriminate Against Nonlocal Businesses. A zoning Ordinance cannot be drafted to only inhibit competition.

### **RECOMMENDED ACTION:**

The purpose of this report is to present the topic of formula business regulation to City Council and the public. If the City Council decides that it would like to develop an Ordinance that regulates formula businesses, staff requests direction on:

1. Land uses to regulate (fast-food, restaurant, retail, accommodations and/or office)
2. Zones or districts to regulate (Central Business District (CBD), Highway Commercial, etc.)
3. Design regulations (designs that preserve the character of Fort Bragg or a particular community). This seems most applicable in the CBD.
4. Whether to regulate the size of businesses.
5. Inclusion of Conditional Use Permits (CUPs) or Use Permits as part of the regulations.

### **ALTERNATIVE ACTION(S):**

Provide staff direction to not develop or research formula business regulation.

### **FISCAL IMPACT:**

The cost to develop the Ordinance is estimated at \$10,000-\$15,000. The impact of the Ordinance on City revenues is unknown. Of the City's most recent top twenty-five sales tax generating businesses, fifteen (15) or 60% would likely be considered a formula business (depending on the specific definition). The top twenty-five sales tax generating businesses together generate 66% of the City's total sales tax revenue.

However, as a general rule local businesses typically spend a much greater portion of their profits or earnings locally, which creates a multiplier by supporting other businesses and jobs in the local economy.

### **GREENHOUSE GAS EMISSIONS IMPACT:**

The impacts of a formula business Ordinance on greenhouse gas emissions are unknown but will likely be tied to an increase or decrease in new business construction or remodels.

### **CONSISTENCY:**

A formula business ordinance is consistent with the City Council's goal:  
Priority Area 1: Jobs/Industry  
Goal 3 – Foster and help sustain local businesses

**IMPLEMENTATION/TIMEFRAMES:**

The timeframe for implementing a zoning ordinance to regulate formula businesses differs depending on the business location. For the Inland Land Use & Development Code, an Ordinance is introduced at a Council meeting, adopted at the next meeting and typically effective thirty (30) days later. The process for the Coastal Land Use & Development Code is more complex because any modification to the Coastal Land Use & Development Code must be approved by the Coastal Commission, which is often a lengthy reiterative process. The time frame for final adoption could be years.

Changes to the Citywide Design Guidelines would be applicable to both the Inland Land Use & Development and the Coastal Land Use & Development Code without the need for Coastal Commission approval.

**ATTACHMENTS:**

1. N/A

**NOTIFICATION:**

1. Economic Development Planning, **Notify Me subscriber list**
2. Tourism and Marketing, **Notify Me subscriber list**
3. Fort Bragg Downtown Businesses, **Notify Me subscriber list**