

ORDINANCE NO. _____

**ORDINANCE ADDING CHAPTER 20.147 TO THE MENDOCINO COUNTY CODE ESTABLISHING
A COMMUNITY CHARACTER COMBINING DISTRICT
WITHIN THE COUNTY ZONING CODE**

WHEREAS, Mendocino County contains many rural communities with a small-town environment and unique character, each of which attracts residents and visitors because of their eclectic and diverse mix of businesses, and each of which must be protected and enhanced so that the unique character of the rural communities of Mendocino County can flourish without inappropriate changes; and

WHEREAS, the Mendocino County Board of Supervisors desires to protect the unique character of the rural communities of the County and create a supportive environment for new and unique small businesses; and

WHEREAS, Mendocino County General Plan Policy DE-69 provides that the County should emphasize local community character and culture in community planning and development; and

WHEREAS, Mendocino County General Plan Policy DE-71 provides that the County should create attractive and economically viable community 'core' areas; and

WHEREAS, Mendocino County General Plan Policy DE-79 provides that compatibility with desired architectural character in established neighborhoods and communities shall be evaluated when considering new development; and

WHEREAS, the Mendocino County Board of Supervisors is concerned that 'chain' or 'formula' businesses, whose objectives of standardization and brand identity may be in conflict with emphasizing local community character, will proliferate throughout the rural communities of the County and detract from the unique character of the County by displacing unique local or other small businesses or introducing standardized, non-unique establishments that will lessen the uniqueness and character prized by County residents; and

WHEREAS, income earned by independent small businesses is more likely to circulate within the local economy than the money earned by formula businesses, which often have corporate offices and vendors located outside of Mendocino County, resulting in less local economic benefit and vitality, adversely affecting the County; and

WHEREAS, notwithstanding the visual attractiveness of a storefront or other business structure, the standardized architecture, color schemes, décor and signage (which said signage almost universally includes the display of registered service marks which, under federal law, cannot be modified or changed through the application of local land use regulations) of many formula businesses can detract from the distinctive character of the rural communities of the County; and

WHEREAS, the location of formula business establishments in the County, if not regulated, will hamper and irreparably impede the County's goal of a diverse business base with specific attention to the small town character of the County's rural communities. Specifically, the unregulated

and unmonitored establishment of formula businesses may change the character of the rural communities of the County and unduly limit or eliminate business establishment opportunities for smaller or medium-sized businesses, many of which tend to be non-traditional or unique and which complement the small town character of the County's rural communities; and

WHEREAS, the Mendocino County Board of Supervisors adopted an interim prohibition on the establishment of formula businesses in most of the County to allow time for preparation of potential formula business regulations by County staff; and

WHEREAS, draft versions of a proposed ordinance were made available to the public for review and referred to the County's Municipal Advisory Councils; and

WHEREAS, the absence of regulations and procedures governing formula businesses poses a threat to the health, safety and welfare of the citizens of Mendocino County, which, if unaddressed, could affect business diversity, the local economy, and the unique character of the County and its rural communities; and

WHEREAS, the purpose of this ordinance is to create an overlay district which would provide regulations for the establishment of certain types of formula businesses in commercial zones and community areas within Mendocino County; and

WHEREAS, on June 16, 2016, the Planning Commission opened a duly-noticed public hearing regarding proposed regulations on formula businesses, which was continued first to August 18, 2016, and second to November 17, 2016, during which the Planning Commission accepted numerous public comments and deliberated regarding the proposed ordinance, and on November 17, 2016, the Planning Commission provided its report and recommendation on the proposed ordinance to the Board of Supervisors; and

WHEREAS, on _____, the Board of Supervisors conducted a duly-noticed public hearing on the ordinance, accepted public comment, and introduced the ordinance for first reading.

NOW, THEREFORE, the Board of Supervisors of the County of Mendocino, State of California, ordains as follows:

Section 1. The above recitals are incorporated herein by this reference.

Section 2. Chapter 20.147 is hereby added to the Mendocino County Code to read as follows:

Chapter 20.147 – Community Character Combining District

Sec. 20.147.010 Intent

Sec. 20.147.020 Applicability

Sec. 20.147.030 Definitions

Sec. 20.147.040 Prohibitions

Sec. 20.147.050 Requirements

Sec. 20.147.060 Exceptions

Sec. 20.147.010 Intent

The Community Character Combining District (“CC Combining District”) is intended to establish special requirements and regulations to retain and enhance the special features of community areas and commercial places within Mendocino County by:

- (A) Enhancing the visual attractiveness of commercial structures by restricting standardized features that would detract from the distinctive character of the community areas and commercial places in the County.
- (B) Protecting diverse commercial activities of each community area and commercial places by encouraging a variety of commercial land uses that serve the needs of the community.
- (C) Preserve and enhance the established historic character of each of the communities, including the retention and restoration of historic building sites
- (D) Establish places and facilities that create a sense of community, and encourage building designs that reflect and incorporate historic character of each community.
- (E) Encourage locally owned businesses, and support the creation of economic opportunity, places and facilities that support a sense of community, as well as promoting economic opportunities that support infill development and improve the aesthetic character of core downtown community areas.

Sec. 20.147.020 Applicability

The CC Combining District may be applied over C-1 (Limited Commercial) and C-2 (General Commercial) zoning districts in the unincorporated areas of the County including but not limited to the following Community Areas or Commercial Places:

- Anderson Valley
 - Boonville
 - Navarro
 - Philo
- Covelo
- Fort Bragg
 - Cleone
- Hopland
- Laytonville
- Potter Valley
- Redwood Valley
- Willits
 - Brooktrails

- Ridgewood
- Calpella
- Ukiah
 - Lake Mendocino Drive
 - South Ukiah
- Talmage
- Other Commercial Places
 - Bell Springs
 - Comptche

Sec. 20.147.030 Definitions

As used in this Chapter, and as used in this Chapter only, the following definitions shall apply unless the context otherwise requires:

(A) Community Area. "Community Area" includes communities located in unincorporated Mendocino County that are listed and described by Chapter 6, Community-Specific Policies, of the General Plan.

(B) Commercial Places. "Commercial Places" includes lands designated C-1 (Limited Commercial) or C-2 (General Commercial) that are not located within a Community Area.

(C) Formula Business. "Formula Business" means any of the following type of commercial use types, as defined by Mendocino County Zoning Code – Division 1, Chapter 20.024, regardless of location or ownership, which along with ten (10) or more other establishments maintains two (2) or more Standardized Features:

- (1) Eating and Drinking Establishments (Section 20.024.065)
- (2) Food and Beverage Retail Sales (Section 20.024.075)
- (3) Food and Beverage Preparation – Without Consumption (Section 20.024.080)
- (4) Retail Sales, General (Section 20.024.120)

(D) Improvement. "Improvement," as used in this article, shall be interpreted and shall include the construction, alteration, and repair of all buildings, structures, and facilities permanently affixed to real property, and appurtenances thereto.

(E) Person. "Person" means any individual firm, co-partnership, corporation, company, association, joint association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof.

(F) Standardized Features. "Standardized Features" include the following:

(1) Color Scheme. A selection of colors used throughout, such as on the furnishings, permanent fixtures, and wall coverings, or as used on the façade.

(2) Décor. The style of interior furnishings, which may include but is not limited to, style of furniture, wall coverings or permanent fixtures.

(3) Façade. The face or front of a building, including awnings, looking onto a street or an open space.

(4) Servicemark. Words, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of the services from one party from those of others.

(5) Signage. "Signage" shall be defined as a sign pursuant to Title 20 of the Mendocino County Code.

(6) Standardized array of merchandise. An inventory of merchandise of which 50% or more is provided by a single distributor bearing uniform markings.

(7) Standardized array of services. A substantially common menu or set of services priced and performed in a consistent manner.

(8) Uniforms. Standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, that, and points (other than name tags) as well as standardized colors of clothing uniforms.

(G) Structure. "Structure" means anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground; excepting tents, recreational vehicles and fences less than six (6) feet in height.

(H) Substantially Reconstructed Structure. "Substantially Reconstructed Structure" means the alternation, removal, replacement of more than 50% of the structure's existing floor area or exterior walls, whichever occurs first.

Sec. 20.147.040 Prohibitions

The County, and its agents, employees and departments, shall not approve any subdivision, use permit, variance, building permit, grading permit, business license, certificate of use, certificate of occupancy or any other approval, permit, license or entitlement for the use of land or structures by a Formula Business in the CC Combining District without compliance with the provisions of this Chapter.

Any application for an approval, permit, license or entitlement for the use of land or structures that is determined by the County to be for a Formula Business that does not identify the use as a Formula Business is incomplete and cannot be processed until the omission is corrected. Any approval, permit, license or entitlement approved after the effective date of the ordinance adopting this Chapter that is determined by the County to have been, at the time of application, for a Formula Business that did not identify the use as a Formula Business is subject to revocation at any time. If the County determines that the application for an approval, permit, license or entitlement is for a Formula Business, the applicant bears the burden of proving to the County that the proposed use is not a Formula Business.

Sec. 20.147.050 Requirements

(A) The establishment of a new Formula Business in a newly constructed Structure on any lot or within a Substantially Reconstructed Structure located within a Community Area or Commercial Place, as defined in this Chapter, within the CC Combining District, is subject to the approval of a Minor Use Permit, pursuant to Mendocino County Zoning Code – Division I, Chapter 20.196, Use Permits. Establishment of such Formula Businesses are subject to the following requirements, unless the applicable base zoning district contains a more restrictive similar requirement, in which case the more restrictive requirement shall control:

(1) Site Improvements: Site layout, open space and topography, orientation and location of buildings, vehicular access, circulation and parking, setbacks, height, walls, fences, public safety and similar elements shall be designed to integrate with adjoining properties and provide a desirable environment compatible with existing development in the area.

(2) Architectural Design. The character, scale and quality of the design, the architectural relationship between the site and other buildings, building materials, colors, screening of exterior appurtenances, exterior lighting and signing and similar elements have been incorporated into the Formula Business' design concept in order to ensure its compatibility with the character of adjacent buildings and properties.

(3) Signage. Signage shall be established in conformance with Mendocino County Code – Division I, Chapter 20.184 Sign Regulations. All signs shall be designed to be compatible with the architecture and design of buildings/structures on-site, and shall incorporate similar and compatible building materials and colors as utilized by the buildings/structures on which they are affixed.

(4) Landscape Design. The design of the Formula Business shall include a landscape design plan which shall include the location, type, size, color, texture and coverage of plant materials, and provisions for irrigation, maintenance and protection of landscaped areas and similar elements to

ensure visual relief, to compliment buildings and structures and to provide an attractive environment.

(B) In addition to the findings required for a Minor Use Permit, all approvals of a Formula Business shall contain a finding that the requirements of this section have been satisfied.

Sec. 20.147.040 Exceptions

The provisions of the CC Combining District shall not apply to Formula Business in the following instances.

(A) When an active building permit for a new Formula Business on any lot or within a substantially reconstructed structure is deemed complete prior to September 22, 2015.

(B) When building and site improvements associated with an existing Formula Business are necessary to comply with fire safety or Americans with Disabilities Act ("ADA") requirements.

Section 3. CEQA. This ordinance is categorically exempt from the California Environmental Quality Act under (a) Section 15060(c)(2) of the State CEQA Guidelines, because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; (b) Section 15060(c)(3) of the State CEQA Guidelines because it is not a project within the meaning of CEQA since it has no potential for resulting in physical changes in the environment; and (c) Section 15308 of the State CEQA Guidelines because it is a regulatory action taken by the County to assure the maintenance and protection of the environment. These findings are based on the staff memorandum accompanying this ordinance.

Section 4. Severability. If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this _____ day of _____, 2017, by the following roll call vote:

AYES:

NOES:

ABSENT:

WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT,
County Counsel

JOHN McCOWEN Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy