



AGENCY: City Council  
MEETING DATE: January 29, 2020  
DEPARTMENT: City Manager  
PRESENTED BY: Tabatha Miller  
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## AGENDA ITEM SUMMARY

**TITLE:**

**Receive Report and Provide Direction to Staff on Developing a Formula Business Ordinance for Planning Commission Review and Recommendation**

**ISSUE:**

The City Council initially considered a Formula Business Ordinance on October 24, 2019, and provided staff some direction (staff report is attached). The discussion this evening is to refine Council direction on what should be addressed in an ordinance regulating formula businesses so that a draft ordinance can be presented to the Planning Commission for review and recommendation to City Council.

**ANALYSIS:**

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. The City’s Land Use & Development Codes (LUDC) include a definition of Formula Business, although it is less specific than most jurisdictions and provides no limit on the number of standardized businesses needed to be considered a formula business. The consequence is that local businesses such as Harvest Market, Le Tre Clothing or Oasis that have more than one location would likely be considered a formula business under Fort Bragg’s definition.

Formula Business (definition from Fort Bragg LUDC). 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.

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 areas 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>1</sup>. CUPs (or UP/MUPs in Fort Bragg codes) add flexibility to zoning and allow for local review to ensure compatibility with the neighborhood or pre-established set of criteria.

### Use Permits in Fort Bragg LUDC

Per the Fort Bragg ILUDC, a Use Permit (UP) or Minor Use Permit (MUP) provides a process for reviewing uses and activities that may be appropriate in the applicable zoning district. The impacts of certain land uses on a neighborhood cannot be evaluated without reviewing the specifics of the project, such as noise, traffic congestion, and the effects on neighboring properties. UPs and MUPs allow for an evaluation and if applicable placement of conditions on the permit to mitigate the negative impacts of a project on the neighborhood.

MUPs are approved or denied by the Community Development Director, while UPs must be approved or denied by the Planning Commission. Public notices of an application for an MUP will state that a decision will be made by the Director by the date specified unless an interested person requests in writing a public hearing. Notice of a pending UP or MUP is provided to property owners within a 300-foot radius by mail, is posted on the property and published in the newspaper at least 10 days before the decision.

The most significant difference between an MUP and UP is that an MUP will only get a hearing if an interested person requests it in writing. This makes the MUP permit process faster than a UP and therefore typically less expensive and less risky for the applicant.

Using an MUP versus a UP as a means to evaluate the compatibility of a formula business would provide much of the benefit of a UP but with a less expensive and time consuming permit process. It places the burden of requesting a hearing on the public while still providing a means for a public review and input. This is the process incorporated into Cannabis Dispensary Permits and vacation rentals allowed only in the Central Business District.

Whether an MUP or UP is required can and often does vary depending on the zoning district. What is allowed by right and appropriate in one zoning district may need to be evaluated on a case by case basis to assess impacts to another zoning district. A negative aspect of an MUP is that anyone can exercise this option, without justification or merit, so it can be used simply to slow down permit issuance and create additional work for staff adding cost to the applicant.

### Summary of Council Input to Date

The only consensus from the October 24, 2019 special meeting on a formula business ordinance, was the desire by City Council to develop constraints on the type and location of formula businesses, and the desire to preserve the character and economic vitality of Fort Bragg. The Council was less united in what type, location and means to use to preserve the character should be incorporated into the Ordinance. That said, there were general themes

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<sup>1</sup> The City of Fort Bragg Land Use & Development Codes refer to these Conditional Permits as a Use Permit (UP) or Minor Use Permit (MUP).

during that discussion to guide staff in the development of a proposed Ordinance for review and recommendation by the Planning Commission:

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 south.<sup>2</sup> At least some Councilmembers indicated that they would like to see at least some restriction on formula based businesses here, despite the fact that formula businesses already exist. Of particular interest was creating more Fort Bragg character and charm in this entrance to our City.
2. General Commercial Corridor. There was little discussion or concern voiced about control over formula businesses in the Main Street corridor that stretches from the Noyo Bridge to the Central Business District (CBD). Many of the City's existing formula businesses are located in this commercial corridor and it seems to be the most likely District to allow such businesses. The City could still require an MUP so that there is an option to review the project before approval, if there is some concern about the impact from the project to the 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 reflected in much of the CBD, with Laurel Street from Main St. to Franklin St. representing a strong example of that quaint small town charm. 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. Businesses, including 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. As pointed out in the October 24, 2019 staff report, many cities limit the size, design, location and configuration of businesses so they fit within historic downtowns and do not dominate a downtown district.
4. South of Pudding Creek. The area from the Pudding Creek bridge south to the CBD along Main Street is primarily zoned Highway Visitor Commercial and a few formula businesses already 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 subject to an MUP.
5. North of Pudding Creek. This area is zoned Highway Visitor Commercial and at the north end of town Industrial and Light Industrial. It is 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 MacKerricher

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<sup>2</sup> The entire southern gateway is in the Coastal Zone and so almost all development is subject to a Coastal Development Permit and falls within the City's Coastal General Plan and Coastal Land Use & Development Code. Additionally, the western portion of the northern gateway is also in the Coastal Zone. Changes to the Coastal Codes involve the Coastal Commission approval and cannot be easily incorporated.

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.

### 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 some guidelines and restrictions for the City's entryways or Gateways that should

also be considered.

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 One and at the north entryway on Highway One 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 viewshed.
- 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.

Recent Fort Bragg Formula Businesses

Notably, Policy LU-4.1 above, applied to AutoZone during its application for a Coastal Development Permit (CDP). The CDP also triggered Design Review. Likewise, Taco Bell, also in the Coastal Zone was subject to a CDP and Design Review. Other formula businesses that have opened in recent years in Fort Bragg have not been subject to any use or compatibility review, including: Mountain Mike's Pizza; SHN Consulting Engineers & Geologists; Edward Jones Investments or Sinclair Gas.

**RECOMMENDED ACTION:**

Direct staff to develop a formula business ordinance for review by the Planning Commission incorporating the following direction concepts:

1. Revise the City's definition of Formula Business to be more specific and to allow expansion of small successful businesses in Fort Bragg.
2. Require all formula businesses be subject to, at the least, a Minor Use Permit.
3. Require fast-food restaurant formula businesses to have a Use Permit, not just a Minor Use Permit. Consider districts or zones where such businesses may be barred.
4. Review existing design regulations and policies and ensure that they preserve the character of Fort Bragg in the south and north gateways to the City.
5. Review existing design regulations and policies and ensure that they preserve the character of Fort Bragg in the Central Business District by limiting size, location and density of formula businesses, requiring specific design standards and encouraging historic preservation.
6. Create policies that discourage or ban formula businesses, including formula accommodations, north of Pudding Creek.

**ALTERNATIVE ACTION(S):**

1. Provide staff direction to not develop formula business regulation.
2. Provide staff with alternative direction on a formula business ordinance.

**FISCAL IMPACT:**

The staff time and legal costs to develop the Ordinance are 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 specifically related to formula businesses, 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. Current Zoning Map
2. Staff Report on Formula Businesses from 10-24-2019

**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