



## MEMORANDUM

**TO:** Planning Commission

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

**SUBJECT:** Consideration of Amendments to Title 16 of the Arroyo Grande Municipal Code (AGMC) Regarding the Definition of Formula Business and Family and Finding That This Action is Exempt From Review Under the California Environmental Quality Act

**DATE:** January 16, 2024

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### **SUMMARY OF ACTION:**

A recommendation to City Council to adopt an ordinance amendment to Section 16.04 of the Arroyo Grande Municipal Code relating to the definition of Formula Business.

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

No financial impact is projected.

### **RECOMMENDATION:**

1) Adopt a Resolution recommending the City Council adopted the proposed ordinance amendment; 2) Determine that the ordinance amendment is not a project subject to the California Environmental Quality Act ("CEQA") because it 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 Council directed staff to research and propose formula business restrictions applicable to 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.

The community and City Council expressed concerns that formula businesses would detract from the character of an architecturally distinct district and price out start-up or small independent retail businesses from the real estate market. A University of Wisconsin case study of downtown businesses was reviewed to identify the pros and cons of regulating formula businesses.

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The City Council asked staff to return with a proposed ordinance prohibiting formula businesses in the vicinity of the Village, and staff returned with a Planning Commission-recommended ordinance that included the most restrictive regulatory approach out of several alternatives. The 2005 resolution identified that *“the potential proliferation of formula businesses would diminish 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 Village Core Downtown (VCD) and Village Mixed Use/Historic Character Overlay (VMU/HCO) districts (see graphic below). Collectively, the VCD and VMU/HCO may be referred to as the “Village” throughout this report.

### Village Core Downtown (VCD) and Village Mixed Use (VMU)



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

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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:

- 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, Rori's Artisanal Creamery (Rori's), in the Village Core Downtown in the space previously occupied by Doc Bernstein's. Staff was tasked with researching whether Rori's qualified as a "formula business." At the time of application, staff identified five other Rori's stores and concluded that it did not meet the six-location threshold of a formula business. However, the Council expressed concern that establishments similar to Rori's might be disallowed under the City's current zoning regulations caused the City 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 municipal code and return at a study session to provided analysis as to whether to revise the definition.

### City Council Study Session

On [October 10, 2023](#), 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 (Attachment 2). 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, Council directed staff to return with an amendment to the definition of formula business. Council requested, following study by staff: (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.

### Definition of Family

Housing Element Program I.5-2 directs Community Development staff to amend the definition of "family" in the Development Code to comply with state law. In recent years,

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the state has flagged the definition of family during review of Housing Elements when the definition requires family members to be related or limits on numbers of people in a family. The City's defines family as "an individual or group of persons, who need not be related by blood, marriage or adoption, living together as a single housekeeping unit and sharing kitchen facilities in a single dwelling unit." The City's definition of family does not include either of the criteria deemed problematic by the state, and therefore, does not need to be amended at this time.

### ANALYSIS OF ISSUES:

Per the discussion above, the Municipal Code includes a definition of a formula business and identifies that these are prohibited in the Village Core Downtown and Village Mixed Use districts of Arroyo Grande's Historic Character Overlay zone. (the "Village")

As currently written, the 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.** Council's direction to staff during the study session included broadening the definition to include all business types that are "required by contractual or other arrangement to maintain standardized services and the same or

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similar name, tradename, or trademark.” Currently, the definition 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. Council directed staff to increase this number, suggesting that it be changed 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. In staff’s discussions with those agencies, 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,



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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. 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.

### 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 Commission’s consideration:

1. Adopt a Resolution recommending that Council adopt the code amendment;
2. Modify and adopt the Resolution;
3. Do not adopt the Resolution or
4. Provide other direction to staff.

### **ADVANTAGES:**

Revisions to the ordinance are supported and objectives and policies from the General Plan by strengthening 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.

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### **ENVIRONMENTAL REVIEW:**

In compliance with the California Environmental Quality Act (CEQA), the Community Development Department has determined that the ordinance amendment is not a project subject to the California Environmental Quality Act ("CEQA") because it 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.)

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

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2. A public hearing notice was published in the Tribune on January 5, 2024.

#### **Attachments:**

1. Resolution
2. Minutes from the October 10, 2023 City Council Meeting