

**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning & Building Services**

TO: Planning Commission

FROM: Jim Moore, Director of Planning & Building Services

DATE: December 18, 2014

PROJECT: Continued consideration of Resolution recommending Fairfax Town Council adopt Ordinance No. XXX, Prohibiting Approvals of Formula Businesses and Formula Restaurants within all commercially zoned properties except the Commercial Recreational (CR) zone, and from within the Planned Development District (PDD).

CEQA STATUS: CEQA Exempt, 14 C.C.R. § 15061(b) (3).

BACKGROUND

On August 6, 2014, the Town Council adopted Urgency Interim Ordinance No. 781 imposing a 45-day moratorium on the approval of any subdivisions, use permits, variances, building permits, sign permits, or any other applicable entitlement for use which is required in order to comply with the Town's zoning ordinance or any other discretionary Town permit or approval for the construction, expansion, replacement, modification or alteration of any facilities for use as a "formula business" or "formula restaurant" located within the Highway Commercial (CH) zoning district.

The moratorium adopted by the Council on August 6, 2014 was initially effective for 45 days. On September 3, 2014 the Council extended the moratorium. The moratorium will now expire upon the earlier of either (a) upon the effective date of the permanent zoning regulations governing formula-based businesses and restaurants in the CH zone, or (b) automatically ten months and fifteen days from passage of the extension. The moratorium is an interim measure meant to dovetail with the proposed zoning ordinance to amend the CH zone to create controls for formula based businesses. Unlike the CC zoning district, the CH currently has no such formula business regulations.

DISCUSSION

The Commission first reviewed the proposed Formula Business Ordinance at their September 25th, 2014 meeting where they continued the matter off calendar after making the following one change to the Commission Resolution No. 14-3:

An additional "Whereas" was added to Resolution No. 14-13, "WHEREAS, the Planning Commission has fully endorsed the conversion of the Highway

AGENDA ITEM # 5

Commercial CH Zones to Central Commercial CC Zones and does not intend the adoption of this Ordinance to slow down the impetus for the Town of Fairfax to fully implement the 2010 – 2030 Fairfax General Plan."

The Commission reviewed the proposed Formula Business Ordinance again at a special meeting held on October 30, 2014 where they continued consideration of the Formula Business Ordinance to a subsequent meeting so that:

(1) An additional "whereas" to the Resolution could be added that states;

"Whereas, the Formula Business Ordinance has been an essential and central tenet of the Town of Fairfax for some time now,"

(2) The Formula Business Ordinance could be amended as a "stand alone" ordinance that would apply to all commercially zoned properties, with the exception of Commercial Recreational (CR) zone – which requires a public vote to amend in any fashion.

Subsequent to the October 30, 2014 Planning Commission special meeting, upon review of the Commissioners intended revisions, staff determined that the Formula Business Ordinance should also be applicable to all properties zoned Planned Development District (PDD) since that zone also allows for commercial uses.

Please Note: all Commissioner amendments that were requested, along with staff's recommendation to apply the Formula Business Ordinance to the PDD zone also, have been reviewed and approved by the Town Attorney and are included in the attached redlined ordinance copy.

RECOMMENDATION

- 1) Open/close public hearing
- 2) Adopt Resolution recommending Fairfax Town Council adopt Ordinance No. XXX, an Ordinance of the Town Council of the Town of Fairfax Prohibiting Approvals of Formula Businesses and Formula Restaurants within all Commercially Zoning Districts except Commercial Recreational (CR), and from within any Planned Development District (PDD) zoned properties.

ATTACHMENTS

Exhibit A – Resolution 14-13

Exhibit C – Draft Ordinance No. XXX

Exhibit D – draft minutes from the 9/25/14 & 10/30/14

RESOLUTION NO. 14-13

A RESOLUTION OF THE FAIRFAX PLANNING COMMISSION RECOMMENDING THE FAIRFAX TOWN COUNCIL ADOPT AN ORDINANCE AMENDING CHAPTER 17.040("GENERAL ZONING REGULATIONS"), ADDING SECTIONS 17L092.130, 17.096.140, 17.100.130, 17.104.120, 17.108.080, AND 17.112.030, AND DELETING ARTICLE 11 OF CHAPTER 17.100 ("CC CENTRAL COMMERCIAL ZONE") OF THE FAIRFAX OF THE FAIRFAX TOWN CODE RELATING TO FORMULA BUSINESSES AND RESTAURANTS

WHEREAS, the Fairfax Town Code currently includes provisions relating to the approval of formula businesses and formula restaurants in the Central Commercial ('CC') zoning district (the 'Formula Business Ordinance'); and

WHEREAS, the Formula Business Ordinance has been an essential and central tenant of the Town of Fairfax since it was passed in 2002; and

WHEREAS, the Town desires to amend the Town Code to regulate formula businesses and restaurants in all the commercial zones, excepting the Commercial Recreation CR Zone, and in the Planned Development PDD Zones; and

WHEREAS, the Planning Commission has fully endorsed the conversion of the Highway Commercial CH Zones to Central Commercial Zones and does not intend the adoption of this Ordinance to slow down the impetus for the Town of Fairfax to fully implement the 2010 – 2030 Fairfax General Plan; and

WHEREAS, the Planning Commission has considered those certain proposed amendments to and extensions of Fairfax's Formula Business Ordinance as set forth in proposed Ordinance No. XX, a true and correct copy of which is attached hereto as Exhibit A; and

WHEREAS, the Planning Commission considered proposed Ordinance No. XX at a duly noticed public hearing on September 25th, 2014 and October 30th, 2014, at which time it received oral and documentary evidence related to the proposed ordinance; and

WHEREAS, after those two hearings on October 30, 2014 the Commission determined that it would like the ordinance to regulate formula businesses and restaurants and all areas of Town where commercial development might occur; and

WHEREAS, the Commission determined that the more efficient way to accomplish this Town wide regulation would be to create a separate section to accomplish this regulation; and

WHEREAS, the Planning Commission finds that the proposed Ordinance is required for the public health, safety, and general welfare, and that such ordinance is consistent with the general objectives, policies, and programs of the General Plan.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. The proposed Ordinance has been assessed in accordance with the California Environmental Quality Act ("CEQA," codified at Public Resources Code § 21000, et seq., and as further governed by the CEQA Guidelines, 14 C.C.R. § 15000, et seq.). The proposed Ordinance does not authorize construction and, in fact, imposes greater restrictions on certain development within the CH and CC zoning districts in order to protect the public health, safety and general welfare. Therefore, the Planning Commission finds that it can be seen with certainty that the proposed Ordinance does not have the possibility to have a significant effect on the environment, and is therefore exempt from the environmental review requirements of CEQA per 14 C.C.R. § 15061(b)(3).

Section 2. The Planning Commission hereby finds that the proposed Ordinance is consistent with many General Plan policies, including, but not limited to Land Use Policy LU-7.1.2, inasmuch as it will help ensure that new and/or renewed development in the Town Center Area shall preserve and enhance the mix of land uses, architectural styles and ornamentation, materials, colors and texture; as well as Town Center Policy TC-3.2.8, given that it will further the Town's policy of promoting locally-owned businesses.

Section 3. The Planning Commission thus hereby recommends that the Town Council adopt proposed Ordinance No.XXX substantially as set forth in Exhibit A.

The foregoing resolution was duly introduced and adopted on the 18th day of December 2014, by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

Brannon Ketcham, Chairperson

James M. Moore
Director of Planning and Building Services

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5

2
3
4
5
6
7

8
9
0
1
$$\begin{matrix} 2 \\ 3 \end{matrix}$$

4
5
6

7
8

9
0
1
2

3
4
5
6
7

8
9
0

- 1
- 2
- 3
- 4
- 5

36 **WHEREAS**, the Council further believes that Fairfax enjoys as many visitors as it does in large
37 part due to the unique nature of its retail and restaurant offerings, many of which are owner-
38 operated; and

39 **WHEREAS**, if not monitored and regulated, the increase of formula retail businesses and
40 restaurants in the Town could hamper the Town's goal of a diverse local economy, as well as the
41 retention of its unique village identity; and

42 **WHEREAS**, Article II of Chapter 17.100 of the Town Code currently regulates the approval of
43 formula businesses and formula restaurant uses in the CC zoning district (the "Formula Business
44 Ordinance"); and

45 **WHEREAS**, none of the other zoning districts in Town in which commercial uses are permitted
46 currently have any similar such regulations; and

47 **WHEREAS**, the Formula Business Ordinance as set forth in the CC zoning regulations has not
48 been updated since 2002, some ten years prior to the 2012 update of the General Plan.

49 **NOW, THEREFORE**, the Town Council of the Town of Fairfax does ordain as follows:

50 **SECTION 1:** The following title shall be inserted into Chapter 17.040 of the Town Code of the
51 Town of Fairfax, so that it precedes Section 17.040.010:

52 "ARTICLE I: GENERALLY"

53 **SECTION 2:** The following shall be inserted after the end of Section 17.040.090
54 ('Condominium conversion prohibited):

55 "ARTICLE II: FORMULA BUSINESSES AND RESTAURANTS IN ZONES
56 ALLOWING COMMERCIAL USES

57 § 17.040.200 PURPOSE.

58 The vitality and character of the Town's economy is dependent upon its small-town,
59 village character and pedestrian scale. It is the purpose of this article to regulate formula
60 businesses and formula restaurants in the zones permitting commercial uses in Town to
61 ensure the service of local demand for goods and services, provide a diverse mix of
62 businesses that are compatible with the needs of area residents, preserve opportunities for
63 owner-operator businesses, maintain the Town's unique village character, and promotes
64 the pedestrian-orientation of the Town Center Planning Area and pedestrian usage of the
65 Town's commercial zones.

66 § 17.040.210 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

FORMULA BUSINESS. Any business that is required by a corporate headquarters or franchise 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 any retail sales, service, visitor accommodation, wholesale or industrial operations that was not in business within the Town of Fairfax prior to April 1, 2000.

FORMULA RESTAURANT. Any restaurant devoted to the preparation and offering of food and beverage for sale to the public for consumption either on or off 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 that was not in business within the Town of Fairfax prior to April 1, 2000.

§ 17.040.220 CONDITIONAL USE OF FORMULA BUSINESSES AND RESTAURANTS IN ZONES ALLOWING COMMERCIAL USES.

A formula business or formula restaurant may only be established on a site in a zone allowing commercial uses after obtaining a conditional use permit for the operation of that use on such site, subject to the limitations of this Article. In addition to the findings required by Chapter 17.032 as prerequisite to the issuance of a conditional use permit, no conditional use permit shall be issued for a proposed formula business or restaurant unless the Planning Commission can make all of the following findings:

(A) The proposed formula business or restaurant will promote diversity and variety to assure a balanced mix of commercial uses available to serve both resident and visitor populations.

(B) The proposed formula business or restaurant, together with its design and improvements, will be consistent with the unique and historic village-like character of Fairfax, and preserve the unique visual appearance and shopping and dining experience of Fairfax for its residents and visitors.

(C) The proposed formula business or restaurant will provide services or products which complement existing businesses in the zoning district in which it is proposed to operate, given the existence of and proximity to the same or similar businesses within that zone.

(D) If located within the Town Center Planning Area, the proposed formula business or restaurant will be consistent with the pedestrian orientation of the Town Center Planning Area.

(E) The proposed formula business or restaurant will help residents avoid the need to drive out of town for their shopping needs.

(F) The proposed formula business or restaurant will be consistent with all applicable General Plan goals, objectives, policies, and programs.”

SECTION 3: A new Section 17.092.130 (‘Formula Businesses and Restaurants’) is hereby added to Chapter 17.092 (‘CL Limited Commercial Zone’) to read as follows:

“§ 17.092.130. FORMULA BUSINESSES AND RESTAURANTS.

Notwithstanding any other provision of this Chapter, any proposed use or structure within the CL zone which constitutes a formula business or formula restaurant, as those terms are defined in Section 17.040.210, shall comply with Article II of Chapter 17.040.”

SECTION 4: A new Section 17.096.140 (‘Formula Businesses and Restaurants’) is hereby added to Chapter 17.096 (‘CH Highway Commercial Zone’) to read as follows:

“§ 17.096.140. FORMULA BUSINESSES AND RESTAURANTS.

Notwithstanding any other provision of this Chapter, any proposed use or structure within the CH zone which constitutes a formula business or formula restaurant, as those terms are defined in Section 17.040.210, shall comply with Article II of Chapter 17.040.”

SECTION 5: A new Section 17.100.130 (‘Formula Businesses and Restaurants’) is hereby added to Chapter 17.100 (‘CC Central Commercial Zone’) to read as follows:

“§ 17.100.130. FORMULA BUSINESSES AND RESTAURANTS.

Notwithstanding any other provision of this Chapter, any proposed use or structure within the CC zone which constitutes a formula business or formula restaurant, as those terms are defined in Section 17.040.210, shall comply with Article II of Chapter 17.040.”

SECTION 6: Article II of Chapter 17.100 of the Town Code of the Town of Fairfax is hereby deleted in its entirety.

SECTION 7: A new Section 17.104.120 (‘Formula Businesses and Restaurants’) is hereby added to Chapter 17.104 (‘CS Service Commercial Zone’) to read as follows:

“§ 17.104.120. FORMULA BUSINESSES AND RESTAURANTS.

Notwithstanding any other provision of this Chapter, any proposed use or structure within the CS zone which constitutes a formula business or formula restaurant, as those terms are defined in Section 17.040.210, shall comply with Article II of Chapter 17.040.”

SECTION 8: A new Section 17.108.080 ('Formula Businesses and Restaurants') is hereby added to Chapter 17.108 ('CR Commercial Recreation Zone') to read as follows:

"§ 17.108.080. FORMULA BUSINESSES AND RESTAURANTS.

Notwithstanding any other provision of this Chapter, any proposed use or structure within the CR zone which constitutes a formula business or formula restaurant, as those terms are defined in Section 17.040.210, shall comply with Article II of Chapter 17.040."

SECTION 9: A new subsection (6) is added to subsection (A) of Section 17.112.030 ('General standards and requirements') to read as follows:

"(6) Within any planned development district, no proposed use or structure that constitutes a formula business or formula restaurant, as those terms are defined in Section 17.040.210, shall be approved or allowed to operate without first obtaining a use permit in compliance with Article II of Chapter 17.040."

SECTION 10: CEQA. The Town of Fairfax finds that there is no possibility that the adoption and implementation of this Ordinance will have significant effects on the environment, and therefore, this Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to 14 California Code of Regulations, Section 15061(b)(3).

SECTION 11: Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 12: This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the ____ day of _____, 2014, and duly adopted at the next regular meeting of the Town Council on the ____ day of _____, 2014, by the following vote, to wit:

AYES:

NOES:

ABSENT:

167

168

169 Attest:

170

171

172

173 Michele Gardner, Town Clerk

David Weinsoff, Mayor

Commissioner LaMotte and Mr. Jacobs discussed the roof materials.

Chair Ketcham opened and then closed the public comment period when no one came forward to speak.

Commissioner Ezzet said that she liked the use and the design and that the number of parking spaces should not be reduced.

M/s, Gonzalez-Parber/LaMotte, Motion to approve Application # 14-35, a request for design review of proposed exterior changes to a 1,950 square foot, commercially zoned property at 2001 Sir Francis Drake Blvd., with the following additional Condition of Approval:

Condition 18: The sign face shall be of wood, externally lit and the final sign copy will be subject to the Planning Director's approval.

AYES: All

Chair Ketcham read the appeal rights and announced a 10-minute break at 9 p.m.

7. **Formula Business Ordinance:** Consideration for recommendation to the Town Council of a draft Ordinance amending Town Code Chapter 17.096 to include language regulating formula businesses in the Highway Commercial CH Zone Districts and Chapter 17.100 to amend/update the formula businesses regulations in the Central Commercial CC Zone Districts; CEQA exempt, 14 C.C.R. § 15061(b)(3).

Planning Director Moore presented the staff report. Mr. Moore discussed a moratorium imposed by the Town Council, which included formula business uses, in relation to amending the Town Code. Mr. Moore noted that, unlike the language that related to the Central Commercial Zone (CC), the language in the code relating to the Central Highway Zone (CH) did not include formula business regulation. Furthermore, he said that the Town Attorney had advised that the language needed to be updated and applied to both zones.

Chair Ketcham and Mr. Moore discussed the proposed amendments in relation to the General Plan, which would be amended at a future date. Mr. Moore discussed the role of the Commission in the discussions, which he noted was advisory to the Town Council. He said that the Town Council had requested that the item be brought forward for the Planning Commission's discussion, which he discussed in relation to the repeal of Ordinance 778.

In response to Chair Ketcham, Mr. Moore discussed the process that would lead up to the rezoning of HC to CC, when further language discussion would be necessary. Mr. Moore noted that that staff had not been asked by the Town Council to provide a timeline for those discussions.

Commissioner LaMotte commented on the zoning changes being piecemealed together and said that she would encourage a prioritized approach.

Mr. Moore said that he would ask the Town Manager to address the critical path with the Commissioners. He discussed the action that was open to the Commissioners.

Commissioner Hamilton said progress had been made with the proposed business formula language in the ordinance. She discussed her concern that the language might not be consistently applied in the General Plan.

Following discussion among the commissioners, general consensus was reached that they would prefer the public forums on CH and CC zones to take place before the changes to the language were discussed and the amendments made to the Ordinance.

Mr. Moore discussed the way forward with the commissioners.

M/s, Ezzet/LaMotte, Motion to continue a draft Ordinance amending Town Code Chapter 17.096 to include language regulating formula businesses in the Highway Commercial CH Zone Districts and Chapter 17.100 to amend/update the formula businesses regulations in the Central Commercial CC Zone Districts to a date unknown with the presence of the Town Manager.

AYES: Ezzet, Hamilton, Kehrlein, Ketcham, LaMotte
ABSTENTION: Gonzalez-Parber

8. **Sign Ordinance Amendment:** Consideration for recommendation to the Town Council of a draft Ordinance amending Town Code Chapter 17.064, Signs, to include regulations for non-commercial signs; CEQA exempt, 14 C.C. R. § 15061(b)(3).

Planning Director Moore presented the staff report. He explained why the Town Council had requested staff and commissioners to explore extending the restriction of non-commercial signs (including political signs) from 30 days to 60 days, which related to the use of absentee and mail-in ballots.

Commissioner LaMotte suggested a minor change to the language that related to lit signs under "Design Criteria".

Discussion on the presentation of the staff reports took place between staff and commissioners. There was general agreement that further discussion should be postponed to the next meeting.

M/s, LaMotte/Gonzalez-Parber, Motion to continue consideration for recommendation to the Town Council a draft Ordinance amending Town Code Chapter 17.064, Signs, to include regulations for non-commercial signs to the next scheduled Planning Commission Meeting.

AYES: All

MINUTES

9. Minutes from the August 21, 2014 meeting.

Draft October 30, 2014 Fairfax Planning Commission Special Meeting Minutes

CALL TO ORDER

Chair Ketcham called the meeting to order at 6:07 PM.

Roll Call

Commissioners Present: Ezzet, Hamilton, Kehrlein, Ketcham, LaMotte

Commissioners Absent: Gonzalez-Parber, Green,

Staff Members Present: Garrett Toy, Town Manager
Jim Moore, Director of Planning and Building Services

AGENDA

M\S, Hamilton – LaMotte, motion to approve the agenda as submitted.

Formula Business Ordinance - Continued consideration for recommendation to the Town Council of a draft Ordinance amending Town Code Chapter 17.096 to include language regulating formula businesses in the Highway Commercial CH Zone Districts and Chapter 17.100 to amend/update the formula businesses regulations in the Central Commercial CC Zone Districts; CEQA exempt, 14 C.C.R. § 15061(b)(3).

Chair Ketcham thanked Mr. Toy for attending.

Manager Toy indicated that the Town Council adopted an urgency Ordinance prohibiting the processing of formula business applications in August and then extended in for 10 months and 15 days in September. The Council also directed staff to add language to regulate formula businesses in the Highway Commercial CH Zone and to modify the language in the Central Commercial CC Zone regulations. He indicated that he understands that the Commission has questions about the Council's approach to processing the change of properties zoned CH to CC.

Chair Brennan stated that the Commission wants to know the Council's plan and approach and whether the next workshop has been scheduled because that affects the implementation of the General Plan. They want to know what the critical path will be.

Mr. Toy stated that the Council changed all the CH Zones to CC but then rescinded the change once there was the threat of a referendum and decided to schedule workshops to discuss the matter.

Chair Ketcham asked if there was any discussion by the Council of having a separate ordinance regulating formula businesses in all the commercial zones to include the CS and CL Zones.

Manager Toy indicated that that option was not discussed by the Council.

Chair Brennan stated that it would be more in keeping with the General Plan if formula businesses were regulated in all the Commercial Zones.

Commissioner Hamilton wondered if the Commission could adopt the Resolution recommending the Ordinance changes but ask the Council to consider adopting a general Zone Change that would apply to all commercial properties. She reminded the other Commissioners that when the same language is placed in several locations throughout the Code when changes are made down the road, errors can occur if one sections is changed and others are not. Duplicative language creates the potential for errors.

Manager Toy indicated that there is not a time issue on this ordinance change so he can take it to the Council in January.

Chair Ketcham indicated that he would like to add an additional "whereas" to the Resolution that, "The formula business ordinance has been an essential and central tenet of the Town of Fairfax for some time now (since it the ordinance was originally adopted in 2002).

Commissioner Hamilton questioned if the wording of item F was intentional because if a business has to be consistent with all applicable General Plan goals, objectives, policies, and programs that sets the bar pretty high.

Commissioner LaMotte pointed out that the words, "all applicable" General Plan goals, etc. She wondered who makes the determination if a business complies or not.

Chair Ketcham agreed that the language allows flexibility and suggested that if a date needs to be included in the new whereas, the date the General Plan was adopted should be used.

M/S, Hamilton-LaMotte, motion to continue consideration of amendments to the Central Commission and Highway Commercial zones to regulate formula businesses to the November 20, 2014 meeting and amend it so that there is a separate ordinance regulating Formula Businesses and Restaurants in all commercial zones; and, to include the new "whereas" language in the Resolution as suggested by Chair Ketcham.

AYES: Ezzet, Hamilton, Kehrlein, LaMotte, Chair Ketcham

Noes: none

Sign Ordinance Amendment – Continued consideration for recommendation to the Town Council of a draft Ordinance amending Town Code Chapter 17.064, Signs, to include regulations for non-commercial signs; CEQA exempt, 14 C.C. R. § 15061(b)(3).

Manager Toy indicated that due to the increase in absentee mail-in ballots, the Council wants to extend the amount of time that election signs can be displayed. Also it is illegal to prohibit election signs but you can regulate non-commercial signs. Specifically, the ordinance allows non-commercial signs to be up for 67 days without a permit unless they exceed the size limit.

Chair Brennan indicated that section 17.064.030 combines political signs, holiday decorations and event posters and categorizes them as non-commercial signs in the design criteria. At the last meeting regarding Section 2 of 17.064.040 the Commission wondered if the section might be interpreted as "requiring lighting for non-commercial signs.

Manager Toy indicates that he believes that section was included to regulate holiday lights.