



AGENCY: Planning Commission  
MEETING DATE: January 6, 2021  
DEPARTMENT: City Manager  
PRESENTED BY: Tabatha Miller  
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## 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 Although unpublished so it cannot be relied on as case law, the court there relied heavily on the lengthy preamble section which set forth the nondiscriminatory purposes of the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<sup>6</sup>
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

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<sup>6</sup> Personal services as defined by the City's Land Use and Development Code includes: barber and beauty shops, clothing rental, dry cleaning pick-up stores with limited equipment, home electronics and small appliance repair, laundromats, locksmiths, massage (licensed, therapeutic, nonsexual), pet grooming with no boarding, shoe repair shops, spas and hot tubs for hourly rental, tailors, tanning salons, and tattoo and body piercing services.

- 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.<sup>7</sup>

### 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>8</sup> Despite a number of

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<sup>7</sup> Commissioner Roberts suggested that "and that no such establishment shall project a visual appearance that is homogeneous with its establishments in other communities" be added to the end of required finding d.

<sup>8</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.

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.

**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>9</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)

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<sup>9</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.

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

Malibu, CA Revised (Section 17.61)

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

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>10</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.

<sup>10</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
8. PowerPoint Presentation

**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