

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.

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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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