TOWN OF FAIRFAX
STAFF REPORT
February 4, 2015

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager
Jim Moore, Director of Planning and Building Services

SUBJECT: Introduction and first reading by title only of Ordinance No. 787, An Ordinance of the Town Council of the Town of Fairfax Amending Chapter 17.040 ("General Zone Regulations"), Adding Sections 17.092.130, 17.096.140, 17.100.130, 17.104.120, 17.108.080, and 17.112.030, and Deleting Article II of Chapter 17.100 ("CC Central Commercial Zone") of the Fairfax Town Code Relating to Formula Businesses and Restaurants.

RECOMMENDATION

1) Conduct public hearing
2) Introduce and waive first reading and read by title only Ordinance No. 787, An Ordinance of the Town Council of the Town of Fairfax Amending Chapter 17.040 ("General Zone Regulations"), Adding Sections 17.092.130, 17.096.140, 17.100.130, 17.104.120, 17.108.080, and 17.112.030, and Deleting Article II of Chapter 17.100 ("CC Central Commercial Zone") of the Fairfax Town Code Relating to Formula Businesses and Restaurants.

DISCUSSION

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) the effective date of the permanent zoning regulations governing formula-based businesses and restaurants in the CH zone (30 days from the second reading of Ordinance No. 787), 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.

AGENDA ITEM # 12

As the Formula Business Ordinance is contained under the Zoning Code, any amendments require a recommendation by the Planning Commission prior to Council consideration and/or adoption.

The Planning Commission first reviewed the proposed Formula Business Ordinance at their September 25th, 2014 meeting, when they continued the matter 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 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 then reviewed the proposed Formula Business Ordinance again at a special meeting held on October 30, 2014, when they continued consideration of the Formula Business Ordinance to a subsequent meeting so that:

(1) The following "whereas" could be added to the Resolution: "Whereas, the Formula Business Ordinance has been an essential and central tenet of the Town of Fairfax for some time now;" and

(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.

At its December 18, 2014 meeting the Planning Commission passed Resolution 14-13 recommending that the Town Council adopt the Formula Business Ordinance No. 787. Ordinance No. 787 reflects the current standards for similar ordinances in other communities, and phrases the standards as criteria as opposed to questions. Attached is a comparison table laying out the old (Code) standards side by side with the new (Ord. 787) standards.

As Ordinance No. 787 applies to all zones which allow commercial uses, with the exception of the CR zone, the standards will now be placed in "Chapter 17.040: General Zone Regulations." Attached for illustrative purposes is how the language will appear in Chapter 17.040 (in italics and underlined). It should be noted that all the commercial zones will now reference the formula business standards in Chapter 17.040.

This item was continued from the January 14, 2015 Council meeting because of revisions that Mayor Coler wanted staff to consider. To allow us time to review the revisions and prepare a redline version for Council review, staff recommended the continuance of the item.

The revisions are as follows:

One new "Whereas" was added:

WHEREAS, a well-balanced mix of commercial and retail offerings in Town contributes to a diverse and healthy local economy and business environment for the benefit of the Town as a whole and protects against blight; and

Another "Whereas" was modified:

WHEREAS, the Council believes that the historic and village character of Fairfax is made manifest by, among other things, its merchants' offerings of goods, services, and dining opportunities that are tailored to the distinctive character and local interests of Fairfax residents and visitors ~~and are not necessarily reproducible or found in the context of formula businesses and/or restaurants; and~~

And criteria "C" was amended:

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, and will not have significant, adverse financial impacts to same or similar businesses within that zone.

In essence, the revisions add a criteria to assess adverse financial impacts to existing businesses. For your reference, we did create one additional attachment which is a redline of the PC recommended ordinance with the Mayor's suggested revisions.
If the Council accepts the revisions, it would adopt the version of the Ordinance No.787 containing the PC and the Mayor's revisions. Staff supports the revisions.

ATTACHMENTS
PC Resolution 14-13 (with PC proposed ordinance attached)
Comparison Table
Redline of Town Code with PC revisions
Proposed Ordinance No. 787 with PC and Mayor's revisions

Planning Commission Resolution 14-13

Recommending Adoption of Ordinance No. 787

(Proposed Ordinance Attached)

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, insomuch 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:

Brannon Ketcham, Chairperson

ATTEST:

James M. Moore
Director of Planning and Building Services

2014RESOLUTIONS/formulabus.reso.12_18_14.2/ln

ORDINANCE NO. 787

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING CHAPTER 17.040 ("GENERAL ZONE REGULATIONS"), ADDING SECTIONS 17.092.130, 17.096.140, 17.100.130, 17.104.120, 17.108.080, AND 17.112.030, AND DELETING ARTICLE II OF CHAPTER 17.100 ("CC CENTRAL COMMERCIAL ZONE") OF THE FAIRFAX TOWN CODE RELATING TO FORMULA BUSINESSES AND RESTAURANTS

WHEREAS, the Town's foremost written expression of its sense of self and vision for its future is its General Plan, which celebrates "the uniqueness of Fairfax: the Town's robust, village-like character, as seen in the small businesses, quaint neighborhoods and busy streets where many residents bicycle and walk" (General Plan, pp. LU-2); and

WHEREAS, the General Plan seeks to preserve and enhance the community's small-town and historic character (Land Use Element Goal LU-7; Town Center Element Goal TC-2); and

WHEREAS, the General Plan includes a Town Center Element to document "strategies and policies that provide specific guidance to enhance the sense of place and the quality of life in the downtown area while promoting the economic base of the Town" (General Plan, pp.TC-1); and

WHEREAS, many, but not all, of the zones permitting commercial uses are located within the borders of the Town Center Planning Area; and

WHEREAS, the General Plan expresses the policy that new and/or renewed development in the Town Center Planning Area shall preserve and enhance the village character and pedestrian scale of the downtown area. Large, highly visible parking lots characteristic of strip shopping centers are inconsistent with village character (Town Center Policy TC-1.1.1); and

WHEREAS, because biking and walking are an integral part of a complete circulation network that provides affordable, healthful and ecological means of transportation, bicycle and pedestrian oriented development should be encouraged in the Town Center Planning Area (Circulation Goals C-5 and C-6, Circulation Element Policy C-5.8, and Town Center Element Policy TC-3.2.1); and

WHEREAS, the vitality and diversity of the Town's economy is based in part on the owner-operator character of the town's businesses, and the Town Center Element of the General Plan sets the policy of promoting locally-owned business (Town Center Policy TC-3.2.8); and

WHEREAS, the Council believes that the historic and village character of Fairfax is made manifest by, among other things, its merchants' offerings of goods, services, and dining opportunities that are tailored to the distinctive character and local interests of Fairfax residents and visitors and are not necessarily reproducible or found in the context of formula businesses and/or restaurants; and

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

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

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

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

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

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

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

"ARTICLE I: GENERALLY"

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

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

§ 17.040.200 PURPOSE.

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

§ 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 that is required by a corporate headquarters or franchise or other arrangement 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 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 9: 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 10: 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 11: 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 14th day of January 2015, and duly adopted at the next regular meeting of the Town Council on the ___ day of _____ 2015 by the following vote, to wit:

AYES:
NOES:
ABSENT:

_____
Barbara Coler, Mayor

Attest:

_____ _____
Michele Gardner, Town Clerk Date

Comparison table

COMPARISON TABLE

Proposed Ordinance 787 deletes Article II: Formula Businesses and Restaurants in CC Zones of the current Town Code Chapter 17.100 CC Central Commercial. However, much of the content from Article II is included within the proposed ordinance. The following table illustrates how the content from the Town Code (left column) is incorporated into the proposed ordinance (right column). Note that the proposed ordinance includes additional sections not in the Code, and therefore not in the comparison table.

Town Code Chapter 17.100: CC Central Commercial Zone **Article II: Formula Businesses and Restaurants in CC Zones**	**Proposed Ordinance No. 787** **§ 17.040.220 CONDITIONAL USE OF FORMULA BUSINESSES AND RESTAURANTS IN ZONES ALLOWING COMMERCIAL USES**
§ 17.100.150 PURPOSE. It is the purpose of this article to limit the number of formula businesses and formula restaurants in the CC zone to those that are compatible with the needs of area residents, to preserve and encourage the owner-operator character of the town's business, and to promote the local economy.	**§ 17.040.200 PURPOSE.** The vitality and character of the Town's economy is dependent upon its small-town, village character and pedestrian scale. It is the purpose of this article to regulate formula businesses and formula restaurants in the zones permitting commercial uses in Town to ensure the service of local demand for goods and services, provide a diverse mix of businesses that are compatible with the needs of area residents, preserve opportunities for owner-operator businesses, maintain the Town's unique village character, and promote the pedestrian-orientation of the Town Center Planning Area and pedestrian usage of the Town's commercial zones.
§ 17.100.160 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 Fairfax CC zone prior to April 1, 2000.	**§ 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 Fairfax CC zone prior to April 1, 2000.	**FORMULA RESTAURANT**. Any restaurant that is required by a corporate headquarters or franchise or other arrangement 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.
§ 17.100.170 CONDITIONAL USE OF FORMULA BUSINESSES AND RESTAURANTS IN THE CC ZONE. Formula businesses and restaurants are permitted as conditional uses in the CC zone if the following questions can be answered affirmatively. In order for an approval to be granted pursuant to this chapter, findings, based upon an affirmative answer to the following questions shall be made:	**§ 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) Is this a pedestrian oriented business, consistent with the CC 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.
(B) Is it likely that significant revenues from this business will be derived from residents of the Upper Ross Valley, San Geronimo Valley and Central West Marin areas?	Not included
(C) Is it likely the business will provide services and products which satisfy the day-to-day needs of residents of the Upper Ross Valley, San Geronimo Valley and Central West Marin areas?	(E) will help residents avoid the need to drive out of town for their shopping needs and (A) will promote diversity and variety to assure a balanced mix of commercial uses available to serve both resident and visitor populations.
(D) Is this a smaller scale business in terms of number of customers commensurate with the character of the CC zone?	Not included

(E) Is the business consistent with the unique character of Fairfax?	(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.
(F) Is it likely this business will provide services or products which complement existing business in the CC zone?	(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.
(G) Is there a need for this type of business in town, given the existence of the number of same or similar businesses in Fairfax?	(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.
(H) Is the proposed location of this business appropriate, given the type of use and the proximity of same or similar businesses?	(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.
(I) Is it likely this business will not cause one or more existing businesses in town to fail?	(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.
(J) Will this business keep residents from having to drive out of town for day-to-day needs?	(E) The proposed formula business or restaurant will help residents avoid the need to drive out of town for their shopping needs.
Not included	(F) The proposed formula business or restaurant will be consistent with all applicable General Plan goals, objectives, policies, and programs.

Redline of Town Code
with
Planning Commission revisions

CHAPTER 17.040: GENERAL ZONE REGULATIONS

Section

)10 Lot coverage

)20 Setbacks; generally

)30 Setbacks for sidewalks; commercial and industrial zones

)40 Setbacks; structures adjacent to Fairfax and San Anselmo Creeks

)50 Outdoor advertising

)60 Businesses to be conducted from buildings

)70 Fire protection

)80 Commercial air-sea-rail shipping containers prohibited in residential zones

)90 Condominium conversion prohibited

ARTICLE I: GENERALLY

§ 17.040.010 LOT COVERAGE.

In all residential zones, no permit shall be granted for the erection or construction of any building or structure where the total area of all existing and/or proposed buildings, structures or accessory structures exceeds 35 percent of the total lot area, save and except that a swimming pool shall not be computed as a part of the percentage, or unless additional coverage is allowed by variance.

(Prior Code, § 17.22.010) (Ord. 352, passed - -1973; Am. Ord. 486, passed - -1981)

§ 17.040.020 SETBACKS; GENERALLY.

Save and except as otherwise specifically provided in this title or by variance, no accessory structure or building, including a swimming pool, anypart of which is more than two feet above finished grade, shall be placed in any yard between the lot and setback line herein established as follows:

(A) Front yard setback: ten feet.

(B) Rear yard setback: ten feet.

(C) Side yard setback: five feet; provided, however, that, if a lot shall be of an average width less than 50 feet, then the setback line shall be ten percent of the average width, but in no event less than three feet.

(D) All corner lots: all street frontage of any corner lot shall have a yard setback of ten feet.

(Prior Code, § 17.22.020) (Ord. 352, passed - -1973; Am. Ord. 461, passed - -1979; Am. Ord. 575, passed - -1988)

§ 17.040.030 SETBACKS FOR SIDEWALKS; COMMERCIAL AND INDUSTRIAL ZONES.

In any commercial or industrial zone, there shall be a minimum front yard setback of seven feet for sidewalks, if no sidewalk is provided for in public right-of-way, except as otherwise provided by use permit.

(Prior Code, § 17.22.030) (Ord. 352, passed - -1973)

§ 17.040.040 SETBACKS; STRUCTURES ADJACENT TO FAIRFAX AND SAN ANSELMO CREEKS.

(A) No building, accessory building, structure or swimming pool shall be constructed closer to the topof the stream bank of the Fairfax and San Anselmo creeks than 20 feet or two times the average depth of the bank, whichever is greater, without authorization by variance, except for retaining walls and bulkheads which replace failing structures and which do not increase the height, width, length or configuration of the original structure.

(B) All structures approved under this section must comply with the requirements in Chapter 8.28, Watercourses, of this code.

(Prior Code, § 17.22.040) (Ord. 352, passed - -1973; Am. Ord. 495, passed - -1982; Am. Ord. 498, passed - -1982; Am. Ord. 605, passed - -1991)

§ 17.040.050 OUTDOOR ADVERTISING.

No outdoor advertising signs or structures, commonly referred to as "signs," shall be permitted in the town save and except as permitted by the provisions of Chapter 17.064 of this title.

(Prior Code, § 17.22.050) (Ord. 352, passed - -1973)

§ 17.040.060 BUSINESSES TO BE CONDUCTED FROM BUILDINGS.

(A) No business shall be conducted upon any premises in the town, save and except from a building with four walls and roof constructed under the provisions of the building code of the town.

(B) The businesses conducted outside may be operated after first obtaining a conditional use permit from the Planning Commission, as provided in Chapter 17.032 of this title.

(Prior Code, § 17.22.060) (Ord. 352, passed - -1973)

§ 17.040.070 FIRE PROTECTION.

(A) No building or structure shall be erected in any zone and no permit thereafter shall be issued, until the owner of the property has provided for adequate water supply for fire protection.

(B) The plans for the fire protection must be approved by the Chief of the Fire Department of the town.

(Prior Code, § 17.22.070) (Ord. 352, passed - -1973)

Cross-reference:
Fire Code, see Title 7

§ 17.040.080 COMMERCIAL AIR-SEA-RAIL SHIPPING CONTAINERS PROHIBITED INRESIDENTIAL ZONES.

No commercial air-sea-rail shipping container shall be permitted upon any premises in any residential zone.

(Prior Code, § 17.22.080) (Ord. 352, passed - -1973; Am. Ord. 567, passed - -1988)

§ 17.040.090 CONDOMINIUM CONVERSION PROHIBITED.

No house, apartment or other building shall be converted either to condominium ownership or stock cooperative ownership in the town.

(Prior Code, § 17.22.090) (Ord. 352, passed - -1973; Am. Ord. 487, passed - -1981)

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

§ 17.040.200 PURPOSE.

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

§ 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 that is required by a corporate headquarters or franchise or other arrangement 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."

Proposed Ordinance No. 787
with
Planning Commission revisions
and
Mayor Coler's revisions

ORDINANCE NO. 787

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING CHAPTER 17.040 ("GENERAL ZONE REGULATIONS"), ADDING SECTIONS 17.092.130, 17.096.140, 17.100.130, 17.104.120, 17.108.080, AND 17.112.030, AND DELETING ARTICLE II OF CHAPTER 17.100 ("CC CENTRAL COMMERCIAL ZONE") OF THE FAIRFAX TOWN CODE RELATING TO FORMULA BUSINESSES AND RESTAURANTS

WHEREAS, the Town's foremost written expression of its sense of self and vision for its future is its General Plan, which celebrates "the uniqueness of Fairfax: the Town's robust, village-like character, as seen in the small businesses, quaint neighborhoods and busy streets where many residents bicycle and walk" (General Plan, pp. LU-2); and

WHEREAS, the General Plan seeks to preserve and enhance the community's small-town and historic character (Land Use Element Goal LU-7; Town Center Element Goal TC-2); and

WHEREAS, the General Plan includes a Town Center Element to document "strategies and policies that provide specific guidance to enhance the sense of place and the quality of life in the downtown area while promoting the economic base of the Town" (General Plan, pp.TC-1); and

WHEREAS, many, but not all, of the zones permitting commercial uses are located within the borders of the Town Center Planning Area; and

WHEREAS, the General Plan expresses the policy that new and/or renewed development in the Town Center Planning Area shall preserve and enhance the village character and pedestrian scale of the downtown area. Large, highly visible parking lots characteristic of strip shopping centers are inconsistent with village character (Town Center Policy TC-1.1.1); and

WHEREAS, because biking and walking are an integral part of a complete circulation network that provides affordable, healthful and ecological means of transportation, bicycle and pedestrian oriented development should be encouraged in the Town Center Planning Area (Circulation Goals C-5 and C-6, Circulation Element Policy C-5.8, and Town Center Element Policy TC-3.2.1); and

WHEREAS, the vitality and diversity of the Town's economy is based in part on the owner-operator character of the town's businesses, and the Town Center Element of the General Plan sets the policy of promoting locally-owned business (Town Center Policy TC-3.2.8); and

WHEREAS, the Council believes that the historic and village character of Fairfax is made manifest by, among other things, its merchants' offerings of goods, services, and dining opportunities that are tailored to the distinctive character and local interests of Fairfax residents and visitors ~~and are not necessarily reproducible or found in the context of formula businesses and/or restaurants~~; and

WHEREAS, a well-balanced mix of commercial and retail offerings in Town contributes to a diverse and healthy local economy and business environment for the benefit of the Town as a whole and protects against blight; and

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

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

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

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

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

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

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

"ARTICLE I: GENERALLY"

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

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

§ 17.040.200 PURPOSE.

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

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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, and will not have significant, adverse financial impacts to 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 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 9: 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 10: 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 11: 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 4th day of February 2015, and duly adopted at the next regular meeting of the Town Council on the ___ day of _____ 2015 by the following vote, to wit:

AYES:
NOES:
ABSENT:

_____
Barbara Coler, Mayor

Attest:

_____ _____
Michele Gardner, Town Clerk Date