

April 6, 2016

To: Yachats Planning Commission

From: Larry Lewis, City Planner

Re: FORMULA BUSINESS REGULATIONS

The City Council and the Planning Commission have recently discussed a concern about ‘formula businesses’ establishing in Yachats that would result in an adverse impact to the village character of the city. This memorandum provides a summary of the issue and provides example language from five cities that have implemented formula business regulations*.

SUMMARY

A growing number of cities are enacting policies that restrict the proliferation of “formula businesses” – stores and restaurants that have standardized services, décor, methods of operation, and other features that make them virtually identical to businesses elsewhere.

Many formula retailers and restaurant are increasingly locating in downtown business districts. Once formula businesses arrive, it is not uncommon to see additional formula businesses. This sometimes leads to a “squeezing out” of independent businesses, and can result in a transformation (change in character) of a downtown district.

This can have long-term economic consequences as the downtown district loses its distinctive appeal and no longer offers opportunities for independent entrepreneurs. Low-margin businesses that meet the basic needs of the neighborhood and city may be pushed out as the area attracts more formula restaurants and stores. Additionally, a concern is that formula businesses tend to be fair-weather friends and can disappear quickly when the economy contracts or their corporate strategy shifts.

To prevent and mitigate these problems, some cities have adopted ordinances that prohibit formula businesses, cap their total number, or require that they meet certain conditions in order to open. A ban on formula businesses does not prevent a chain business from coming in, but it does require the business to be distinct – in name, operations, and appearance – from all of its other outlets. There are a few examples of a chain complying with a formula business ordinance by opening a unique outlet, however they often refuse to veer from their cookie-cutter formula and opt not to open.

If a city chooses to enact a formula business ordinance, there are legal issues that need to be addressed. A city should articulate within the ordinance, the public purposes the law will serve and specify how the restrictions will fulfill those purposes. This is key to crafting a sound ordinance that will not be susceptible to legal challenges. The ordinance should reference the city’s comprehensive plan and goals within the plan that formula business restrictions will help to fulfill. These commonly include:

- Maintaining the unique character of the community and the appeal of the downtown area,

* This summary and examples are extracted from the Institute for Local Self-Reliance.

- Protecting the community’s economic vitality by ensuring a diversity of businesses with sufficient opportunities for independent entrepreneurs,
- Fostering businesses that serve the basic needs of the city, rather than those oriented toward tourists or regional shoppers.

EXAMPLE REGULATIONS

Example formula business regulations from different cities are provided below. These are not the complete regulations for each of the cities however they do provide various examples of regulations that have been implemented.

Carmel, CA

In the mid-1980’s this city became the first in the country to enact a formula restaurant ban, which prohibits fast food, drive-in and formula food establishments. In Carmel, a business is considered a formula restaurant if it is “required by contractual or other arrangements to offer standardized menus, ingredients, food preparation, employee uniforms, interior décor, signage or exterior design,” or “adopts a name, appearance or food presentation format which causes it to be substantially identical to another restaurant regardless of ownership or location.”

Calistoga, CA

1. Add to the Definitions Section 17.04, 17.04.132 Business, Formula to read as follows:

“Formula Business” shall mean a business which is required by contractual or other arrangement to maintain any of the following : standardized services, decor, uniforms, architecture, signs or other similar features. This shall include but not be limited to retail sales and service, visitor accommodations, wholesale and industrial operations.

2. Add to the Definitions Section 17.04, Section 17.04.616 Restaurant, Formula to read as follows:

“Formula Restaurant” shall mean a restaurant devoted to the preparation and offering of food and beverage for sale to the public for consumption either on or off the premises and which is required by contractual or other arrangement to offer any of the following: standardized menus, ingredients, food preparation, decor, uniforms, architecture, or similar standardized features.

WHEREAS, the City Council has now amended the City’s General Plan Policy and Program Document including policies pertaining to the quality of life desired in Calistoga by maintaining a friendly, slow-paced, rural, small town atmosphere and further detailing policies aimed at reinforcement of the downtown as the commercial and cultural center of the community; and

WHEREAS, the City Council finds that these policies are necessary to preserve the unique and historic character of Calistoga’s downtown commercial district, including regulating the aspect of businesses, services and merchandise that is reflective of the

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history and people of the community and which has become a cornerstone of the visitor industry which is a key component in the City's economy; and

WHEREAS, the City Council further finds that certain formula business establishments, e.g. formula food businesses do not reflect the unique character of the community and desired aesthetic ambience of the commercial areas of the city in that they offer rushed, ready made meals from formula menus identical to similarly decorated units located in other communities and thus cannot contribute to the established uniqueness which the Council finds necessary to maintain a viable visitor industry in Calistoga; and

WHEREAS, the City Council further finds that the scale and design of improvements of existing development is an important factor in the overall aesthetic character of the community and that refinements in the City's Zoning Ordinance are necessary to insure that new development is in scale and in harmony with Calistoga; and

WHEREAS, the City Council has considered the importance of the pace of change in the non-residential sector of the community in order to maintain the character of Calistoga as well as the ongoing vitality and viability of the existing historic downtown commercial district.

Sanibel, FL

WHEREAS, the City of Sanibel was created in large part to allow the planning for the orderly development of an island community known far and wide for its unique atmosphere and unusual natural environment and to insure compliance with such planning so that these unique and natural characteristics of the island shall be preserved; and

WHEREAS, the City and island's unique character, consisting of large wildlife and preservation areas, quiet beaches and passive relaxation opportunities, supported by the Sanibel Plan, the Beach Management Plan, the Land Development Code and all ordinances of the City, is not only important for its own sake, but is also in a sense Sanibel's stock in trade; and

WHEREAS, the City has undertaken to write a Vision Statement which reflects the public's desire to remain a small town community, remain unique through a development pattern which reflects the predominance of natural conditions and characteristics over human intrusions, and avoid "auto-urban" development influences; and

WHEREAS, the same characteristics which make Sanibel Island unique and desirable as a place in which to live and which to visit, place it in danger of losing its uniqueness and desirability; and

WHEREAS, one of the threats to Sanibel's uniqueness and natural relaxed atmosphere is the potential proliferation of "formula" restaurants; and

WHEREAS, such types of restaurants diminish the unique character of the island by offering standardization of architecture, interior design and decor, uniforms and the like;

110) Formula restaurant. An eating place that is one of a chain or group of three (3) or more establishments and which satisfies at least two of the following three descriptions:

- a. it has the same or similar name, tradename, or trademark as others in the chain or group;
- b. it offers either of the following characteristics in a style which is distinctive to and standardized among the chain or group:
 1. exterior design or architecture;
 2. uniforms, except that a personal identification or simple logo will not render the clothing a uniform;
 3. it is a fast food restaurant.

York, ME

One excerpt... York has retained a large concentration of historic buildings and locally owned businesses, and that the town's unique character is important to York's "collective identity as a community."

Winslow, WA (Bainbridge Island)

In 1989, after a public hearing in which comment was overwhelmingly opposed to additional formula take-out food restaurants, the city council adopted an ordinance prohibiting such businesses on the grounds that they "are automobile rather than pedestrian-oriented businesses" and the city's comprehensive plan "calls for pedestrian orientation and a village atmosphere."

WHEREAS, as a result, the City Council of the City of Winslow, Washington, now finds that formula take-out food restaurants represent a type of business that is automobile-oriented or of a particular nature that the existence of one such restaurant in the High School Road zone is a sufficient maximum number of that use for the village character of Winslow to be preserved. That other or additional restaurants of that type in all zones should not be permitted hereafter; that expansion in number of such establishments should be disallowed entirely in order to establish at this time, an optimal mix of pedestrian-oriented and other kinds of commercial and retail establishments; that to preclude further development of such restaurants in a town of this size prevents commercial overconcentration of automobile-oriented businesses and of that type of retail service establishment and will provide for smaller neighborhood-style pedestrian and other kinds of retail outlets to best serve the varied needs of Winslow residents and consumers.