

ORDINANCE 801

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF COTATI ADDING SECTION 17.42.071,
TITLED FORMULA-BASED FAST FOOD RESTAURANT TO THE COTATI MUNICIPAL
CODE AND AMENDING SECTIONS, 17.22.020 (TABLE 2-3), AND 17.90.020, TO ADD
SPECIFIC PROVISIONS RELATING TO FORMULA-BASED FAST FOOD RESTAURANTS.**

WHEREAS, to protect the public health, safety, and welfare, it is the desire of the City Council of the City of Cotati to modify the City of Cotati Municipal Code to address the location and operation of Formula-Based Fast Food Restaurants, as defined below; and,

WHEREAS, Cotati is a vital and active City that retains a small town atmosphere and a strong sense of community and community character; and

WHEREAS, Cotati has striven to retain its small town character and diverse economic and business establishments, in part, by encouraging, through the City's land use regulations, the establishment of a diverse range of small businesses. This has had the desired effect of promoting the development of small businesses whose owners are involved in and support the community, both financially and otherwise; and

WHEREAS, money earned by independent businesses is more likely to circulate within the local neighborhood and City economy than the money earned by formula-based businesses such as Formula Based Fast Food Restaurants, which often have corporate offices and vendors located outside of Cotati; and

WHEREAS, Cotati is one of a few urban centers in the state in which housing, shops, work places, schools, parks and civic facilities intimately co-exist to create strong identifiable neighborhoods. The neighborhood streets invite walking and bicycling and the City's mix of architecture contributes to a strong sense of neighborhood community within the larger City community; and

WHEREAS, notwithstanding the marketability of a retailer's goods or services or the visual attractiveness of the storefront, the standardized architecture, the standardized color schemes, decor and signage (which said signage almost universally includes the display of registered service marks which, under federal law, cannot be modified or changed through application of local land use regulations) of many Formula-Based Fast Food Restaurants can detract from the distinctive character of the City's commercial districts; and

WHEREAS, the advent of Formula-Based Fast Food Restaurants in the City, if not regulated, may hamper and irreparably impede the City's goal of a diverse restaurant base with distinct neighborhood food service personalities comprised of a mix of restaurant types. Specifically, the unregulated and unmonitored establishment of Formula-Based Fast Food Restaurant uses may unduly limit or eliminate restaurant establishment opportunities for smaller or medium-sized businesses, many of which tend to be non-traditional or unique, and unduly skew the mix of available restaurant types towards national retailers in lieu of local or regional retailers, thereby decreasing the diversity of eating establishments available to residents and visitors and the diversity of purveyors of prepared foods; and

WHEREAS, the City Council finds that this ordinance is categorically exempt from environmental review pursuant to Section 15060 and 15061(b) (3) of the California Environmental Quality Act ("CEQA") Guidelines in that the Council finds and determines that the project is covered by the

**Ordinance No. 801
Formula-Based Fast Food Ordinance**

general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Adding and amending sections of the existing Land Use Code to establish further regulations on formula-based fast food restaurants would not result in direct or reasonably foreseeable indirect adverse physical changes in the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COTATI DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 17.22.020, Table 2-3 of the City of Cotati Municipal Code is hereby amended to add the following:

TABLE 2-3 Allowed Land Used and Permit Requirements for Mixed Use Corridors and Districts	PERMIT REQUIRED BY DISTRICT							Specific Use Regulations
	CE	CG	CD	CI	IG	PF		
	LAND USE (1)							
Formula-Based Fast Food Restaurant	S	S	S	-	-	-	17.42.071	

The remainder of Table 2-3 shall remain the same.

SECTION 2. Section 17.42.071 is hereby added to read as follows:

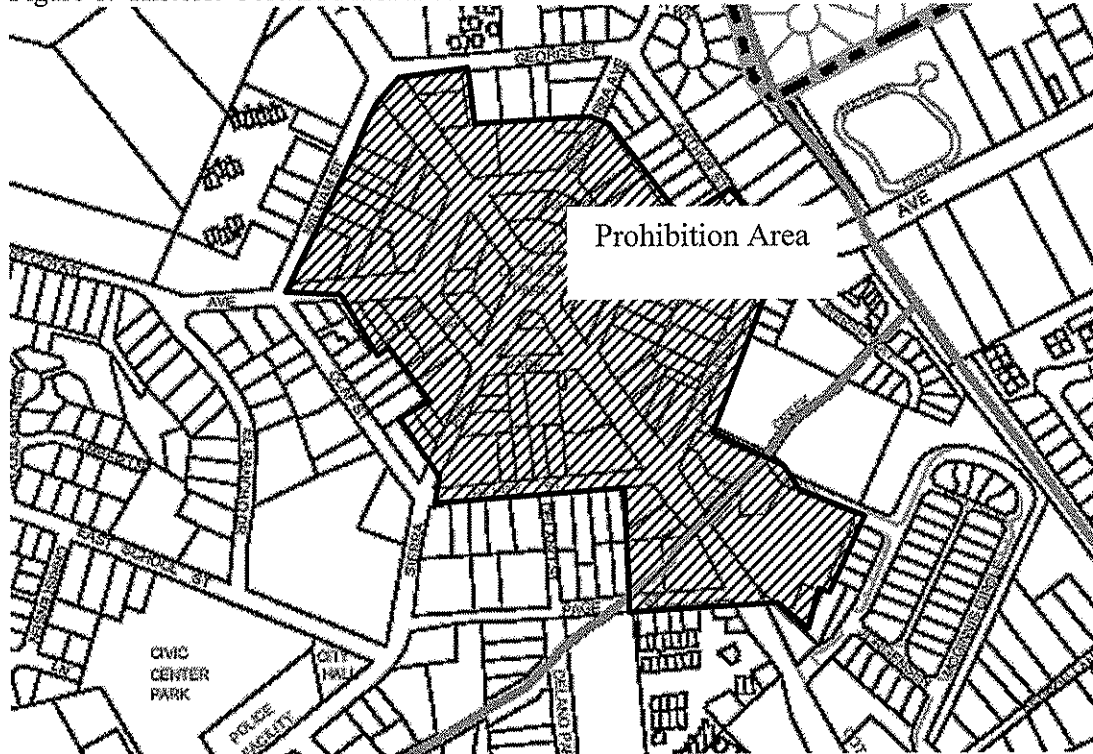
17.42.071 - Formula Based Fast Food Restaurant

Formula Based Fast Food Restaurants shall comply with the requirements of this Section and shall occur only where allowed by this Section. The provisions of this Section are intended to ensure the preservation of Cotati's unique neighborhood community character and to retain a diverse economic and business establishment by restricting and/or prohibiting the establishment of Formula-Based Fast Food Restaurants within certain Zoning Districts and areas of the City.

A. Limitations on Use

1. Formula Based Fast Food Restaurants Prohibited. Formula-Based Fast Food Restaurants are prohibited within the Public Facilities (PF) Zoning District, Commercial Industrial (CI) Zoning District, General Industrial (IG) Zoning District and within the Prohibition Area of the Downtown Commercial (CD) Zoning District as shown on Figure 1. Historic Core/La Plaza Hub Formula Based Fast Food Restaurant Prohibition Area.

Figure 1. Historic Core/La Plaza Hub Formula Based Fast Food Restaurant Prohibition Area



2. Allowable Formula Based Fast Food Restaurants and Permit Requirements.

- a. Formula-Based Fast Food Restaurants meeting the Formula Based Fast Food Restaurant Performance Standards set forth in Section 17.42.071 B, below are allowable in the following districts with a Use Permit as set forth in Section 17.62.050:
 - (i) East Cotati Avenue Corridor (CE) Zoning District;
 - (ii) Gravenstein Highway Corridor (CG) Zoning District; and
 - (iii) Within the portion of the Downtown Commercial (CD) Zoning District not depicted as the Prohibition Area in Figure 1 Historic Core/La Plaza Hub Formula Based Fast Food Restaurant Prohibition Area.
- b. No Use Permit shall be granted for a Formula Based Fast Food Restaurant unless the Review Authority first:
 - (i) finds that the proposed use meets the Formula-Based Fast Food Restaurant Performance Standards set forth in Section 17.42.071 B, below;
 - (ii) makes the findings otherwise required for the issuance of a Use Permit as set forth in Section 17.62.050. and
 - (iii) finds that the project results in an equitable distribution of Formula-Based Fast Food Restaurants within each of the commercial zoning districts as set forth in Section 2(a) above.

B. Formula Based Fast Food Restaurant Performance Standards.

No permit shall be issued for the establishment of a Formula-based Fast Food Restaurant, and it shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City the operation of a Formula-based Fast Food Restaurant, unless said establishment complies with each of the following performance standards:

1. A formula based fast food restaurant shall only be established within the City if the total number of legally entitled formula-based fast food restaurants within the City does not exceed a cap number of 8. The total number of Formula-based Fast Food Restaurant shall be dispersed within the commercial districts as follows:
 - Within the CG District a maximum of 4 Formula-based Fast Food Restaurants shall be allowed;
 - Within the portion of the CD District not depicted as Prohibition Area in Figure 1. Historic Core/La Plaza Hub Formula Based Fast Food Restaurant Prohibition Area a maximum of 2 Formula-based Fast Food Restaurants shall be allowed; and
 - Within the CE District a maximum of 2 Formula-based Fast Food Restaurants shall be established;
2. No more than 1 of the same Formula-based Fast Food Restaurants shall be located within the City (e.g.: not more than one Burger King Restaurant or not more than one Starbucks). The “same” shall be mean 150 or more Formula Based Fast Food Restaurants that share a “formula” (i.e. the same Trademark, logo, Service Mark or other mutually identifying name or symbol, any Standardized Array of Merchandise, or standard services, Decor, Color Scheme, business methods, architecture, layout, Uniform Apparel, Signage or similar, standardized feature);
3. No Formula-Based Fast Food Restaurants shall be located closer than 60 feet from any other Formula Based Fast Food Restaurant; and
4. No more than 30 percent of the leasable square footage any building or structure with 3 or more tenants shall be used by a Formula Based Fast Food Restaurant.

In addition, all Formula-Based Fast Food Restaurants shall comply with all other requirements of the Municipal Code, including, but not limited to:

- Section 17.24.050.E.1. - Formula Design Prohibited
- Section 17.62.040 - Design Review
- Section 17.42.070 - Drive Thru Facilities

SECTION 3. Section 17.90.020(F) of the City of Cotati Land Use Code is amended to add Formula-Based Fast Food Restaurant as follows:

Formula-Based Fast Food Restaurant. A national, regional, or local formula food service establishment that uses a Trademark, Logo, Service Mark or other mutually identifying name or symbol that is shared by 150 or more similar establishments within the United States, and which

Ordinance No. 801
Formula-Based Fast Food Ordinance

maintains any Standardized Array of Merchandise, or Standard Services, Decor, Color Scheme, business methods, architecture, layout, Uniform Apparel, Signage or similar, standardized feature; and is dedicated to food service where food is consumed on or off the site and exhibits three or more of the following characteristics:

1. Food is pre-made and wrapped before customers place orders;
2. Food is served with disposable tableware for on-site food consumption;
3. Food is ordered from a wall menu at a service counter;
4. Food consumed on the premises is ordered while customers are standing;
5. Payment is made by customers before food is consumed; and
6. The service counter is closer to an entry/exit than is the seating/dining area.

For purposes of this definition and for the purposes of Chapter 17.42.071, the following words and phrases shall have the following meanings:

- a. "Standardized Array of Merchandise" shall be defined as 50% or more of in-stock merchandise from a single distributor bearing uniform markings.
- b. "Trademark" shall be defined as a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of the goods from one party from those of others.
- c. "Service Mark" shall be defined as a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of a service from one party from those of others.
- d. "Décor" shall be defined as the style of interior finish materials, which may include but is not limited to, style of furniture, wallcoverings or permanent fixtures.
- e. "Color Scheme" shall be defined as selection of colors used throughout the business establishment, such as on the furnishings, permanent fixtures, and wallcoverings, or as used on the Façade.
- f. "Façade" shall be defined as the face or front of a building, including awnings, looking onto a street or an open space.
- g. "Uniform Apparel" shall be defined as standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hat, and pins (other than name tags) as well as standardized colors of clothing.
- h. "Signage" shall be defined as a sign pursuant to Section 17.90.020 of the Cotati Municipal Code.
- i. "Logo" shall be defined as is a graphical element, symbol, or icon that, together with its logotype (which is set in a unique typeface or arranged in a particular way) form a trademark or brand.
- j. "Standard Services" shall be defined as mutually shared service methods which distinguish the source of a service of one party from those of others.

SECTION 4. Section 17.90.020(A) of the Cotati Municipal Code is amended to read as follows:

Accessory Retail or Services - The limited retail sale of various products, or the provision of certain personal services within a health care, hotel, office, or industrial complex, to employees or customers of, or visitors to the primary use. Examples of these uses include pharmacies, gift shops, and food service establishments within hospitals; convenience stores and food service establishments within hotel, office and industrial complexes; and barber and beauty shops within residential care facilities. Does not include formula-based fast food restaurant, which is separately defined.

SECTION 5. Section 17.90.020(B) of the Cotati Municipal Code is amended to read as follows:

Bar/Tavern - A business where alcoholic beverages are sold for on-site consumption, which are not part of a larger restaurant. Includes bars, taverns, pubs, and similar establishments where any food service is subordinate to the sale of alcoholic beverages. May also include beer brewing as part of a microbrewery ("brew-pub"), and other beverage tasting facilities. Does not include Adult Oriented Businesses or formula based fast food restaurant, which is separately defined.

SECTION 6. Section 17.90.020(C) of the Cotati Municipal Code is amended to read as follows:

Convenience store- A neighborhood serving retail store of 3,500 square feet or less in gross floor area, which carries a range of merchandise oriented to daily convenience shopping needs. Does not include formula-based fast food restaurant, which is separately defined.

SECTION 7. Section 17.90.020(G) of the Cotati Municipal Code is amended to read as follows:

General Retail - Stores and shops selling many lines of merchandise. Examples of these stores and lines of merchandise include:

art galleries, retail	jewelry
art supplies, including framing services	luggage and leather goods
bicycles	musical instruments (small), parts and accessories (large instruments are under "Furniture, Furnishings, and Appliance Store")
books, magazines, and newspapers	orthopedic supplies
cameras and photographic supplies	small wares
clothing, shoes, and accessories	specialty shops
department stores	sporting goods and equipment
drug stores and pharmacies	stationery
dry goods	toys and games
fabrics and sewing supplies	variety stores
florists and houseplant stores (indoor sales only—outdoor sales are "Building and Landscape Materials Sales")	videos, DVDs, records, CDs, including rental stores
hobby materials	

Does not include adult oriented businesses, antique or collectible stores, furniture and appliance stores, second hand stores or formula-based fast food restaurant, all of which are separately defined.

Grocery, specialty foods-A retail business where the majority of the floor area that is open to the public is occupied by food products packaged for preparation and consumption away from the store. Includes retail bakeries, where any on-site baking is only for on-site sales. (See also "Catering Service".) Does not include formula-based fast food restaurant, which is separately defined.

SECTION 7. Section 17.90.020(R) of the Cotati Municipal Code is amended to read as follows:

Restaurant, Café, Coffee Shop - A retail business selling ready-to-eat food and/or beverages for on- or off-premise consumption. These include eating establishments where customers are served from a walk-up ordering counter for either on- or off-premise consumption ("counter service"); and establishments where customers are served food at their tables for on-premise consumption ("table

Ordinance No. 801
Formula-Based Fast Food Ordinance

service"), that may also provide food for take-out. Does not include formula-based fast food restaurant, which is separately defined.

SECTION 8: Severability. The provisions of this chapter are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Chapter.

SECTION 9: Effective Date. This ordinance shall take effect on the 31st day following its adoption.

IT IS HEREBY CERTIFIED that the foregoing ordinance was duly introduced at a regular meeting of the City Council of the City of Cotati on the 10th day of October 2007, and legally adopted on the 24th day of October, 2007, by the following vote, to wit:

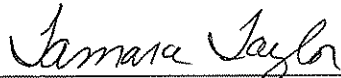
FOX	<u>Yes</u>
GILARDI	<u>No</u>
GUARDINO	<u>Yes</u>
MINNIS	<u>Abstain</u>
ORCHARD	<u>Yes</u>

APPROVED: _____



Mayor

ATTEST: _____



Deputy City Clerk