

white paper

Outcomes for Portland's Future

The Formula Business Ordinance

In Brief:

On November 20, 2006, the Portland City Council adopted a "Formula Business Ordinance" amended to the Portland City Code, Chapter 14 (Land Use), Article III, Division 19.7.

The adoption of this ordinance has brought specific concerns to the forefront:

- The ordinance precludes formula businesses from locating in large parts of the Portland Peninsula including the Downtown and Old Port areas.
- Timing: The adoption of such a significant ordinance was done without public participation, sans traditional policy-making process and, with little, if any, analysis of the impact on the City.
- The ordinance is in contrast with Portland's long term vision: 1) by being ambiguous with regards to service franchise operations and businesses regardless of size, 2) by limiting re-building of the Bayside area, and 3) by diluting the base and charm of the smaller, boutique businesses on the peninsula.

To the average person, zoning is a very dry subject. It can be a difficult task to raise and maintain public interest. As a result, public participation often narrowly represents a select group of interests. Citizens live in the community and through their daily lives become aware of successes and failures of that community. As a result, public input in discussion can lead to better decisions.

To view and obtain a copy of the Formula Business Ordinance online go to:

<http://www.portlandmaine.gov/chapter014.pdf>

and see "Formula Business," Division 19.7, Sec. 14-330.1

Situation:

When the City Council narrowly approved (5-4) to pass the Formula Business Ordinance (“FBO”) on November 20, 2006 it created two overlay districts on the peninsula:

- The broader FBO covers the Old Port, Arts District, Eastern Waterfront and Bayside. Formula businesses wanting to locate within the zone will have to adhere to size, storefront and sign restrictions. A formula business in those zones is defined as a business with more than 30 locations in the United States.
- In the Old Port and Arts District, a stricter Extended Pedestrian Activity District (“PAD”) Overlay Zone is created. In this zone, a formula business is defined as having 10 or more locations. The number of formula businesses allowed in the zone is capped at 23 (the current number operating there). A new formula business could not open in this zone unless another closed or moved out.

The passage of the ordinance followed a six-week moratorium banning new chain restaurants from opening in the Arts District and Old Port. At the time of passage, the council amended the FBO to create a task force to study the merits of such restrictions. Members of the task force were to be selected in the coming weeks.

In early December, a group of city residents organized an effort to overturn the FBO. The City Council met and took public comment on January 3, 2007. At this meeting, a councilor proposed an Amendment to the Ordinance to provide a sunset provision that would repeal on June 30, 2007 and have a special Stakeholders Task Force study the FBO and other downtown concerns and issue a report to the council by April 30th. However, the City Council did not act and instead referred it to the Community Development Committee (CDC) for review on January 10, 2007.

On January 10th, the CDC voted 3-0 to recommend the City Council reject the proposed “sunset provision” that would cause restrictions to expire June 30th unless the council extended them. At this meeting, the committee also heard testimony from people on both sides of the issue which will be the subject of a council workshop on January 29, 2007.

Specifics:

Though there may be some support for the FBO being held to formula restaurants and fast food type chains, the expansion of the FBO is extremely problematic. In reality, many of the formula businesses are a tremendous asset to the downtown and would bring shoppers downtown rather than to various life-style malls and enclosed malls in the Greater Portland area.

Restrictions - Space & Frontage: The FBO’s restrictions on size and street frontage of not more than 50’ is in direct conflict with the buildings designed in the Bayside neighborhood and with most new construction that might occur within the FBO overlay zone. Typically, new construction will have more than 50’ per storefront frontage and is part of the mixed use plan in the Bayside neighborhood. 3,000 SF as a limit would effectively block most users.

Restrictions - Dispersion: 400’ is a huge distance and ignores a basic concept of retail marketing—many retailers like to cluster.

Restrictions - Limit Number of Formula Businesses: The number 23 seems arbitrary given that Portland has never had any serious influx of these users and the fact that it is unlikely to occur in the future.

Since a great deal of the PAD overlay is in the Old Port, the stricter restriction of no more than 2,000 SF and no more than 50’ of frontage makes little sense. Physical construction of the buildings is 25’ wide by 75’-80’ deep for the most part due to the time of the buildings’ construction in the late 1800s. Therefore, spaces are not easily subdivided and the few buildings that are over 2,000 SF are unlikely to be able to be subdivided.

Timing of the Ordinance: This is perhaps one of the most significant ordinance changes that the City Council will make during this term. The rush to pass it, out of the traditional policy-making process, is likely to lead to unintended consequences with regards to the vitality of the Portland Peninsula.

Are We On the Right Track?

In addition to the “specifics” listed prior, the FBO needs further scrutiny due to its huge influence on Portland’s future as briefly summarized here.

Service Industry: One of the fastest growing areas of franchise operations has been the service industry. The FBO does exempt certain formula businesses based on a premise of “providing services rather than goods for sale, including but not limited to mailing services and vehicle and equipment rental.”

By allowing these services the FBO invites users such as Boston Hair, Aspen Dental, SuperCuts, Pearl Vision, Snippets, etc. These users are likely or more likely to compete with local businesses than an exclusive fashion designer carrying only a single brand of clothing such as Cole Haan Footwear or American Eagle for example. This exemption could preclude the goals of the FBO, or at any rate is in conflict with its goals.

“One of the dangers of reactive zoning is the law of unintended consequences.”

- Portland Press Herald Editorial, 12/26/2006

Portland’s Long Term Vision:

- **The FBO Undermines Bayside:** The national tenants and formula businesses are likely to play a significant role in the re-building of the Bayside area. It is the only place on the peninsula they can have the square footage and the nearby parking that is required for the businesses to be successful. These midsize users are typically 3,500 to 15,000 SF. They make ideal first floor tenants for the proposed re-building of Bayside. Those properties are uniquely unsuited to smaller boutique tenants.
- Driving tenants towards 1,500 to 3,000 SF uses (which is your typical home-grown business) is a bad decision. By creating space on Bayside which is a target for 1,500 to 3,000 SF users the City is diluting its base and will lose the charm of clustering these smaller boutique businesses.
- Portland is on the verge of building too many small retail spaces. It is not in the City’s long term interest to have 1,500 SF users spread from India Street to upper and western Congress Street to the Bayside. The City needs tenants such as Eastern Mountain Sports, the Mattress Furniture store, smaller electronic and office supply stores, etc. to fill out the Bayside vision.

USA Today recently ran a story touting Portland as “earning its place on travel ‘hot’ lists” due to its inclusion in Frommer’s list of the top 12 world travel destinations for 2007. Flexibility and common sense in zoning will maintain the City’s existing DNA that enabled it to get this most recent accolade.

It’s important that residents make their views known on the FBO to the City Council. Please do so and especially before the scheduled council workshop on January 29th. The link to the Portland City Council’s page on the City of Portland website is included on the back page.



Author:

I've been actively involved in downtown real estate for over 20 years. My company, Malone Commercial Brokers, has leased hundreds of retail spaces and we have a keen understanding of what is attractive to customers and potential tenants. I believe this ordinance misses the mark in both places.

I'm a past president of the Maine Real Estate & Development Association (MEREDA) and 2002 recipient of MEREDA's Public Policy Award. I can be contacted at joe@malonecb.com or (207) 772-2422.



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This publication is also available on our website: <http://www.malonecb.com>

REFERENCES & NOTES:

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2. Portland Works* press release, Damage Control: Businesses, taxpayers oppose Portland's formula business ordinance, 01/17/2007
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4. Kelley Bouchard, Panel Votes to Bolster Formula Business Limits, Portland Press Herald, Local & State, 01/11/2007, Section B
5. Kate Bucklin, Shops to Close, Business Ban Blamed, The Portland Forecaster, 01/11/2007.
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7. Tux Terkel, Selling Natural Foods, Urban Growth, Portland Press Herald, 01/09/2007.
8. Rick Hampson, City of Portland is Maine Attraction, USA Today, Nation Section, 01/08/2007
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12. Kelley Bouchard, Council Puts Limits on Small Shops, Portland Press Herald, 12/05/2006.
13. Edward D. Murphy, Store Owner, Others Fear Freeze on Chains, Portland Press Herald, 11/28/2006.
14. Kate Bucklin, City Council Approves Limits on Franchise, Chain Businesses, The Portland Forecaster, 11/22/2006
15. Kelley Bouchard, Councilors Limit Chain Businesses, Portland Press Herald, 11/21/2006

LINKS:

Formula Business Ordinance - <http://www.portlandmaine.gov/chapter014.pdf>

Portland City Council - <http://www.portlandmaine.gov/citycou.htm>

- the council can be emailed en masse from this page

Community Development Committee (CDC) - <http://www.portlandmaine.gov/cdc.htm>

- members are comprised of 3 members of the city council

MEREDA, Maine Real Estate & Development Association - <http://www.mereda.org/>

- MEREDA opposes the FBO

Portland Press Herald Archives - <http://pressherald.maine.today.com/readerservices/archives.html>

- search past issues of the Portland Press Herald and Maine Sunday Telegram

The Portland Forecaster - <http://www.theforecaster.net/>

*NOTE: Portland Works is a coalition of businesses and taxpayers assessing long term damage of the ordinance. Portland Works' contact info: P.O. Box 4887, Downtown Station, Portland, ME 04112, Attn: Mark Robinson, (207) 286-1993 or (207) 332-3798

