

**TOWN OF SAN ANSELMO
STAFF REPORT
September 20, 2012**

For the Meeting of September 25, 2012

TO: Town Council

FROM: Diane Henderson, Interim Director of Planning
Megan Acevedo, Deputy Town Attorney

SUBJECT: Consideration of Possible Changes to the Municipal Code With
Regard to Chain Stores

RECOMMENDATION:

That the Council review the proposed options for restricting chain stores in Town and give staff direction regarding next steps.

BACKGROUND:

At the July 10, 2012, Town Council meeting, staff presented a report to the Council regarding possible approaches to restricting chain stores and restaurants ("formula businesses") in downtown San Anselmo and on Sir Francis Drake Boulevard, east of the Hub ("Designated Downtown Areas"). The Council requested that staff return with additional information concerning the regulation of such businesses in addition to solely regulating the aesthetic features of formula businesses. The available options include:

1. Adopt a Conditional Use Permit (CUP) requirement for formula businesses in the Designated Downtown Areas.
2. Prohibit formula businesses in the Designated Downtown Areas.
3. Defer implementation of a formula business policy until the Economic Development Committee provides a recommendation for its vision of downtown San Anselmo.

DISCUSSION:

A. Definition of Formula Business

As a first step, the Town must determine how to define "formula business". At the July 10, 2012, meeting, the Council expressed concern that the definition not be so broad as to cover small local chains, such as High Tech Burrito. In addition, the Council asked that the definition exclude banks and grocery stores, which tend to be part of larger chains. While any definition of formula business would have to be considered as part of a proposed ordinance, the following definition is offered for the Council's use at this time for preliminary discussion purposes:

Formula Business

Formula Business is defined to mean, "A type of retail sales activity or retail sales establishment, including food service, which is required to maintain any of the following: standardized ("formula") menus, trademark, logo, service mark, symbol, décor, architecture, layout, uniform attire, signage or similar standardized features.

Formula Business excludes the following types of establishments: financial services, professional or medical offices, and personal services including salons and gyms.¹ In addition, the definition excludes chains with less than 20 establishments worldwide."

B. Conditional Use Permit Requirement for Formula Businesses

The Town could require formula business applicants to secure a conditional use permit ("CUP") to operate in the Designated Downtown Areas. This is the approach taken by Sausalito, Fairfax, and San Francisco among others.

The Town's zoning ordinance would have to be amended to add formula businesses as a conditional use in the zones covering the Designated Downtown Areas. Applications for CUPs could be heard by the Planning Commission and could be appealed to the Council. Due process requires notice and an opportunity to be heard for CUP proceedings. (Gov. Code § 65905(a)). The

¹ San Francisco defines the types of business to which the formula business regulations apply, rather than carving out those to which it does not apply. The San Francisco Planning Code specifies that the regulations apply only to the following types of establishments (as defined in the code): "Bar," "Drive-up Facility," "Eating and Drinking Use," "Liquor Store," "Sales and Service, Other Retail," "Restaurant," "Limited-Restaurant," "Take-Out Food," "Sales and Service, Retail," "Service, Financial," "Movie Theater," and "Amusement and Game Arcade." (SF Planning Code § 303(i)(2).)

Planning Commission must issue written findings in support of its CUP decisions and the record must contain substantial evidence to support the findings.²

A combination of the following considerations could be used to develop findings with regard to formula business CUP applications:

1. Is this a pedestrian oriented business?
2. Are other similar retail uses available within the area?
3. What are the existing retail vacancy rates in the area?
4. Will the proposed business complement the existing mix of community-serving retail uses and neighborhood-serving uses within the area?
5. Is the proposed business consistent with the character of downtown San Anselmo?
6. Will the proposed business cause one or more existing businesses to fail?
7. Will the proposed business prevent residents from having to drive out of town for day-to-day needs?

If the Council wishes to add a CUP requirement for formula businesses, staff will draft a proposed ordinance for Planning Commission review and recommendation to the Council for final action.

C. Prohibit Formula Retail in Designated Downtown Areas

The Town could prohibit all formula business in the Designated Downtown Areas. San Francisco, for example, has banned all formula retail in several neighborhoods. Carmel and Pacific Grove have prohibited chain restaurants in certain areas. If the Council decides to take this approach, it should consider whether it wants to ban formula retail and formula restaurants.

Staff believes that such an approach is unwarranted at this time. Historically, downtown San Anselmo has not been a magnet for chain stores. As discussed in detail at previous Town Council meetings on this topic, if a chain store desires to locate downtown, there are currently provisions in the Municipal Code that allow the Planning Director or Planning Commission to regulate the physical appearance of the store and its signage, to avoid creating a formula retail appearance downtown. In light of current economics and the number of vacant storefronts downtown, staff believes that adding additional regulations at this time would not be in the best interest of the Town. Choosing the status quo at this time would not preclude the Council from adopting an ordinance regulating formula retail at any time in the future.

E. Wait for Further Planning Guidance

At the Council meeting on September 11, 2012, the Council discussed changing the makeup, purpose and charge of the Economic Development Committee. The

² See, *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 511.

Council may want to wait for the Committee to be formed before it makes a decision about restricting formula businesses in the Designated Downtown Areas.

In the meantime, the Town would still have its existing power to regulate the aesthetics of any formula business that may attempt to locate in the Designated Downtown Areas. As discussed in greater detail in the July 10, 2012 staff report, the Town's Municipal Code currently requires a design review application for proposed improvements to existing and new commercial buildings (SAMC §10-3.1503). The Planning Director is responsible for reviewing "Any minor modifications to existing buildings, structures or improvements such as: awnings, canopies, windows, doors, color changes, automated teller machines, other modifications similar to the above" (SAMC §10-3.1504[a]). The Planning Commission is tasked with reviewing the design of all other exterior improvements to be constructed in the Town, along with any minor modifications that the Planning Director believes should be reviewed by the Commission (SAMC §10-3.1504[b]). For properties in the Designated Downtown Areas the Planning Director or Planning Commission must make findings related to the effect of a proposed improvement on surrounding businesses before a project can be approved. (SAMC § 10-3.1505[a]). Conditions are imposed as necessary to make these findings possible. (Id).

Conclusion

If the Council desires to restrict formula businesses in San Anselmo, staff will bring back a draft ordinance for consideration by the Planning Commission and ultimately, Town Council.

Respectfully submitted,



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