

ADMINISTRATIVE CODE

EXAMPLES:

Formula Fast Food Restaurants &

Formula Retail

August 16, 2007

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Formula Fast Food

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VILLAGE OF PORT JEFFERSON: Formula Fast Food

Chapter 250: ZONING

[HISTORY: Adopted by the Board of Trustees of the Village of Port Jefferson as Ch. 80 of the 1970 Code; readopted 12-15-1991 by L.L. No. 2-1991. Amendments noted where applicable.]

ARTICLE IV Word Usage and Definitions

§ 250-9. Definitions.

Unless otherwise expressly stated, the following terms shall, for the purpose of this chapter, have the meanings herein indicated:

BAR — A counter or a structure at which alcoholic beverages are served and/or consumed and at which food may be served. [Added 4-4-1984 by L.L. No. 3-1984]

EATING AND DRINKING ESTABLISHMENT — Any establishment wherein food and/or beverages are sold at retail to casual, seated patrons for consumption at tables and chairs located inside the building or on the premises in a permitted area outside the building. [Amended 3-13-1978 by L.L. No. 10-1978; 5-5-1982 by L.L. No. 2-1982; 4-4-1984 by L.L. No. 3-1984; 8-16-1993 by L.L. No. 2-1993; 3-25-1996 by L.L. No. 3-1996]

FLOOR AREA — The sum of the gross horizontal areas of the several floors of the buildings on a lot, measured from the exterior faces of exterior walls or from the center line of party walls separating two buildings, including cellar and basement areas not used for storage or for the operation and maintenance of the building.

FLOOR AREA RATIO — The floor area in square feet of all buildings on a lot, divided by the area of such lot in square feet.

FORMULA FAST FOOD ESTABLISHMENT [Added 6-26-2000 by L.L. No. 10-2000]

- A. An establishment required by contractual or other arrangements to offer some or all of the following:
- (1) Standardized menus, ingredients, food preparation, decor, external facade and/or uniforms.
 - (2) Preprepared food in a ready-to-consume state.
 - (3) Sold over the counter in disposable containers and wrappers.
 - (4) Selected from a limited menu.
 - (5) For immediate consumption on or off the premises.
 - (6) Where the customer pays before eating.

B. This definition does not include eating and drinking or retail food establishments.

HEIGHT, BUILDING — The vertical distance measured from the average finished grade at the front of the building exterior wall to the highest point of the roof for flat and mansard roofs and to the mean height between eave and ridge for other types of roofs. This definition does not apply to "detached garages," which is defined in the preceding definition, which contains a fifteen-foot maximum height and describes the method by which garage height is to be measured. [Amended 7-11-2005 by L.L. No. 4-2005]

RETAIL FOOD ESTABLISHMENT — Any establishment wherein food, food products and/or beverages are sold at retail to casual patrons for consumption off the premises and/or for consumption at counters and stools on the premises. [Added 8-16-1993 by L.L. No. 2-1993; amended 3-25-1996 by L.L. No. 4-1996]

WALK-UP WINDOW — Includes an opening or aperture, such as, but not limited to a sliding or removable window, door or building panel, through which business is conducted from inside a building to patrons or customers located outside the building. [Added 9-26-1984 by L.L. No. 6-1984]

ARTICLE V District Use Regulations

§ 250-18. Central Commercial C-1 District. Editor's Note: See also the Bulk and Parking Regulations located at the end of this chapter.

In a Central Commercial C-1 District, no building or premises shall be used and no building or part of a building shall be erected which is arranged, intended or designed to be used, in whole or in part, for any purpose except as listed below, and all such uses will be subject to site plan approval in accordance with § 250-52 hereof.

H. Formula fast food establishments are prohibited in the Central Commercial C-1 District. [Added 6-26-2000 by L.L. No. 10-2000]

§ 250-19. General Commercial C-2 District. Editor's Note: See also the Bulk and Parking Regulations located at the end of this chapter.

In a General Commercial C-2 District, no building or premises shall be used and no building shall be erected which is arranged, intended or designed to be used, in whole or in part, for any purpose except those listed below, and all such uses shall be subject to site plan approval in accordance with § 250-52 hereof.

B. (2) Formula fast food establishments are prohibited in the General Commercial C-2 District. [Added 6-26-2000 by L.L. No. 10-2000]

§ 250-22. Marina-Waterfront MW District

In a Marina-Waterfront MW District, no building or premises shall be used and no building or part of a building shall be erected which is arranged, intended or designed to be used, in whole or in part, for any purpose except as listed below, and all such uses shall be subject to site plan approval in accordance with § 250-52 hereof.

H. Formula fast food establishments are prohibited in the Marina Waterfront MW District. [Added 6-26-2000 by L.L. No. 10-2000]

TOWN OF SOUTHOLD: Formula Food Restaurant

Chapter 280: ZONING

[HISTORY: Adopted by the Town Board of the Town of Southold 4-9-1957; amended in its entirety 11-23-1971. Amendments noted where applicable.]

ARTICLE I General Provisions

§ 280-4. Definitions. [Amended 7-31-1973]

B. Definitions and usages. Unless otherwise expressly stated, the following terms shall, for the purpose of this chapter, have the meanings as herein defined. Any word or term not noted below shall be used with a meaning as defined in Webster's Third New International Dictionary of the English Language, unabridged (or latest edition). [Amended 10-26-1976 by L.L. No. 5-1976; 4-11-1978 by L.L. No. 2-1978; 2-1-1983 by L.L. No. 2-1983; 1-21-1986 by L.L. No. 1-1986; 5-17-1988 by L.L. No. 14-1988; 8-23-1988 by L.L. No. 20-1988; 1-10-1989 by L.L. No. 1-1989]

RESTAURANT — Any premises other than take-out or formula food restaurants where food is commercially sold for on-premises consumption to patrons seated at tables or counters. [Amended 5-16-1994 by L.L. No. 9-1994]

RESTAURANT, FORMULA FOOD — A restaurant business required by contractual or other arrangements to offer standardized menus, ingredients, food preparation, decor, external facade or uniforms. [Added 5-16-1994 by L.L. No. 9-1994]

RESTAURANT, TAKE-OUT — Any establishment other than a formula food restaurant, whose principal business is the sale of foods, frozen desserts or beverages to the customer in a ready-to-consume state, usually served in paper, plastic or other disposal containers, for consumption within the restaurant building, elsewhere on the premises or for carryout for consumption off the premises. [Amended 5-16-1994 by L.L. No. 9-1994]

ARTICLE IX Limited Business (LB) District [Added 1-10-1989 by L.L. No. 1-1989 Editor's Note: This local law also repealed former Art. VIII, C Light Industrial District, as amended. ; amended 5-9-1989 by L.L. No. 6-1989; 8-1-1989 by L.L. No. 5-1989; 11-29-1994 by L.L. No. 26-1994; 2-7-1995 by L.L. No. 3-1995; 8-22-1995 by L.L. No. 18-1995; 10-19-1999 by L.L. No. 14-1999]

§ 280-41. Use regulations.

In the LB District, no building or premises shall be used and no building or part of a building shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any uses except the following:

A. Permitted uses. The following uses are permitted uses. All permitted uses except single-family and owner-occupied two-family residences require site plan approval.

- (5) Restaurants, except drive-in restaurants or formula restaurants.

ARTICLE X Hamlet Business (HB) District [Added 1-10-1989 by L.L. No. 1-1989 Editor's Note: This local law also repealed former Art. IX, C-1 General Industrial District, as amended.]

§ 280-45. Use regulations. [Amended 5-9-1989 by L.L. No. 6-1989; 12-12-1989 by L.L. No. 23-1989; 7-31-1990 by L.L. No. 16-1990; 5-16-1994 by L.L. No. 9-1994; 11-26-1994 by L.L. No. 26-1994; 2-7-1995 by L.L. No. 3-1995; 10-17-1995 by L.L. No. 21-1995; 5-6-2003 by L.L. No. 10-2003]

In the HB District, no building or premises shall be used and no building or part of a building shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any uses except the following:

- A. Permitted uses. The following are permitted uses and, except for those uses permitted under Subsection A(1), (2), (3) and (20) hereof, are subject to site plan approval by the Planning Board: [Amended 4-20-2004 by L.L. No. 11-2004]
- (8) Restaurants, excluding formula food and take-out restaurants.
- B. Uses permitted by special exception by the Board of Appeals. The following uses are permitted as a special exception by the Board of Appeals as hereinafter provided, except Subsection B(10), which may be permitted as a special exception by the Planning Board, and all such special exception uses shall be subject to site plan approval by the Planning Board: [Amended 6-20-2006 by L.L. No. 8-2006]
- (9) Takeout and formula food restaurants, subject to the following requirements:
- (a) Adequate parking shall be provided in accordance with that required by Article XVIII, Parking and Loading Areas, of this chapter. All parking spaces shall be located within reasonable walking distance of the site or 300 feet, whichever is less. The improvement or development of municipal parking may be used to satisfy this requirement. The adequacy of municipal parking shall be determined by the Planning Board as part of its site plan review procedure by conducting a parking survey of the capacity of the existing municipal parking area to accommodate the projected increase in usage due to the introduction of the subject land use.
- (b) An assessment of the potential traffic impacts of the proposed use must accompany the long environmental assessment form. The appropriate mitigation measures must be incorporated into the site plan.
- (c) There shall be no counter serving outdoor traffic via a drive-in, drive-through, drive-up, drive-by or walk-up window or door.
- (d) Exterior signage shall conform in all respects to Article XIX, Signs, of this chapter and, further, may not be lit from within.
- (e) Advertisements, including trademark logos, may not be affixed, painted or glued onto the windows of the business or onto any exterior structures, including waste disposal receptacles and flags.
- (f) The physical design, including color and use of materials, of the establishment shall be compatible with and sensitive to the visual and physical characteristics of other buildings, public spaces and uses in the particular location.

ARTICLE XI General Business (B) District [Added 1-10-1989 by L.L. No. 1-1989 Editor's Note: Editor's Note: This local law also repealed former Art. X, Tourist Camps, Camp Cottages and Trailers.]

§ 280-48. Use regulations. [Amended 5-9-1989 by L.L. No. 6-1989; 8-1-1989 by L.L. No. 15-1989; 8-13-1991 by L.L. No. 19-1991; 7-13-1993 by L.L. No. 11-1993; 5-16-1994 by L.L. No. 9-1994; 11-29-1994 by L.L. No. 26-1994; 12-27-1994 by L.L. No. 30-1994; 2-7-1995 by L.L. No. 3-1995; 10-17-1995 by L.L. No. 21-1995; 11-19-2002 by L.L. No. 7-2002; 5-6-2003 by L.L. No. 9-2003]

In the B District, no building or premises shall be used and no building or part thereof shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any uses except the following:

- B. Uses permitted by special exception by the Board of Appeals. The following uses are permitted as a special exception by the Board of Appeals as hereinafter provided, except Subsection B(17), which may

be permitted as a special exception by the Planning Board, and all such special exception uses shall be subject to site plan approval by the Planning Board. [Amended 6-20-2006 by L.L. No. 8-2006]

- (15) Formula food restaurants located within a shopping center in this zone, subject to the following requirements:
- (a) There must be sufficient parking as provided for by the Article XVIII, Parking and Loading Areas, of this chapter, and such parking area shall be available within the shopping center site to accommodate the use.
 - (b) The operation of the establishment shall not create traffic problems.
 - (c) There shall be no counter serving outdoor traffic via a drive-in, drive-through, drive-up, drive-by or a walk-up window or door.
 - (d) Exterior signage shall conform in all respects to Article XIX, Signs, of this chapter and, further, may not be lit from within.
 - (e) Advertisements, including trademark logos, may not be affixed, painted or glued onto the windows of the business or onto any exterior structure, including waste disposal receptacles and flags.
 - (f) The signage must conform to the existing color theme and signage style of the shopping center.
 - (g) The existing exterior architectural style of the shopping center building may not be altered or modified in any way to accommodate the proposed use.
 - (h) The use must be located within the shopping center's main primary building complex and may not be located within a single freestanding structure within the shopping center site.

ARTICLE XVIII Parking and Loading Areas [Added 1-10-1989 by L.L. No. 1-1989]

§ 280-78. Off-street parking areas.

- A. Off-street parking spaces, open or enclosed, are permitted accessory to any use specified below. Any land which is developed as a unit under single ownership and control shall be considered a single lot for the purpose of these parking regulations. Reasonable and appropriate off-street parking requirements for structures and uses which do not fall within the categories listed below shall be determined by the Planning Board upon consideration of all factors entering into the parking needs of each use. For those uses not specified in the schedule, there shall be a periodic monitoring of off-street parking conditions to ensure that the purpose of this article is satisfied. In addition, the Planning Board may waive all or a portion of these requirements within the Hamlet Business District where it shall find that municipal parking facilities within 300 feet of the proposed use will adequately serve the proposed use.

Type of Use

Required Number of Parking Spaces

Restaurant, drive-in, curb service take-out or formula food floor space, whichever is greater

1 space per 2 seats or 1 space per 50 square feet of gross floor space, whichever is greater
[Amended 5-16-1994 L.L. No. 9-1994]

TOWN OF SOUTHAMPTON: Fast-Food Restaurant

Chapter 330: ZONING

[HISTORY: Adopted by the Town Board of the Town of Southampton as Ch. 69 of the 1979 Code; amended in its entirety 3-27-1984 by L.L. No. 1-1984. Editor's Note: Section 1, Legislative Findings, dealing with the purposes and goals of this legislation, is on file in the office of the Town Clerk. Amendments noted where applicable.]

ARTICLE I General Provisions

§ 330-5. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

DRIVE-THROUGH OR DRIVE-IN ESTABLISHMENT — An establishment wherein the sale of goods or delivery of services is provided directly to patrons while seated in automobiles which are located on the premises, but not including drive-in restaurants. [Added 10-6-2000 by L.L. No. 15-2000]

RESTAURANT, DRIVE-IN — An establishment serving food or drink wherein the service, such as the ordering, delivery or payment, is performed by a carhop, waiter or waitress located outside the confines of a building, to patrons seated in a stationary automobile parked on the premises, and where such consumption is allowed, encouraged or permitted on the premises. [Added 10-6-2000 by L.L. No. 15-2000]

RESTAURANT, DRIVE-THROUGH OR DRIVE-THRU — An establishment where food or drink is served from within an enclosed building, to patrons seated in automobiles located outside the confines of the building, for immediate consumption, and where all or part of such consumption occurs outside the confines of the building or off the premises. [Added 10-6-2000 by L.L. No. 15-2000]

RESTAURANT, FAST-FOOD — An establishment in which food is pre-prepared and sold over a counter in disposable containers and wrappers, selected from a limited menu for immediate consumption on or off the premises, and where there are two or more cashier stations available to patrons. [Added 10-6-2000 by L.L. No. 15-2000]

RESTAURANT, STANDARD [Added 10-23-1990 by L.L. No. 27-1990; amended 10-6-2000 by L.L. No. 15-2000]

- A. An establishment where food or drink are prepared and served within an enclosed building, and predominantly consumed by customers seated at tables on the premises, and shall not include drive-in, drive-through or fast-food restaurants, take-out restaurants or bars, taverns or nightclubs.
- B. Bar and lounge areas serving beverages shall be accessory to the principal restaurant use. The gross floor area devoted to an accessory bar or lounge area shall constitute no more than 1/4 of the total gross floor area of the dining area.

RESTAURANT, TAKE-OUT — An establishment serving food or drink prepared and served within an enclosed building and sold over a counter for immediate consumption primarily off the premises, and which has a customer service area limited to four tables or space for no more than 15 customers to eat within the establishment at one time, seated or otherwise, including delicatessens, lunch counters, luncheonettes and ice cream and pizza parlors, but excluding fast-food restaurants, drive-in or drive-through restaurants, fast-food restaurants or bars, taverns or nightclubs. [Added 10-6-2000 by L.L. No. 15-2000]

TOWN OF ISLIP: Fast-Food Restaurant

Chapter 68: Zoning

§ 68-3. Word usage and definitions.

B. Definitions.

RESTAURANT, FA ST-FOOD — Any establishment whose principal business is the sale of foods and or beverages in ready-to-consume individual servings, for consumption either inside or outside the restaurant building or for carry-out, and whose design or method of operation includes a drive-up or drive through service or offers curbside service. [Added 4-8-1997]

§ 68-308. Area density.

F. The minimum required plot area for a car wash (motor vehicle wash), motor vehicle dealership or fast-food restaurant shall be 40,000 square feet. [Added 4-8-1997]

§ 68-180.4. Permitted uses. [Amended 1-4-1994]

A. In a Downtown District Primary Development Zone, no building, structure or premises shall be so erected or altered, except for one of the following uses:

- (2) Restaurant, luncheonette or cafe, including those with dancing and entertainment or outside service on the premises, but excluding drive-in or carry-out restaurants.

TOWN OF EAST HAMPTON: Supermarket/Superstore

Chapter 255, ZONING

ARTICLE I, General Provisions

§ 255-1-20. Definitions.

SUPERMARKET -- Any retail store, operation or enterprise in which food, beverages and household goods constitute the predominant goods offered for sale, and which retail store, operation or enterprise occupies a combined gross floor area of 10,000 square feet or more, whether housed in all or part of a single building or in all or parts of multiple buildings. For the purposes of this definition, a retail business housed in multiple buildings on the same lot or on adjacent lots shall be considered a single retail store, operation or enterprise, if the business or businesses within the individual buildings are owned, operated or controlled by a single entity, either directly or through affiliates. Compare "superstore." [Added 10-18-1996 by L.L. No. 17-1996; amended 10-19-1999 by L.L. No. 27-1999]

SUPERSTORE -- Any retail store, operation or enterprise, which retail store, operation or enterprise has a combined gross floor area of 10,000 square feet or more, whether housed in all or part of a single building or in all or parts of multiple buildings. For the purposes of this definition, a retail business housed in multiple buildings on the same lot or on adjacent lots shall be considered a single retail store, operation or enterprise, if the business or businesses within the individual buildings are owned, operated or controlled by a single entity, either directly or through affiliates. In addition, any building whose gross floor area equals or exceeds 10,000 square feet shall be considered a "superstore" if it contains one or more retail stores, including supermarkets, even if the building also contains a use or uses not classified as retail stores. See "retail store" and "supermarket." [Added 10-18-1996 by L.L. No. 17-1996; amended 10-19-1999 by L.L. No. 27-1999]

ARTICLE V, Special Permit Uses

§ 255-5-50. Specific standards and safeguards.

SUPERMARKET [Added 10-18-1996 by L.L. No. 17-1996]:

- (1) No building which is occupied in whole or part by a use classified hereunder as "supermarket" shall have a gross floor area which exceeds 25,000 square feet. [Amended 10-19-1999 by L.L. No. 27-1999]
- (2) Required parking shall be located primarily to the sides or rear of the building, and not between the store and adjacent streets. Absent unusual circumstances, such as topographical constraints, a lot with multiple street frontages, or the need to buffer adjoining residential property from the parking lot, no more than 20% of the area of required parking shall be located between the store and the adjacent streets.
- (3) One or more outdoor storage trailers may be permitted in connection with a supermarket, provided that the trailer or trailers are necessary to the operation of the supermarket and that site plan approval is obtained therefor. Any such trailers shall be suitably screened by landscaping or other methods acceptable to the Planning Board. The Planning Board shall eliminate or minimize to the greatest degree practicable any noise impacts associated with the trailers (e.g., noise from refrigeration units) through the location of the trailers and/or the use of noise baffles.

SUPERSTORE [Added 10-18-1996 by L.L. No. 17-1996]:

- (1) No building which constitutes a superstore under the provisions of this chapter may have a gross floor area which exceeds 15,000 square feet, unless said building also contains a use which is classified

hereunder as "supermarket." In the latter case, the building shall be regulated by the provisions of this chapter which apply to supermarkets. [Amended 10-19-1999 by L.L. No. 27-1999]

TOWN OF SOUTHOLD: Retail Store

Chapter 280: ZONING

[HISTORY: Adopted by the Town Board of the Town of Southold 4-9-1957; amended in its entirety 11-23-1971. Amendments noted where applicable.]

ARTICLE I General Provisions

§ 280-4. Definitions. [Amended 7-31-1973]

B. Definitions and usages. Unless otherwise expressly stated, the following terms shall, for the purpose of this chapter, have the meanings as herein defined. Any word or term not noted below shall be used with a meaning as defined in Webster's Third New International Dictionary of the English Language, unabridged (or latest edition). [Amended 10-26-1976 by L.L. No. 5-1976; 4-11-1978 by L.L. No. 2-1978; 2-1-1983 by L.L. No. 2-1983; 1-21-1986 by L.L. No. 1-1986; 5-17-1988 by L.L. No. 14-1988; 8-23-1988 by L.L. No. 20-1988; 1-10-1989 by L.L. No. 1-1989]

BUILDING — A structure wholly or partially enclosed within exterior walls, or within exterior and party walls, and a roof, affording shelter to persons, animals or property. [Amended 11-12-1997 by L.L. No. 26-1997; 12-8-1998 by L.L. No. 27-1998]

BUILDING AREA — The aggregate of the maximum horizontal cross section of the buildings on a lot, measured between the exterior faces of walls.

(1) The term "building area" shall include the following:

- (a) Balconies.
- (b) Terraces, patios, decks and other structures above the finished grade.
- (c) Swimming pools, tennis courts and other similar structures.

(2) The term "building area" shall exclude the following:

- (a) Cornices, eaves, gutters, chimneys and fireplaces, projecting not more than 28 inches from exterior walls.
- (b) Steps and open porches, projecting not more than five feet from exterior walls and having an area of not more than 30 square feet.
- (c) First-story bay windows projecting not more than three feet from exterior walls and exterior cellar doors projecting not more than six feet from exterior walls.

FLOOR AREA — The sum of the gross horizontal areas of all floors of the building or buildings on a lot, having a clear height of not less than six feet measured from the exterior faces of exterior walls or from the center line of party walls separating two buildings, including cellar and basement areas. The "floor area" shall not include roof overhangs projecting less than three feet or any floors or portions thereof contained on terraces or balconies projecting beyond the exterior face of the building.

FLOOR AREA RATIO — The floor area in square feet of all buildings on a lot divided by the area of such lot in square feet.

RETAIL STORE — An enclosed structure where goods are offered for sale to the public as take-out items, including hardware, drugs, food and beverages, furnishings, apparel and similar products. Minor repair services within the establishment may be undertaken as part of product sales.

SHOPPING CENTER — A group of retail and service businesses which have an integrated architectural and site design and which have an anchor tenant consisting of either a supermarket or a

department store if the anchor tenant encompasses a minimum of 25,000 square feet of area. [Added 5-16-1994 by L.L. No. 9-1994]

ARTICLE IX Limited Business (LB) District [Added 1-10-1989 by L.L. No. 1-1989 Editor's Note: This local law also repealed former Art. VIII, C Light Industrial District, as amended. ; amended 5-9-1989 by L.L. No. 6-1989; 8-1-1989 by L.L. No. 5-1989; 11-29-1994 by L.L. No. 26-1994; 2-7-1995 by L.L. No. 3-1995; 8-22-1995 by L.L. No. 18-1995; 10-19-1999 by L.L. No. 14-1999]

§ 280-41. Use regulations.

In the LB District, no building or premises shall be used and no building or part of a building shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any uses except the following:

- A. Permitted uses. The following uses are permitted uses. All permitted uses except single-family and owner-occupied two-family residences require site plan approval.
 - (2) Retail businesses complementary to the rural and historic character of the surrounding area, limited to the following:
 - (b) Wholesale or retail sale and accessory storage and display of garden materials and plants, including nursery operations, provided that the outdoor storage or display of plants and materials does not obstruct pedestrian flow or vehicular traffic and does not occur within three feet of the property line.
- B. Uses permitted by special exception by the Board of Appeals. The following uses are permitted as a special exception by the Board of Appeals as hereinafter provided and are subject to site plan approval by the Planning Board:
 - (2) Contractors' businesses or yards, including but not limited to building, electrical and plumbing yards.

ARTICLE X Hamlet Business (HB) District [Added 1-10-1989 by L.L. No. 1-1989 Editor's Note: This local law also repealed former Art. IX, C-1 General Industrial District, as amended.]

§ 280-45. Use regulations. [Amended 5-9-1989 by L.L. No. 6-1989; 12-12-1989 by L.L. No. 23-1989; 7-31-1990 by L.L. No. 16-1990; 5-16-1994 by L.L. No. 9-1994; 11-26-1994 by L.L. No. 26-1994; 2-7-1995 by L.L. No. 3-1995; 10-17-1995 by L.L. No. 21-1995; 5-6-2003 by L.L. No. 10-2003]

In the HB District, no building or premises shall be used and no building or part of a building shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any uses except the following:

- A. Permitted uses. The following are permitted uses and, except for those uses permitted under Subsection A(1), (2), (3) and (20) hereof, are subject to site plan approval by the Planning Board: [Amended 4-20-2004 by L.L. No. 11-2004]
 - (7) Retail stores, up to a maximum of 6,000 total square feet of gross floor area in any building (excluding unfinished basement and attic areas), notwithstanding the provisions of the Bulk Schedule for Business, Office and Industrial Districts. Editor's Note: The Bulk Schedule for Business, Office and Industrial Districts is included at the end of this chapter. Such retail stores greater than 3,000 total square feet shall comply with the retail building standards for HB Districts listed below, in addition to the site plan requirements of this chapter:
 - (a) Building massing and facade treatment.
 - [1] Variation in massing.

- [a] A standardized building mass shall be prohibited. For the purposes of this subsection, the term "standardized" shall include an array of articulated elements, layout, design, logos or similar exterior features that have been applied to four or more retail buildings nationwide.
 - [b] Exterior building walls facing side yards shall include materials and design characteristics consistent with those on the front of the building.
- [2] Building walls that face public streets, connecting pedestrian walkways, or adjacent development shall meet the following standards:
- [a] Facades shall be subdivided and proportioned using features such as windows, entrances, arcades, arbors, awnings, trellises with vines, or alternate architectural detail that defines human scale, along no less than 60% of the facade.
 - [b] To maintain the "Main Street" character in the Hamlet Centers, where practical, buildings shall be sited with a zero or minimum setback from the front property line or primary pedestrian walkways and be transparent between the height of three feet and eight feet above the grade of the walkway for no less than sixty 60% of the horizontal length of the building facade.
- [3] Awnings.
- [a] Awnings shall be no longer than a single storefront.
 - [b] Fabric awnings and canvas awnings with a matte finish are permitted. Awnings with high-gloss finish and illuminated, plastic awnings are prohibited.
- [4] Customer entrances. Buildings shall have clearly defined, highly visible customer entrance(s) featuring no fewer than three of the following:
- [a] Canopies or porticos;
 - [b] Overhangs;
 - [c] Recesses/Projections;
 - [d] Arcades;
 - [e] Raised corniced parapets over the door;
 - [f] Peaked roof forms;
 - [g] Arches;
 - [h] Outdoor patios;
 - [i] Display windows;
 - [j] Architectural detail such as tile work and moldings integrated into the building structure and design; or
 - [k] Integral planters or wing walls that incorporate landscaped areas and/or places for sitting.
- [5] Buildings containing a drive-through or drive-up window are prohibited.
- (b) Building materials.
- [1] All buildings should be constructed or clad with materials that are durable, economically maintained, and of a quality that will retain their appearance over time, including, but not limited to, natural or synthetic stone; brick; stucco; integrally colored, textured, or glazed concrete masonry units or glass.

- [2] Exterior building materials shall not include the following:
 - [a] Smooth-faced gray concrete block, painted or stained concrete block, unfinished tilt-up concrete panels;
 - [b] Field-painted or pre-finished standard corrugated metal siding;

(c) Signage.

- [1] Advertisements, including trademark logos and service marks, may not be affixed, painted or glued onto the windows of the business or onto any exterior structures, including waste disposal receptacles and flags.
- [2] Florescent and backlit signs located within or on a building or structure and facing an exterior public space are prohibited.

(d) Site design.

- [1] The principal building entrance shall face the primary street frontage and/or sidewalk where practical.
- [2] New construction along primary pedestrian walkways within the Hamlet Centers shall have a zero or minimum setback from the sidewalk/front property line, whenever possible, to reinforce the "Main Street" street wall.

(e) Off-street parking.

- [1] Off-street parking shall not be located in the front yard between the front facade of the building(s) and the primary abutting street. Parking areas must be located in the side and rear yards of the building. Adequate parking shall be provided in accordance with that required by Article XVIII of this chapter of the Town of Southold Town Code.
- [2] Parking areas shall be screened from adjacent properties, streets and public sidewalks, pursuant to § 280-95, Landscaped parking area.

- (22) Grocery stores up to a maximum of 25,000 square feet of gross floor area, exclusive of unfinished basements or attic areas, notwithstanding the provisions of the bulk schedule. [Added 6-20-2006 by L.L. No. 8-2006]

B. Uses permitted by special exception by the Board of Appeals. The following uses are permitted as a special exception by the Board of Appeals as hereinafter provided, except Subsection B(10), which may be permitted as a special exception by the Planning Board, and all such special exception uses shall be subject to site plan approval by the Planning Board: [Amended 6-20-2006 by L.L. No. 8-2006]

- (10) Retail stores in excess of 6,000 total square feet of gross floor area in any building, up to a maximum of 12,000 total square feet of such gross floor area in any building (excluding unfinished basement and attic areas), subject to the following requirements: [Added 6-20-2006 by L.L. No. 8-2006]

(a) Compliance with the retail building standards listed below, in addition to the site plan requirements of this chapter.

- [1] Building massing and facade treatment.

- [a] Variation in massing.

- [i] A standardized dominant building mass shall be prohibited. For the purposes of this subsection, the term "standardized" shall include an array of architectural elements, layout, design, logos or similar exterior features that have been applied to four or more retail buildings nationwide.

- [ii] Exterior building walls facing side yards shall include materials and

design characteristics consistent with those on the front of the building.

[iii] Building walls that face public streets, connecting pedestrian walkways, or adjacent development shall meet the following standards:

[A] Facades shall be subdivided and proportioned using features such as windows, entrances, arcades, arbors, awnings, trellises with vines, or alternate architectural detail that defines human scale, along no less than 60% of the facade.

[B] To maintain the "Main Street" character in the Hamlet Centers, where practical, buildings shall be sited with a zero or minimum setback from the front property line or primary pedestrian walkways and be transparent between the height of three feet and eight feet above the grade of the walkway for no less than 60% of the horizontal length of the building facade.

[C] Buildings shall achieve architectural variation through the inclusion of architectural features such as columns, ribs or pilasters, piers, changes in wall planes and changes in texture or materials consistent with the architecture of adjacent buildings and community character.

[b] Awnings.

[i] Awnings shall be no longer than a single storefront.

[ii] Fabric awnings and canvas awnings with a matte finish are permitted. Awnings with high-gloss finish and illuminated, plastic awnings are prohibited.

[c] Customer entrances. Buildings shall have clearly defined, highly visible customer entrance(s) featuring no fewer than three of the following:

[i] Canopies or porticos;

[ii] Overhangs;

[iii] Recesses/Projections;

[iv] Arcades;

[v] Raised corniced parapets over the door;

[vi] Peaked roof forms;

[vii] Arches;

[viii] Outdoor patios;

[ix] Display windows;

[x] Architectural detail such as tile work and moldings integrated into the building structure and design; or

[xi] Integral planters or wing walls that incorporate landscaped areas and/or places for sitting.

[d] Buildings containing a drive-through or drive-up window are prohibited.

[2] Building materials.

[a] All buildings should be constructed or clad with materials that are durable, economically maintained, and of a quality that will retain their appearance over

time, including, but not limited to, natural or synthetic stone; brick; stucco; integrally colored, textured, or glazed concrete masonry units or glass.

- [b] Exterior building materials shall not include the following:
- [c] Smooth-faced gray concrete block, painted or stained concrete block, unfinished tilt-up concrete panels;
- [d] Field-painted or pre-finished standard corrugated metal siding.

[3] Signage.

- [a] Advertisements, including trademark logos and service marks, may not be affixed, painted or glued onto the windows of the business or onto any exterior structures, including waste disposal receptacles and flags.
- [b] Florescent and backlit signs located within or on a building or structure and facing an exterior public space are prohibited.

[4] Site design.

- [a] The principal building entrance shall face the primary street frontage and/or sidewalk where practical.
- [b] New construction along primary pedestrian walkways within the Hamlet Centers shall have a zero or minimum setback from the sidewalk/front property line, whenever possible, to reinforce the "Main Street" street wall.

[5] Off-street parking.

- [a] Off-street parking shall not be located in the front yard between the front facade of the building(s) and the primary abutting street. Parking areas must be located in the side and rear yards of the building. Adequate parking shall be provided in accordance with that required by Article XVIII of this chapter of the Town of Southold Town Code,
- [b] Parking areas shall be screened from adjacent properties, streets and public sidewalks, pursuant to § 280-95, Landscaped parking area.

(b) The Planning Board shall determine that the proposed retail store(s) will not have an undue adverse impact on the community. In making such a determination, the Planning Board shall conduct or hire a consultant to conduct a Market and Municipal Impact Study, at the expense of the applicant. The study shall be completed within 90 days of receipt of all requested materials, and the applicant shall be afforded the opportunity to submit its own such study. The Planning Board shall make such determination within 30 days of its receipt of the study. Such study shall include an analysis of the projected impact of the retail store(s) on:

- [1] The existing local retail market, including market shares, if applicable.
- [2] The supply and demand for local retail space.
- [3] Local wages, benefit and employment.
- [4] Revenues retained within the local economies of the Town of Southold.
- [5] Public service and facilities costs.
- [6] Public revenues.
- [7] Impacts on municipal taxes.
- [8] Impacts of property values in the community.

- [9] Effects on retail operations in the surrounding market area.
- [10] Employee housing needs, if applicable.
- [11] The Town of Southold's ability to implement its Comprehensive Plan consistent with the proposed project.

ARTICLE XI General Business (B) District [Added 1-10-1989 by L.L. No. 1-1989 Editor's Note: Editor's Note: This local law also repealed former Art. X, Tourist Camps, Camp Cottages and Trailers.]

§ 280-48. Use regulations. [Amended 5-9-1989 by L.L. No. 6-1989; 8-1-1989 by L.L. No. 15-1989; 8-13-1991 by L.L. No. 19-1991; 7-13-1993 by L.L. No. 11-1993; 5-16-1994 by L.L. No. 9-1994; 11-29-1994 by L.L. No. 26-1994; 12-27-1994 by L.L. No. 30-1994; 2-7-1995 by L.L. No. 3-1995; 10-17-1995 by L.L. No. 21-1995; 11-19-2002 by L.L. No. 7-2002; 5-6-2003 by L.L. No. 9-2003]

In the B District, no building or premises shall be used and no building or part thereof shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any uses except the following:

A. Permitted uses. The following uses are permitted uses and, except for those uses permitted under Subsection A(1), (12) and (13) hereof, are subject to site plan approval by the Planning Board:

(2) Any permitted use set forth in and regulated by § 280-91A(3) to (22) of the Hamlet Business District, except Subsection A(7) as applicable in the Business District is herein modified as follows: [Amended 6-20-2006 by L.L. No. 8-2006]

(a) Retail stores, up to a maximum of 8,000 total square feet of gross floor area in any building (excluding unfinished basement and attic areas), notwithstanding the provisions of the Bulk Schedule for Business, Office and Industrial Districts. Editor's Note: The Bulk Schedule for Business Office and Industrial Districts is included at the end of this chapter. Such retail stores greater than 4,000 total square feet shall comply with the retail building standards for B Districts listed below, in addition to the site plan requirements of this chapter.

[1] Building massing and facade treatment.

[a] Variation in massing.

[i] A standardized building mass shall be prohibited. For purposes of this subsection, the term "standardized" shall include an array of architectural elements, layout, design, logos or similar exterior features that have been applied to four or more retail buildings nationwide.

[ii] Exterior building walls facing side yards shall include materials and design characteristics consistent with those on the front of the building.

[iii] Building walls that face public streets, connecting pedestrian walkways, or adjacent development shall meet the following standards:

[A] Facades shall be subdivided and proportioned using features such as windows, entrances, arcades, arbors, awnings, trellises with vines, or alternate architectural detail that defines human scale, along no less than 60% of the facade.

[b] Awnings.

[i] Awnings shall be no longer than a single storefront.

[ii] Fabric awnings and canvas awnings with a matte finish are permitted. Awnings with high-gloss finish and illuminated, plastic awnings are

prohibited.

- [c] Customer entrances. Retail buildings shall have clearly defined, highly visible customer entrance(s) featuring no less than three of the following:
 - [i] Canopies or porticos;
 - [ii] Overhangs;
 - [iii] Recesses/Projections;
 - [iv] Arcades;
 - [v] Raised corniced parapets over the door;
 - [vi] Peaked roof forms;
 - [vii] Arches;
 - [viii] Outdoor patios;
 - [ix] Display windows;
 - [x] Architectural detail such as tile work and moldings integrated into the building structure and design; or
 - [xi] Integral planters or wing walls that incorporate landscaped areas and/or places for sitting.

[d] Buildings containing a drive-through or drive-up window are prohibited.

[2] Building materials.

- [a] All primary buildings should be constructed or clad with materials that are durable, economically maintained, and of a quality that will retain their appearance over time, including, but not limited to, natural or synthetic stone; brick; stucco; integrally colored, textured, or glazed concrete masonry units or glass.
- [b] Exterior building materials shall not include the following:
 - [i] Smooth-faced gray concrete block, painted or stained concrete block, unfinished tilt-up concrete panels.
 - [ii] Field-painted or pre-finished standard corrugated metal siding.

[3] Signage.

- [a] Advertisements, including trademark logos and service marks, may not be affixed, painted or glued onto the windows of the business or onto any exterior structures, including waste disposal receptacles and flags.
- [b] Florescent and backlit signs located within or on a building or structure and facing an exterior public space are prohibited.

[4] Site design.

- [a] The principal building entrance shall face the primary street frontage and/or sidewalk where practical.

[5] Off-street parking.

- [a] No greater than 30% of the off-street parking spaces provided for all uses contained in the development's building(s) shall be located between the front facade of the building(s) and the primary abutting street. Adequate parking shall

be provided in accordance with that required by Article XVIII of this chapter of the Town of Southold Town Code.

[b] Parking areas shall be screened from adjacent properties, streets and public sidewalks, pursuant to § 280-95, Landscaped parking area.

- (3) Wholesale businesses, private warehousing and public warehousing, and building material storage and sale, but excluding storage of coal, coke, fuel oil or junk.
- (4) Building, electrical and plumbing contractors' businesses or yards.
- (6) Wholesale or retail sale and accessory storage and display of garden materials, supplies and plants, including nursery operations, provided that the outdoor storage or display of plants and materials does not obstruct pedestrian flow or vehicular traffic and does not occur within three feet of the property line.

ARTICLE XIV Light Industrial Park/Planned Office Park (LIO) District [Added 1-10-1989 by L.L. No. 1-1989 Editor's Note: This local law also repealed former Ch. 100, Art. XIII, Site Plan Approval, as amended. For current provisions, see Art. XXIV, Site Plan Approval.]

§ 280-58. Use regulations.

In the LIO District, no building or premises shall be used and no building or part of a building shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any purpose except the following:

- A. Permitted uses. The following uses are permitted uses and, except for those uses permitted under Subsection A(1) hereof, are subject to site plan approval by the Planning Board: [Amended 5-9-1989 by L.L. No. 6-1989; 11-29-1994 by L.L. No. 26-1994; 4-28-1997 by L.L. No. 6-1997]
- (3) Wholesale businesses, private warehousing and public warehousing, and building material storage and sale, but excluding storage of coal, coke, fuel oil or junk. [Amended 11-19-2002 by L.L. No. 7-2002]
 - (4) Building, electrical and plumbing contractors' businesses or yards.

ARTICLE XV Light Industrial (LI) District [Added 1-10-1989 by L.L. No. 1-1989]

§ 280-62. Use regulations.

In the LI District, no building or premises shall be used and no building or part of a building shall be erected or altered which is arranged, intended or designed to be used, in whole or in part, for any purpose except the following:

- A. Permitted uses. The following uses are permitted uses and, except for those uses permitted under Subsection A(1) and (2) hereof, are subject to site plan approval by the Planning Board: [Amended 5-9-1989 by L.L. No. 6-1989; 11-29-1994 by L.L. No. 26-1994; 4-28-1997 by L.L. No. 6-1997]
- (3) Wholesale businesses, private warehousing and public warehousing, and building material storage and sale, but excluding storage of coal, coke, fuel oil or junk. [Amended 11-19-2002 by L.L. No. 7-2002]
 - (4) Contractors' businesses or yards, including but not limited to building, electrical, plumbing, and landscapers' yards. [Amended 1-20-2004 by L.L. No. 4-2004]

ARTICLE XVIII Parking and Loading Areas [Added 1-10-1989 by L.L. No. 1-1989]

§ 280-78. Off-street parking areas.

- A. Off-street parking spaces, open or enclosed, are permitted accessory to any use specified below. Any land which is developed as a unit under single ownership and control shall be considered a single lot for the purpose of these parking regulations. Reasonable and appropriate off-street parking requirements for structures and uses which do not fall within the categories listed below shall be determined by the Planning Board upon consideration of all factors entering into the parking needs of each use. For those uses not specified in the schedule, there shall be a periodic monitoring of off-street parking conditions to ensure that the purpose of this article is satisfied. In addition, the Planning Board may waive all or a portion of these requirements within the Hamlet Business District where it shall find that municipal parking facilities within 300 feet of the proposed use will adequately serve the proposed use.

Type of Use

Required Number of Parking Spaces

Retail shop or store, other than those listed herein At least 1 per 200 square feet of gross floor area

§ 280-79. Off-street loading areas.

Off-street loading berths, open or enclosed, are permitted accessory to any use (except one- or two-family residences), subject to the following provisions:

- A. Uses for which required. Accessory off-street loading berths shall be provided for any use specified below. Any land which is developed as a unit under single ownership and control shall be considered a single lot for the purpose of such loading requirements.
- (3) For buildings with offices and retail sales and service establishments: one berth for 5,000 to 25,000 square feet of floor area, and one additional berth for each additional 25,000 square feet of floor area or fraction thereof to be used.



Combating 'Sameness' with a Formula Business Ordinance

By Stephen Svete, AICP



Planwest

"Arcata's plaza area is the focal point of the community and the setting that generated the initial concerns about formula restaurants and their intrusion into a local historic district"—MIKE MULLEN, ARCATA, CALIFORNIA, PLANNING PROGRAM MANAGER

Among the articles of faith that many urban planners hold as self-evident is that land-use planning is a truly local endeavor. Many even espouse that a town's general plan can influence quality of life through land-use regulation. This theory has been at the crux of the New Urbanist argument for revamping development codes.

But a funny thing happened on the way to urban design perfection—American-style corporate capitalism. The plethora of the chain coffee houses, stores, and restaurants devouring space in the neo town centers—the very projects that collect awards at APA conferences—are at risk of turning these developments into carbon copies of one another. The result is not a new type of community at all, but simply a new version of a shopping mall, ultimately controlled by the same corporations that controlled the old ones. And while the vast majority of municipalities are still thrilled when Starbucks takes up residence in their downtowns or their revamped suburban centers, there is a small but interesting posse of cities that are going a different direction.

These towns—call them anti-formula business towns—have raised the bar on development, transcending the typical discussion about facade treatment and sales tax revenues. They have the vision of remaining a place that cannot be replicated; safeguarding a community where retailers and hoteliers—like residents—are unique to that place, and where the geography is somewhere. They are forwarding that vision through the use of the police power of zoning to tackle deeper issues of community economics and social ecology.

The Shame of Same

In the last decade, other progressive efforts at supporting independent establishments and fighting formula businesses have taken root around the nation. The Boulder Independent Business Alliance (BIBA), a membership-supported nonprofit

organization in Boulder, Colorado, with a sustainable mission of "strengthening and supporting locally owned independent businesses" has supported Boulder County's local businesses since 1998 with joint marketing, consumer and policymaker education programs, and more.

Community economists in Ithaca, New York, devised a local currency system with a "regional boundary [to] keep local wealth re-circulating within the community." Since 1991, the program has grown to involve some 950 merchants and services. Called Ithaca HOURS, the currency is the equivalent to the average hourly wage in Tompkins County—\$10.

HOURS notes buy plumbing, carpentry, electrical work, roofing, nursing, chiropractic, childcare, car and bike repair,

... about this article.

Join us online!

From April 14-25 go online to participate in our "Ask the Author" forum, an interactive feature of *Zoning News*. Stephen Svete, AICP, will be available to answer questions about this article. Go to the APA website at www.planning.org and follow the links to the "Ask the Author" section. From there, just submit your questions about the article using an e-mail link. The author will reply, posting the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of *Zoning News* at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA *Zoning News* webpages.

ASK THE AUTHOR



Calistoga's Formula Business Ordinance gives independent establishments a chance to provide community services and entertainment uses.

food, firewood, gifts, and thousands of other goods and services. A local credit union accepts them for mortgage and loan fees. People also pay rent through the HOURS system. Local restaurants, cinemas, bowling alleys, and grocery stores accept HOURS, as do farmers market vendors, a local hospital, the chamber of commerce, and more than 350 businesses.

But the most powerful technique is the use of zoning authority to regulate against the corporate formula. This issue of *Zoning News* examines the anti-formula land-use provisions in two California communities and seeks to determine their applicability elsewhere.

The planning arguments against formula businesses are not rooted exclusively in a zealous attachment to community identity and physical form. To employ a formula business ordinance means to deepen the understanding of community-based economics. According to Stacy Mitchell, a researcher for the Minneapolis-based Institute for Local Self-Reliance (ILSR) and author of *The Hometown Advantage*, locally owned businesses strengthen a community's economic health because they spend locally for the support services that corporate chains tend to centralize in regional headquarter locations. The

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argument goes that when a local bookseller goes out of business after the opening of a chain retailer such as Barnes & Noble, the effects are more far-reaching than simply shutting the doors and terminating the employees. Local accountants, printers, bankers, and advertisers that were patronized by the local bookseller also suffer financial losses. Barnes & Noble and other large chain retailers typically do not patronize local businesses for support services.

Although the trend to respond to the adverse effects of the powerful growth of formula businesses may provide a hopeful sign to those who value increased community engagement in civic life, such efforts remain a relatively isolated activity, bucking national trends in American retailing. According to Mitchell, more than 13,000 local pharmacies have closed their doors since 1990. As of 2002, independent bookstores accounted for less than 15 percent of book sales, a decline from 58 percent in 1972. Neighborhood hardware stores also are in jeopardy, as recent data shows Home Depot and Lowe's capturing one-third of the hardware goods market. The effect of these trends is readily observable on the American landscape. Empty downtown storefronts and declining first-generation suburban shopping centers are as common in the small town and city streetscape as massive power centers are on the urban periphery. It is perhaps a reaction to these depressing scenes that has moved opponents of this pattern to action.

The most powerful tool for corporate zoning control is the formula business ordinance. Formula businesses are those all-too-familiar establishments with common signage, uniform-clad employees, and corporate doctrines. Formula business ordinances take regulation to a new level, going beyond the typical zoning restrictions directed at some problem businesses, such as size restriction ordinances used to regulate big-box retail operations.

Calistoga

The small Napa Valley town of Calistoga, California, has the broadest formula business ordinance of those discussed in this article, with provisions for retail, restaurant, and lodging establishments. An original version was passed in 1995 and updated in 2001. Calistoga associate planner, Jo Noble, defends the ordinance, "In 1995, there were rumors of a pending application by a fast-food chain. The planning commission asked staff to explore how such businesses could be restricted from locating here. We do well with the mom-and-pop businesses, and tourists come here for that reason—to escape the Burger Kings and Carl's Juniors." Noble says that Calistoga moved quickly when the specter of the chain businesses presented itself. "The planning commission was very active in crafting the actual language. It is targeted to protect both restaurants and lodging establishments." Excerpts from the Calistoga Formula Business Ordinance state as follows:

Formula businesses often create a bland, unattractive built environment where cars rule,



Michael Davidson

Michael Davidson

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 polices 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 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 the 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 ensure 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.

Definitions:

"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.

"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.

Uses Allowed:

Uses requiring use permits:

- Formula business operations of uses otherwise allowed in Section 17.22.020-A but not including formula restaurants or formula visitor accommodations.
- Structures, or multiple structures in a single development in excess of 20,000 square feet of gross floor area.
- Parking lots, or multiple parking lots in a single development in excess of 50 parking spaces.

Prohibited Uses:

- Formula restaurants.
- Formula visitor accommodations.

town centers suffer, and the sense of community is lost.



Shannon Armstrong

Noble says the ordinance has been a huge success in building community pride, with countless other communities inquiring about the ordinance. "We have been able to protect our identity, which has in turn bolstered our tourist industry," Noble says, adding that the ordinance is now widely viewed as a model.

Arcata

Arcata, California, also has made recent attempts at regulating formula businesses, targeting only restaurants in a unique quota-style fashion. An isolated Redwood Coast college town, Arcata has a long history of progressive community policy. "There are nine formula restaurants in Arcata, and the ordinance does not permit any more to open here," says Mike Mullen, Arcata's planning program manager. Adopted in July 2002, the ordinance allows a new formula restaurant to come to town, but only if an existing one leaves:

The number of formula restaurants in Arcata shall be limited to nine (9) establishments from the date of the adoption of this ordinance. A new formula restaurant shall only be allowed if it replaces an existing formula restaurant in one of the following business districts: Janes Road [1], Northtown [1], Uniontown [2], and Valley West/Giuntoli Lane [5]. The allowed number of formula restaurants per business district has been indicated in the brackets, and replacement formula restaurants are allowed within the business district boundaries as identified in Attachment 1. All other business districts, as labeled in Attachment 1, shall not allow formula restaurants.

Arcata's definition for formula restaurant differs slightly from the Calistoga definition:

A retail establishment primarily devoted to the on-site 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, signs or similar standardized features and which causes it to be substantially identical to more than eleven other restaurants regardless of ownership or location.

What makes Arcata's ordinance particularly interesting is its genesis—rooted in the anti-globalization movement. In 2000, Arcata amended its municipal code to create a committee on "democracy and corporations." The committee is charged with presenting options to the city council on how Arcata can "control pattern restaurants from moving into downtown areas" and "to cooperate with other communities that are working on socially responsible investing." Mullen cites the work of the New Rules Project, another ILSR venture, as the philosophical anchor of the new Formula Restaurant Limitation Ordinance. At a practical level, he says the point is to protect Arcata's eating and drinking establishments, which are the driving force behind the city's economy. He says that during the five public hearings leading up to the adoption of the ordinance, speakers generally were counted three-to-one in favor. "In the 22 years and four states that I have worked in as a planner, developing and crafting the Formula Restaurant Limitation Ordinance has to be one of the most intriguing projects to land on my desk," says Mullen. So far, no legal challenges have come forward in either Arcata or Calistoga.

A Formula Business Ordinance Trend?

Will the anti-globalization movement sweep the rest of California and the nation and push communities to adopt formula business ordinances? Maybe. But Mullen says no other communities in Humboldt County are expected to follow

SELECTED SECTIONS OF THE SAN FRANCISCO, CALIFORNIA, REQUIREMENT FOR A CONDITIONAL USE PERMIT PROCESS SPECIFIC TO COFFEEHOUSES IN THE NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT

SEC. 722.1. NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT

North Beach's eating, drinking, and entertainment establishments remain open into the evening to serve a much wider trade area and attract many tourists. The balance between neighborhood-serving convenience stores and citywide specialty businesses has shifted gradually, as some convenience stores have been replaced by bakeries, ice cream parlors, and restaurants. . . The North Beach District controls are designed to ensure the livability and attractiveness of North Beach . . . Small-scale, neighborhood-serving businesses are strongly encouraged.

SEC. 722. NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE, SPECIFIC PROVISIONS FOR THE NORTH BEACH NEIGHBORHOOD COMMERCIAL DISTRICT NORTH BEACH SPECIALTY RETAIL USES

Controls: Retail coffee stores defined pursuant to Code § 790.102(n) [editor's note: see below] are not permitted without conditional use authorization except to the extent qualifying as specialty grocery permitted pursuant to § 790.102(b) [editor's note: see below]

SEC. 790.102. SALES AND SERVICES, OTHER RETAIL.

A retail use which provides goods and/or services but is not listed as a separate zoning category in zoning category numbers .41 through .63 listed in Article 7 of this Code, including, but not limited to, sale or provision of the following goods and services:

- (b) **Specialty groceries** such as cheese, confections, coffee, meat, produce;
- (n) **Retail coffee stores.** As used herein, retail coffee store means,
 - (1) A retail drinking use which provides ready-to-drink coffee and/or other nonalcoholic beverages for consumption on or off the premises, which may or may not provide seating. Its intended design is not to serve prepared ready-to-eat food for consumption on or off the premises, except where a conditional use is granted for an exception in the West Portal NCD pursuant to the "Specific Provisions for the West Portal District." Such use exhibits the following characteristics:
 - (A) Contains no more than 15 seats with no more than 400 square feet of floor area devoted to seating,
 - (B) A limited menu of beverages prepared on the premises and able to be quickly prepared for consumption on or off the premises,

- (C) Beverages served in disposable or non-disposable containers for consumption on or off the premises,
- (D) Beverages are ordered and served at a customer service counter,
- (E) Beverages are paid for prior to consumption,
- (F) Public service area, including queuing areas and service counters, which counters are designed specifically for the sale and distribution of beverages;
- (G) Beverages are available upon a short waiting time,
- (H) Equipment to prepare beverages for consumption,
- (I) Limited amount of non-prepackaged food goods may be served, such as pastries or similar goods,
- (J) No on-site food preparation, and no equipment to cook or reheat food or prepare meals other than that connected to beverage preparation, except where a conditional use is granted for an exception in the West Portal NCD pursuant to the "Specific Provisions for the West Portal District."
- (K) Coffee beans, tea, syrups, herbs and other beverage-based products and equipment to make and/ or reconstitute beverages or consume coffee, tea and/ or other beverages may be sold.

It may include any use permitted for specialty grocery, as defined in Section 790.102(b), but if so, such use shall not include accessory take-out food activity, as described in Section 703.2(b)(1)(C) of this Code, except to the extent permitted by this Subsection 790.102(n). It is distinct and separate from a small self-service or large fast-food restaurant, as defined in Section 790.90 and 790.91 of this Code, or a full-service restaurant as defined in Section 790.92 of this Code.

- (2) It shall be conducted in accordance with the following conditions:
 - (A) All debris boxes shall be kept in enclosed structures,
 - (B) The operator shall be responsible for cleaning the sidewalk in front of or abutting the building to maintain the sidewalk free of paper or other litter during its business hours, in accordance with Article 1, Section 34 of the San Francisco Police Code,
 - (C) Noise and odors shall be contained within the premises so as not to be a nuisance to nearby residents or neighbors.

Arcata's lead. Still, there is some evidence that concern is growing about the effects of corporate retailing on local economies. For example, in nearby blue-collar Eureka, the county seat and the largest city in Humboldt County, city leaders are developing an ordinance that would require an economic impact review for new retail establishments of more than 40,000 square feet. Chris Kerrigan, a councilperson elected shortly after Eureka citizens defeated a 1999 rezoning action promoted by Wal-Mart, says "We've spent millions and more than a decade trying to turn our downtown around. We need to protect that investment."

But the transferability of zoning protection from Main Street to the rest of America remains problematic. San Francisco's Jim Davis, chief planner in that city's neighborhood planning unit, says that numerous attempts to pass similar local business protection and anti-corporate laws in the progressive Bay Area metropolis have

failed. The strongest protections that San Francisco has been able to muster is a 1999 requirement for a conditional use permit process specific to coffeehouses in North Beach, a measure that appears to be targeting the Starbucks chain.

If a trend exists, this creative foray into land-use rulemaking may prove most successful in communities that meet a unique set of geographic and social criteria—those that are relatively small in size with tourism-based economies and progressive-thinking citizens. Regardless of the isolation of the formula business ordinance trend, communities with them are showing how zoning powers can address vexing problems. Anti-formula towns have taken a giant leap toward understanding urban form by acknowledging the correlation between the built environment—either on Main Street or at town's edge—and the social and economic problems that manifest as a result of it. In so doing, formula business ordinances are more than basic urban design protections. They protect community values.

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