



AGENCY: City Council
MEETING DATE: June 28, 2021
DEPARTMENT: City Manager
PRESENTED BY: Tabatha Miller
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AGENDA ITEM SUMMARY

TITLE:

Receive Report and Planning Commission Recommendation, and Provide Direction on Ordinance Regulating Formula Businesses in the Inland Zoning Area

ISSUE:

The City Council discussed regulating formula businesses on October 24, 2019 and February 24, 2020. After the second discussion, the City Council directed staff to bring the matter to the Planning Commission to draft an ordinance that would apply to the Inland area of the City. After delays related to the COVID-19 pandemic, staffing reductions and staff turnover in the Community Development Department, the Planning Commission began working on developing an Ordinance in October 2020. On June 2, 2021, the Planning Commission approved a Resolution (5-0) recommending that the City Council adopt the Formula Business Ordinance, adding Chapter 18.46 Formula Business Regulations to the Inland Land Use and Development Code (ILUDC).

On April 12, 2021, the City Council adopted Urgency Ordinance No. 964-2021 placing a 45-day Moratorium on the Approval of Applications and Permits for Formula Businesses in the Inland Zoning Areas. On the same day, an Urgency Ordinance for a Formula Business Moratorium in the Coastal Zoning Areas failed. On May 24, 2021, the City Council approved an extension of the moratorium for ten months and fifteen days to provide sufficient time to allow the Formula Business Regulations to be finalized, adopted and to become effective. Staff expects that a final ordinance will be adopted prior to April 4, 2022 and that the moratorium can be rescinded early.

Staff is presenting the proposed Ordinance this evening for initial review and direction with the expectation that any changes desired by the City Council will be incorporated and the Ordinance will be scheduled for Public Hearing and introduction on July 12, 2021.

ANALYSIS:

Cities cannot prohibit Formula Businesses within their jurisdictions, but can pass ordinances to impose specific permit requirements to ensure that new Formula Businesses are located in accordance with legitimate land-use and planning goals that support the City's General Plan Policies.

Three elements to consider in structuring a legally defensible formula business ordinance:

- 1) Establish extensive findings on the purpose of the ordinance;
- 2) Establish clear criteria for the issuance of Use Permits regulating the use of the land which treats the class of Formula Businesses equally; and

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3) Make clear connections between the Formula Business regulations and the stated purpose of the ordinance.

Discussion on Proposed Ordinance Language

Section 1. Legislative Findings

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

Section 2. Chapter 18.46 Formula Business Regulations

18.46.010 Purpose.

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

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

18.46.020 Definitions.

Terms and phrases used in the Formula Business Chapter will be codified in Chapter 18.100 reserved for definitions. With the exception of the definition for "Formula Business," which will replace the current definition in the ILUDC, the terms below will only apply to Chapter 18.46 and not the whole ILUDC. This ensures that the intent of another chapter in the ILUDC isn't changed or confused because a term is now defined differently than originally intended. For example, changing the common use of the term to the meaning set forth below.

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

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

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

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

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

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

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

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

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

For definition of **“Signage,”** see definition of **“sign”** § 18.100.020 (S).

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

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

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

18.46.030 Regulations.

Section A below specifically states where Formula Businesses may locate with a Use Permit. Both the Planning Commission and the City Council wavered on whether a Formula Business should be subject to a Minor Use Permit (MUP), a Use Permit (UP)², if some Formula Businesses should be allowed by right, or if some zoning districts should allow Formula Businesses by right. The Planning Commission determined that a Use Permit is

² MUPs are approved or denied by the Community Development Director, while UPs must be approved or denied by the Planning Commission. Public notices of an application for an MUP will state that a decision will be made by the Director by the date specified unless an interested person requests in writing a public hearing. Notice of a pending UP or MUP is provided to property owners within a 300-foot radius by mail, is posted on the property and published in the newspaper at least 10 days before the decision.

the correct level of review, apart from the exceptions in Section 18.46.050 (explained later on).

Regulation B below establishes that Design Review is required when establishing the Formula Business and if making exterior alterations. This is a little redundant in that [Section 18.71.050](#) of the ILUDC establishes the requirements for design review and is comprehensive. However, referencing this requirement in the Formula Business Chapter ensures that prospective new businesses, not familiar with the Code, that qualify as a Formula Business are clearly informed of this requirement. The Planning Commission recognized Design Review and the exterior appearance of Formula Businesses as a significant concern. So much so, that an update of the City's current Design Guidelines grew out of developing this Ordinance.

- A. *A Formula Business Establishment may be allowed in the Commercial Zoning Districts with a Use Permit (UP).*
- B. *Establishment of or exterior alteration of a Formula Business is subject to Design Review as set forth in Section 18.71.050.*

18.46.040 Required Findings for Approval.

When a permit application for a Formula Business comes before the Planning Commission for review, the required findings ensure that the new business is consistent with the intent of the Ordinance and is consistent with the policies, goals and mission of the Inland General Plan. Special findings A, B, C, & D ensure that a Formula Business supports and adds to the vitality of the local economy. Special findings E, F, & G focus on design and ensure that the Formula Business is consistent with the design and aesthetic values of Fort Bragg. Rightfully so, the Planning Commission spent significant time reviewing and revising these required findings.

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

- A. *The Commercial Establishment will add to, rather than detract from, the overall economic and cultural vitality of the City; and*
- B. *The Commercial Establishment will not result in an over-concentration of Formula Business establishments in its immediate vicinity or in the City as a whole; and*
- C. *The Commercial Establishment will complement existing businesses; and*
- D. *The Commercial Establishment will promote diversity and variety to assure a balanced mix of commercial uses to serve both resident and visitor populations; and*
- E. *The Commercial Establishment has been designed to preserve and enhance the City's small town character; and*

- F. *The Commercial Establishment's exterior design limits formula architectural, sign and other components; and*
- G. *The Commercial Establishment's exterior design integrates existing community architectural design features.*

18.46.050 Exemptions.

The Planning Commission invested significant time finding a balance that allowed for some formula business development "by right." Exemptions D, E, and F to the Formula Business regulations create exclusions from the Formula Business Regulations, most importantly the required findings in Section 18.46.040. These exemptions allow Formula Businesses by right, so long as other Use Permit requirements are not triggered. In exchange for the "allowed by right" designation, the City restricts the amount of the square footage occupied by Formula Business. By not allowing the full space in a development to be occupied by Formula Business, additional opportunities exist for non-Formula Business uses which typically require smaller spaces and are locally based. It also encourages much needed housing in Mixed Use Projects.

The Planning Commission originally discussed these exemptions in the context of support for the Central Business District (CBD). As currently written, these exemptions apply to all Commercial Zoning Districts, except Neighborhood Commercial. Staff found the Commissioners' reasoning on the benefits of allowing some Formula Businesses by right, applicable and beneficial to the other Commercial Zoning Districts.

Exemption D allows Formula Businesses "by right" that are no more than 2,000 square feet (sf) in size. The Planning Commission discussed whether 2,000 was the appropriate square footage and reasoned that smaller formula businesses would benefit the City by filling smaller vacant spaces, especially in the CBD, and would not have the same potentially adverse impact of the larger formula businesses. Further, more extensive design review policy in the CBD will protect facades and historic storefronts.

Formula Businesses can also be the source of additional traffic, as patrons seek out the familiar offerings. The limit on parking in the CBD means that patrons may not be able to park right in front of the formula business and may instead need to park a block or more away and walk. Likewise, an individual familiar with a formula business brand may spot that brand in the next block and walk farther into the CBD. Both increase the pedestrian traffic in the CBD and encourage individuals to patronize other businesses along their route.

One possible area of concern with the exemption set at 2,000 sf for formula businesses is that fast food restaurants with small footprints could qualify for the exemption. This is not as much of a concern in the CBD because parking and stricter design review guidelines will likely ensure that a smaller Formula Business, even a fast food restaurant, fits with the character and historical nature of the CBD. Many formula businesses, especially fast food restaurants, depend on ample parking and drive thru service. The historic nature of the CBD limits parking and the space necessary to accommodate a drive thru.

Outside of the CBD, it is a little more likely that a fast food or quick service restaurant could have a negative impact. The chart below shows the average U.S. square footage of several well-known quick service restaurants, all of which are well above 2,000 sf. There are quick service restaurants that operate in smaller spaces but a review of these establishments found they were typically more innovative, specialized, and lesser-known, and as a result more likely to “fit” in Fort Bragg.

Restaurant Chain	Average Square Footage
McDonald’s	4,500
Chick-fil-A	4,200
Burger King	3,500
Arby’s	3,500
Wendy’s	3,000
Chipotle	2,600
Source: www.statista & www.restfinance	

For comparison purposes, the chart below provides the approximate square footage of existing and proposed development in the City of Fort Bragg.

Building	Square Footage
Dry Shed on Mill Site	~70,000
Safeway	~51,700
Rite Aid	~27,000
Proposed Grocery Outlet	~16,150
North Coast Brewery	~15,700
Former Sears Building	~9,800
Proposed Dollar General	~9,000
Floor Store/Holistic Sunshine (retail space only)	~2,960
Starbucks	~2,800
Taco Bell	~2,400
Speedex/Sinclair’s Service Station (as expanded)	~1,800

If concerned with small fast food/quick service restaurants, the City Council could reduce the 2,000 sf limit, only apply the 2,000 sf exemption to the CBD, or specifically exclude fast food/quick service restaurants from the exemption.

Under Exemption E, a formula business or multiple formula businesses combined cannot occupy more than twenty-five percent (25%) of a Mixed Use³ or Retail Complex⁴ project. General Plan Policy LU-4.2 limits commercial development between the Noyo River and

³ Mixed Use Project is a project that combines both commercial and residential uses, where the residential component is typically located above the commercial. Mixed Use Projects can also be located in separate buildings on the same parcel.

⁴ Retail Complex is defined as a primarily retail commercial site with 3 or more separate businesses sharing common pedestrian parking areas.

Puttling Creek Bridges to 50,000 square feet, which means that the largest space available to formula business under this exemption would be 12,500 square feet (25%). It is difficult to imagine a commercial use other than formula business that could feasibly fill the remaining 37,500 sf. City Council has provided guidance on a cannabis cultivation ordinance, which limits cultivation activities to Industrial and Light Industrial districts, so it is unlikely this use will be allowed in Commercial Zoning Districts and therefore, be an option to fill 37,500 sf of big box store space.

Exemption E encourages smaller businesses and balanced development and ensures that anything larger than 12,500 sf with a proposed Formula Business use meets the Special Findings in Section 18.46.040, meaning it is a complementary fit for Fort Bragg. This is consistent with the City's General Plans and the ILUDC which provides certain limits on Big Box Stores.

Under Exemption F, a formula business or businesses can occupy up to thirty-five percent (35%) of a Mixed Use Development project, so long as at least thirty-five percent (35%) of the project is a housing component. This furthers the City Council's goal and the community's need for additional housing at all income levels. Additionally, by limiting the amount of space available to Formula Businesses there is 30% more space available for non-Formula Businesses or additional housing.

Overall, the Planning Commission was concerned with the size and scale of Formula Business stores. Exemptions D, E and F encourage smaller uses on a scale better fitting Fort Bragg and a mix of formula and non-formula businesses.

Exemption G 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.

This Chapter shall not apply to:

- A. *Those land use applications approved prior to the adoption of the Ordinance codified in this chapter;*
- B. *Construction required to comply with fire and/or life safety requirements;*
- C. *Disability accessibility work;*
- D. *A Formula Business that does not exceed 2,000 square feet of gross floor area, except those uses prohibited by Section 18.46.060;*
- E. *Formula Business, which if approved, would not result in Formula Business(es) occupying more than twenty-five percent of the total gross floor area of a Retail Complex or Mixed Use Project, subject to the prohibited uses in Section 18.46.060;*

- F. *A Formula Business, which if approved, would not result in Formula Business(es) occupying more than thirty-five percent of the total gross floor area of a Mixed Use Project in which at least thirty-five percent of total gross floor area is a residential component, subject to the prohibited uses in Section 18.46.060; or*
- G. *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.*

Proposed development that qualifies as an Exemption per D, E, F, or G of this Section is subject to Design Review as provided in Section 18.71.050.

18.46.060 Prohibited Formula Business Uses.

The proposed Ordinance allows Formula Businesses in all Commercial Zoning Districts except Neighborhood Commercial.⁵ The reason for excluding Neighborhood Commercial was the Planning Commission's discussions about protecting residential neighborhoods from larger more impactful retail development. Typically, chain stores generate more traffic, both vehicular and pedestrian. Neighborhood Commercial businesses should serve the local neighborhood and not the broader service area, thus, this zoning use did not seem to be a good fit for Formula Business.

A prohibition on Payday Lending Formula Businesses has also been added to the Ordinance. These businesses are often associated with taking money out of communities and draining resources instead of adding to them. Formula Business versions of this business model have proliferated in the last twenty years and are credited with downward community economic spirals.⁶

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

18.46.070 Burden of Proof.

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

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

⁵ Note there is currently no Office Commercial land use zoned in the Inland Area of Fort Bragg.

⁶ [Controlling the Growth of Payday Lending Through Local Ordinances and Resolutions, October 2012](#)

Community Survey

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

Links to Planning Commission Agenda Items on Formula Business

1. 06-02-2021 Planning Commission Agenda Item:
<https://cityfortbragg.legistar.com/LegislationDetail.aspx?ID=4969275&GUID=8293464C-DC69-425B-ABBF-C29A84008F5C&Options=&Search=>
2. 05-05-2021 Planning Commission Agenda Item:
<https://cityfortbragg.legistar.com/LegislationDetail.aspx?ID=4931044&GUID=D05A39F8-64C5-4386-80A1-3878652A4C5D&Options=&Search=>
3. 02-10-2021 Planning Commission Agenda Item:
<https://cityfortbragg.legistar.com/LegislationDetail.aspx?ID=4791266&GUID=BC2A0%20DF5-7E5B-4B2E-92F5-A2990439AB54&Options=&Search=>
4. 01-6-2021 Planning Commission Agenda Item:
<https://cityfortbragg.legistar.com/LegislationDetail.aspx?ID=4734368&GUID=95%20841ACC-F213-497A-A7C0-5B6B5DD266E6&Options=&Search=>
5. 11-12-2020 Planning Commission Agenda Item:
<https://cityfortbragg.legistar.com/LegislationDetail.aspx?ID=4690413&GUID=86%204E59CA-C811-40B0-A2EA-74FE8B15A4FF&Options=&Search=>
6. 10-14-2020 Planning Commission Agenda Item:
<https://cityfortbragg.legistar.com/LegislationDetail.aspx?ID=4663892&GUID=CF%207C04D6-1EDB-46DE-A786-C6C165DE4242&Options=&Search=>

RECOMMENDED ACTION(S):

Review the Ordinance adding Chapter 18.46 Formula Business Regulations to the Inland Land Use and Development Code (ILUDC) and provide feedback to staff on any revisions or modifications.

FISCAL IMPACT:

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

Occupancy Tax (TOT) is the General Fund’s largest source of revenue.

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

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

GREENHOUSE GAS EMISSIONS IMPACT:

N/A

CONSISTENCY:

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

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

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

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

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

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

Policy LU-4.1 Formula Businesses and Big Box Retail: The location, scale, and appearance of formula businesses and big box retail shall not detract from the economic

vitality of established commercial businesses, and shall be consistent with the small town, rural character of Fort Bragg.

Policy LU-4.2 Large-Scale Commercial Development: To maintain scenic views along Main Street and to ensure that building sizes at the City's gateways are in scale with the community, no commercial building shall exceed the following limitations on the gross floor area: a) between the Noyo River and Pudding Creek Bridges - maximum 50,000 square feet b) east of Highway One and north of Pudding Creek Bridge - maximum 30,000 square feet.

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

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

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

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

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

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

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

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

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

Central Business District Frontage and Façade Standards

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

The following policy regulates formula design:

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

IMPLEMENTATION/TIMEFRAMES:

If the Ordinance is introduced on July 12, 2021 and adopted on July 26, 2021, it would become effective August 25, 2021.

ATTACHMENTS:

1. Proposed Ordinance
2. Planning Commission Resolution
3. Current Zoning Map

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**