

NORWOOD PLANNING AND ZONING COMMISSION
Monday, September 23, 2019
Work Session – 7:00 P.M.
Norwood Community Center
1670 Naturita Street

A G E N D A

WORK SESSION

Formula Business Regulation Options:

- a. Introduction from Planner Chapin.
- b. P&Z Commission Discussion.
- c. Public Comment.

****Visitors Please Note: Thank you for attending! The Board values your opinion, however speaking time may be limited by the Board if necessary for the efficient conduct of the meeting. Accommodations for handicapped can be made upon request. ****

MEMORANDUM

TO: Norwood Planning and Zoning Commission

FROM: Cindy Chapin, Town Planner

RE: Formula Business amendment to Land Use Code

ATTACHMENTS: 1) Definition of and Options for regulation of formula businesses
2) Town of Paonia Ordinance regulating formula businesses

DATE: September 23, 2019

The Norwood Board of Trustees directed the Town Attorney and Town Planner to formulate a definition for "Formula Business" to be presented to the Planning and Zoning Commission at its September 23, 2019 worksession. That action was in response to a citizen petition requesting the Trustees adopt an ordinance enacting a moratorium on formula businesses until amendments to the Land Use Code could be considered.

The Commission held a worksession on July 22, 2019 to introduce the concept of formula businesses. The community continued discussion of a moratorium on formula businesses at two meetings before the Trustees, August 6 and August 14.

The Commission decided to review Section 5.00 of the Land Use Code to determine if amendments may be needed to strengthen site development standards--also in response to the community reaction to formula businesses in the B-1, Business District. Worksessions were held on August 19 and 26. Amendments to Section 5.05, "Landscaping and Screening" and Section 5.06 (e)(1), height of freestanding signs are scheduled to be heard at a public hearing on September 30.

In compliance with the Trustee direction, a definition and related amendments to the Land Use Code have been prepared for your consideration.

Several approaches to regulating formula businesses have been enacted by cities and towns. The courts generally have allowed regulation when it finds that the regulation is supported by the community comprehensive plan and when "preserving distinctive community character" was its legitimate public purpose. In drafting the regulations it is critical to ensure that the true purpose is not to protect particular local businesses. The community expressed several reasons for objecting to formula businesses locating in Norwood including inappropriate mass/scale, signs and exterior facades. The courts focus on "contractual obligations" that require a business to maintain "standardized characteristics". It is the standardized characteristics of formula businesses that the community finds most objectionable.

Norwood has several businesses that meet the criteria used by many cities and towns to regulate formula businesses. Thus, in addition to a definition, how to regulate the formula business is to be addressed by the Commission.

Often the formula businesses are only allowed in certain zone districts and/or overlay districts within zone districts. Those communities have a distinctive public interest in protecting, for instance, their

historic cores or waterfronts, which are threatened by strip mall development. In some instances when the formula businesses are allowed, they are only permitted as a special or conditional use that requires a public process that a use by right does not. The Town of Paonia has adopted an ordinance that protects its historic district by prohibiting formula businesses and requires a special use permit for other commercial zone districts. It also has "exemptions" which you may want to consider.

Norwood is unique in that it has a much smaller commercial footprint than the majority of those communities. This is why the Future Land Use Plan's vision statement reads:

Vision Statement

Norwood strives to preserve and promote its small town feel by maintaining its scale, its rural character, its eclectic mix of land uses and the essential commercial services that serve residents and create a viable community.

Our local existing formula businesses demonstrate how formula businesses can be integrated into the community. They all have in common standardized array of merchandise/services but none have an immediately recognizable "look" when viewed from the street. The use of their trademarks and servicemarks are discreet. Only US Bank has a drive through facility.

The discussion before you now is what is appropriate for Norwood? As this is the first opportunity, draft language has been provided that provides an outline for regulation that includes a definition for formula business and additional related definitions. The related definitions are important to consider. You may decide to change, for instance, the definition of standardized array of merchandise or how many substantially similar businesses are required at other locations. If you determine there is opportunity for increased formula businesses, you may want to develop criteria for conditional use. Attached is the Paonia ordinance for your convenience. A broader discussion may ensue to limit the size of structures to maintain the scale that is preferred. How to grand-father existing formula businesses if any exist after the definition has been determined.

I am certain there will be much to consider and look forward to receiving all comments.

Formula Business Establishments.

Purpose: The Town of Norwood has developed a unique community character in the Commercial Core of the B-1, Business District. The Town desires to maintain this unique character and protect the community's economic vitality by ensuring a diversity of businesses with sufficient opportunities for independent entrepreneurs.

Applicability: To meet these objectives, the Town does not permit Formula Business Establishments within the Commercial Core.

OR

Purpose. The Town of Norwood has developed a unique community character in its B-1, Business District. The Town desires to maintain this unique character and protect the community's economic vitality by ensuring a diversity of businesses with sufficient opportunities for independent entrepreneurs.

Applicability: To meet these objectives, the Town limits Formula Business Establishments to a maximum of six within the B-1, Business District.

OR

Purpose. The Town of Norwood has developed a unique community character within the Town. The Town desires to maintain this unique character and protect the community's economic vitality by ensuring a diversity of businesses with sufficient opportunities for independent entrepreneurs.

Applicability: To meet these objectives, the Town does not permit Formula Business Establishments.

Formula Business means a business which is required by contractual or other arrangement to maintain one or more of the following standardized items: name, array of merchandise and/or services, trademarks, logos, servicemarks, symbols, color scheme, interior décor, exterior façade, architecture, layout, uniforms, signage, or similar standardized features, and which causes it to be substantially similar to more than five other businesses regardless of ownership or location. Formula businesses can include, but are not limited to restaurants, retail stores, banks, real estate sales offices, spas, hair and nail salons, and hotel/motel/inn/B&B.

Related Definitions. For purposes of this section, the following definitions apply:

(a) Color scheme means the selection of colors used throughout the business, such as on the walls, furnishings, permanent fixtures or on the building façade.

(b) Décor means the interior design and furnishings that may include style of furnishings, shelving, display shelving/racks, wall coverings or other permanent fixtures.

(c) Façade means the principal exterior face or front of a building, including awnings that are oriented towards a street, alley or open space.

(d) Servicemark means a word, phrase, symbol or design or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of a service of one party from those of others.

- (e) Standardized array of merchandize means fifty percent (50%) or more of the in-stock merchandise is from a single manufacturer or distributor bearing uniform markings.
- (f) Standardized array of services means a substantially similar set of services or food and beverage menus that are priced, prepared and performed in a consistent manner.
- (g) Trademark means a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs legally registered or established by use that distinguishes the source of the product of one party from those of others.
- (h) Uniform apparel means standardized items of clothing, including but not limited to standardized aprons, pants, shirts, vests, smocks or dresses, and hat and pins (other than name tags) with standardized colors and fabrics.

ORDINANCE NO. 2019- _____

AN ORDINANCE OF THE TOWN OF PAONIA, COLORADO, AMENDING AND SUPPLEMENTING CHAPTER 16 OF THE TOWN OF PAONIA MUNICIPAL CODE REGARDING FORMULA BUSINESSES.

RECITALS

WHEREAS, the Town of Paonia (the “Town”) is a statutory Town and municipal corporation in Delta County, Colorado, governed by and through its Board of Trustees (the “Board”); and

WHEREAS, the Board is conferred with the specific enumerated authority to exercise all power conferred upon or possessed by the Town and has the power and authority to adopt such laws, ordinances and resolutions as it shall deem proper; and

WHEREAS, the Paonia Zoning Code is “drawn with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate uses of land throughout the Town”; and

WHEREAS, The Board has the specific authority as set forth under C.R.S. 31-4-101 et. seq.; and

WHEREAS, the authority to zone has long been recognized as an aspect of a local government’s police powers to regulate activities in order to protect the public health, safety, morality and general welfare of its citizens; and

WHEREAS, pursuant to C.R.S. § 31-23-301, the Town has the power to regulate buildings and other structures for the purposes of promoting health, safety and the general welfare of the community; and

WHEREAS, pursuant to C.R.S. § 29-20-104(1)(g), the Town has the power to regulate the use of land on the basis of the impact thereof on the community or surrounding areas; and

WHEREAS, the Board of Trustees determines that it is in the best interest of the community and the public health, safety and welfare of the citizens of the Town to amend the Town Code to add this provision to the Municipal Code; and

WHEREAS, in an effort to ensure the Highway 133 Corridor Master Plan is consistent and complies with the Town of Paonia’s 1996 Comprehensive Plan, the Board believes it is necessary to protect the Town’s historic downtown core, viewed as the civic, social and business of the community

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF PAONIA, COLORADO, as follows:

Section 1. Legislative Findings.

The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the Town Board of Trustees.

Section 2. Amendment to the Town Code.

Sec. 16-1-100 of the Town of Paonia Municipal Code is amended to add a definition for formula businesses:

Formula business means a business which is required by contractual or other arrangement to maintain one or more of the following items: standardized ("formula") array of services and/or merchandise, trademarks, logos, servicemarks, symbols, decor, architecture, layout, uniforms, or similar standardized features and which causes it to be substantially identical to more than five other businesses regardless of ownership or location. Formula businesses can include, but are not limited to restaurants, retail stores, banks, real estate sales offices, spas, hair and nail salons, and hotel/motel/inn/B&B.

Sec. 16-3-70 of the Town of Paonia Municipal Code is amended to reflect the zone districts where formula businesses are permitted by right, permitted by special review or prohibited:

| | | | | |
|--------------------|-----|-----|-----|-----|
| USE | C-1 | C-2 | I-1 | I-2 |
| Formula Businesses | X | S | S | S |

P = Permitted by Right
S = Permitted by Special Review
X = Prohibited

Section 3. Additions to the Town Code.

Sec. 16-3-140 Formula Business is added to the Town of Paonia Municipal Code as follows:

Sec. 16-3-140 Formula Business

(1) **Intent.** The purpose of these formula business requirements is to maintain and protect Paonia's historic downtown core as the civic, social and business hub of the community, ensure the vitality and diversity of the Town's commercial districts and enhance the quality of life of residents and visitors.

(2) **Applicability.** These regulations shall apply to formula businesses as defined in Sec. 16-3-100 of the Code.

(3) **Related Definitions.** For purposes of this section, the following definitions apply:

(a) *Color scheme* means the selection of colors used throughout the business, such as on the walls, furnishings, permanent fixtures or on the building façade.

(b) *Décor* means the interior design and furnishings that may include style of furnishings, shelving, display shelving/racks, wall coverings or other permanent fixtures.

(c) *Façade* means the principal exterior face or front of a building, including awnings, overhangs, and porte-cocheres that are oriented towards a street, alley or open space.

(d) *Servicemark* means a word, phrase, symbol or design or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of a service of one party from those of others.

(e) *Signage* means a sign as detailed Sec. 18-6-10.

(f) *Standardized array of merchandize* means fifty percent (50%) or more of the in-stock merchandise is from a single manufacturer or distributor bearing uniform markings.

(g) *Standardized array of services* means a substantially similar set of services or food and beverage menus that are priced, prepared and performed in a consistent manner.

(h) *Trademark* means a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs legally registered or established by use that distinguishes the source of the product of one party from those of others.

(i) *Uniform apparel* means standardized items of clothing, including but not limited to standardized aprons, pants, shirts, vests, smocks or dresses, and hat and pins (other than name tags) with standardized colors and fabrics.

(4) **Exemptions.** The following formula businesses are exempt from these formula business requirements:

(a) Formula businesses in operation prior to the effective date of these regulations.

(b) Construction work on a pre-existing, approved or exempt formula business that is required to comply with fire and/or life safety standards.

(c) Disability access improvements to a pre-existing, approved or exempt formula business.

(5) **Formula Business Location Requirements.** Formula retail businesses may be permitted as a Special Review in in the C-2, I-1 or I-2 zone district.

Formula businesses that are legally in existence as of the effective date of this Ordinance may remain in their current location as a non-conforming use. The same or substantially similar type of use may be transferrable upon sale or transfer of the commercial space or ownership of the business and/or building.

Formula businesses that are legally in existence as of the effective date of this Ordinance may be renovated and/or expanded up to fifteen percent (15%) of the existing gross floor area or a maximum of one thousand five hundred (1,500) square feet, whichever is less.

(6) **Compliance with the Code.** Formula business shall comply with all applicable standards of the underlying zone district and the applicable regulations of the Town Code.

(7) **Formula Business Additional Criteria.** No conditional use permit for a formula business shall be approved unless the following criteria are met:

(a) The formula business complements existing businesses and promotes quality, diversity and variety to assure a balanced mix of commercial uses and range of local, regional and national goods and services for residents and visitors.

(b) The formula business has submitted plans, drawings, renderings, visual simulations or other examples that illustrate how it will be consistent with the historic nature of the Town of Paonia.

(c) The formula business does not include any drive-through facilities.

Section 4. Severability.

If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and, to this end, the provisions of this Ordinance are declared to be severable.

Section 5. Repeal of Prior Ordinances.

All other ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 6. Ordinance Effect.

Existing ordinances or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and any and all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed; provided, however, that the repeal of any ordinance or parts of ordinances of the Town shall not revive any other section of any ordinance or ordinances hereto before repealed or superseded, and further provided that this repeal shall not

affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

Section 7. Effective Date.

This Ordinance shall take effect thirty days after passage.

Section 8. Public Notice, Hearing and Review by the Planning Commission.

A public hearing on this Ordinance was held on the ____ day of _____, 2019, in the Town Hall of the Town of Paonia _____, with the provisions of Sec. 16-6-10 of the Town Code being met. As required by the Code, this matter was referred to the Planning Commission on July 31, 2019.

INTRODUCED, READ AND REFERRED to public hearing before the Board of Trustees for the Town of Paonia, Colorado, on the ____ day of _____, 2019.

TOWN OF PAONIA

By: _____
CHARLES STEWART, Mayor

ATTEST:

J. CORINNE FERGUSON, Town Clerk

HEARD AND FINALLY ADOPTED by the Town of Paonia Board of Trustees for the Town of Paonia, Colorado, on the ____ day of _____, 2019.

TOWN OF PAONIA

By: _____
CHARLES STEWART, Mayor

ATTEST:

J. CORINNE FERGUSON, Town Clerk

Approved as to Form:

BO JAMES NERLIN, Town Attorney