

<b>AGENCY:</b>	Planning Commission
<b>MEETING DATE:</b>	October 14, 2020
<b>PREPARED BY:</b>	T. Sar
<b>PRESENTED BY:</b>	T. Sar

## AGENDA ITEM SUMMARY REPORT

**APPLICATION NO.:** Inland Land Use and Development Code Amendment 2-20 (ILUDC 2-20)

**APPLICANT:** City of Fort Bragg

**PROJECT:** Discuss Potential ILUDC Amendment to Regulate Formula Businesses in the City of Fort Bragg.

**LOCATION:** Commercial Zoning Districts in the City of Fort Bragg (Attachment 1)

**APN:** Multiple

**LOT SIZE:** N/A

**ZONING:** Neighborhood Commercial (CN), Central Business District (CBD), General Commercial (CG), and Highway Visitor Commercial (CH) Districts

**ENVIRONMENTAL** Adoption of an ordinance is exempt from environmental review under CEQA. The CEQA guidelines include a statutory exemption for "the adoption of an ordinance and various minor amendments to other Municipal Code provisions to ensure their consistency with the new formula business zoning regulations" are exempt under the CEQA Guidelines' "General Rule" exemption (CEQA Guidelines Article 5, Section 15061(b)(3)).

**DETERMINATION:** Environmental Determination was noted as Statutory Exemption.

**SURROUNDING LAND USES:** N/A

**APPEALABLE PROJECT:**  Can be appealed to City Council  
 Can be appealed to California Coastal Commission

## **BACKGROUND:**

On October 24, 2019 and January 29, 2020, City Council met to discuss policies to regulate Formula Business in the City of Fort Bragg. The City's land use goals and policies are to preserve the economic diversity of the City, to ensure that it has a strong and resilient economy which continues to support its local business by establishing an appropriate balance between formula business and local business to prevent the proliferation of elements that project a sense of sameness and familiarity that conflict with the City's goal of remaining a unique small coastal town. The purpose of the regulation must be tied to the long-term commercial health of the City and cannot be discriminatory against a particular business in order to be legally imposable.

While cities cannot completely prohibit "Formula Businesses" within their jurisdictions, cities can enact ordinances that impose additional permit requirements that limit the numbers in a given area and impose certain design guidelines in order to ensure they are compatible with surrounding uses.

On September 17, 2020, the City of Fort Bragg, launched a survey on formula business to the public. The **2020 Formula Business Survey** is being conducted as part of soliciting the public's input prior to adopting a formula business ordinance. The responses will theoretically allow us to get a better understanding on our community needs as a whole. The results of the survey will be published on the City of Fort Bragg website upon completion of the survey. Current report findings are presented in Attachment 3.

## **PROJECT DESCRIPTION**

The increase of formula retail businesses in the City's commercial areas, if not monitored and regulated, could hamper the City's goal of maintaining a diverse retail base with distinct neighborhood retailing personalities comprised of a mix of businesses. Specifically, the unregulated and unmonitored establishment of additional formula retail uses may unduly limit or eliminate business establishment opportunities for smaller or medium sized businesses. Many of which tend to be non-traditional or unique, and disproportionately skew the mix of businesses towards national retailers in lieu of local or regional retailers, thereby decreasing the diversity of merchandise available to residents and visitors.

## **ANALYSIS**

Formula Businesses are not limited to retail and restaurants. Formula Business includes any business that has standardized services, décor, methods of operation, and other features that make them virtually identical to businesses elsewhere. Like other cities, Formula Business in Fort Bragg includes H&R Block and other tax prep businesses, national chain real estate offices, hotels, private post offices, insurance agents, medical clinics, health clubs, banks and other financial institutes that may fall within the definition of Formula Business.

Some cities and towns are enacting policies that restrict the proliferation of "Formula Businesses" as it's not uncommon for formula businesses to arrive in a small town area, and squeeze out independent business. This can have long-term economic consequences on the

town and/or neighborhood business districts. Even the loss of a few businesses in the small Central Business District (CBD) radius has the potential for distinctive impacts on the overall appeal of the pedestrian experience and effect the opportunities for independent entrepreneurs. Local small businesses that meet the basic needs of surrounding neighborhoods, such as financial businesses, real estate offices, grocers, and pharmacies may be pushed out as more formula businesses open up.

At the January 29, 2020 meeting, Council discussed in depth the various locations of potential impact of formula businesses in the City. Council also deliberated whether financial and real estate formula businesses should be located in CBD and other districts. The City cannot legally prevent a formula business like a National Bank and a Real Estate firm from coming in, but the city can require them to open up business in specific locations that is distinct in name, operation, and appearance from all of its other outlets. Although there are a few examples of a chain complying with a formula business ordinance by opening a unique outlet, in most cases, they refuse to veer from their cookie-cutter formula and opt not to open. One strategy the City can use is adopting an ordinance that regulates formula businesses in certain locations and requires that they meet specified conditions to operate locally in order to mitigate impacts to small businesses and maintain the small town character and natural beauty. Below are descriptions of locations in the City that were mentioned in previous meetings, additional context for the character of each district is described in Attachment 2; Commercial Districts Purpose and Permit Requirements, a Land Use code excerpt and visually in Attachment 1; Zoning Map.

- 1. Gateway:** The area from Highway 20 to the Noyo Bridge is sometimes referred to as the gateway to Fort Bragg, as most people enter the City from the east. This area is primarily zoned **Highway Visitor Commercial**. At least some Councilmembers indicated that they would like to see some restriction on formula businesses in this location, despite formula businesses already existing here. Of particular interest was creating more Fort Bragg charm at this entrance to the City. Regulations in this “gateway” area would occur under the Coastal Land Use and Development Code (CLUDC) update only and so are not directly impacted by direction under this proposed ILUDC amendment.
- 2. General Commercial Corridor:** There was little discussion or concern about control over formula businesses in the Main Street corridor that stretches from the Noyo Bridge to the Central Business District (CBD) and to Franklin Street in the east. Many of the City’s existing formula businesses are located in this commercial corridor and the most appropriate District to allow formula businesses. The City could make formula business allowed by right in this district or require a Minor Use Permit (MUP) as an option to review the project before approval, if there is some concern about the impact of the project in that neighborhood.
- 3. Central Business District.** The one clear consensus regarding the CBD was maintaining what is considered the character and charm of Fort Bragg as is reflected in much of the CBD. The CBD encompasses the area from Oak to Pine and Main to McPherson, with the heart of the district between Laurel Street and Redwood. The CBD represents a strong example of that quaint small town charm Fort Bragg has to offer locals and tourists alike. Whether formula businesses should be allowed in this district was debated by City Council. One thought was that office, retail and/or restaurant formula businesses would

not detract from the character of the CBD and might increase foot traffic and occupy what are now empty, dilapidated store fronts in this struggling district. Formula businesses could be required to maintain the character of the CBD by locating in existing vacant store fronts and conforming to design standards. For example, the City could prohibit façade renovations that incorporate an element of uniform branding and limit exterior displays to signage only.

4. **South of Pudding Creek.** The area from the Pudding Creek Bridge south to Pine street along Main Street is primarily zoned **Highway Visitor Commercial** and a few formula businesses currently exist in this area. Council did not discuss this area in much detail and like the General Commercial Corridor it may be a good location to consider formula businesses by right or to require a MUP.
5. **North of Pudding Creek.** There is a continuation of an area zoned **Highway Visitor Commercial** and at the north end of town are **Industrial and Light Industrial districts**. This area is sometimes referred to as the northern entry or gateway to the City. A number of hotels already exist in this area; both those associated with a franchise and independent accommodations. The City Council did not spend much time discussing the merits of formula hotel/accommodation businesses but could distinguish this area from the General Commercial Corridor by not allowing additional formula accommodation businesses in this area. This area, close to McKerracher State Park and with better ocean views, may be more suitable to further restrictions to preserve the views and character of its surroundings. The Industrial and Light Industrial zones at the north end of the City are unlikely to need additional regulation beyond the MUP process. The lack of existing infrastructure in these areas is the primary factor increasing costs of siting in this location for business big or small.

### **Existing Formula Business Regulation**

Fort Bragg's Coastal and Inland Land Use & Development Codes and General Plans contain some guidelines and restrictions on formula based businesses that should be considered in adding to and/or revising the existing regulation.

*Formula Business (definition).* A business that is required by contractual or other arrangement to maintain standardized uses, services, décor, uniforms, architecture, signs or other similar features. Formula businesses can include retail sales services, restaurants, gas stations, visitor accommodations, etc.

*Goal LU-4* Promote the economic vitality of the City's existing commercial areas.

*Policy LU-4.1 Formula Businesses and Big Box Retail:* Regulate the establishment of formula businesses and big box retail to ensure that their location, scale, and appearance do not detract from the economic vitality of established commercial businesses and are consistent with the small town, rural character of Fort Bragg.

*Policy LU-4.2* Require that a fiscal and economic analysis be performed as part of the conditional use permit process for big box retail projects. The analysis shall evaluate the

economic effects of the project for a minimum five-year time frame. A consultant selected by the City and paid for by the project proponent shall carry out the analysis.

*Policy LU-4.3 Large-Scale Commercial Development:* To maintain scenic views of the coast and to ensure that building sizes at the City's gateways are in scale with the community, no commercial building shall exceed the following limitations on the gross floor area:

- a) Between the Noyo River and Pudding Creek Bridges - maximum 50,000 square feet;
- b) East of Highway One and north of Pudding Creek Bridge - maximum 30,000 square feet;
- c) West of Highway One and north of Pudding Creek Bridge and south of the Noyo River Bridge - maximum 15,000 square feet; and
- d) East of Highway One and south of Noyo River Bridge – maximum 40,000 square feet.

### **Existing Gateway Guidance and Regulation**

Fort Bragg's Coastal and Inland Land Use & Development Codes and General Plans contain the following guidelines and restrictions for the City's entryways or Gateways that should also be considered in policy changes.

*Goal CD-3* Create attractive entryways to the City.

*Policy CD-3.1 Entryways:* Clearly define the points of entry to the City through the use of distinctive signs, lighting, and landscaping.

*Program CD-3.1.1:* Maintain distinctive signs placed in a landscaped area at the south entryway at Highway 20/Highway 1 and at the north entryway on Highway 1 at the City Limits.

*Policy CD-3.2 Gateway Development:* Encourage a higher quality of development at the City's gateways.

*Program CD-3.2.1:* Consider adopting the following standards for Gateway Developments in the Citywide Design Standards:

- Define gateway development as development located south of the Noyo Harbor Bridge or North of the Pudding Creek Bridge.
- Gateway development should not detract from views to the ocean.
- Signage should be modest in scale and should not block the view shed.
- Significant landscaping shall be installed to reinforce the transition from a wilderness environment to an urban environment in gateway development. Landscaping should include trees and drought tolerant plants. Lawns are discouraged.
- Site design should include open space around the periphery of the gateway development to reinforce the transitional quality of the area.
- Site design should include installation of bike lanes and sidewalks.
- Gateway development should model Green Building techniques and materials.

## PROPOSED CHANGES TO ORDINANCE AND CONSISTENCY ANALYSIS

In order to implement the changes directed by the City Council to regulate formula business, the following amendments to the ILUDC are proposed below.

The proposed amendment to the Municipal Code involves changes to Chapter 18 of the Inland Land Use and Development Code (ILUDC) only. Changes to the Coastal Land Use and Development Code (CLUDC) require additional steps prior to adoption and implementation including referral to the California Coastal Commission for conformance with the Certified Local Coastal Program (LCP) and Coastal General Plan. No amendments are proposed for the CLUDC at this time. Should Commissioners and Council wish to pursue amendments to the CLUDC, staff recommends this be done through a separate action after the approval and implementation of the amendments to the ILUDC.

Potential ILUDC amendments require changes to; the land use tables in **Article 2** to specify where formula businesses may be allowed or require permitting; and **Article 4** describes the specific uses and regulations as they apply to formula business; and **Article 10** which defines the terminology. A table summarizing the codes that will require amendments to establish regulations on Formula Business is shown below.

<b>Table 1: Ordinance Amendments for Formula Businesses</b>	
<b>Code Section</b>	<b>Proposed Change(s)</b>
<b>Article 2 Chapter 18.22</b>	<ul style="list-style-type: none"><li>Revise Commercial Land Use Table 2-6 in Chapter 18.22 to include Formula Business as a land use, and indicate its allowance in specific districts with Use Permit approval subject to the Specific Use Regulations that will be detailed in Chapter 18.42.025.</li></ul>
<b>Article 4 Chapter 18.42</b>	<ul style="list-style-type: none"><li>Add Section 18.42.025 – Formula Business to provide Specific Use Regulations for commercial uses.</li></ul>
<b>Article 10 Chapter 18.100</b>	<ul style="list-style-type: none"><li>Changes proposed for definition of terms “Formula Business” and “Big Box Retail”</li></ul>

### Proposed Changes to Article 2 Land Use Tables:

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, require review to control setbacks, façade, colors, height, lighting, landscaping and location; and
2. Allowable Land Uses that control what uses are allowed in the designated zoning districts.

One sample of version of Article 2, Table 2-6 “Formula Business,” is shown below in Table 2. This version permits the use in the CN, CH, and CG districts with a Conditional Use Permit. The Central Business District (CBD) was also considered for permitting and may be discussed to be included to either replace CN or both. The defined purpose and requirements set forth for the various zoning districts being considered under this amendment have been included as Attachment 2 to this report.

Table 2: Sample Article 2.6

Primary Use	CN	CG	CH	CBD	IL	IH
Formula Business	UP	UP	UP	--	--	--

*P = Permitted, MUP = Minor Use Permit, UP = Use Permit, --Not Permitted*

A zoning ordinance will typically set forth a list of permitted uses by right, within each zoning district. Other uses may be allowed with a Use Permit (UP) or a Minor Use Permit (MUP). This will allow the applicant flexibility in zoning use and allow for local review to confirm the project is compatible with existing surrounding use.

Use Permits can be used to regulate formula businesses in a legally defensible manner. The primary function of the Use Permits is to provide for the review of the use of the land and not to restrict 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.

- *Allow formula business in CN, CH, and CG zoning districts with a Use Permit.*

As warranted, the City routinely amends the ILUDC to ensure that the code implements the policy goals of the City Council and complies with State law. Staff proposes to draft a Formula Business ordinance within the City of Fort Bragg Inland districts. The new ordinance would limit the location and operation of formula business within the City’s commercial districts.

**Proposed Changes to Article 4 Standards for Specific Land Uses:**

**18.42.075 – Formula Business**

This section establishes standards for formula business, where allowed by Article 2 (Zoning Districts and Allowable Land Uses). The intent is to regulate the establishment of formula businesses in specific locations. Items for discussion include:

- **Limitation on location.** The design, location, size and operating characteristics of the formula business use shall be compatible with the existing and future land uses in the vicinity.
  - At the February 24th City Council meeting, Council expressed more interest on limiting establishment more by location than zoning. Zoning is a more strategic and defensible tool for implementing regulations.
  - As mentioned above, which the CG district is the most likely location of Formula Business, it also encompasses the “Gateway”. Higher standards are development are encouraged in this location including additional review of signage, landscaping, and size. CG is a district included in

proposed Table 2-6 for requiring a UP, to allow the department a more comprehensive review of any formula business application.

- **Formula Business Conditional use.** If a Use Permit or Minor Use Permit shall be required to operate Formula Business in accordance with Table 2-6 of Article 2, Commission should provide input on in which districts a permit is required.
  - Council had some consensus about requiring permits in CN, CG, and CH districts.
  - If there is strong consensus to further regulate financial formula businesses in CBD (and other districts) changes could be made to “Services-Business, Financial, Professional” Section of Table 2-6 to require UP in CBD for Banks and Business support services.
  - Another important factor to consider is that even a proposed locally owned “Formula” Franchise business will need to be regulated in the same matter as a corporate owned Formula Business application if permitting requirements are implemented.
  
- **Fiscal and Economic Analysis.** In accordance with Policy LU-4.2. Formula Business submittals must supply “a fiscal and economic analysis as part of the conditional use permit process for big box retail projects. The analysis shall evaluate the economic effects of the project for a minimum five-year time frame. A consultant selected by the City and paid for by the project proponent shall carry out the analysis.”
  - This requirement could be extended to all formula business beyond just Big Box (defined below).
  - This requirement could apply to only Use Permits or could be expanded to include Minor Use Permits as well.
  
- **Exterior Appearance.** The specific characteristics of a business’s façade may add to or detract from the City’s unique coastal town character.
  - Design review can include Signage, lighting, windows, etc.
  - This section shall additionally reference Policy LU 4.3 for consistency with siting and size maximums for these developments.
  
- **Quantity.** The maximum quantity of permits issued for Formula Business uses may be determined by resolution of the Planning Commission and City Council.
  - While it is possible to limit the number of Formula Business allowed by district, this may be less legally defensible than using the review criteria described above.
  - Using quantity as a regulatory tool, may have unintended consequences of limiting competition.
  
- **Business License.** A formula business shall require a City Business License.

## [NECESSARY] FINDINGS

An application for a Use Permit or Minor Use Permit may be approved subject to conditions, or disapproved by the review authority. The review authority shall approve a Use Permit or Minor Use Permit only after first finding all of the following:

1. The proposed use is consistent with the General Plan and any applicable specific plan;
2. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Development Code and the Municipal Code;
3. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity;
4. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities (e.g., fire protection, police protection, potable water, schools, solid waste collection and disposal, storm drainage, wastewater collection, treatment, and disposal, etc.), to ensure that the type, density, and intensity of use being proposed would not endanger, jeopardize, or otherwise constitute a hazard to the public interest, health, safety, convenience, or welfare, or be materially injurious to the improvements, persons, property, or uses in the vicinity and zoning district in which the property is located.
5. The proposed use complies with any findings required by § [18.22.030](#) (Commercial District Land Uses and Permit Requirements).

**Conditions of approval.** In approving a Use Permit or Minor Use Permit, the review authority may impose any conditions deemed reasonable and necessary to ensure that the approval will comply with the findings required by Subsection (F) of this Section (Findings and decision). The violation of any required condition shall constitute a violation of this Section and may constitute grounds for revocation of the permit.

### **Proposed Changes to Article 10 Definitions:**

#### **18.100.010 – Definitions**

This Chapter provides definitions of terms and phrases used in the ILUDC that are technical or specialized, or that may not reflect common usage. These definitions are proposed to be updated as follows:

**Formula Business** – A business that is required by contractual or other arrangement to maintain standardized uses, services, decor, uniforms, architecture, signs, or other similar features; and is substantially identical to 25 or more other businesses in the United States.

Formula businesses can include retail sales, services, restaurants, gas stations, visitor accommodations, etc.

**Big Box Retail** – 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 or be located 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.~~

### **IMPLEMENTATION/TIMEFRAMES:**

The timeframe for implementing a zoning ordinance to regulate formula businesses depends upon the direction received. Following direction updates to the Inland Land Use & Development Code will be made into a draft Ordinance. The ordinance will be reviewed by the City Attorney and will be prepared and presented to the Planning Commission. Subject to a recommendation to Council, a Public Hearing will be conducted by Council, and if approved, is 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 described above.

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.

### **RECOMMENDED PLANNING COMMISSION ACTION**

Receive report and provide direction to staff for the preparation of the ILUDC amendment to regulate Formula Business.

### **ALTERNATIVE PLANNING COMMISSION ACTIONS**

Provide direction to staff to not to bring forward a propose d Formula Business Ordinance.

### **ATTACHMENTS**

1. Land Use Map
2. Commercial Districts Purpose and Permit Requirements
3. Formula Business Survey Monkey Report Analytics