



## MEMORANDUM

**TO:** City Council

**FROM:** Brian Pedrotti, Community Development Director

**SUBJECT:** Introduction of an Ordinance Amending Section 16.04.070 of Chapter 4 of Title 16 of the Arroyo Grande Municipal Code Regarding the Definition of Formula Business and Finding That This Action is Exempt from Review Under the CEQA

**DATE:** February 13, 2024

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### **SUMMARY OF ACTION:**

Introduction of a proposed ordinance amending Title 16 of the Arroyo Grande Municipal Code ("AGMC") regarding the definition of a Formula Business and finding that this action is exempt from review under CEQA. Introducing the ordinance will allow for adoption at a future City Council meeting following this noticed public hearing.

### **IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:**

No financial impact is projected.

### **RECOMMENDATION:**

Introduce, read by title only, and waive further reading of an Ordinance amending Section 16.04.070 of the Arroyo Grande Municipal Code regarding the definition of a Formula Business and finding the Ordinance exempt from the California Environmental Quality Act (CEQA) because the Ordinance has no potential to result in either a direct, or reasonably foreseeable indirect, physical change in the environment (State CEQA Guidelines, §§ 15060, subd. (b)(2)-(3), 15378).

### **BACKGROUND:**

#### Adoption of Original Ordinance

In March of 2005, in response to public comment, the City Council directed staff to research and propose formula business restrictions applicable to the Village Core Downtown (VCD) and Village Mixed Use (VMU) districts of Arroyo Grande's Historic Character Overlay zone (the "Village") commercial area. On April 26, 2005, the City Council held a study session to discuss proposals to regulate formula businesses, also called chain businesses, and asked staff to return with an ordinance prohibiting formula businesses in the vicinity of the Village. Upon approval by the City Council, the 2005 Ordinance identified that "*the potential proliferation of formula businesses would diminish*

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*the unique character of the VCD and VMU/HCO districts by offering standardization of architecture, interior design and décor, uniforms and the like, and which are required to be virtually identical to other such businesses in other communities.”* Specifically, the Ordinance prohibited formula businesses in the VCD and Village Mixed Use/Historic Character Overlay (VMU/HCO) districts (see **Figure 1** below). Collectively, the VCD and VMU/HCO may be referred to as the “Village” throughout this report.

**Figure 1: VCD and VMU Zoning Districts**



The Ordinance provided the following definition for a formula business:

**“Formula business”**. Shall mean a business, limited to retail trade uses and restaurants, that is required by contractual or other arrangement to maintain standardized services and the same or similar name, tradename, or trademark which causes it to be substantially identical to six (6) or more other establishments, regardless of ownership or location, and which satisfies one of the following two criteria:

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- a. It has exterior design or architecture, signs, décor or similar features in a style which is distinctive to and standardized among the chain or group;
- b. It is a fast-food restaurant.

The definition above is limited to retail trade uses and restaurants and excludes other businesses such as offices and hotels or inns. Additionally, the definition adopted sets the threshold for other similar establishments to six, which is more restrictive than other jurisdictions, as discussed below.

#### Revisiting the Ordinance

In 2023, the City received an application for a new ice cream shop in the VCD in the space previously occupied by Doc Bernstein's. Staff was tasked with researching whether the ice cream shop qualified as a "formula business." At the time of application, staff identified five similar ice cream stores and concluded that it did not meet the six-location threshold of a formula business. However, the City Council expressed concern that similar establishments might be prohibited under the City's current zoning regulations, causing staff to revisit whether the six-establishment threshold was too low.

On May 23, 2023, based on the above concerns, the City Council directed staff to review the definition of "Formula Business" in the AGMC and return at a study session to provide analysis as to whether to revise the definition.

#### City Council Study Session

On [October 10, 2023](#), the City Council held a study session to discuss potential revisions to the regulations related to formula businesses. Staff provided a staff report outlining the purpose of the current definition, examples from other jurisdictions with similar restrictions on formula businesses, and potential revisions. The City Council's discussion included topics such as types of uses that would fall into the definition of formula business, non-conforming uses, and an increase in the number of establishments to be considered a formula business. Ultimately, the City Council directed staff to return with an amendment to the definition of formula business, including (1) an increase to the six-establishment threshold, (2) that the definition apply to all business types, and (3) the removal of the two criteria in the definition.

#### Planning Commission

On [January 16, 2024](#), the Planning Commission held a public hearing and recommended that the City Council approve the Ordinance amendment as proposed.

## ANALYSIS OF ISSUES:

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Per the discussion above, the AGMC includes a definition of a formula business and identifies that these are prohibited in the Village. The current definition of a Formula Business is inclusive of both of the following:

1. A retail trade or restaurant business, **and**
2. Is required by contractual or other arrangement to maintain standardized services and the same or similar name, tradename, or trademark which causes it to be substantially identical to six (6) or more other establishments, regardless of ownership or location.

In addition to these two criteria, the definition goes on to say that in order to qualify as a formula business, the business must meet **one** of the two following additional criteria:

- It has exterior design or architecture, signs, décor or similar features in a style which is distinctive to and standardized among the chain or group, or
- It is a fast-food restaurant.

Based on a strict reading of this language, if a business meets the first two criteria and is a fast-food restaurant, it qualifies as a formula business and is prohibited in the Village regardless of its exterior design or architecture, signs, décor or similar style features. Non-fast-food restaurants (i.e., sit-down restaurants), however, could potentially be allowed in the Village if they met the first additional criteria. In other words, if the non-fast-food restaurant managed to alter its exterior design or architecture, signs, décor or similar features so that it ceased to be distinctive to and standardized among the chain or group, it would no longer qualify as a formula business and could be allowed.

#### Proposed Revisions

**Expansion to all Businesses.** Currently, the definition of formula business is limited to retail and restaurant establishments. The proposed revisions remove those categories, expanding the definition of formula business to any type of business in the Village.

**Qualifying Criteria.** The current definition specifies that to be a formula business, the establishment must use “exterior design or architecture, signs, décor or similar features in a style which is distinctive to and standardized among the chain or group” or be a fast-food restaurant. These current criteria would allow a formula business, such as a sit-down restaurant, to locate within the Village if they altered their architecture, signs, décor, etc. to be distinctive. The proposed revisions remove these criteria, thereby closing the “loophole” that would allow such formula businesses in the Village since the City’s goal is to have unique businesses in its historic core.

**Number of Locations.** A business that has more than six (6) locations is considered a formula business under the current definition. The proposed amendment increases this

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number to ten (10) locations, to strike a balance between maintaining the charm and character of the Village without imposing restrictions on property owners that make it difficult to find tenants for vacant commercial spaces. Ten (10) locations is a commonly used threshold in other jurisdictions like the cities of Sonoma and Malibu. Staff contacted these agencies, and it was determined that setting the number at 10 has allowed these jurisdictions to maintain their identity without stifling economic development.

The proposed ordinance reads as follows:

**“Formula business”**. Shall mean a business, ~~limited to retail trade uses and restaurants,~~ that is required by contractual or other arrangement to maintain standardized services and the same or similar name, tradename, or trademark which causes it to be substantially identical to ~~six (6)~~ ten (10) or more other establishments at the time of application submittal, regardless of ownership or location., ~~and which satisfies one of the following two criteria:~~

- a. ~~It has exterior design or architecture, signs, décor or similar features in a style which is distinctive to and standardized among the chain or group;~~
- b. ~~It is a fast food restaurant.~~

#### Legally Non-conforming

If the definition of formula business is amended as proposed, it would expand to uses beyond retail and restaurants and as a result would create legally non-conforming businesses in the Village. These uses would primarily be real estate offices that are part of nationwide corporations. Non-conforming uses are regulated by AGMC Section 16.48.110. This Section establishes standards for maintaining a non-conforming use, enlarging the use, alteration or restoration after destruction, and discontinuation of a non-conforming use.

The non-conforming uses that would be created by this amendment will be discontinued if the use is changed to a conforming use or if the use is discontinued for a continuous period of one hundred eighty (180) days or more. (AGMC Section 16.48.110.B.4) A non-conforming use may continue following a change of ownership, tenancy or management if the building, structure, land use or activity is substantially unchanged. For purposes of that section, a formula business would lose its non-conforming status if there was a substantial change to the building, structure, or land use/activity on the property (e.g. a formula real estate office could not convert to a formula fast casual restaurant because that would constitute a substantial change in the land use.) If the amendment is adopted, the existing businesses will be allowed to continue as legal non-conforming in the VCD and VMU districts, subject to AGMC Section 16.48.110.B.4. No additional language regarding legal non-conforming uses has been included in the proposed ordinance revisions.

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#### General Plan Consistency

The amendment is supported by objectives and policies in the General Plan. Specifically, Economic Development Element objective ED2 and policies ED 3-4 and ED 5-4 support the small-town character and maintaining the Village as a vibrant downtown core. Land Use Element objective LU6 also supports maintaining the Village core as a “symbolic, functional and unique business center of the City” which can be achieved by the adoption of the amendment to the definition of formula business and its implementation. Thus, disallowing formula businesses, as defined, will ensure that current residents, visitors, and future generations may enjoy the unique and historic character, culture, and architecture of the Village, as contemplated by the above objectives and policies of the General Plan.

#### **ALTERNATIVES:**

The following alternatives are provided for the City Council’s consideration:

1. Introduce the attached Ordinance; or
2. Modify as appropriate and introduce the modified Ordinance; or
3. Do not introduce the Ordinance and provide direction to staff on specific revisions to the Ordinance; or
4. Provide other direction to staff.

#### **ADVANTAGES:**

Revisions to the Ordinance are supported with objectives and policies from the General Plan because the revisions strengthen the regulatory requirements for formula businesses, ensuring that the architectural design and style of the Village are preserved.

#### **DISADVANTAGES:**

The proposed amendment will limit the type of businesses that can lease commercial spaces within the VCD and VMU districts.

#### **ENVIRONMENTAL REVIEW:**

The ordinance does not qualify as a “project” under CEQA and because the ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines section 15060, subd. (c)(2), (3).) Section 15378 of the State CEQA Guidelines defines a project as the whole of an action, which could potentially result in either a direct physical change, or reasonably foreseeable indirect physical change, in the environment. Here, the ordinance will not result in any construction or development, and it will not have any other effect that would physically change the environment. Approval of the proposed ordinance therefore does not qualify as a project subject to CEQA.

#### **PUBLIC NOTIFICATION AND COMMENTS:**

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The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

**ATTACHMENTS:**

1. Proposed Ordinance