



AGENCY: Planning Commission
MEETING DATE: May 5, 2021
DEPARTMENT: City Manager
PRESENTED BY: Tabatha Miller
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AGENDA ITEM SUMMARY

TITLE: Receive Report and Provide Staff Direction on Ordinance Adding Chapter 18.46 Formula Business Regulations to the Fort Bragg Inland Land Use and Development Code

ISSUE:

After discussing the regulation of formula businesses on October 24, 2019 and February 24, 2020, the City Council directed staff to bring the matter to the Planning Commission to provide guidance on developing a Formula Business Ordinance and potentially recommending an Ordinance for adoption by the City Council. The Planning Commission initially received a report on development of an Ordinance to regulate formula businesses on October 14, 2020. In a series of meetings since then (see Links on page 9), the Planning Commission has developed policies to incorporate into the Formula Business Ordinance.

On April 12, 2021, the City Council adopted Urgency Ordinance No. 964-2021 placing a 45-day Moratorium on the Approval of Applications and Permits for Formula Businesses in the Inland Zoning Areas. Urgency Ordinances require four of five Councilmembers to approve and to extend. On the same day, an Urgency Ordinance for a Formula Business Moratorium in the Coastal Zoning Areas failed. It is expected that City Council will consider extending the Inland Area moratorium to provide sufficient time to allow the Formula Business Regulations to be finalized, adopted, and to become effective.

Attached to this Staff Report is a Proposed Ordinance adding Chapter 18.46 Formula Business Regulations to the Inland Land Use and Development Code (ILUDC). Staff requests that the Planning Commissions provide final direction on the Ordinance, so that it can be scheduled for a Public Hearing before the Commission where the Commission makes a recommendation to the City Council to approve, approve in modified form or disapprove the proposed amendment ([ILUDC Section 18.94.040](#)).

ANALYSIS:

This amendment to the Municipal Code involves changes to Title 18, the Inland Land Use and Development Code (ILUDC), in order to provide additional regulation of Formula Businesses.

Cities cannot prohibit all Formula Business within their jurisdictions, but can pass ordinances to impose specific permit requirements to ensure that new Formula Businesses are located in accordance with legitimate land-use and planning goals that support the City's General Plan Policies. Three elements to consider in structuring a legally defensible formula business ordinance: 1) Establish extensive findings on the purpose of the ordinance; 2) Establish clear criteria for the issuance of Use Permits regulating the use of the land which treats the class of Formula Businesses equally; and 3) Make clear connections between the Formula Business regulations and stated purpose of the ordinance.

AGENDA ITEM NO. _____

Discussion on Proposed Ordinance Language

Section 1. Legislative Findings

Section 1 of the proposed Ordinance sets forth legislative findings. There have been few legal challenges in California to local Formula Business regulations. One, in which the City of Coronado successfully defended its regulations, was *Organized v. City of Coronado*¹. Although unpublished, so it cannot be relied on as case law, the court there relied heavily on the lengthy preamble section which set forth the nondiscriminatory purposes of the regulation. Staff has followed this example, to provide further support for adoption of the Formula Business regulations.

Section 2. Chapter 18.46 Formula Business Regulations

18.46.010 Purpose.

The purpose provides an abbreviated purpose for the Ordinance. It introduces the chapter in the code, serves as a sort of preamble and is included in the codified portion of the Ordinance, unlike the more expansive Legislative Findings. It also helps substantiate the nondiscriminatory justification for the Ordinance.

The purpose of this chapter is to promote and maintain the City's unique small town character, the diversity and vitality of the City's commercial districts, and the quality of life for Fort Bragg's residents and visitors. It is presumed that establishing or preserving a balanced mix of local, regional and national-based businesses will more effectively serve to achieve this purpose as a strategy to maintain and improve the economic health of the City's business districts and the small one-of-a-kind ambiance.

18.46.020 Definitions.

Terms and phrases used in the Formula Business Chapter will be codified in Chapter 18.100 reserved for definitions under the header "Formula Business." Additionally, the Ordinance eliminates the current definition of "Formula Business" in the ILUDC.

A couple of notable updates from prior working versions of the Ordinance are described here. Instead of listing, each land use that would be included or excluded from the Formula Business Regulation, the term "Commercial Establishment" has been added with a basic definition – a commercial establishment that provides goods and /or services directly or indirectly to the consumer. After several versions, the Planning Commission concluded that a more generic definition that could encompass all uses would serve the City better than a detailed definition trying too hard to account for all possible future formula business uses. The alternative is to list each land use, as defined in the ILUCD, to include or exclude from the Formula Business Regulations. If this alternative is desired the Use Table 2.6 could be

¹ *Organized v. City of Coronado*, 2003 Cal.App.Unpub. LEXIS 5769, Court of Appeals of California, Fourth Appellate District, Division One.

updated to refer to Chapter 18.46 in the right column "Specific Use Regulation" for each Commercial Land Use subject to the Ordinance.

A definition of "Payday or Check Cashing Commercial Establishment" has been added. Several times through the process of developing this Ordinance, the question about limiting or even banning Payday Lending Businesses was raised. In response, this Ordinance provides a ban on Payday or Check Cashing Formula Businesses in all commercial zoning districts in Section 18.46.060.

The following definitions will be added to the ILUDC as set forth in the Ordinance:

"Array of merchandise/menu" shall be defined as 50 percent or more of in-stock merchandise from a single distributor bearing uniform markings.

"Color scheme" shall be defined as selection of colors used throughout, such as on the furnishings, permanent fixtures, and wallcoverings, or as used on the facade.

"Commercial Establishment" means a commercial establishment that provides goods and/or services directly or indirectly to the consumer.

"Decor" shall be defined as the style of interior finishings, which may include but is not limited to style of furniture, wallcoverings or permanent fixtures.

"Facade" shall be defined as the face, front or side of a building, including awnings, especially the principal front that looks onto a street or an open space.

"Formula Business" means a Commercial Establishment which, along with ten (10) or more other business locations outside of Fort Bragg, regardless of ownership or location at the time that the application is deemed complete, is required by contractual or other arrangement to maintain at least two (2) of the following Standardized features: an Array of merchandise/menu, Decor, Uniforms, Façade, Color scheme, exterior Signage including a Trademark or Service mark as Signage.

"Payday or Check Cashing Commercial Establishment" is a person or company who makes or facilitates a deferred presentment transaction, such that the person or company provides currency or a payment instrument in exchange for a person's check or agreement to provide access to a drawer's account in a financial institution and agrees to hold that person's check for a period of time prior to presentment, deposit, or redemption or facilitates this process.

"Service mark" shall be defined as word, phrase, symbol or design or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of a service from one party from those of others.

For definition of "Signage," see definition of "sign" § 18.100.020.

"Standardized" does not mean identical, but means substantially the same.

"Trademark" shall be defined as a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of the goods from one party from those of others.

“Uniforms” shall be defined as standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hat, and pins (other than name tags) as well as standardized colors of clothing.

18.46.030 Regulations.

Section A below was added to specifically state where Formula Businesses may locate and to add the requirement for a Use Permit. Both the Planning Commission and the City Council in their preliminary discussions waived on whether a Formula Business should be subject to a Minor Use Permit (MUP), a Use Permit (UP)², if some should be allowed by right, or if some zoning districts should allow Formula Businesses by right. The proposed Ordinance establishes that a Use Permit is the correct level of review, apart from the exceptions in Section 18.46.050 discussed later; nevertheless, the Planning Commission or City Council may change the level of review.³

Regulation B below, establishes that Design Review is required when establishing the Formula Business and if making exterior alterations. Design Review was raised by the Planning Commission as an important aspect of reviewing Formula Businesses. So much so, that an update of the City’s current Design Guidelines grew out of developing this Ordinance. There are a few circumstances when a Formula Business may be exempt from Design Review per [Section 18.71.050](#) and the Commission could modify Regulation B, to allow design review by the Director in those cases or eliminate this regulation and subject Formula Business to Design Review as established in Section 18.71.050.

- A. A Formula Business Establishment may be allowed in all Commercial Zoning Districts except Neighborhood Commercial with a Use Permit (UP).*
- B. Establishment or exterior alteration of a Formula Business is subject to Design Review.*

18.46.040 Required Findings for Approval.

When a permit application for a Formula Business comes before the Planning Commission for review, the required findings ensure that the new business is consistent with the intent of the Ordinance. Rightfully so, the Planning Commission spent significant time reviewing and revising these required findings.

Required findings. In addition to the findings required by 18.71.060(F) as prerequisite to the issuance of a Use Permit, the Planning Commission shall make all of the following findings prior to the issuance of a Use Permit for a Formula Business, unless in conformance with Section 18.46.050:

² 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.

³ As discussed at the February 10, 2021 Planning Commission meeting, certain exemptions highlighted in yellow on page 6 are discussed and “allowed by right” certain Formula Businesses.

- A. *The Commercial Establishment will provide needed goods or services, will promote Fort Bragg's economic vitality, and will be compatible with existing and planned uses; and*
- B. *The Commercial Establishment will not result in an over-concentration of Formula Business establishments in its immediate vicinity or in the City as a whole; and*
- C. *The Commercial Establishment will complement existing businesses and promote diversity and variety to assure a balanced mix of commercial uses to serve both resident and visitor populations; and*
- D. *The Commercial Establishment has been designed to preserve and enhance the City's small town character, has an exterior design, which appropriately limits "formula" architectural, sign and other components, and integrates existing community architectural and design features which will preserve such character for the City's residents and visitors.*

18.46.050 Exemptions.

The feedback provided by the Planning Commission during its last discussion on Formula Business is incorporated below as exemptions (D, E, F) to the Formula Business regulations and creates an exemption from the required findings in Section 18.46.040. These exemptions were added to allow Formula Businesses by right, so long as other Use Permit requirements are not triggered. In exchange for the "allowed by right" designation, the City controls the amount of the space occupied by the Formula Business. This way, the potentially adverse impact from Formula Businesses is limited. In the exemptions associated with percentage of Formula Business allowed, the City is exchanging desired development such as additional residential component in a Mix Use Property or smaller scale commercial development that could provide space for new businesses that are not formula or chains.

The Planning Commission originally discussed these exemptions in the contexts of support for the Central Business District. As currently written, these exemptions would apply to all Commercial Zoning Districts, except Neighborhood Commercial (discussed in the next section). Staff found the Commissioners' reasoning on the benefits of allowing some Formula Businesses by right, applicable and beneficial to the other Commercial Zoning Districts. The Planning Commission may consider directing staff to limit exemption D, E and F to only certain Commercial Zoning Districts. The Commission may also want to consider if the percentage and/or amount of square feet (emphasized in bold on next page) allowed for Formula Businesses is in line with the Commission's goals.

The City's General Plans and the ILUDC provide certain limits on Big Box Stores. The Planning Commission also echoed a desire to limit the scale of formula business stores. Exemption D, E and F support those limitations by encouraging smaller uses on a scale better fitting Fort Bragg and a mix of formula and nonformula businesses.

As the Proposed Ordinance is written, design review

This Chapter shall not apply to:

- A. Those land use applications approved prior to the adoption of the Ordinance codified in this chapter;*
- B. Construction required to comply with fire and/or life safety requirements;*
- C. Disability accessibility work;*
- D. A Formula Business that does not exceed **2,000 square feet of gross floor area**, including all spaces occupied by the Commercial Establishment, except those uses prohibited by Section 18.46.060;*
- E. A Formula Business, which if approved, would not result in Formula Business(es) occupying more than **twenty-five percent** of the total gross floor area of a Retail Complex or Mixed Use Project, subject to the prohibited uses in Section 18.46.060;*
- F. A Formula Business, which if approved, would not result in Business(es) occupying more than **thirty-five percent** of the total gross floor area of a Mixed Use Project in which at **least thirty-five percent** of total gross floor area is a residential component, subject to the prohibited uses in Section 18.46.060;*
- G. Business license approved prior to the adoption of the ordinance codified in this chapter;*
- H. Renovation of existing Formula Businesses so long as the renovation does not expand the square feet of floor area by 500 feet or more or the height or width of the business structure by more than ten percent; and*
- I. Changes in ownership of existing Formula Businesses where there is no substantial change to the land use classification of the use, or in the mode or character of the operation.*

18.46.060 Prohibited Formula Business Uses.

The proposed Ordinance allows Formula Businesses in all Commercial Zoning Districts except Neighborhood Commercial. The reasoning for excluding Neighborhood Commercial was the Planning Commission's discussions about protecting residential neighborhoods from larger more impactful retail development. Typically, chain stores generate more traffic, both vehicular and pedestrian. Neighborhood Commercial businesses should serve the local neighborhood and not the broader service area, thus, this district did not seem to be a good fit for Formula Business.

As mentioned in the Definition section, a prohibition on Payday Lending Formula Businesses has also been added to the Ordinance. These businesses are often associated with taking money out of communities and draining resources instead of adding to them. Formula

Business versions of this business model have proliferated in the last twenty years and are credited with downward community economic spirals.⁴

- A. *Formula Businesses, as defined in Chapter 18.100, are prohibited in the Neighborhood Commercial (CN) Zoning District.*
- B. *Formula Business Payday Lending or Check Cashing Commercial Establishments, as defined in Chapter 18.100, are prohibited in all Commercial Zoning Districts.*

18.46.070 Burden of Proof.

This section simply places a permit applicant on notice that they bear the burden of proving that a use does not meet the definition of a Formula Business.

In the event the City determines that a permit application or permit is subject to this chapter for a Formula Business, the permit applicant or holder bears the burden of proving to the City that the proposed or existing use does not constitute a Formula Business.

18.46.080 Transferrable.

This section establishes that a Use Permit is transferrable to a new business, so long as the land use category, location and gross floor area remain the same. This is a legal requirement and one of the reasons that the City of Malibu's original citizen initiative regulating Formula Businesses was overturned in 2017.

An approved Formula Business Use Permit is transferrable to a new business in the same land use category, located at the exact same location or tenant space, so long as the square footage of the gross floor area is not increased.

Community Survey

In October 2020, staff conducted a non-scientific and [informal survey of community members](#) to gauge support for or against further regulation of formula businesses. Over 1,100 responses were received and approximately two-thirds of respondents favored some regulation of formula businesses. Of those in favor, the largest number of respondents indicated a desire to regulate the total number and type of businesses allowed.

Environmental Determination

Exempt from CEQA. Pursuant to Section 15061(b)(3) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Significant effect on the environment is defined as substantial or potentially substantial, adverse change in the environment.

⁴ [Controlling the Growth of Payday Lending Through Local Ordinances and Resolutions, October 2012](#)

The Proposed Ordinance does not authorize any additional uses as permitted or permitted with a Use Permit or a Minor Use Permit. The Ordinance does not change the uses allowed in the City or the allowable intensity or density of use. Thus, there is no possibility that the proposed Ordinance will have a significant effect on the environment and the exemption set forth in Section 15061 (b)(3) applies.

RECOMMENDED ACTION:

Staff is seeking direction on the final Ordinance to be able to schedule a public hearing at a future Planning Commission meeting.

ALTERNATIVE ACTION(S):

1. Provide alternative direction to staff on the final Ordinance.

FISCAL IMPACT:

The impact of the Ordinance on City revenues is unknown. Of the City’s top twenty-five (25) sales tax generating businesses, as of Fourth Quarter 2020, which represents 69.4% of the General Fund City’s Sales Tax Revenue, fifteen are formula businesses. Additionally, a number of the hotels in Fort Bragg are associated with chains, such as Super 8, Holiday Inn, Motel 6, Best Western and Travelodge. The Transient Occupancy Tax (TOT) is the General Fund’s largest source of revenue.

Fort Bragg Top Twenty-Five Sales Tax Businesses - Quarter 4, 2020

ARCO AM/PM MINI MART	REDWOOD COAST FUELS
BOATYARD TOBACCO	RINO SERVICE STATIONS
CANCLINI TV & APPLIANCE	RITE AID DRUG STORES
CHEVRON SERVICE STATIONS	ROSSI BUILDING MATERIALS
CVS/PHARMACY	SAFEWAY STORES
DOLLAR TREE STORES	SINCLAIR SERVICE STATIONS
GEO AGGREGATES	SPORT CHRYSLER-JEEP-DODGE
HARVEST MARKET	TACO BELL
KEMPPE LIQUID GAS	THE BREWERY SHOP
MCDONALD'S RESTAURANTS	TRUE VALUE HARDWARE
MENDO MILL & LUMBER COMPANY	TWO SHORT SALES
MENDOCINO COUNTY HORTICULTURE SUPPLY	US CELLULAR
O'REILLY AUTO PARTS	

CONSISTENCY:

The Community Design Element of the City’s Inland General Plan provides support for regulating Formula Businesses. The intent of the Community Design Element is to establish goals, policies and programs to preserve and enhance Fort Bragg’s authentic, small town character, and is concerned primarily with the visual quality of the City.

Adopting Formula Business Regulations is consistent with numerous goals and policies because these regulations are in place to ensure that development within the City maintains and enhances the unique coastal character of our rural small-town. The proposed Ordinance

regulating Formula Business is consistent with the following Inland General Plan Goals and Policies:

Goal LU-3 Ensure that the Central Business District remains the historic, civic, cultural, and commercial core of the community.

Policy LU-3.1 Central Business District: Retain and enhance the small-scale, pedestrian friendly, and historic character of the Central Business District (CBD).

Policy LU-3.6 Re-Use of Existing Buildings: Encourage the adaptive re-use and more complete utilization of buildings in the Central Business District and other commercial districts.

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

Policy LU-4.1 Formula Businesses and Big Box Retail: The location, scale, and appearance of formula businesses and big box retail shall not detract from the economic vitality of established commercial businesses, and shall be consistent with the small town, rural character of Fort Bragg.

Policy LU-4.2 Large-Scale Commercial Development: To maintain scenic views along Main Street 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

Policy LU-4.3 Standards for Commercial Uses in Residential Areas: Commercial uses in and adjacent to residential areas shall not adversely affect the primarily residential character of the area.

Policy C-5.1 Community Priorities for Transportation Improvements: Place a higher priority on maintaining a sense of place and enhancing the attractiveness of the Central Business District than on efficient traffic flow and movement.

Policy CD-1.5 Strip Development: Discourage strip development along Main Street.

Goal CD-2 Preserve the Central Business District as the commercial, civic, historic, and cultural center of the community.

Policy CD-2.1 Adaptive Reuse: Facilitate the adaptive reuse of existing older buildings in the Central Business District.

Policy CD-2.3 Economic Vitality: Continue to support the economic diversity and vitality of downtown businesses.

Policy CD-2.5 Strengthen the Distinctive Identity of the Central Business District: Strengthen the distinctive identity and unique sense of place of the Central Business District.

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

Policy CD-6.1 Protect and Preserve Buildings and Sites with Historic and Cultural Significance to the Community.

Central Business District Frontage and Façade Standards

Section 18.22.060 applies to new development in the Central Business District. The policies limit the uses allowable on the ground floor (pedestrian-oriented uses, such as retail), prescribe requirements on pedestrian entrances (shall be recessed from the sidewalk), and prohibits formula design.

The following policy regulates formula design:

E. Formula design prohibited. *The architectural style and exterior finish materials of each proposed structure shall be designed based upon the architectural traditions of Fort Bragg and Mendocino County, and the architectural styles prevalent in the site vicinity. Buildings proposed with architectural features substantially similar to those found in other communities on buildings occupied by the same corporate or franchise entity that will occupy the proposed building are strongly discouraged.*

IMPLEMENTATION/TIMEFRAMES:

The Municipal Code requires that the Planning Commission conduct at least one public hearing regarding amendments to the ILUDC and that the Commission recommend to the City Council to either approve, approve in modified form or disapprove the proposed amendment based on the findings provided in the ILUDC. Upon a recommendation to the Council, a Public Hearing will be conducted by City Council, and if approved, is adopted at the next meeting and typically effective thirty (30) days later.

ATTACHMENTS:

1. Att. 1 – Proposed Ordinance
2. Att. 2 – Location Map LU-1 Land Use Designations
3. Att. 3 – Commercial Districts Purpose and Permit Requirements

LINKS:

1. 2-10-2021 Planning Commission Agenda Item:
<https://cityfortbragg.legistar.com/LegislationDetail.aspx?ID=4791266&GUID=BC2A0DF5-7E5B-4B2E-92F5-A2990439AB54&Options=&Search=>
2. 01-6-2021 Planning Commission Agenda Item:
<https://cityfortbragg.legistar.com/LegislationDetail.aspx?ID=4734368&GUID=95841ACC-F213-497A-A7C0-5B6B5DD266E6&Options=&Search=>

3. 11-12-2020 Planning Commission Agenda Item:
<https://cityfortbragg.legistar.com/LegislationDetail.aspx?ID=4690413&GUID=864E59CA-C811-40B0-A2EA-74FE8B15A4FF&Options=&Search=>
4. 10-14-2020 Planning Commission Agenda Item
<https://cityfortbragg.legistar.com/LegislationDetail.aspx?ID=4663892&GUID=CF7C04D6-1EDB-46DE-A786-C6C165DE4242&Options=&Search=>

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**
4. Dollar General Applicant