



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Meeting Agenda Planning Commission

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Thursday, December 17, 2020

6:00 PM

Via Video Conference

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### SPECIAL MEETING

#### MEETING CALLED TO ORDER

#### 5a. PLEDGE OF ALLEGIANCE

#### ROLL CALL

#### PLEASE TAKE NOTICE

*DUE TO THE PROVISIONS OF THE GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20 WHICH SUSPEND CERTAIN REQUIREMENTS OF THE BROWN ACT, AND THE ORDER OF THE HEALTH OFFICER OF THE COUNTY OF MENDOCINO TO SHELTER IN PLACE TO MINIMIZE THE SPREAD OF COVID-19, PLANNING COMMISSIONERS, AND STAFF WILL BE PARTICIPATING BY VIDEO CONFERENCE IN THE SPECIAL PLANNING COMMISSION MEETING OF WEDNESDAY DECEMBER 17, 2020.*

*In compliance with the Shelter-in-Place Orders of the County and State no in-person meeting will be held and the public is invited to attend virtually. The meeting will be live-streamed on the City's website at [city.fortbragg.com](http://city.fortbragg.com) and on Channel 3. Public Comment regarding matters on the agenda may be made in any of the following ways: (1) By joining the Zoom video conference, (2) Through the City's online eComment agenda feature, (3) Emailed to Joanna Gonzalez, [jgonzalez@fortbragg.com](mailto:jgonzalez@fortbragg.com), (4) Written comments delivered through the drop-box for utility payments to the right of the front door at City Hall, 416 N. Franklin Street, or (5) Voice mail comments called in to (707) 961-2827 ext 111 by 5:00 PM on the day of the meeting.*

*Comments can be made at any time prior to the meeting, in real-time while the item is being considered by the Planning Commission and up to 12:00 PM on Friday, December 18, 2020. All eComments or emails received before or during the meeting that have not been published with the agenda packet will be read aloud into the record. Public comments are restricted to three minutes. Written comments on agenda matters and those exceeding three minutes will be included in the public record as part of the agenda packet the next business day after the meeting.*

*We appreciate your patience and willingness to protect the health and wellness of our community and staff. If you have any questions regarding this meeting, please contact Community Development at (707)961-2827 ext 111.*

#### ZOOM WEBINAR INVITATION

*You are invited to a Zoom webinar.  
When: Dec 17, 2020 06:00 PM Pacific Time (US and Canada)  
Topic: Special Planning Commission*

*Please click the link below to join the webinar:*

<https://zoom.us/j/92817457405?pwd= SXFVZ01FZTRJU0NSMnRWRkZpZW E3UT09>

Passcode: 045388

Or iPhone one-tap :

US: +16699009128,,92817457405#,,,,,0#,,045388# or +13462487799,,92817457405#,,,,,0#,,045388#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 669 900 9128 or +1 346 248 7799 or +1 253 215 8782 or +1 646 558 8656 or +1 301 715 8592  
or +1 312 626 6799

Webinar ID: 928 1745 7405

Passcode: 045388

International numbers available: <https://zoom.us/u/a9WteZ1U6>

TO SPEAK DURING PUBLIC COMMENT PORTIONS OF THE AGENDA VIA ZOOM, PLEASE JOIN THE MEETING AND USE THE RAISE HAND FEATURE WHEN IT IS TIME FOR PUBLIC COMMENT.

## **1. APPROVAL OF MINUTES**

## **2. PUBLIC COMMENTS ON NON-AGENDA ITEMS**

## **3. DISCLOSURE OF EX PARTE COMMUNICATIONS ON AGENDA ITEMS**

## **4. PUBLIC HEARINGS**

## **5. CONDUCT OF BUSINESS**

### 20-958

Receive Report and Make Recommendations for Preparation of an Ordinance to Regulate Formula Business to Amend Title 18 of the Fort Bragg Municipal Code [Inland Land Use and Development Code (ILUDC)]

**Attachments:** [Staff Report Planning Commission 12172020](#)

[Att 1 - Working Draft Formula Business Ordinance](#)

[Att 2 - Location Map LU-1 Land Use Designations](#)

[Att 3 - Commercial Districts Purpose and Permit Requirements](#)

[Att 4 - 10/24/2019 Staff Report to City Council](#)

[Att 5 - 02/24/2020 Staff Report to City Council](#)

[Att 6 - 10/14/2020 Staff Report to Planning Commission](#)

[Att 7 - 11/12/2020 Staff Report to Planning Commission](#)

[Att 8 - Public Comments](#)

## **6. MATTERS FROM CHAIR/COMMISSIONERS/STAFF**

## **ADJOURNMENT**

The adjournment time for all Planning Commission meetings is no later than 9:00 p.m. If the Commission is still in session at 9:00 p.m., the Commission may continue the meeting upon majority vote.

STATE OF CALIFORNIA     )  
  )ss.  
COUNTY OF MENDOCINO    )

I declare, under penalty of perjury, that I am employed by the City of Fort Bragg and that I caused this agenda to be posted in the City Hall notice case on December 15, 2020.

\_\_\_\_\_  
Chantell O'Neal  
Assistant Director; Engineering

**NOTICE TO THE PUBLIC**

Materials related to an item on this agenda submitted to the Commission after distribution of the agenda packet are available for public inspection in the Community Development Department at 416 North Franklin Street, Fort Bragg, California, during normal business hours. Such documents are also available on the City's website at [www.fortbragg.com](http://www.fortbragg.com) subject to staff's ability to post the documents before the meeting.

**ADA NOTICE AND HEARING IMPAIRED PROVISIONS:**

It is the policy of the City of Fort Bragg to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including those with disabilities. Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities.

If you need assistance to ensure your full participation, please contact the City Clerk at (707) 961-2823. Notification 48 hours in advance of any need for assistance will enable the City to make reasonable arrangements to ensure accessibility.

The Council Chamber is equipped with a Wireless Stereo Headphone unit for use by the hearing impaired. The unit operates in conjunction with the Chamber's sound system. You may request the Wireless Stereo Headphone unit from the City Clerk for personal use during meetings. This notice is in compliance with the Americans with Disabilities Act (28 CFR, 35.102-35.104 ADA Title II).



# City of Fort Bragg

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## Text File

**File Number: 20-958**

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**Agenda Date:** 12/17/2020

**Version:** 1

**Status:** Business

**In Control:** Planning Commission

**File Type:** Staff Report

**Agenda Number:**

Receive Report and Make Recommendations for Preparation of an Ordinance to Regulate Formula Business to Amend Title 18 of the Fort Bragg Municipal Code [Inland Land Use and Development Code (ILUDC)]



AGENCY:	Planning Commission
MEETING DATE:	December 17, 2020
DEPARTMENT:	City Manager
PRESENTED BY:	Tabatha Miller
EMAIL ADDRESS:	<a href="mailto:tmiller@fortbragg.com">tmiller@fortbragg.com</a>

## AGENDA ITEM SUMMARY

**TITLE:**

**Receive Report and Make Recommendations for Preparation of an Ordinance to Regulate Formula Business to Amend Title 18 of the Fort Bragg Municipal Code [Inland Land Use and Development Code (ILUDC)]**

**ISSUE:**

After discussing regulating formula businesses on October 24, 2019 and February 24, 2020, the City 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. The Planning Commission initially received a report on development of an Ordinance to Regulate Formula Businesses on October 14, 2020 and provided staff feedback. On November 12, 2020, the Planning Commission reviewed and provided feedback on a proposed definition for Formula Business and proposed Special Findings when a conditional use permit is required.

This evening staff is seeking additional guidance on regulating formula businesses in certain districts or areas of the City, types of formula businesses that will be regulated, legislative findings, and other restrictions.

**ANALYSIS:**

Working Draft Ordinance

Attachment No. 1 to this staff report is a working draft of a Formula Business Ordinance. The intent is to incorporate direction provided to date along with several staff recommendations for a final ordinance. It provides an early framework to look at consistency within the ordinance and consistency with the City's Inland General Plan and Inland Land Use and Development Code (ILUDC). Prior to final presentation to Planning Commission for recommendation, the City Attorney will conduct a legal review of the proposed Formula Business Ordinance.

Section 1. Legislative Findings

Section 1 sets forth draft legislative findings. There have been few 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*<sup>1</sup>. 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.

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

Staff welcomes input from the Planning Commission on the contents of Section 1.

### Section 2. Purpose

Section 2 provides an abbreviated stated purpose for the ordinance. It introduces the chapter in the code and 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.*

Staff welcomes input from the Planning Commission on the contents of Section 2.

### Section 3. Definitions

Section 3 sets forth the definitions as applied to this code chapter, and incorporates Planning Commission and City Council direction to date. One staff recommended change is to reference "Retail Establishment" in the definition of "Formula Business."

"Formula Business" means a **Retail 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, Signage, Trademark, or Service mark. [emphasis added]

A sample definition of "Retail Establishment" is set forth at the end of the definition section and identifies the specific land uses to fall within the Formula Business regulations. Staff would like Planning Commission input on what specific land uses should be included in the definition of "Retail Establishment."

### Types of Formula Businesses to be regulated

The City Council and the Planning Commission have discussed which formula business uses should be regulated and which should be exempt. A review of other jurisdictions' Formula Business Code Chapters found several approaches to differentiate which uses would be subject to the additional formula business regulation. The Coronado Code includes all "commercial business establishments" in the definition of "formula business," which simply includes all commercial uses as subject to the regulation, without exception. Similarly, City of Calistoga includes all uses by defining Formula Business as "a business or use".<sup>2</sup> The City of Ojai addresses specific categories in its definition of formula business by adding inclusive language at the end.

"Formula Business" means a type of commercial business establishment, retail sales or rental activity and retail sales or rental establishment, including restaurants, hotels

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<sup>2</sup> Calistoga requires all formula businesses in its downtown have a use permit, and forbids formula restaurants and visitor accommodations.

and motels...<sup>3</sup> [emphasis added]

The City of Malibu's most recent formula business chapter<sup>4</sup> includes "any type of retail sales activity or retail service activity" and in a separate section exempts grocery stores, drug store/pharmacies, gas stations, banks and financial services, real estate offices, movie theaters, postal service offices and medical offices. Malibu cites a shortage of these resident serving businesses as the reason for exempting them from the Formula Business regulations. Similar to Malibu the City/County of San Francisco includes in its definition of Formula Business "retail sales or service activity or retail sales or service establishment" and in a separate section lists each defined land use that is included in "retail sales or service activity or retail sales or service establishment."<sup>5</sup> The City of Sebastopol, includes all uses in its definition but separately exempts banks and credit unions, offices and tax preparation services and businesses under 10,000 square feet in certain shopping centers. Sebastopol also specifically prohibits Formula Business offices on the ground floor, and restaurants and hotels & motels in its downtown.

Staff recommends following the San Francisco method of specifically listing each defined land use to which the Formula Business regulations will apply. In the alternative the Planning Commission could use the Malibu method of listing the excluded defined land uses. Using the already defined land uses keeps the use designations more consistent throughout the code and applies a clear definition as to what is included in "Retail Establishment."

Below is a list of all commercial land uses that are likely to have a Formula Business associated with them. Staff is seeking direction from the Planning Commission on what land uses should be included as a "Retail Establishment" subject to the Formula Business regulations.

1. Auto parts sales with no installation services
2. Bar/tavern
3. Bank, financial services
4. Big box retail
5. Brewery/Restaurant
6. Building and landscape materials sales
7. Business support services

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<sup>3</sup> Ojai requires all formula businesses in town to have a use permit and bans formula businesses that are over 2,000 square feet or exceed 25 feet of linear street frontage in the downtown commercial district.

<sup>4</sup> In 2017, Malibu's voter initiative Measure R, was struck down and was replaced in 2018 with revisions consistent with the law set forth in *The Park at Cross Creek, LLC v. City of Malibu*, 12 Cap.App.5<sup>th</sup> 1196.

<sup>5</sup> San Francisco's defined formula business uses include: Bar; Drive-up Facility; Eating and Drinking Use; Liquor Store; Sales and Service, Other Retail and Retail Sales and Services General; Restaurant; Limited-Restaurant; Sales and Services, Retail; Services, Financial; Movie Theater; Amusement Game Arcade; Services, Limited Financial, except single automated teller machines; Service, Fringe Financial; Tobacco Paraphernalia Establishment; Massage Establishment; Service, Personal; Service, Instructional; Gym; General Grocery; Specialty Grocery; Pharmacy; Jewelry Store; Tourist Oriented Gift Store; Non-Auto Vehicle Sales or Rental; Cannabis Retail.

8. Cannabis Dispensary
9. Convenience store
10. Drive-through retail or service
11. Farm supply and feed store
12. Fuel dealer
13. Lodging – Hotel or motel
14. Medical Services – Clinic, lab, urgent care
15. Service station
16. Personal services
17. Printing and publishing
18. Retail, general – 10,000 sf or larger
19. Retail, general – 5,000 sf - 9,999 sf
20. Retail, general - Less than 5,000 sf
21. Groceries, specialty foods
22. Restaurant, café, coffee shop
23. Health/fitness facility
24. Vehicle Services

Section 4. Required Findings for Approval

Section 4 sets forth the findings which the Planning Commission must make prior to issuance of a Use Permit (UP) or in the alternative a Minor Use Permit (MUP). Planning Commission may want to provide additional direction on when, if ever, a Formula Business would only be subject to an MUP. The proposed findings are based on feedback provided at the November 12, 2020 Planning Commission meeting and should relate to the Legislative Findings in Section 1 and the Ordinance purpose stated in Section 2. Staff welcomes further direction and guidance.

1. **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:
  - a. The Retail Establishment will provide needed goods or services which add to the retail offerings in Fort Bragg, will promote Fort Bragg’s economic vitality and will be compatible with existing and planned uses; and
  - b. The Retail 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 Retail Establishment will complement existing businesses and promote diversity and variety to assure a balanced and appropriate mix of commercial uses to serve both resident and visitor populations; and



- d. The Retail 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.

#### Section 5. Exemptions

Section 5 exempts land use applications already deemed complete, improvements necessitated by safety or ADA accommodations, renovations of existing formula businesses and changes in ownership where the use remains the same.

1. Those land use applications which were deemed complete prior to the adoption of the ordinance codified in this chapter;
2. Business license approved prior to the adoption of the ordinance codified in this chapter;
3. Construction required to comply with fire and/or life safety requirements;
4. Disability accessibility work;
5. Renovation of existing formula businesses; and
6. 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.

#### Section 6. Prohibited Formula Business Uses

Section 6 is a placeholder for prohibitions that the Planning Commission or City Council may want to place on Formula Businesses. The two prohibitions listed in the draft ordinance are only examples and not meant as staff recommendations. Many jurisdictions ban Formula Businesses in certain areas or districts, such as historic downtowns or other unique or special areas to preserve what makes them special. Other jurisdictions will limit the square footage of Formula Businesses in these districts or limit where they can be located.

During the February 24, 2020 City Council meeting, the City Council considered what Formula Businesses regulations should apply to certain parts of town. With the exception of the Central Business District (CBD), which is clearly defined in the City's Land Use and Development Code and has a distinct zoning district, the other areas have distinguishing characteristics but share common commercial zoning districts.

**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>6</sup> Despite a number of Formula Businesses already existing in the Gateway, last year the Planning Commission denied a Coastal Development Permit for an AutoZone auto parts store, which was to be located in the Gateway. The decision was affirmed by the City Council. City Council showed interest in creating more Fort Bragg character and charm in this entrance to our City.

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<sup>6</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.

**General Commercial Corridor.** 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 portion of this area that is included in the Coastal Zone extends to the east side of Highway 1, all the way to the east side City Limit south of Walnut Street.

**Central Business District.** The one clear consensus regarding the CBD has been 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.

**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.

**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. This area, close to MacKerricher 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 formula business regulation beyond the Use Permit process.

At the February 24, 2020 City Council meeting, the City Council direction was not always unanimous but directed staff:

1. Gateway – Require all Formula Businesses to obtain a Use Permit.
2. General Commercial Corridor – Require Use Permit, if in the Coastal Zone, if not, no additional permit requirement.
3. Central Business District – Require all Formula Businesses to obtain a Use Permit.
4. South of Pudding Creek – Require all Formula Businesses to obtain a Use Permit.
5. Require Use Permit, if in the Coastal Zone, if not, no additional permit requirement.

In summary, the City Council's direction was to require a Use Permit for Formula Businesses in all locations except in the General Commercial Corridor and North of Pudding Creek not located in the Coastal Zone. Notably, the current application for development by Dollar General is in the General Commercial Corridor and outside of the Coastal Zone. If Fort Bragg

had a formula business ordinance in place following this City Council Guidance, the project would still remain permitted by right with a discretionary design review and a question as to whether CEQA could be triggered.

A Citywide Use Permit requirement for Formula Businesses is not a ban on any category of Formula Businesses, but it would ensure that the public had an opportunity to participate in the process. The other option is to require a Minor Use Permit instead of a Use Permit in some or all of those districts. Staff is asking the Planning Commission for recommendations on where to require Use Permits and if in some of those districts, a Minor Use Permit (MUP) is appropriate.<sup>7</sup>

#### Section 7. Burden of Proof

Section 7 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.

#### Section 8. Transferrable

Section 8 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.

Sections 9 and 10 are standard language included in most of the City's ordinances.

#### Links to other Cities' Formula Business Regulations

Here are links to a few examples of other jurisdictions' Formula Business Regulations:

Calistoga, CA

<https://www.codepublishing.com/CA/Calistoga/#!/html/Calistoga17/Calistoga1721.html>

San Francisco, CA

[https://codelibrary.amlegal.com/codes/san\\_francisco/latest/sf\\_planning/0-0-0-48475](https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_planning/0-0-0-48475)

Sebastopol, CA

<https://sebastopol.municipal.codes/SMC/17.340>

Ojai, CA (Section 10-2.1713)

<http://www.qcode.us/codes/ojai/>

Malibu, CA Revised (Section 17.61)

<http://qcode.us/codes/malibu/>

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<sup>7</sup> 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.

Coronado, CA

<https://www.codepublishing.com/CA/Coronado/html/Coronado86/Coronado8655.html#86.55.370>

**RECOMMENDED ACTION:**

Staff recommends and requests that the Planning Commission provide guidance on regulating Formula Businesses in certain districts or areas of the City, types of Formula Businesses that will be regulated, legislative findings, and other restrictions.

**ALTERNATIVE ACTION(S):**

Recommend that the City not pursue a Formula Business 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,<sup>8</sup> 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.

Arco AM/PM Mini Mart	McDonald's Restaurants	Safeway Stores
Boatyard Tobacco	Mendo Mill & Lumber Company	Sinclair Service Stations
Canclini 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	Rhino Service Stations	True Value Hardware
Dollar Tree Stores	Rite Aid Drug Stores	Two Short Sales
Geo Aggregates	Rossi Building Materials	US Cellular
Harvest Market		

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

**GREENHOUSE GAS EMISSIONS IMPACT:**

Approval of Formula Business regulations will have no direct impact on Greenhouse Gas Emissions.

**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.

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<sup>8</sup> Most recently available report from MuniServices is for second quarter of calendar year 2020.

**ATTACHMENTS:**

1. Working Draft Formula Business Ordinance
2. Location Map LU-1 Land Use Designations
3. Commercial Districts Purpose and Permit Requirements
4. 10/24/2019 Staff Report to City Council
5. 02/24/2020 Staff Report to City Council
6. 10/14/2020 Staff Report to Planning Commission
7. 11/12/2020 Staff Report to Planning Commission

**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

**BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG**

**AN ORDINANCE ESTABLISHING  
REGULATIONS FOR FORMULA  
BUSINESSES**

**ORDINANCE NO.**

**The City Council ordains as follows:**

**Section 1. Legislative Findings.** The City Council hereby finds as follows:

1. The City of Fort Bragg is a small coastal community of 7,500 residents perched on the bluff tops overlooking the ocean in northern Mendocino County. A former lumber town with what was a strong fishing industry, Fort Bragg has a rich history and many of its homes and buildings are well over a hundred years old. Located approximately 165 miles north of San Francisco and 185 miles west of Sacramento, Fort Bragg, while quite small, is the largest city on the coast between San Francisco and Eureka. The remoteness of Fort Bragg is one of its greatest assets. The natural landscape is beautiful. The air is clean, the ocean wild, and traffic is a non-issue. The City acquired parkland along the bluff tops of the former mill site and has completed construction of a multiuse trail. This trail created public access to 3.5 miles of scenic coastline and is value added for local residents and visitors alike. Of the City's 1869 acres, 962 are located in the Coastal Zone. The coastal views and beauty are critical to what makes Fort Bragg special. Many unique local businesses and brands have made Fort Bragg distinct in its natural beauty and laid-back commercial character. Maintaining the economic health and one-of-a-kind distinction is vital to preserving Fort Bragg's commercial character while meeting the needs of its visitors and residents.
2. To retain that one-of-a-kind character, the City seeks to avoid the proliferation of chain store uses that result in diluting what makes Fort Bragg unique and instead creating a character of repetitiveness similar to other towns across America, where chain store prevalence grows. Fort Bragg seeks to encourage elements that provide variety and fit with the unique environment, history and its quirky charm while retaining opportunities for all. The City's mission and vision embraces a friendly city with a small town character and a strong sense of community that values its roots in the fishing and timber industries. The City's General Plan, Citywide Design Guidelines, and Inland Land Use & Development Code emphasize the commitment to maintaining the strength and vitality of the historic Central Business District.
3. A strong and diverse retail base is necessary for the success of Fort Bragg's commercial sector, in particular the Central Business District. The City recognizes that a healthy blend of unique and familiar businesses providing diverse retail experiences for both visitors and residents supports this success. "As the economy evolves to a more tourism and service-based economy, the community has acknowledged the importance of maintaining the historic identity of downtown and the integrity of the residential neighborhoods, while enhancing views and access to the coastline and planning for continued growth and development."

(Inland General Plan 6. Community Design Element). The City is committed to and recognizes the importance of promoting and supporting the economic vitality and diversity of City businesses both in its commercial districts and the historic Central Business District. (Inland General Plan Goal LU-4, Policy CD-6.1 and Policy CD2.3). Maintaining the City's quality of life and identity is a priority. (Inland General Plan C-5, Policy C-5.1).

4. As the City continues to rely on its reputation as an emerging destination, to sustain and grow its tourism industry Fort Bragg must retain its historical ties to timber and fishing, the coastal and cultural qualities, and its recreation opportunities. Fort Bragg's commercial uses should promote its unique and special qualities. The commercial uses should not detract from or dilute what makes Fort Bragg stand out from other cities in California. Formula retail businesses are, by their nature, not unique. Many of Fort Bragg's unique goods and services cannot be found where many of our visitors reside. As a result, the City Council finds that formula retail businesses located in the City, if not regulated, will conflict with and frustrate the City's goal of maintaining its unique historical character with a local economy that offers visitors and residents non-standard offerings.
5. An abundance of formula retail establishments hinders the City's ability to promote its unique one-of-a-kind experience and to promote a diverse and balanced retail base within the City. A diverse retail base includes unique character that avoids overwhelming familiarity and sameness. The City Council finds that an overabundance of formula retail establishments will unduly limit or possibly eliminate the availability of businesses that tend to be unique or project the history and character of Fort Bragg.
6. The increase of formula retail establishments will hinder the City's goal to promote economic vitality in existing commercial areas, maintain community identity, and the continued support of economic diversity and vitality in the downtown. (Inland General Plan Goal LU-4, Goal C-5, and CD-2.3) A balanced and diverse retail base should be comprised of a balanced mix of businesses, small, medium and large, familiar and unique, and offering a good variety of goods and services. The City strives to ensure that goods and services available locally, meet the regular needs of residents and visitors. The City Council finds that unregulated establishment of additional formula retail establishment uses may unduly limit or eliminate business establishment opportunities for smaller or medium-sized businesses, many of which tend to be unique and unduly skews the mix of businesses towards formula retailers in lieu of those unique or start-up retailers, and result in decreasing the diversity of goods and services available to residents and visitors.
7. The Inland General Plan Mission and Vision pledges "to preserve and enhance the small town character and natural beauty that make the city a place where people want to live and visit, and to improve the economic diversity of the city to ensure that it has a strong and resilient economy which supports its residents." (Inland General Plan 1B Mission and Vision). The City Council finds that the public welfare will be served and advanced by regulating formula retail businesses.
8. The City has analyzed the project proposal described herein and has determined that the project is covered by the general rule that California Environmental Quality Act ("CEQA") applies only 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. 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.

This proposed ordinance does not authorize any additional uses or as permitted or permitted with a Use Permit or Minor Use Permit. This ordinance, does not change the uses allowed in the City or their intensity or density. The City Council has determined that there is no possibility that the proposed ordinance will have a significant effect on the environment and accordingly, the exemption set forth in Section 15061(b)(3) applies.

### **Section 2. Purpose.**

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.

### **Section 3. Definitions.**

"Formula Business" means a Retail 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, Signage, Trademark, or Service mark.

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

"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.

"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.

"Facade" shall be defined as the face or front of a building, including awnings, looking onto a street or an open space.

"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.

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

"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.

"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.



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

“Retail Establishment” means a commercial establishment that provides goods and/or services directly or indirectly to the consumer as defined in this Code (*this is a sample listing of land uses that could be regulated as Formula Businesses*):

1. Auto parts sales with no installation services §18.100.020
2. Bar/tavern §18.100.020
3. Big box retail §18.100.020
4. Building and landscape materials sales §18.100.020
5. Cannabis Dispensary §18.100.020
6. Convenience store §18.100.020
7. Groceries, specialty foods §18.100.020
8. Retail, general §18.100.020
9. Restaurant, café, coffee shop §18.100.020
10. Health/fitness facility §18.100.020

#### **Section 4. Required Findings for Approval.**

1. 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:
  - a. The Retail 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 Retail 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 Retail 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 Retail 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.

#### **Section 5. Exemptions.**

This Chapter shall not apply to:

1. Those land use applications which were deemed complete prior to the adoption of the ordinance codified in this chapter;

2. Business license approved prior to the adoption of the ordinance codified in this chapter;
3. Construction required to comply with fire and/or life safety requirements;
4. Disability accessibility work;
5. Renovation of existing Formula Businesses; and
6. 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.

**Section 6. Prohibited Formula Business Uses.**

*(The following prohibitions are possibilities not necessarily staff recommendations)*

1. Formula Businesses with a proposed use that is greater than 2,500 gross square feet are prohibited in the Central Business District *(see figure xxx map of CBD)*:
2. The following types of Formula Businesses are prohibited in the Central Business District:

*(Complete with land uses not consistent with the historical character of the CBD)*

**Section 7. Burden of Proof.**

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 proofing to the City that the proposed or existing use does not constitute a Formula Business.

**Section 8. Transferrable.**

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.

**Section 9. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Fort Bragg hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

**Section 10. Effective Date and Publication.** This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause a summary of said Ordinance to be published as provided in Government Code §36933, in a newspaper of general circulation published and circulated in the City of Fort Bragg, along with the names of the City Council voting for and against its passage.

**The foregoing Ordinance was introduced by Councilmember [REDACTED] at a regular meeting of the City Council of the City of Fort Bragg held on [REDACTED] and**

adopted at a regular meeting of the City of Fort Bragg held on [redacted] by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:
- RECUSED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
June Lemos, CMC  
City Clerk

PUBLISH: [redacted] and [redacted] (by summary).  
EFFECTIVE DATE: [redacted].

Working Draft

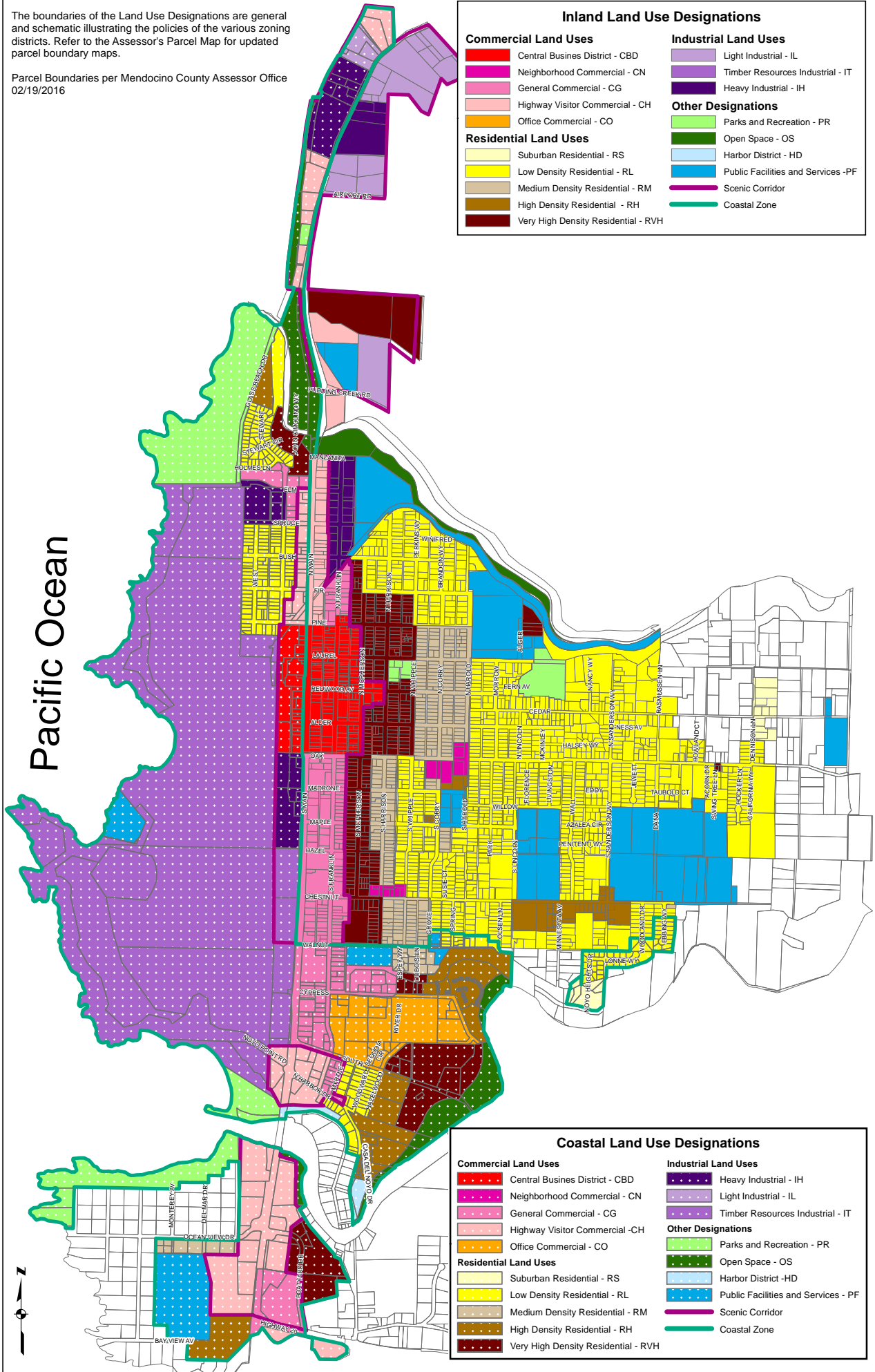
The boundaries of the Land Use Designations are general and schematic illustrating the policies of the various zoning districts. Refer to the Assessor's Parcel Map for updated parcel boundary maps.

Parcel Boundaries per Mendocino County Assessor Office 02/19/2016

Pacific Ocean

### Inland Land Use Designations

Commercial Land Uses		Industrial Land Uses	
<span style="color: red;">■</span>	Central Business District - CBD	<span style="color: purple;">■</span>	Light Industrial - IL
<span style="color: magenta;">■</span>	Neighborhood Commercial - CN	<span style="color: darkpurple;">■</span>	Timber Resources Industrial - IT
<span style="color: pink;">■</span>	General Commercial - CG	<span style="color: black;">■</span>	Heavy Industrial - IH
<span style="color: lightpink;">■</span>	Highway Visitor Commercial - CH	<b>Other Designations</b>	
<span style="color: orange;">■</span>	Office Commercial - CO	<span style="color: lightgreen;">■</span>	Parks and Recreation - PR
<b>Residential Land Uses</b>		<span style="color: darkgreen;">■</span>	Open Space - OS
<span style="color: yellow;">■</span>	Suburban Residential - RS	<span style="color: lightblue;">■</span>	Harbor District - HD
<span style="color: lightyellow;">■</span>	Low Density Residential - RL	<span style="color: blue;">■</span>	Public Facilities and Services - PF
<span style="color: tan;">■</span>	Medium Density Residential - RM	<span style="color: magenta;">■</span>	Scenic Corridor
<span style="color: brown;">■</span>	High Density Residential - RH	<span style="color: green;">■</span>	Coastal Zone
<span style="color: darkbrown;">■</span>	Very High Density Residential - RVH		



### Coastal Land Use Designations

<span style="color: red;">■</span>	Central Business District - CBD	<span style="color: purple;">■</span>	Heavy Industrial - IH
<span style="color: magenta;">■</span>	Neighborhood Commercial - CN	<span style="color: lightpurple;">■</span>	Light Industrial - IL
<span style="color: pink;">■</span>	General Commercial - CG	<span style="color: darkpurple;">■</span>	Timber Resources Industrial - IT
<span style="color: lightpink;">■</span>	Highway Visitor Commercial - CH	<b>Other Designations</b>	
<span style="color: orange;">■</span>	Office Commercial - CO	<span style="color: lightgreen;">■</span>	Parks and Recreation - PR
<b>Residential Land Uses</b>		<span style="color: darkgreen;">■</span>	Open Space - OS
<span style="color: yellow;">■</span>	Suburban Residential - RS	<span style="color: lightblue;">■</span>	Harbor District - HD
<span style="color: lightyellow;">■</span>	Low Density Residential - RL	<span style="color: blue;">■</span>	Public Facilities and Services - PF
<span style="color: tan;">■</span>	Medium Density Residential - RM	<span style="color: magenta;">■</span>	Scenic Corridor
<span style="color: brown;">■</span>	High Density Residential - RH	<span style="color: green;">■</span>	Coastal Zone
<span style="color: darkbrown;">■</span>	Very High Density Residential - RVH		



**18.22.020 - Purposes of Commercial Zoning Districts**

The purposes of the individual commercial zoning districts and the manner in which they are applied are as follows.

- A. CN (Neighborhood Commercial) zoning district.** The CN zoning district is applied to areas of the City that are appropriate for small-scale facilities providing convenience shopping and services for adjacent residential neighborhoods. The maximum allowable residential density within the CN district for the residential component of a mixed use project is 12 dwelling units per acre; the maximum floor area ratio (FAR) is 0.40. The CN zoning district implements and is consistent with the CN land use designation of the General Plan.
- B. CO (Office Commercial) zoning district.** The CO zoning district is applied to areas of the City that are intended to serve the office and institutional needs of the community that cannot be accommodated within the CBD zoning district. Other related and office-supporting uses may also be allowed. The maximum allowable residential density within the CO district for either the residential component of a mixed use project or multifamily dwellings as a primary use is 24 dwelling units per acre; the maximum floor area ratio (FAR) is 0.40. The CO zoning district implements and is consistent with the CO land use designation of the General Plan.
- C. CBD (Central Business District) zoning district.** The CBD zoning district is applied to the core of the downtown which is the civic, cultural, and commercial center of the City. The CBD zone is intended to accommodate retail stores, government and professional offices, theaters, and other similar and related uses in the context of pedestrian-oriented development. The maximum allowable residential density within the CBD zone for the residential component of a mixed use project is 40 dwelling units per acre; the maximum floor area ratio (FAR) is 2.0. The CBD zoning district implements and is consistent with the CBD land use designation of the General Plan.
- D. CG (General Commercial) zoning district.** The CG zoning district is applied to areas of the City that are appropriate for less compact and intensive commercial uses than those accommodated within the CBD zone. Allowable land uses are typically more auto-oriented than pedestrian-oriented, and may include automotive and service-related uses, a wide range of retail stores, including those selling large products (appliances, home furnishings, building materials, etc.). The maximum allowable residential density within the CG district for the residential component of a mixed use project is 24 dwelling units per acre; the maximum floor area ratio (FAR) is 0.40. The CG zoning district implements and is consistent with the CG land use designation of the General Plan.
- E. CH (Highway Commercial) zoning district.** The CH zoning district is applied to sites along Highway 1 and arterials at the entry points to the community. Allowable land uses include lodging, restaurants, and retail stores. The maximum allowable residential density within the CH district for the residential component of a mixed use project is 24 dwelling units per acre; the maximum floor area ratio (FAR) is 0.40. The CH zoning district implements and is consistent with the CH land use designation of the General Plan.

(Ord. 930, § 2, passed 06-12-2017)

**18.22.030 - Commercial District Land Uses and Permit Requirements**

- A. General permit requirements.** Table 2-6 identifies the uses of land allowed by this Development Code in each commercial zoning district, and the planning permit required to establish each use, in compliance with § 18.20.030 (Allowable Land Uses and Planning Permit Requirements).
- B. Requirements for certain specific land uses.** Where the last column in Table 2-6 (“Specific Use Regulations”) includes a section number, the referenced section may affect whether the use requires a Zoning Clearance, Minor Use Permit, or Use Permit, and/or may establish other requirements and standards applicable to the use.
- C. Findings for Use Permit or Minor Use Permit approval.** The approval of a Use Permit or Minor Use Permit for a project within a commercial district shall require that the review authority first make the following findings for the zoning district applicable to the site, in addition to the findings required by § 18.71.060 (Use Permit and Minor Use Permit):

- 1. CN (Neighborhood Commercial) district.** The use is designed and intended to serve the local neighborhood and not a broader service area, and is not of a size as to require a clientele larger than the neighborhood market area.

**2. CO (Office Commercial) district.** The use acts to support primary uses in the zone, or clients or visitors of allowable permitted uses.

**3. CBD (Central Business District) district.** The use complements the local, regional and tourist-serving retail, office and services functions of the CBD, and will not detract from this basic purpose of the CBD. Uses proposed for the intense pedestrian-oriented retail shopping areas of the CBD, which include the 100 blocks of East and West Laurel Street, the 300 block of North Franklin Street\*, and the 100 and 200 blocks of Redwood Avenue, shall be limited to pedestrian-oriented uses on the street-fronting portion of the building.

\* Code reviser’s note: The language in this section has been revised to refer to the intended area of the downtown core.

**4. CG (General Commercial) district.**

- a. The uses generally require larger display and/or storage areas; and
- b. The use is not dependent on heavy customer traffic per square foot.

**5. CH (Highway Commercial) district.**

- a. Secondary uses oriented to local clientele may be permitted where the primary use of a site is oriented to or serves visitor, regional, or transient traffic; and
- b. Uses oriented to local clientele may be allowed where visitor-oriented uses are precluded because of environmental concerns or other site specific constraints.

<b>TABLE 2-6 Allowed Land Uses and Permit Requirements for Commercial Zoning Districts</b>	<b>P Permitted use, Zoning Clearance required</b>					
	<b>MUP Minor Use Permit required (see § 18.71.060)</b>					
	<b>UP Use Permit required (see § 18.71.060)</b>					
	<b>S Permit requirement set by Specific Use Regulations</b>					
	<b>— Use not allowed</b>					
<b>LAND USE (1)</b>	<b>PERMIT REQUIRED BY DISTRICT</b>					<b>Specific Use Regulations</b>
	<b>CN</b>	<b>CO</b>	<b>CBD</b>	<b>CG</b>	<b>CH</b>	

**AGRICULTURAL, RESOURCE AND OPEN SPACE USES**

Crop production, horticulture, orchard, vineyard	P	P	P	P	P	
--	---	---	---	---	---	--

**INDUSTRY, MANUFACTURING AND PROCESSING, WHOLESALING**

Laboratory - Analytical and testing	—	P	—	P	—	
Artisan/craft product manufacturing with retail sales	—	P(2)	P(2)	P(2)	P(2)	
Brewery/restaurant	—	—	UP	—	—	
Printing and publishing	—	—	P	P	—	
Research and development (R&D)	—	—	—	UP	—	
Recycling - Small facility	P	P	P	P	P	18.42.150
Recycling - Large facility	—	—	—	UP	—	18.42.150

**Key to Zoning District Symbols**

<b>CN</b>	Neighborhood Commercial	<b>CG</b>	General Commercial
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CO	Office Commercial	CH	Highway and Visitor Commercial
CBD	Central Business District		

Notes:

- (1) See Article 10 for land use definitions.
- (2) Use shall be entirely enclosed within a building, unless outdoor activities and/or storage are authorized by Use Permit.

<b>TABLE 2-6 Allowed Land Uses and Permit Requirements for Commercial Zoning Districts</b>	<b>P Permitted use, Zoning Clearance required</b>					
	<b>MUP Minor Use Permit required (see § 18.71.060)</b>					
	<b>UP Use Permit required (see § 18.71.060)</b>					
	<b>S Permit requirement set by Specific Use Regulations</b>					
	<b>— Use not allowed</b>					
<b>LAND USE (1)</b>	<b>PERMIT REQUIRED BY DISTRICT</b>					<b>Specific Use Regulations</b>
	<b>CN</b>	<b>CO</b>	<b>CBD</b>	<b>CG</b>	<b>CH</b>	

RECREATION, EDUCATION AND PUBLIC ASSEMBLY USES

Recreational vehicle park	—	—	—	—	UP	
Commercial recreation facility - Indoor	—	—	UP	P	P	
Commercial recreation facility - Outdoor	UP	UP	—	UP	UP	
Conference facility	—	UP	UP	UP	UP	
Health/fitness facility	—	UP	UP	P	UP	
Library, museum, art gallery	UP	UP	P	P	P	
Meeting facility, public or private	UP	UP	UP	UP	UP	
Park, playground	P	P	P	P	P	
School - Private	UP	UP	UP	UP	UP	
Sports and active recreation facility	—	—	UP	UP	UP	
Studio - Art, dance, martial arts, music, etc.	UP	UP	P	P	P	
Theater	—	UP	P	P	P	

RESIDENTIAL USES

Emergency shelter	—	—	—	P	—	
Home occupation	P	P	P	P	P	18.42.080
Live/work unit	MUP	MUP	MUP	MUP	—	18.42.090
Multifamily dwellings	P	UP	UP	UP	UP	18.42.120
Residential care facility for the elderly (RCFE)	—	UP	UP	UP	—	
Residential care facility	—	UP	UP	UP	—	
Residential component mixed use project	P	UP	P(2)	P	P	18.42.100

LAND USE (1)	PERMIT REQUIRED BY DISTRICT					Specific Use Regulations
	CN	CO	CBD	CG	CH	
	Single residential unit	MUP (3)	—	UP(4)	UP(4)	
Second unit – ADU/JADU	P(5)	P(5)	P(5)	P(5)	P(5)	18.42.170

Key to Zoning District Symbols

CN	Neighborhood Commercial	CG	General Commercial
CO	Office Commercial	CH	Highway and Visitor Commercial
CBD	Central Business District		

Notes:

- (1) See Article 10 for land use definitions.
- (2) Use allowed only on second or upper floors, in compliance with § 18.22.060(B) (Limitation on the Location of Allowable Land Uses).
- (3) Use permitted only for lots in the CN zone that do not front a major collector, as defined in the General Plan.
- (4) Use permitted only for existing structures that have the appearance of a single residential dwelling unit, per the Citywide Design Guidelines.
- (5) Use permitted only on parcels with existing single residential unit or existing/proposed multifamily development, in compliance with § 18.42.170.

LAND USE (1)	PERMIT REQUIRED BY DISTRICT					Specific Use Regulations
	CN	CO	CBD	CG	CH	
	RETAIL TRADE					

RETAIL TRADE

LAND USE (1)	CN	CO	CBD	CG	CH	Specific Use Regulations
Artisan shop	UP	UP	P	P	P	
Auto and vehicle sales and rental	—	—	—	P	P	
Auto parts sales with no installation services	—	—	—	P	P	



LAND USE (1)	PERMIT REQUIRED BY DISTRICT					Specific Use Regulations
	CN	CO	CBD	CG	CH	
	<b>P</b> Permitted use, Zoning Clearance required <b>MUP</b> Minor Use Permit required (see § 18.71.060) <b>UP</b> Use Permit required (see § 18.71.060) <b>S</b> Permit requirement set by Specific Use Regulations <b>—</b> Use not allowed					
Bar/tavern	—	—	UP	MUP	MUP	
Big box retail	—	—	—	UP	UP	
Building and landscape materials sales - Indoor	—	—	—	P	UP	
Building and landscape materials sales - Outdoor	—	—	—	UP	UP	18.42.130
Cannabis retail	—	—	MUP	MUP	MUP	18.42.057 Chapter 9.30
Cannabis retail - Delivery only	—	—	—	MUP	MUP	18.42.057 Chapter 9.30
Construction and heavy equipment sales and rental	—	—	—	UP	UP	18.42.130
Convenience store	P	—	P	P	P	
Drive-through retail or service	—	—	UP	UP	UP	18.42.070
Farm supply and feed store	—	—	—	P	UP	
Fuel dealer (propane for home and farm use, etc.)	—	—	—	UP	—	
Furniture, furnishings and appliance store	—	—	P	P	UP	
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	
Mobile home, boat, or RV sales	—	—	—	UP	UP	
Night club	—	—	UP	UP	UP	
Outdoor retail sales and activities	—	—	P	P	P	18.42.130
Restaurant, café, coffee shop	UP	P	P	P	P	18.42.165
Second hand store	—	—	—	P	P	
Service station	—	—	—	UP	UP	18.42.180
Shopping center	—	—	—	UP	UP	

Key to Zoning District Symbols

CN	Neighborhood Commercial	CG	General Commercial
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CO	Office Commercial	CH	Highway and Visitor Commercial
CBD	Central Business District		

Notes:

- (1) See Article 10 for land use definitions.

<b>TABLE 2-6 Allowed Land Uses and Permit Requirements for Commercial Zoning Districts</b>	<b>P Permitted use, Zoning Clearance required</b> <b>MUP Minor Use Permit required (see § 18.71.060)</b> <b>UP Use Permit required (see § 18.71.060)</b> <b>S Permit requirement set by Specific Use Regulations</b> <b>— Use not allowed</b>					
	<b>PERMIT REQUIRED BY DISTRICT</b>					<b>Specific Use Regulations</b>
<b>LAND USE (1)</b>	<b>CN</b>	<b>CO</b>	<b>CBD</b>	<b>CG</b>	<b>CH</b>	

SERVICES - BUSINESS, FINANCIAL, PROFESSIONAL

Bank, financial services	UP	P	P	P	P	
Business support service	—	P	P	P	P	
Medical services - Doctor office	P	P	P	P	UP	
Medical services - Clinic, lab, urgent care	—	P	P	P	—	
Medical services - Hospital	—	UP	—	UP	UP	
Office - Accessory	P	P	P	P	P	
Office - Business/service	—	P	P	P	P	
Office - Professional/administrative	—	P	P	P	P	

SERVICES - GENERAL

Adult day care	P	P	P	P	UP	
Catering service	—	P	P(3)	P	—	
Child day care center	UP	UP	UP	UP	MUP	
Drive-through service	—	—	UP	UP	UP	18.42.070
Equipment rental	—	—	UP	P	UP	
Kennel, animal boarding	—	—	—	UP	—	18.42.040
Lodging - Bed and breakfast inn (B&B)	—	—	UP	UP	P	18.42.050
Lodging - Hotel or motel	—	—	UP	UP	UP	
Lodging - Vacation rental unit	—	—	MUP	—	—	18.42.190
Maintenance service - Client site services	—	—	—	P	—	
Mortuary, funeral home	—	P	—	P	—	

LAND USE (1)	PERMIT REQUIRED BY DISTRICT					Specific Use Regulations
	CN	CO	CBD	CG	CH	
	Personal services	P	P	P	P	
Personal services - Restricted	—	—	UP	UP	UP	
Public safety facility	—	P	P	P	P	
Repair service - Equipment, large appliances, etc.	—	—	—	P	P	
Vehicle services - Major repair/body work	—	—	—	UP	UP	
Vehicle services - Minor maintenance/repair	—	—	—	P	P	
Veterinary clinic, animal hospital	—	P	—	P	P	

Key to Zoning District Symbols

CN	Neighborhood Commercial	CG	General Commercial
CO	Office Commercial	CH	Highway and Visitor Commercial
CBD	Central Business District		

Notes:

- (1) See Article 10 for land use definitions.
- (2) Use allowed only on second or upper floors, in compliance with § 18.22.060(B) (Limitation on the Location of Allowable Land Uses).
- (3) Permitted above the first floor or as part of a restaurant.

LAND USE (1)	PERMIT REQUIRED BY DISTRICT					Specific Use Regulations
	CN	CO	CBD	CG	CH	
	TRANSPORTATION, COMMUNICATIONS AND INFRASTRUCTURE					

TRANSPORTATION, COMMUNICATIONS AND INFRASTRUCTURE

Ambulance, taxi, and specialized transportation dispatch facility	—	UP	—	UP	UP	
Broadcasting studio	—	P	P	P	—	

LAND USE (1)	PERMIT REQUIRED BY DISTRICT						Specific Use Regulations
	CN	CO	CBD	CG	CH		
	<b>P</b> Permitted use, Zoning Clearance required <b>MUP</b> Minor Use Permit required (see § 18.71.060) <b>UP</b> Use Permit required (see § 18.71.060) <b>S</b> Permit requirement set by Specific Use Regulations <b>—</b> Use not allowed						
Parking facility, public or commercial	P	P	P	P	P		
Pipelines, transmission lines	S	S	S	S	S	18.42.145	
Telecommunications facility	S	S	S	S	S	Chapter 18.44	
Transit station	UP	UP	UP	UP	UP		
Solar, wind, geothermal facilities for on-site use	P	P	P	P	P		
Utility facility	P	P	UP	P	P		
Vehicle storage	—	—	—	UP	—		

Key to Zoning District Symbols

CN	Neighborhood Commercial	CG	General Commercial
CO	Office Commercial	CH	Highway and Visitor Commercial
CBD	Central Business District		

Notes:

(1) See Article 10 for land use definitions.

(Ord. 930, § 2, passed 06-12-2017; Am. Ord. 952, § 2, passed 11-12-2019; Am. Ord. 959, § 2, passed 02-10-2020)



AGENCY: City Council  
MEETING DATE: October 24, 2019  
DEPARTMENT: City Manager  
PRESENTED BY: Tabatha Miller  
EMAIL ADDRESS: [tmiller@fortbragg.com](mailto:tmiller@fortbragg.com)

## AGENDA ITEM SUMMARY

### **TITLE:**

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

### **ISSUE:**

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

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

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

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

### **ANALYSIS:**

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

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

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

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

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

ensure compatibility with the neighborhood.

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

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

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

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

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

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

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

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

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

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

### Do we want to regulate the appearance?

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

### Other Considerations

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

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

### What are the legal concerns?

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

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

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

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

**RECOMMENDED ACTION:**

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

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

**ALTERNATIVE ACTION(S):**

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

**FISCAL IMPACT:**

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

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

**GREENHOUSE GAS EMISSIONS IMPACT:**

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

**CONSISTENCY:**

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

**IMPLEMENTATION/TIMEFRAMES:**

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

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

**ATTACHMENTS:**

1. N/A

**NOTIFICATION:**

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



AGENCY: City Council  
MEETING DATE: January 29, 2020  
DEPARTMENT: City Manager  
PRESENTED BY: Tabatha Miller  
EMAIL ADDRESS: [tmiller@fortbragg.com](mailto:tmiller@fortbragg.com)

## 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

**AGENCY:** Planning Commission  
**MEETING DATE:** October 14, 2020  
**PREPARED BY:** T. Sar  
**PRESENTED BY:** 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



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	
<b>TABLE 2-6</b>						
<b>Allowed Land Uses and Permit Requirements for Commercial Zoning Districts</b>						
	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				
<b>RETAIL TRADE</b>						
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	<p>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*:</p> <p>(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).</p> <p>*color scheme, array of services, decor, façade, servicemark, uniforms, architecture, or signage</p>	10
Sebastopol, CA	<p>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.</p>	25
Palo Alto, CA	<p>“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.</p>	10

Ukiah, CA	<p>RESTAURANT – FORMULA FAST FOOD: A restaurant that includes all of the following characteristics:</p> <ol style="list-style-type: none"> <li>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</li> <li>2. Has three (3) or more of the following characteristics: <ol style="list-style-type: none"> <li>a. Food is pre-made and wrapped before customers place orders;</li> <li>b. Food is served with disposable tableware for on-site consumption;</li> <li>c. Food is ordered from a wall menu at a service counter;</li> <li>d. Food consumed on the premises is ordered while customers are standing;</li> <li>e. Payment is made by customers before food is consumed; or</li> <li>f. The service counter is closer to an entry/exit than is the seating/dining area.</li> </ol> </li> </ol> <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"> <li>(1) Standardized array of merchandise shall be defined as 50% or more of in-stock merchandise from a single distributor bearing uniform markings.</li> <li>(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.</li> <li>(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.</li> <li>(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.</li> <li>(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.</li> <li>(6) Facade shall be defined as the face or front of a building, including awnings, looking onto a street or an open space.</li> <li>(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.</li> <li>(8) Signage shall be defined as business sign pursuant to Section <a href="#">602.3</a> of the Planning Code.</li> </ol>	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"> <li>1. Standardized array of merchandise or standardized menu.</li> <li>2. Standardized facade.</li> <li>3. Standardized decor and color scheme.</li> <li>4. Uniform apparel.</li> <li>5. Standardized signage.</li> <li>6. Trademark or service mark.</li> </ol> <p>B. For the purposes of this section the following definitions apply:</p> <ol style="list-style-type: none"> <li>1. "Standardized array of merchandise" shall be defined as 50 percent or more of in-stock merchandise from a single distributor bearing uniform markings.</li> <li>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.</li> <li>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.</li> <li>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.</li> </ol>	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 <a href="#">17.08.060</a>.</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.<sup>1</sup> 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

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<sup>1</sup> *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).<sup>2</sup> 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.<sup>3</sup> 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) <b>Conditional Use Criteria.</b> 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>

<sup>2</sup> 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.

<sup>3</sup> *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 <a href="#">303.1(d)</a>, 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 <a href="#">303.1(d)</a>.</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 <a href="#">2</a>, <a href="#">7</a> and <a href="#">8</a> of this Code, the contents of an economic impact study prepared pursuant to Section <a href="#">303(i)</a> of this Code.</p> <p>(8) Notwithstanding anything to the contrary contained in Planning Code Article <a href="#">6</a> 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 <a href="#">10.60.050</a>, 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"> <li>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;</li> <li>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;</li> <li>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;</li> <li>4. The formula retail establishment will contribute to an appropriate balance of local, regional or national-based businesses in the community;</li> <li>5. The formula retail establishment will be mutually beneficial to and would enhance the economic health of surrounding uses in the district;</li> <li>6. The formula retail establishment will contribute to an appropriate balance of small, medium and large-sized businesses in the community; and</li> <li>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.]</li> </ol>
Coronado, CA	<p>C. Required Findings for Approval.</p> <ol style="list-style-type: none"> <li>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;</li> <li>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</li> </ol>

	<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 <a href="#">conditional use permit</a> application, the Planning Commission, or <a href="#">City</a> 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 <a href="#">City</a>;</p> <p>B. That the formula business establishment will complement existing businesses, and promote diversity and variety to assure a balanced mix of <a href="#">commercial uses</a> 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, <a href="#">sign</a>, 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,<sup>4</sup> 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

<sup>4</sup> 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**

## Gonzalez, Joanna

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**From:** Greg Burke <greg@mendosir.com>  
**Sent:** Thursday, December 17, 2020 1:40 PM  
**To:** Gonzalez, Joanna  
**Subject:** Re: Franchise or Formula Business

Thank you Joanna,

Greg Burke

On Dec 17, 2020, at 1:37 PM, Gonzalez, Joanna <[JGonzalez@fortbragg.com](mailto:JGonzalez@fortbragg.com)> wrote:

Greg,

I have received your email and forwarded it to the appropriate staff and the commission and it will be added to tonight's agenda.

-Joanna

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**From:** Greg Burke <[greg@mendosir.com](mailto:greg@mendosir.com)>  
**Sent:** Thursday, December 17, 2020 12:00 PM  
**To:** Gonzalez, Joanna <[JGonzalez@fortbragg.com](mailto:JGonzalez@fortbragg.com)>  
**Subject:** Re: Franchise or Formula Business

Joanna,

I don't often write letters to the planning commission but was hoping to have some confirmation you have received and are able to present the letter. Thank you, Greg

On Dec 17, 2020, at 11:21 AM, Greg Burke <[gburke@mcn.org](mailto:gburke@mcn.org)> wrote:

Comments for consideration:

I am a Fort Bragg City resident and also a business owner in Fort Bragg.

While there seems to be a lot of vocal sentiment against formula business development in Fort Bragg, I believe there is a lot of interest from the public who, are not always vocal, but privately support growth and continued tax collections that will provide much needed funding to help the infrastructure of our city remain relevant and prosper.

From a development standpoint it could take decades for undeveloped lots to be built upon in the commercial districts without outside investment coming into the city. The local business owners have been hurt as much by Amazon as they have from some perceived competition from "outsiders". And they rightly are hesitant to go into a business venture with uncertain community backing, especially given the new dynamics of the shop from home system.

If we have a true natural disaster in our area, not just the hoarding that happens during a pandemic or during a rolling power outage due to wildfires which we all have witnessed, our area is going to have to support itself perhaps for sometime while access is being rebuilt. From a public safety standpoint it would make sense to have another grocery store and a community must have shopping options at various affordability levels for all it's residents including seniors on fixed incomes and young families with children.

The development site plans and sketches I've seen for current project applications have added an element of beautification that has been absent on these lots for years. Anyone who drives by the corner of Maple and S. Franklin can't help but notice the back side of the buildings that run along the 200 block of S. Main St, is this the "character" we want in this town? The same goes for the 800 block of S. Franklin, that's a whole block of eye sore staring back that could be much improved upon while helping the community.

Sincerely,

Greg Burke

Email correspondence with the City of Fort Bragg (and attachments, if any) may be subject to the California Public Records Act, and as such may therefore be subject to public disclosure unless otherwise exempt under the Act.

**Gonzalez, Joanna**

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**From:** noreply@granicusideas.com  
**Sent:** Tuesday, December 15, 2020 6:06 PM  
**To:** Gonzalez, Joanna  
**Subject:** New eComment for Planning Commission on 2020-12-17 6:00 PM - SPECIAL MEETING



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## New eComment for Planning Commission on 2020-12-17 6:00 PM - SPECIAL MEETING

KeriAnn Bourne submitted a new eComment.

Meeting: Planning Commission on 2020-12-17 6:00 PM - SPECIAL MEETING

Item: 20-958 Receive Report and Make Recommendations for Preparation of an Ordinance to Regulate Formula Business to Amend Title 18 of the Fort Bragg Municipal Code [Inland Land Use and Development Code (ILUDC)]

eComment: Head of worker safety Debbie Berkowitz, through the National Employment Law Project, says “Dollar General is a company that has a business model based on essentially breaking the law and cutting corners when it comes to basic worker safety”. “Despite receiving more than 100 safety and health violations at stores nationwide since 2010.. the company has still failed to take corrective action” says Dave Olah, director of OSHA’s Harrisburg PA Area Office.

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## Gonzalez, Joanna

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**From:** Paul Clark <pclark@fortbraggrealty.co>  
**Sent:** Thursday, December 17, 2020 8:48 AM  
**To:** Gonzalez, Joanna  
**Cc:** Paul Clark; CMAR (CMAR@MCN.ORG)  
**Subject:** FW: Special Fort Bragg Planning Commission Meeting to Discuss a Formula Business Ordinance

Comments I hope will be read in the record for tonight's meeting

I will keep comments on the Formula Business policies as short as I can.

One it is not needed and a waste of taxpayer money.

Obviously there is concern over litigation with this policy, I would expect this will bite the city in the rear if it goes into effect the city has a poor track record on lawsuits. Think North Cliff.

Note that the required findings could be met with any member just saying I don't think it meets the "Character" of Fort Bragg, whatever that is at this point.

Note on page 8 that 14 tax producer businesses are Formula Businesses. Out of 25. So the city wants to make sure it has less income by keeping businesses out. Like Grocery Outlet which thankfully will not be processed under this policy. One blessing.

This portion of the proposed ordinance is great. (that is sarcasm of course)

2. To retain that one-of-a-kind character, the City seeks to avoid the proliferation of chain store uses that result in diluting what makes Fort Bragg unique and instead creating a character of repetitiveness similar to other towns across America, where chain store prevalence grows. Fort Bragg seeks to encourage elements that provide variety and fit with the unique environment, history and its quirky charm while retaining opportunities for all. The City's mission and vision embraces a friendly city with a small town character and a strong sense of community that values its roots in the fishing and timber industries. The City's General Plan, Citywide Design Guidelines, and Inland Land Use & Development Code emphasize the commitment to maintaining the strength and vitality of the historic Central Business District.

This one of a kind character please elaborate for the citizens. I have only been here since 1976. Before that I am told there were bars on every block. What time frame is the aim for this ordinance? 1980? Before the GP mill shut down with all the insured workers? This shut down by health and other "leaders" is doing more to kill any character left in this and most town. The Mom and Pop that I believe is the real character of Fort Bragg is on its knees and many more will not survive I feel, hope not, but it does not look good. With the Covid lack of transparency it seems the city is happy to move ahead with this type action. The citizens cant all log on and many probably don't have any idea this is in the works.

The fact that thousands are leaving the State, a few that can afford to live here are moving here to escape the city's and the traffic and crime and red tape, we want to add more to make sure no outsiders come in? Hmmmmm. Maybe we need a wall too?

Paul Clark

Yes I live in Fort Bragg, outside the city but own property and business in town.

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**From:** City of Fort Bragg <listserv@civicplus.com>  
**Sent:** Wednesday, December 16, 2020 8:29 AM

**To:** C21Staff <C21fbssr@fortbraggrealty.co>

**Subject:** Special Fort Bragg Planning Commission Meeting to Discuss a Formula Business Ordinance

[View this in your browser](#)



Fort Bragg Planning Commission will hold a special meeting on Thursday December 17, 2020 at 6:00 PM. To make recommendations for the preparation of an ordinance to regulate Formula Businesses in the City of Fort Bragg to view the agenda click [here](#)

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**Gonzalez, Joanna**

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**From:** noreply@granicusideas.com  
**Sent:** Tuesday, December 15, 2020 5:00 PM  
**To:** Gonzalez, Joanna  
**Subject:** New eComment for Planning Commission on 2020-12-17 6:00 PM - SPECIAL MEETING



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## New eComment for Planning Commission on 2020-12-17 6:00 PM - SPECIAL MEETING

Judith Greenleaf submitted a new eComment.

Meeting: Planning Commission on 2020-12-17 6:00 PM - SPECIAL MEETING

Item: 20-958 Receive Report and Make Recommendations for Preparation of an Ordinance to Regulate Formula Business to Amend Title 18 of the Fort Bragg Municipal Code [Inland Land Use and Development Code (ILUDC)]

eComment: I would like to see Grocery Outlet here on the coast. It would be a tremendous advantage, especially to lower income people. They have many excellent items not now available on the coast and many people go to Ukiah to shop there. They now have a large section devoted to organics at good prices, making them available to people who could not afford them here. There are many business locations empty that this excellent company could rent or buy to the advantage of Fort Bragg. Judith Greenleaf,

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**Gonzalez, Joanna**

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**From:** noreply@granicusideas.com  
**Sent:** Wednesday, December 16, 2020 2:34 PM  
**To:** Gonzalez, Joanna  
**Subject:** New eComment for Planning Commission on 2020-12-17 6:00 PM - SPECIAL MEETING



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## New eComment for Planning Commission on 2020-12-17 6:00 PM - SPECIAL MEETING

Linda Jupiter submitted a new eComment.

Meeting: Planning Commission on 2020-12-17 6:00 PM - SPECIAL MEETING

Item: 20-958 Receive Report and Make Recommendations for Preparation of an Ordinance to Regulate Formula Business to Amend Title 18 of the Fort Bragg Municipal Code [Inland Land Use and Development Code (ILUDC)]

eComment: I strongly oppose more Formula Businesses to move here to Fort Bragg. Our small stores are being strangled by Formula Businesses, which hire mostly part-time, low-wage workers, who cannot live on their earnings. The newest Dollar Store would negatively impact Down Home Foods, our only health food store in town run by a proprietor. Please help our community and oppose Formula Businesses in Fort Bragg.

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**Gonzalez, Joanna**

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**From:** noreply@granicusideas.com  
**Sent:** Wednesday, December 16, 2020 7:10 PM  
**To:** Gonzalez, Joanna  
**Subject:** New eComment for Planning Commission on 2020-12-17 6:00 PM - SPECIAL MEETING



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## New eComment for Planning Commission on 2020-12-17 6:00 PM - SPECIAL MEETING

Robin Simmons submitted a new eComment.

Meeting: Planning Commission on 2020-12-17 6:00 PM - SPECIAL MEETING

Item: 20-958 Receive Report and Make Recommendations for Preparation of an Ordinance to Regulate Formula Business to Amend Title 18 of the Fort Bragg Municipal Code [Inland Land Use and Development Code (ILUDC)]

eComment: No to cheap chain stores that undercut our local businesses, damage the financial welfare of our citizens and our property values. The character of our community that our tourists come here for is at stake. Specifically regarding The Dollar General - we do not need another store selling cheap, throw-away merchandise that only boosts the economy of China.

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**Gonzalez, Joanna**

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**From:** noreply@granicusideas.com  
**Sent:** Wednesday, December 16, 2020 9:37 PM  
**To:** Gonzalez, Joanna  
**Subject:** New eComment for Planning Commission on 2020-12-17 6:00 PM - SPECIAL MEETING



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## New eComment for Planning Commission on 2020-12-17 6:00 PM - SPECIAL MEETING

Eva von Bahr submitted a new eComment.

Meeting: Planning Commission on 2020-12-17 6:00 PM - SPECIAL MEETING

Item: 20-958 Receive Report and Make Recommendations for Preparation of an Ordinance to Regulate Formula Business to Amend Title 18 of the Fort Bragg Municipal Code [Inland Land Use and Development Code (ILUDC)]

eComment: I oppose the building of another big box store in downtown Fort Bragg. We don't need a second Dollar Store. The long open hours will increase unwanted traffic, threaten peace and quiet, cleanliness, and the look of this Fort Bragg neighborhood. We all need to do all that we can, especially right now, to make it possible for the small shops, restaurants, and cafes to survive if we want to preserve this gem of a small town. Thank you, Eva von Bahr

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**Gonzalez, Joanna**

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**From:** noreply@granicusideas.com  
**Sent:** Wednesday, December 16, 2020 10:40 PM  
**To:** Gonzalez, Joanna  
**Subject:** New eComment for Planning Commission on 2020-12-17 6:00 PM - SPECIAL MEETING



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## New eComment for Planning Commission on 2020-12-17 6:00 PM - SPECIAL MEETING

Andy Wellspring submitted a new eComment.

Meeting: Planning Commission on 2020-12-17 6:00 PM - SPECIAL MEETING

Item: 20-958 Receive Report and Make Recommendations for Preparation of an Ordinance to Regulate Formula Business to Amend Title 18 of the Fort Bragg Municipal Code [Inland Land Use and Development Code (ILUDC)]

eComment: I urge you to NOT allow Dollar General into Fort Bragg. This company has a horrible track record of exploiting workers, see: <https://www.nbcnews.com/business/business-news/dollar-general-thriving-workers-say-they-pay-price-n1137096> . Our community needs good jobs not this, which sends profits to stockholders in distant places while we deal with the loss of existing businesses, you should draft an ordinance to stop discussing big box stores and save future time by avoiding the next bad idea now.

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## Gonzalez, Joanna

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**From:** Jacob Patterson <jacob.patterson.esq@gmail.com>  
**Sent:** Thursday, December 17, 2020 9:47 AM  
**To:** O'Neal, Chantell; Gonzalez, Joanna; Miller, Tabatha  
**Subject:** Big Box / Formula Retail Comments

Here is an interesting letter to the editor I just read from one of our local doctors

<https://mendovoice.com/2020/12/letter-to-the-editor-fort-bragg-businesses-and-b-corporations/>

She points out that we don't need another big box store, referring to the proposed Dollar General project. Although it doesn't technically meet the City's current definition of "big box" it appears to fit the bill of what the community means when they refer to big-box retail. This suggests that the current definition in our Code should be updated to include these types of one-stop chain stores so all the General Plan policies can be evaluated for these types of projects, not just community favorite LU-4.1.

Interestingly, the proposed Dollar General project is subject to LU-4.1 and the fact that we already have a Dollar Tree in town suggests that a similar outcome as occurred for the proposed Auto Zone may be appropriate, if not required for the proposed Dollar General. "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." Dr. Kreger hit the nail on the head when she pointed out that an additional dollar would likely have a negative impact on the community. Because Design Review permits require a finding of consistency with the Inland General Plan, and LU-4.1 applies to all projects proposed for Fort Bragg, LU-4.1 suggests that the "location, scale, and appearance" of the Dollar General need to not create undesirable conditions that threaten our community's economic vitality. The location is problematic for obvious reasons but so are the formulaic aspects of the building design.

In any event, what is currently under consideration are the details of the proposed formula business ordinance, not the pending Dollar General proposal. We should learn our lessons from particular entitlement reviews and take extra care to be sure to do three things: fine-tune the definitions in the ordinance to remove as much ambiguity as possible; craft useful findings that relate to the underlying community concerns, including not just for a potential use permit but ALSO for design review permits that are specific for formula businesses (e.g., extra design review findings that only apply to formula businesses like we have for use permits in particular zoning districts); and make sure that the findings include objective and measurable criteria to help determine a proposed project's compliance with the requirement (i.e., what metric is used and what is the threshold for compliance with that metric).

Best,

--Jacob

To: Planning Commission  
Re: Dollar General and Grocery Outlet  
From: Leslie Kashiwada  
Date: December 17, 2020

As you discuss and consider a formula store ordinance, Fort Bragg currently has two open applications for formula businesses, Grocery Outlet and Dollar General. This gives you much grist for the mill when crafting the formula store ordinance. However, I am concerned that both of these proposals will be exempt from the ordinance because their applications slipped in before the ordinance has been finalized and sent to City Council for approval (or modification).

I think it is essential to pass an emergency moratorium on all formula businesses until the ordinance is passed, and the economy has a change to recover from the pandemic closures. Right now is a critical time because so many local businesses have closed. This is just the type of distressed economic condition formula businesses look for. The city coffers are at an all-time low and it is tempting to take the bait. But opening the door to these types of businesses create conditions that will make it difficult for existing local businesses to stay open and for new local businesses to start. Instead, the Planning Commission and City Council should be looking for ways to support local businesses to help them get back on their feet.

The Grocery Outlet has been trying to situate itself in Fort Bragg for years. The first developer of choice, Group II, owns property at Todd Point (Hare Creek), a totally inappropriate location for such a shopping center. Now it is being proposed at the site of the old Social Services Building on the southwest corner of S Franklin Street and South Street. There are issues with this location, but these will come out during the review process. What is more important is to consider the impact this store will have on all the other grocery stores in the area. In particular, how will it impact locally-owned grocery stores like Harvest Market and Purity? In addition, how will Grocery Outlet impact the potential relocation of Harvest Market to the Mill Site? Will this create a situation where there are too many grocery stores clustered in one area of our small town? I would be extremely disappointed if allowing Grocery Outlet to open will prevent Harvest Market, a locally-owned business that does so much for our community, from bringing their vision to fruition. I think this would get closer scrutiny under a properly worded formula business ordinance. Please make sure the ordinance you pass makes sure this kind of situation is fully addressed.

I also was to express my deep concern about Dollar General. Dollar General is more than just a dollar store, though its business model does overlap that of Dollar Tree, which we already have. Dollar General sells products that will put it in competition with hardware stores, drug stores (though not the pharmacy), grocery stores (including the Grocery Outlet if it is approved), and Dollar Tree. It will be located just down the street from Purity and, although Dollar General does not usually carry fresh grocery products, it could siphon enough business away from Purity to cause that store to close.

I want to remind that Planning Commission that when CVS came to town, Rite Aid ended up closing one of their two stores. This is any example of a formula business impacting another

formula business. Rite Aid chose to close the one in the Boatyard. I've never been impressed with CVS, and the current Rite Aid on Chestnut Street is not nearly as well stocked or organized as the one that closed (and is now currently occupied by Dollar Tree). Our town traded two Rite Aids for one Rite Aid and a CVS. Did tax revenues increase because of this swap? There might have been a short bump during construction and before the Boatyard Rite Aid closed, but I doubt there was a long-term increase once the dust settled. For me, it was an overall loss because the drug store that best served my needs closed. There are only so many local dollars to go around, and formula businesses won't generate more of them because their business model is money extraction, not generation. The jobs provided are usually minimum wage and part time, not providing a living wage for employees. And tourists aren't likely to spend a lot of money at these types of stores. In fact, these businesses will be sending their profits to Corporate HQ in another state rather than reinvesting them in our community. I encourage the Planning Commission to look at the impact of Dollar General on the balance sheet of towns in rural areas. I suspect bringing that type of store to our community will not increase the bottom line much, if at all. It might even result in a net loss over time as local businesses close.

In addition, Dollar General is particularly notorious for not caring about the communities where they place their stores. To ensure maximum profit, Dollar General's corporate policies promote neglect and criminal activities by demanding minimal staffing, lack of support for security, large signage in the windows preventing monitoring by local police, and trash buildup on the exterior of the building. Several articles about these issues were posted in comments online, and I am listing them all below for ease of access to this information. And, I am particularly concerned about yet another ready source of cheap alcohol (a concern I have about Grocery Outlet as well).

It is essential that the formula business ordinance include language about denial due bad corporate behavior. Perhaps being sued for violation of health, safety, and environmental laws could be sufficient cause for denial, without the city being accused of bias or arbitrary definitions. Even lawsuits that are settled may not be excusable because these companies have a lot of money to throw at lawyers to get charges dismissed. Is there is any precedent for including this type of clause in existing formula store ordinances? I think it is important to include this type of

In conclusion, I am concerned about formula businesses swooping in during these distressed economic times, taking advantage of cheap property and lack of competition. Until we have a coherent, enforceable policy on the books, Fort Bragg is low-hanging fruit for these types of businesses. I strongly encourage the Planning Commission to propose a moratorium on all franchise/formula businesses until such a policy is developed and approved by the City Council.

Leslie Kashiwada, Ph.D.  
Fort Bragg, CA  
kashiwa@mcn.org

### **Articles about Dollar General**

#### **How Dollar Stores Became Magnets for Crime and Killing**

Discount chains are thriving — while fostering violence and neglect in poor communities.



By Alec MacGillis

June 29, 2020 6 a.m. EDT

<https://www.propublica.org/article/how-dollar-stores-became-magnets-for-crime-and-killing?fbclid=IwAR2pjPLkm9Ljpy3rMZY6qnZTGfQi53JyTOxuUF12TGfX36U0s9iMC6T-Lng>

### **How Dollar General Is Transforming Rural America**

December 11, 2017 5:16 AM ET

Heard on [Morning Edition](#)

[https://www.npr.org/2017/12/11/569815331/loving-and-hating-dollar-general-in-rural-america?fbclid=IwAR0\\_ctNeM3Ywy5j2eoahiJs4QycBm3ppf6Uq4QHGWLa30QnjlijYx68rirA](https://www.npr.org/2017/12/11/569815331/loving-and-hating-dollar-general-in-rural-america?fbclid=IwAR0_ctNeM3Ywy5j2eoahiJs4QycBm3ppf6Uq4QHGWLa30QnjlijYx68rirA)

### **Dollar Stores Thriving in COVID Environment**

Dollar stores have been deemed as essential businesses and remained open throughout the pandemic, and as unemployment numbers increase, many households are struggling to make ends meet.

By [Lisa Brown](#) | September 08, 2020 at 03:41 AM

<https://www.globest.com/2020/09/08/dollar-stores-thrive-in-covid-environment/?fbclid=IwAR1wIz9QFCHAJED2HpnYh8yEYNM0DGaHyVAmuhzrDoXFijNVRuoJ21LNQ0&slreturn=20201116220244>

### **Why dollar stores are bad business for the neighborhoods they open in**

They're affordable, but often lack fresh and healthy food—and gut local and independently owned businesses. 12-10-2018

[https://www.fastcompany.com/90278384/why-dollar-stores-are-bad-business-for-the-neighborhoods-they-open-in?fbclid=IwAR37femw2TmyB-Vr32SBMsAmiDAt0ItNayUTwZD0Fsx1C3f5Lvgi7\\_EIP14](https://www.fastcompany.com/90278384/why-dollar-stores-are-bad-business-for-the-neighborhoods-they-open-in?fbclid=IwAR37femw2TmyB-Vr32SBMsAmiDAt0ItNayUTwZD0Fsx1C3f5Lvgi7_EIP14)

### **How Dollar Stores Prey on the Poor**

“Their whole strategy is to go to a neighborhood that has a lot of poor people who don't have access to transportation and can only walk to and from the dollar store.”

by [Michael Sainato](#) October 1, 2019

[https://progressive.org/magazine/dollar-stores-prey-on-the-poor-sainato-191001/?fbclid=IwAR1HkRUjEkaFBDGCMCHP21X9sZhqWcmpCjitTdiJdXULpSJ62mj3II\\_B\\_LY](https://progressive.org/magazine/dollar-stores-prey-on-the-poor-sainato-191001/?fbclid=IwAR1HkRUjEkaFBDGCMCHP21X9sZhqWcmpCjitTdiJdXULpSJ62mj3II_B_LY)

### **Where even Walmart won't go: how Dollar General took over rural America**

As the chain opens stores at the rate of three a day across the US, often in the heart of ‘food deserts’, some see Dollar General as an admission that a town is failing

<https://www.theguardian.com/business/2018/aug/13/dollar-general-walmart-buhler-haven-kansas>

**Gonzalez, Joanna**

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**From:** noreply@granicusideas.com  
**Sent:** Thursday, December 17, 2020 10:39 AM  
**To:** Gonzalez, Joanna  
**Subject:** New eComment for Planning Commission - Via Webinar



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## New eComment for Planning Commission - Via Webinar

Richard Miller submitted a new eComment.

Meeting: Planning Commission - Via Webinar

Item: 20-958 Receive Report and Make Recommendations for Preparation of an Ordinance to Regulate Formula Business to Amend Title 18 of the Fort Bragg Municipal Code [Inland Land Use and Development Code (ILUDC)]

eComment: I oppose the building of a Dollar Store here in Fort Bragg. The employment practices of this company have been well documented as reprehensible. Please do not allow them to build here. Richard Louis Miller, M.A., Ph.D. Clinical PsychologyMindBodyHealthPolitics.org CovidResponseNetwork.net Wikipedia: Dr. Richard Louis MillerWikipedia: Wilbur Hot SpringsPsychedelicMedicineBook.com Psychepedia.org

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