

Order 100-06/07
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(Cohen, Leeman, Gorham, Suslovic)

JAMES I. COHEN (MAYOR)(5)
WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JAMES F. CLOUTIER (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)
EDWARD J. SUSLOVIC (A/L)

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14 (LAND USE)
ARTICLE III, DIVISION 19.7
(Formula Businesses)**

RE: FORMULA BUSINESSES

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

That Section Division 19.7 is hereby enacted as follows:

DIVISION 19.7. FORMULA BUSINESSES

Sec. 14-330.1. Purpose.

The purpose and intent of this Division is to regulate the number and location of formula businesses in order to maintain the City's unique character, the diversity and vitality of the City's commercial districts, and the quality of life of Portland residents. It is presumed that establishing or preserving an appropriate and balanced mix of businesses will more effectively serve to achieve this purpose as a strategy to maintain the economic health of the community's business districts and their eclectic ambiance.

Sec. 14-330.2. Definitions.

a. Formula Business Overlay Zone. For the purposes of this section, the "Formula Business Overlay Zone" includes the following zones within the Portland peninsula as shown on the attached Formula Business Overlay Zone and Extended PAD Overlay Zone map: B-3, B-3b and B-3c Downtown Business Zones; B-5 Urban Commercial Mixed Use Zone; B-6 Eastern Waterfront Mixed Zone; and B-7 Mixed Development District Zone.

b. Extended PAD Overlay Zone. For the purposes of this section, the "Extended PAD Overlay Zone," as delineated on the attached Formula Business Overlay Zone and Extended PAD Overlay

Zone map, includes all streets within and including the following boundaries:

Congress Street, from Longfellow Square to Pearl Street;
Pearl Street, from Congress Street to Commercial Street;
Commercial Street, from Franklin Arterial to Maple Street;
Maple Street, from Commercial Street to Danforth Street;
Danforth Street, from Maple Street to Center Street;
Center Street, from Danforth Street to Free Street; and
Free Street, from Center Street to Congress Street.

The Extended PAD Overlay Zone also includes:

High Street, from Congress Street to a point halfway between Congress and Deering Streets; and

Forest Avenue, Oak Street, Casco Street, Brown Street and Preble Street, to Shepley Street or a point even with Shepley Street.

c. Formula Business. For the purposes of this section, "Formula Business" means:

(1) If it is located in the Formula Business Overlay Zone, a restaurant or retail establishment, other than those exempted under this subsection, that stands alone as a principal use or with another use as an accessory use, and which is required by contractual or other arrangements to maintain any one or more of the following standardized features, which causes it to be substantially identical to 30 or more other businesses located within the United States, regardless of the ownership of those businesses: name; if food is served, menu, ingredients, food preparation or presentation format; décor; employee uniforms; trademark; logo; symbol; architectural design; signage; color scheme; or any other similar standardized features.

(2) If it is located in the Extended PAD Overlay Zone, a restaurant or retail establishment, other than those exempted under this subsection, that stands alone as a principal use or with another use as an accessory use, and which is required by contractual or other arrangements to maintain any one or more of

the following standardized features, which causes it to be substantially identical to 10 or more other businesses located within the United States, regardless of the ownership of those businesses: name; if food is served, menu, ingredients, food preparation or presentation format; décor; employee uniforms; trademark; logo; symbol; architectural design; signage; color scheme; or any other similar standardized features.

“Formula business” does not include: grocery stores; drug stores and pharmacies; convenience stores; hardware stores; gas stations; and businesses primarily providing services rather than goods for sale, including but not limited to banks and credit unions, movie theaters, entertainment and recreation services, mailing services and vehicle and equipment rental.

Sec. 14-330.3. Restrictions on formula businesses in Formula Business Overlay Zone.

a. Space. A formula business that is a restaurant and is located within the Formula Business Overlay Zone may not contain more than 3,000 square feet of service area. A formula business that is not a restaurant and is located within the Formula Business Overlay Zone may not contain more than 4,000 square feet of selling area.

b. Dispersion. A formula business located within the Formula Business Overlay Zone may not be located within 400 feet of another formula business, as measured along sidewalks from the main entrance of each. In addition, a formula business that holds a liquor license and is located within the Formula Business Overlay Zone may not be located within 150 feet of another business that holds a liquor license, as measured along sidewalks from the main entrance of each.

c. Signs. In addition to any other requirements and limitations on signage in this chapter, a formula business located within the Formula Business Overlay Zone may not have any standard internally-illuminated signs, such as box-type signs or signs with internally-illuminated lettering, below the fifth story of a building. Halo-lit signs and dye-cut metal sign panels that illuminate individual letters and symbols are permitted. Additionally, the City’s Planning Division may require a formula business to reinterpret standard corporate signage, including but not limited to use of alternative materials or lighting solutions, and adjustments to the scale of trademark logos and graphics.

d. Exemption. A formula business located in the Formula Business Overlay Zone on or before November 19, 2006 is not subject to the requirements of this section. Such a business is considered a formula business for the purpose of calculating dispersion requirements under subsection (b) for a new or relocating formula business in the Formula Business Overlay Zone.

Sec. 14-330.4. Restrictions on formula businesses in Extended PAD Overlay Zone.

a. Limit on number of formula businesses. A formula business that is a permitted or conditional use in the underlying zone may be established or relocated in the Extended PAD Overlay Zone only if its establishment or relocation would not result in a total of more than twenty-three (23) formula businesses operating within the Extended PAD Overlay Zone.

b. Space and frontage. A formula business that is a restaurant and is located within the Extended PAD Overlay Zone may not contain more than 2,000 square feet of service area, and may not have more than 50 feet of street level frontage. A formula business that is not a restaurant and is located within the Extended PAD Overlay Zone may not occupy more than 1,500 square feet of selling area, and may not have more than 50 feet of street level frontage.

c. Dispersion. A formula business located within the Extended PAD Overlay Zone may not be located within 200 feet of another formula business, as measured along sidewalks from the main entrance of each. In addition, a formula business that holds a liquor license and is located within the Extended PAD Overlay Zone may not be located within 150 feet of another business that holds a liquor license, as measured along sidewalks from the main entrance of each.

d. Signs. In addition to any other requirements and limitations on signage in this chapter, a formula business located within the Extended PAD Overlay Zone may not have any standard internally-illuminated signs, such as box-type signs or signs with internally-illuminated lettering, below the fifth story of a building. Halo-lit signs and dye-cut metal sign panels that illuminate individual letters and symbols are permitted. Additionally, the City's Planning Division may require a formula business to reinterpret standard corporate signage, including but not limited to use of alternative materials or lighting solutions, and adjustments to the scale of trademark logos and graphics.

e. Exemption. A formula business located in the Extended PAD Overlay Zone on or before November 19, 2006 is not subject to the requirements of this section. Such a business is considered a formula business for the purpose of calculating dispersion requirements under subsection (c) for a new or relocating formula business in the Extended PAD Overlay Zone.

Sec. 14-330.5. Separate Business Entities.

Where two or more formula businesses operate on one site, and where each business entity requires a separate business license, or displays in a manner visible from public property separate business trademarks, logos, service marks or other mutually identifying names or symbols, each business entity shall be counted as a separate formula business for the purpose of this Division.

AND BE IT FURTHER ORDERED, that if enacted by the Council, the restrictions in this article shall apply from November 19, 2006; and

BE IT FURTHER ORDERED, that the City Council shall create a Stakeholders Task Force for the purpose of monitoring the formula business ordinance and assessing its impact and make recommendations for changes; and

BE IT FURTHER ORDERED, that members on the Task Force shall consist of individuals appointed by the Council following nomination by the Chamber of Commerce, the Portland Downtown District retailers, the Portland Downtown District property owners, another local business group or organization, the Bayside Neighborhood Association, the Munjoy Hill Neighborhood Association, and an independent business owner, and a citizen at large nominated by the Mayor; and

BE IT FURTHER ORDERED, that the Task Force shall report to the Council on a quarterly basis and include within the scope of its work a review of all aspects of the formula business ordinance, including but not limited to, the definition of formula business, the location of the overlay zones, the exemptions, the caps, the disbursement requirements and the square footage limitations.6