



AGENCY:	Planning Commission
MEETING DATE:	November 12, 2020
DEPARTMENT:	Community Development
PRESENTED BY:	Tabatha Miller

AGENDA ITEM SUMMARY

TITLE: RECEIVE REPORT AND MAKE RECOMMENDATIONS FOR DEFINITION(S) AND FINDINGS FOR THE PREPARATION OF AN ORDINANCE TO REGULATE FORMULA BUSINESS TO AMEND TITLE 18 OF THE INLAND LAND USE AND DEVELOPMENT CODE (ILUDC)

ISSUE:

In July of 2019, a majority of City Council requested a discussion regarding formula, chain and big box stores be put on a City Council Agenda. The City Manager agendized and reported on the Formula Business topic at the Meetings of October 24, 2019 and again on February 24, 2020. After much discussion, the Council generally agreed that they wanted to take a further look at retail and restaurants, including fast food. They want to protect the Central Business District and have an opportunity to review when big box or chain businesses are proposed for location in the CBD and in the gateways to the City. Council provided direction to require Conditional Use Permits; they are not in favor of any caps; and they prefer to review applications on a case-by-case basis.

Council directed staff to bring this matter to the Planning Commission to draft the ordinance and to bring back to the Council for review, prior to introduction. On October 14, 2020 the Planning Commission met with staff to discuss policies to regulate Formula Business within the City of Fort Bragg. The discussion this evening is to refine the definition of "Formula Business", discuss the importance of both the purpose of the Ordinance and the defined Findings for approval or denial of a project. Once staff has clear direction on goals of the Planning Commissioners in regulating formula businesses, staff will draft an ordinance to be presented to the Commissioners along with a full CEQA analysis, and a resolution for recommendation to City Council for final review and approval.

Persons having not followed along with this discussion prior to this report are encouraged to view the reports from the previous meetings (attached to this agenda item). The purpose of this report is to pick up the discussion where it was left off and further refine the goals and intents of Planning Commission to devise the ordinance.

ANALYSIS:

Cities cannot prohibit 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;

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- 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.

Ordinance Purpose

The purpose of the ordinance and regulating Formula Businesses must be tied to the long-term commercial health of the city and cannot be discriminatory against a particular business. Long-term commercial health may be tied to preserving the character of the city. For example, Coronado, CA was able to successfully defend its ordinance in part because the ordinance set forth the clear purpose “to maintain and preserve the special seaside tourist village atmosphere with small-scale electric ambiance by establishing an appropriate mix of local, regional and national-based businesses and small, medium or large-sized businesses.

In establishing the purpose, policies can be found in City documents which outline the longstanding values of the community’s interest in its commercial health and desire to preserve and maintain its unique character. Policies like; long-term health of the commercial zones; environmental sustainability; small town, low density character; balanced mix of residential and visitor market; aesthetically compatible with open and inviting retail storefronts; and sense of streetscape and continuity to pedestrians are strong defining features of an ordinance. The first place to look in making informed findings for the City of Fort Bragg is our own General Plan. The Inland General Plan Policies will provide the structure for establishing the intent and goals of a Formula Business Ordinance.

The current purpose statement from Element 6 of the Inland General Plan:

A. Purpose

The Community Design Element establishes goals, policies, and programs to preserve and enhance Fort Bragg’s authentic, small town character. The community is defined in part by its isolated location on the magnificent coastline of Mendocino County. Its sense of place derives from its heritage as a regional center for the timber and fishing industries. As the economy evolves to a more tourism and service-based economy, the community has acknowledged the importance of maintaining the historic identify of downtown and the integrity of the residential neighborhoods, while enhancing views and access to the coastline and planning for continued growth and development.

The Community Design Element is concerned primarily with the visual quality of the City, or what residents and visitors see. The City’s appearance is essential to the quality of life in Fort Bragg. Visual quality and amenities go hand-in-hand with long-term economic development strategies, and strengthen the stability and desirability of the community. To be attractive to residents, visitors, and businesses, the City must be concerned about its appearance, physical character, and livability. Existing residential

real estate values and the desirability of businesses that depend on tourism are closely tied to the visual character of the community.

Policies and Goals from the City's General Plan include:

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: *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.*

Goal C-5 *Regard the quality of life in Fort Bragg and maintaining community identity as more important than accommodating through-traffic.*

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. Strip development is typically characterized by street frontage parking lots serving individual or strips of stores or restaurants. It differs from central business districts and shopping centers in that typically there are no provisions for pedestrian access between individual uses, the uses are only one-store deep, the buildings are arranged linearly rather than clustered, and there is no design integration among individual uses.*

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.

Attractive Commercial and Central Business Districts are a source of identity that when allowed to maintain a healthy mix of uses remains a source of identity for Fort Bragg and distinguishes our community from others. Many communities struggle with losing the diversity that smaller local businesses provide and the homogenous appearance resulting from the proliferation of chain formula businesses. When the same goods and services are offered in every community, our nation’s communities start to look like Anywhere, USA. For communities, like Fort Bragg, which is dependent on tourism, this transition can be fiscally devastating. Most of the communities with successful formula business ordinances are small unique towns that depend on the local character to attract visitors and residents.

In addition to the general plan goals, which will establish the parameters and purpose of the ordinance. The primary regulatory tool Fort Bragg currently has to regulate to land-uses is the zoning district tables. Table 2-6 in the City’s Inland Land Use and Development Code (ILUDC) identifies adopted allowable uses by zone and establishes the type of permit(s) necessary for the tailored use listed. A sample snap shot of some retail trade uses currently regulated by the ILUDC in Table 2-6 is shown below.

LAND USE (1)	PERMIT REQUIRED BY DISTRICT					Specific Use Regulations
	CN	CO	CBD	CG	CH	
TABLE 2-6						
Allowed Land Uses and Permit Requirements for Commercial Zoning Districts						
	P	Permitted use, Zoning Clearance required				
	MUP	Minor Use Permit required (see § 18.71.060)				
	UP	Use Permit required (see § 18.71.060)				
	S	Permit requirement set by Specific Use Regulations				
	—	Use not allowed				
RETAIL TRADE						
Auto parts sales with no installation services	—	—	—	P	P	
Bar/tavern	—	—	UP	MUP	MUP	
Big box retail	—	—	—	UP	UP	
Building and landscape materials sales - Outdoor	—	—	—	UP	UP	18.42.130
Convenience store	P	—	P	P	P	
Retail, general - 10,000 sf or larger	—	—	UP	UP	UP	
Retail, general - 5,000 sf – 9,999 sf	—	—	P	P	P	
Retail, general - Less than 5,000 sf	P	P	P	P	P	
Groceries, specialty foods	P	—	P	P	P	

In order to determine the appropriateness of a use in a particular zone, the City’s Inland General Plan defines the purpose and intent of each commercial land use designation. These defined designations are included in attachment 2. Listed below are categories of

land uses currently listed in Table 2-6 which are most likely to have a Formula Business associated with them. One of the questions for the Planning Commission, is which of these are appropriate to include in the definition of a Formula Business.

Allowed Land Uses in Certain Commercial Zoning Districts

- Brewery/Bar
- Restaurant, café, or coffee shop
- Commercial recreation facilities
- Conference facility
- Studio – art, dance, martial arts, music, etc.
- Building and landscape materials sales
- Bank, financials services
- Pharmacies
- Auto Parts
- Big box retail
- Convenience store
- Drive-thru
- Farm supply and feed store
- Furniture, furnishings and appliance store
- Retail, general – size
- Groceries
- Second hand store
- Lodging – Vacation rental units

The policies, goals and purpose already contained in the City’s Inland General Plan will provide the foundation for the Formula Business Ordinance’s stated purpose.

Defining Formula Business:

Something as simple as a definition of a word can impart a lot of information to the reader as well as create confusion if the terminology is subjective or open ended. The definition of Formula Business will determine which proposed uses will be subject to the additional review and regulations. The definition serves as a net to catch formula business uses that the City may want to evaluate and regulate further.

The definition of “formula business” can vary by jurisdiction but typical definition 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.

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.

A few things to note about the City’s existing definition:

1. By using the term “or” when referencing the standardized features, it only takes one to define the business as formula. Some jurisdictions provide a set number, such as two or three, of the standardized features (services, merchandise, menu, etc.) which trigger the definition. Many jurisdictions also include definitions for each of

- the standardized features.
2. The use of “other similar features” as one of the standardized features, is an imprecise “catch all” that would allow other features outside of those listed to be applied to trigger the definition. This broadens what could be defined as a formula business but also makes it more subjective to individual interpretation.
 3. Unlike most other jurisdictions’ definitions, the City’s has no number for other “substantially identical” businesses, meaning that just a second location of a local business could trigger the definition. Most jurisdictions set this between 10-25, although a few have the number as low as 2-5. Another facet of this clause, is the boundary around where those “substantially identical” businesses are located. Some jurisdictions count within the United States and some make the count worldwide. Calistoga simply refers to outside of the City of Calistoga.
 4. In the last sentence of the City’s definition all categories of Formula Businesses are encompassed by using the extensive list and by adding “etc.” at the end. Although not explicitly mentioned, the “etc.” arguable includes financial and service businesses such as banks, insurance, tax prep, accounting, private post offices, spas and other personal services. Some jurisdictions are only concerned with certain categories of Formula Businesses. The most common being restaurants, fast-food restaurants and retail stores.

As way of example, below are definitions from other jurisdictions.

Location	Definition	Numeric Limit
Mendocino County, CA	Formula Business. “Formula Business” means a business of any of the following type of commercial use types, as defined by Mendocino County Zoning Code — Division 1, Chapter 20.024, regardless of location or ownership, which along with ten (10) or more other establishments maintains two (2) or more Standardized Features*: (1) Eating and Drinking Establishments (Section 20.024.065). (2) Food and Beverage Retail Sales (Section 20.024.075). (3) Food and Beverage Preparation — Without Consumption (Section 20.024.080). (4) Retail Sales, General (Section 20.024.120). *color scheme, array of services, decor, façade, servicemark, uniforms, architecture, or signage	10
Sebastopol, CA	Formula Business Uses. For purposes of this chapter, “formula business use” is a business which is required by contractual or other arrangement or affiliation to maintain a standardized (“formula”) array of services and/or merchandise, menu, employee uniforms, decor, facade design, signage, color scheme, trademark or service mark, name, or similar standardized features; and which causes it to be substantially identical to 25 or more other businesses in the United States regardless of ownership or location at the time that the application is deemed complete.	25
Palo Alto, CA	“Formula retail business” means a retail, personal, or eating and drinking service which, along with ten (10) or more other business locations in the United States, is required by contractual or other arrangement to maintain any of the following standardized characteristics: merchandise, menu, services, decor, uniforms, architecture, façade, color scheme, signs, trademark, or servicemark.	10

Ukiah, CA	<p>RESTAURANT – FORMULA FAST FOOD: A restaurant that includes all of the following characteristics:</p> <ol style="list-style-type: none"> 1. Is required by contractual or other arrangements to maintain any of the following: substantially standardized menus, architecture, building appearance, signs, or other similar standardized features; and 2. Has three (3) or more of the following characteristics: <ol style="list-style-type: none"> a. Food is pre-made and wrapped before customers place orders; b. Food is served with disposable tableware for on-site consumption; c. Food is ordered from a wall menu at a service counter; d. Food consumed on the premises is ordered while customers are standing; e. Payment is made by customers before food is consumed; or f. The service counter is closer to an entry/exit than is the seating/dining area. <p>Ice cream shops, coffeehouses, bakeries, hot dog stands, or other businesses whose primary function is not the sale of full meals are exempted from this definition.</p>	N/A
San Francisco, CA	<p>A Formula Retail use is hereby defined as a type of retail sales or service activity or retail sales or service 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 establishments either in operation or with local land use or permit entitlements approved for operation, the business maintains two or more of the following features: a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, uniform apparel, standardized signage, a trademark or a servicemark.</p> <ol style="list-style-type: none"> (1) Standardized array of merchandise shall be defined as 50% or more of in-stock merchandise from a single distributor bearing uniform markings. (2) 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. (3) Servicemark 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. (4) Decor shall be defined as the style of interior furnishings, which may include but is not limited to, style of furniture, wall coverings or permanent fixtures. (5) Color Scheme shall be defined as selection of colors used throughout, such as on the furnishings, permanent fixtures, and wall coverings, or as used on the facade. (6) Facade shall be defined as the face or front of a building, including awnings, looking onto a street or an open space. (7) Uniform Apparel shall be defined as standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hats, and pins (other than name tags) as well as standardized colors of clothing. (8) Signage shall be defined as business sign pursuant to Section 602.3 of the Planning Code. 	11
Port Townsend, WA	<p>Formula retail" means a type of retail sales or rental activity and retail sales or rental establishment, including restaurants, hotels and motels, which, along with 14 or more other establishments, maintains two or more of the following features:</p> <ol style="list-style-type: none"> 1. Standardized array of merchandise or standardized menu. 2. Standardized facade. 3. Standardized decor and color scheme. 4. Uniform apparel. 5. Standardized signage. 6. Trademark or service mark. <p>B. For the purposes of this section the following definitions apply:</p> <ol style="list-style-type: none"> 1. "Standardized array of merchandise" shall be defined as 50 percent or more of in-stock merchandise from a single distributor bearing uniform markings. 2. "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. 3. "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. 4. "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. 	14

	<p>5. "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.</p> <p>6. "Facade" shall be defined as the face or front of a building, including awnings, looking onto a street or an open space.</p> <p>7. "Uniform apparel" 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.</p> <p>8. For definition of "signage," see definition of "sign," PTMC 17.08.060.</p> <p>9. "Standardized" does not mean identical, but means substantially the same.</p>	
Coronado, CA	"Formula Business" means any type of commercial business establishment that uses a trademark, logo, service mark or other mutually identifying name or symbol that is shared by 15 or more commercial businesses (other than a "formula fast food restaurant") and which maintains any standardized ("formula") array of service and/or merchandise, decor, business method, architecture, layout, uniform, or similar, standardized feature.	15

Consideration for Drafting Definition

To provide staff direction in drafting the definition of a Formula Business in Fort Bragg, staff request that the Planning Commission consider and provide input on the following questions:

1. Which types of businesses should be included or excluded in the definition?
2. What is the right number of other establishments in the United States or World that are substantially identical to the proposed business?
3. What are the standardized traits that should be included in the definition?
4. Should there be a number of standardized traits that will trigger the definition?
5. Should a definition of each standardized trait be included in the definition?

Staff recommended definition:

As a starting place for the Planning Commission’s consideration, staff has drafted a proposed “Formula Business” definition:

“Formula Business” means a retail, or eating and drinking service 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, Signs, Trademark, or Service mark.

For the purposes of this section the following definitions apply:

1. “Array of merchandise/menu” shall be defined as 50 percent or more of in-stock merchandise from a single distributor bearing uniform markings.
2. “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.
3. “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.

4. "Facade" shall be defined as the face or front of a building, including awnings, looking onto a street or an open space.
5. "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.
6. For definition of "signage," see definition of "sign" FBMC.
7. "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.
8. "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.
9. "Standardized" does not mean identical, but means substantially the same.

The recommended definition sets the threshold of substantially similar establishments at ten (10). This number would allow expanding smaller chains, including regional businesses, that have not become ubiquitous with Anywhere USA, to avoid the additional Formula Business regulations. Requiring at least two (2) of the standardized features, provides some flexibility for businesses with national or international trademark or service marks but no other standardized traits. For example, several local hardware stores are affiliated Ace Hardware and many hotels affiliate with chains such as Best Western, Travellodge or Holiday Inn for marketing purposes but otherwise maintain relatively unique business attributes.

The phrase "regardless of ownership or location at the time that the application is deemed complete" is to help ensure that the ordinance is not discriminatory against nonlocal businesses. Zoning ordinances enacted to protect local businesses from competition are susceptible to dormant Commerce Clause challenges.¹ The Dormant Commerce Clause is the constitutional principle that the Commerce Clause prevents state or local regulation of interstate commercial activity even when Congress has not acted under its Commerce Clause power to regulate that activity.

Developing Findings for Use Permits

Cities cannot completely ban Formula Businesses within their jurisdictions but they can enact ordinances that impose additional permit requirements, that limit the number in a given area, impose certain design guidelines and ensure that the businesses are compatible with surrounding uses. A key tool for cities in regulating Formula Businesses is the Conditional Use Permit (CUP). 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 but only with a CUP, which in the Fort Bragg Code is referenced as Minor Use

¹ *Island Silver & Spice, Inc. v. Islamorada*, 475 F. Supp. 2d 1281 (S.D. Fla. 2007) struck down Islamorada, Florida's Formula Business Ordinance because it was tailored to serve local business interests by preventing competition from national chains.

Permit (MUP) or Use Permit (UP).² Use permits add flexibility to zoning and allow for local review to ensure compatibility with the neighborhood or a pre-established set of criteria.

In addition to the standard findings for issuing a UP or MUP, specific findings clearly connected to the stated purpose of the Formula Business Ordinance are more likely to withstand a legal challenge. Further, articulated findings ensure that the UP is implemented consistently with the Formula Business Ordinance and the General Plan Policies and Goals.

In 2017, the City of Malibu’s Formula Business Ordinance was invalidated by the California Court of Appeals.³ Partly at issue, was Malibu’s CUP requirements for Formula Businesses. Prior to issuing a CUP, the planning commission was required to make findings about the specific chain. If the CUP was approved, it would only apply to that specific establishment and ownership. The Court found these features of Malibu’s CUP contrary to well established principles. A CUP is not a personal interest and should not attach to the permittee but instead a CUP creates a right that runs with the land. Using Starbucks as an example, the Court pointed out that under Malibu’s CUP for formula businesses, that a Peet’s Coffee, would be unable to operate the same use in the same location as the Starbucks, which defeated the purpose of a Conditional Use Permit [emphasis added].

The take away, is to avoid any formula business specific findings that focuses on the permittee or chain and that once approved for a specific use, that right is transferrable to other establishments or businesses operating the same use. Similarly, the question has been raised whether a franchise-owned formula business should be treated differently than a corporation-owned formula business because the profits stay local. At the October, 24, 2019 City Council meeting, the City Attorney provided direction that ownership structure couldn’t be a factor in evaluating formula businesses.

As way of example, below are specific findings from other jurisdictions.

Location	Formula Business Specific Findings
San Francisco, CA	<p>(d) Conditional Use Criteria. With regard to a Conditional Use authorization application for a Formula Retail use, the Planning Commission shall consider, in addition to the criteria set forth in Section 303, the criteria below and the Performance-Based Design Guidelines adopted by the Planning Commission to implement the criteria below.</p> <p>(1) The existing concentrations of Formula Retail uses within the district and within the vicinity of the proposed project. To determine the existing concentration, the Planning Commission shall consider the percentage of the total linear street frontage within a 300-foot radius or a quarter of a mile radius, at the Planning Department’s discretion, from the subject property that is occupied by Formula Retail and non-Formula Retail businesses. The Department’s review shall include all parcels that are wholly or partially located within the 300-</p>

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 *The Park at Cross Creek, LLC v. City of Malibu*, (2017) 12 Cal.App. 5th 1196.

	<p>foot radius or quarter-mile radius. If the subject property is a corner parcel, the 300-foot radius or quarter mile radius shall include all corner parcels at the subject intersection. For each property, the Planning Department shall divide the total linear frontage of the lot facing a public-right of way by the number of storefronts, and then calculate the percentage of the total linear frontage for Formula Retail and non-Formula Retail. Half percentage points shall be rounded up.</p> <p>For the Upper Market Street Neighborhood Commercial District only, if the application would bring the formula retail concentration within a 300-foot radius to a concentration of 20% or above, Planning Department staff shall recommend disapproval of the application to the Planning Commission. If the application would not bring the formula retail concentration within the 300-foot radius to a concentration of 20% or above, Planning Department staff shall assess the application according to all the other criteria listed in this Subsection 303.1(d), and recommend approval or disapproval to the Planning Commission, according to its discretion and professional judgment. In either case, the Planning Commission may approve or reject the application, considering all the criteria listed in this Subsection 303.1(d).</p> <p>(2) The availability of other similar retail uses within the district and within the vicinity of the proposed project.</p> <p>(3) The compatibility of the proposed Formula Retail use with the existing architectural and aesthetic character of the district.</p> <p>(4) The existing retail vacancy rates within the district and within the vicinity of the proposed project.</p> <p>(5) The existing mix of Citywide-serving retail uses and daily needs-serving retail uses within the district and within the vicinity of the proposed project.</p> <p>(6) Additional relevant data and analysis set forth in the Performance-Based Design Guidelines adopted by the Planning Commission.</p> <p>(7) For Formula Retail uses of 20,000 gross square feet or more, except for General or Specialty Grocery stores as defined in Articles 2, 7 and 8 of this Code, the contents of an economic impact study prepared pursuant to Section 303(i) of this Code.</p> <p>(8) Notwithstanding anything to the contrary contained in Planning Code Article 6 limiting the Planning Department's and Planning Commission's discretion to review signs, the Planning Department and Planning Commission may review and exercise discretion to require changes in the time, place and manner of the proposed signage for the proposed Formula Retail use, applying the Performance-Based Design Guidelines.</p>
Sausalito, CA	<p>D. Required Findings for Approval. In addition to all of the findings required by SMC 10.60.050, all of the following findings must be made prior to the issuance of a conditional use permit for formula a formula retail establishment:</p> <ol style="list-style-type: none"> 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. [Ord. 1184 § 2, 2007; Ord. 1167 § 2, 2003.]
Coronado, CA	<p>C. Required Findings for Approval.</p> <ol style="list-style-type: none"> 1. The formula business establishment will be compatible with existing surrounding uses, and has been designed and will be operated in a nonobtrusive manner to preserve the community's character and ambiance; 2. Approval of the formula business establishment will be consistent with the policies and standards of the General Plan and the local coastal program, and that the proposed

	<p>intensity of uses on the sites is appropriate given the uses permitted on the site and on adjoining sites by these documents;</p> <p>3. Approval of the formula business establishment will contribute to an appropriate balance of local, regional or national-based businesses in the community; and</p> <p>4. Approval of the formula business establishment will contribute to an appropriate balance of small, medium and large-sized businesses in the community. (Ord. 1954 § 14, 2003; Ord. 1919)</p>
San Juan Bautista, CA	<p>(A) The following findings shall be required:</p> <p>(1) The business offers merchandise and/or services that serve the unmet needs of the population.</p> <p>(2) Although the formula-based business may have other store locations throughout the country, State, or region, the business will compliment and enhance the character of the City.</p> <p>(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.</p> <p>(4) Signs shall conform to the City sign standards and design guidelines.</p> <p>(5) Drive-through food establishments shall be prohibited.</p>
Ojai, CA	<p>(3) In addition to the findings required by Section 10-2.2406 as prerequisite to the issuance of a conditional use permit, the Commission shall make all of the following findings prior to the issuance of a conditional use permit for a formula business:</p> <p>(i) The proposed formula business will not result in an over-concentration of formula business establishments in its immediate vicinity or in the City as a whole;</p> <p>(ii) The proposed formula business will contribute to an appropriate balance of small, medium and large-sized businesses in the City; and</p> <p>(iii) The proposed formula business has been designed to preserve and enhance the City's small town character and to integrate existing community architectural and design features which will preserve such character for the City's residents and visitors.</p>
Sebastopol, CA	<p>In acting on a formula business conditional use permit application, the Planning Commission, or City Council on appeal, shall determine:</p> <p>A. If the establishment, maintenance, or operation of the proposed use or development applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use or development, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City;</p> <p>B. That the formula business establishment will complement existing businesses, and promote diversity and variety to assure a balanced mix of commercial uses available to serve both resident and visitor populations;</p> <p>C. That the proposed use, together with its design and improvements, is consistent with the unique and historic character of Sebastopol, has an exterior design which appropriately limits "formula" architectural, sign, and other components, and will preserve the distinctive visual appearance and shopping/dining experience of Sebastopol for its residents and visitors;</p> <p>D. That, as applicable, the proposed use will help residents and visitors avoid the need to shop out of town for goods or services;</p> <p>E. That the proposed use will be pedestrian-oriented and connect to the area's existing and planned pedestrian and bicycle facilities; and</p> <p>F. That if the proposed use is greater than 10,000 gross square feet, the establishment will provide needed goods or services, will promote Sebastopol's economic vitality, and will be compatible with existing and planned uses. (Ord. 1111, 2018)</p>

Staff recommended special findings for MUP/UP:

As a starting place for the Planning Commission's consideration, staff has drafted proposed findings that will be required before a UP or MUP can be issued to a Formula Business in Fort Bragg.

1. The business offers merchandise and/or services that serve the unmet needs of the population; and
2. Approval of the formula business establishment will contribute to an appropriate balance of local, regional or national-based businesses in the community; and
3. The formula retail establishment will be mutually beneficial to and would enhance the economic health of Fort Bragg; and
4. The proposed formula business has been designed to preserve and enhance the City's small town character and to integrate existing community architectural and design features which will preserve such character for the City's residents and visitors.

Next Steps:

1. Identify locations for zoning districts requiring Permits (MUP or UP).
2. Finalize the Formula Business Ordinance. Planning Commission will make a recommendation to the City Council regarding approval of the Ordinance.

ENVIRONMENTAL REVIEW:

Several Cities passing Formula Business Ordinances have proposed the preparation of such an ordinance is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15061(b)(3) in that it can be seen with certainty that the project will not have negative impact to the environment.

Upon determination of the elements of the ordinance being drafted, if staff can conclude that the proposed ordinance does not preclude any existing land uses, establishes a public review process for certain projects that may be detrimental to the general welfare of a specific neighborhood and makes other administrative changes, and the City Attorneys concur, the City will utilize the exemption. If alternatively, the proposed ordinance constitutes a project under CEQA, staff will complete an initial study (IS).

Should an IS be necessitated, this document will be included with the proposed ordinance and Resolution packet drafted for the Planning Commission review.

PLANNING COMMISSION ACTION:

Make recommendations for Definition of "Formula Business", purpose of a Formula Business Ordinance, and specific findings for issuance of a Formula Business permit.

ALTERNATIVE ACTIONS:

Recommend that the City not pursue a Formula Business Ordinance.

RECOMMENDATION:

Staff recommends that Commissioners use the provided slides to collectively develop a definition for formula business and then select appropriate findings that best support the purpose and the goals of the ordinance.

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 (25) sales tax generating businesses,⁴ fourteen (14) or 56% would likely be considered a formula business (depending on the definition). The top twenty-five (25) businesses together generate 68% of the City’s total sales tax revenue.

Acro AM/PM Mini Mart	McDonald's Restaurants	Safeway Stores
Boatyard Tobacco	Mendo Mill & Lumber Company	Sinclair Service Stations
Canclilni TV & Appliance	Mendocino County Horticultures	Sport Chrysler-Jeep-Dodge
Chevron Service Stations	O'Reilly Auto Parts	Taco Bell
CVS/Pharmacy	Redwood Coast Fuels	The Brewery Shop
Denny's Restaurants	Rino Service Stations	True Value Hardware
Dollar Tree Stores	Rite Aid Drug Stores	Two Short Sales
Geo Agregates	Rossi Buiding Materials	US Celluar
Harvest Market		

**Businesses are listed in alphabetical order in order to preserve the confidentiality of financial data.*

IMPLEMENTATION/TIMEFRAMES:

The Municipal Code requires that the Planning Commission conduct at least one public hearing regarding amendments to the ILUDC, and recommend to the Council whether to approve, approve in modified form or disapprove the proposed amendment based on findings provided in ILUDC Sections being amended.

ATTACHMENTS:

1. Location Map LU-1 Land Use Designations
2. Commercial Districts Purpose and Permit Requirements
3. Formula Business Survey Results as of 10/27/2020
4. 10/24/2019 Staff Report to City Council
5. 01/29/2020 Staff Report to Council (presented on 02/24/2020)
6. 02/24/2020 Minutes of City Council
7. 10/14/2020 Staff Report to Planning Commission

⁴ Most recently available report from Muniservices is for second quarter of calendar year 2020.

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**