

Robert Vitale
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February 6, 2023

The Commissioners of St. Michaels, Maryland
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Distributed by Email

Re: Proposed Formula Business Regulation

Dear Commissioners:

Town Officials recently enacted a Moratorium, effective through July 25, 2023, on “the issuance of any zoning permit, development approval, or occupancy permit for Formula Businesses to allow the Commissioners to give thorough and careful consideration to legislation that would implement certain restrictions on where and under what circumstances such businesses may locate in the Town.” The Moratorium was enacted to provide Town Officials sufficient time to consider and enact longer term legislation regarding the establishment and operation of Formula Businesses (often referred to as “franchises”).

I’m writing not only to thank and congratulate the Commissioners for focusing on this important topic, but also to suggest model language (attached) for a regulatory framework regarding Formula Businesses.

Please let me mention a few points regarding my proposed text:

1. No Ownership Test. Unlike the definition of “Formula Business” contained in the Moratorium, the definition proposed in this letter does not incorporate an “ownership test.” I’ve eliminated that concept because corporate ownership is an easily manipulated concept to create “different” owners and is also often difficult to track and prove through public records. Moreover, people generally object to franchises not because of their ownership, but because of their appearance. Stated differently, a McDonald’s owned by a sole proprietor is as noxious as one owned by a mega-corporation. I submit regulatory focus is better addressed to the appearance, operation, and business purpose of a given business, and less so on technical ownership.
2. Not Location Dependent. The proposed text regulates Formula Businesses wherever located within the Town limits.
3. Grandfathering. Whatever regulation is developed should acknowledge that there may be businesses already existing and operating in St. Michaels that may constitute a Formula Business under new regulations; the regulation proposed in this letter grandfathers such businesses so long as they remain the same business as when the grandfathering occurred.
4. Excepted Formula Business. The Moratorium excepts from the definition of Formula Business (and thus from regulation as a Formula Business) (1) banks; (2) real estate brokerages or agencies; (3) grocery stores; and (4) businesses engaged primarily in the sale of goods with a maritime-related theme and that are made from recycled materials. I am not sure where that list came from, but I will defer to the Commissioners on whether the permanent Formula Business regulation (as opposed to the temporary Moratorium) should also contain exceptions for lines of business that would otherwise qualify as a “Formula Business.”

If such exceptions are contemplated, I've proposed a regulatory regime that exempts certain classes of small-scale Formula Businesses, but only so long as there are not more than one of what I refer to as a "Boutique Formula Business" operating in or near St. Michaels.

I believe the regulatory regime proposed in the attached text would accomplish the goals of 1) grandfathering in existing businesses operating in St. Michaels; 2) giving the Planning Commissioners the flexibility to allow the permitting of a Formula Business if it is deemed in the Town's best interests; 3) gives guidance to the Planning Commissioners on the criteria to be used in considering the permitting of a Formula Business or Boutique Formula Business ("consistent with the unique character and identity of St. Michaels"); 4) incorporates enhanced protection for the Historic District; 5) avoids the extraneous issue of "ownership" as a test criteria (which is easily manipulated to sidestep a legislative requirement); and 6) enables the Commissioners to create, if deemed desirable, a class of Boutique Formula Businesses that are in keeping with the Town's development objectives.

Thank you for your consideration of these requests, and for your service to the Town.

Sincerely,

A handwritten signature in blue ink, appearing to read "R Vitale".

Robert Vitale

Sample Formula Business Text

[W Boutique Formula Business Exception]

Code Section __: No Formula Business Authorization shall be issued with respect to any business within the Town of St. Michaels unless the Planning Commission by unanimous vote shall determine that the proposed Formula Business, together with its design and improvements, is consistent with the unique character and identity of St. Michaels and will preserve the distinctive visual appearance and shopping/dining experience of St. Michaels for its residents and visitors, *provided however* 1) no Formula Business Authorization shall be issued with respect to any business located in the Historic District unless such Formula Business was operating in the Historic District prior to the effective date of this Code Section and so long as such Formula Business remains the same Formula Business (as to size, location and line of business) at all times during the effectiveness of such Formula Business Authorization[; and 2) this Code Section shall not apply to any Boutique Formula Business the Planning Commission has determined by unanimous vote is consistent, as to design and improvements, with the unique character and identity of St. Michaels and will preserve the distinctive visual appearance and shopping/dining experience of St. Michaels for its residents and visitors.]

For purposes of Code Section __:

- A. [Boutique Formula Business]: Means a [bank, real estate agency, title insurance agency, personal or commercial insurance agency, pharmacy or grocery store] that would otherwise constitute a Formula Business except i) there are less than six (6) substantially similar or identical Formula Business establishments in or planned for the State of Maryland and ii) a substantially similar or identical Formula Business establishment is not already operating in or planned for within twenty-five (25) miles of the geographic boundaries of the Town of St. Michaels, Maryland.]
- B. Formula Business:
 - a. Means any retail or wholesale business, store or establishment (including but not limited to a/an: hotel; motel; camp ground; convenience store; drive-in or drive-thru establishment; pop-up or temporary store; auto or vehicle parts store; establishment for the sale or storage of gasoline, propane, diesel or other fuel; store or facility for the sale, rental, storage, charging, cleaning or care of vehicles, clothing, appliances, electronics or goods of any kind; personal services establishment such as a nail salon, spa, hair stylist, exercise studio, gym, health food store, vitamin or nutritional supplement store, tattoo parlor, training or rehabilitation facility, cosmetic surgery or medical care facility; retail or wholesale association, club or store; restaurant, bar, pub, dance hall, nightclub, cocktail lounge, tasting venue, or tavern; establishment to sell or allow the use of tobacco or marijuana products, or by-products of either, in any form; or any establishment earning a material portion of its revenue from the sale of food or beverages) that:
 - i. is required or permitted by contractual or other arrangement or affiliation to maintain a standardized array of services and/or merchandise, menu, employee uniforms, decor, interior or exterior design or façade or layout, signage, color scheme, trademark or service mark, name, or similar standardized features, which cause the establishment to be substantially similar or identical to i) twelve (12) or more other establishments in the United States or ii) six (6) or more other establishments in the State of Maryland or iii) one (1) or more other establishments within twenty-five (25) miles of the geographic boundaries of the Town of St. Michaels, Maryland; or
 - ii. is licensed, permitted, or is otherwise authorized to operate as a “franchise” or “formula business” under the laws or regulations of any other State or local jurisdiction within that State; or

iii. is included in, referred to in, or contemplated in, any business plan, filing, offering document, advertisement, announcement or agreement that contemplates the current or future operation of i) twelve (12) or more substantially similar or identical other establishments in the United States or ii) six (6) or more substantially similar or identical other establishments in the State of Maryland or iii) one (1) or more substantially similar or identical other establishments within twenty-five (25) miles of the geographic boundaries of the Town of St. Michaels, Maryland.

C. Formula Business Authorization: means any zoning, building, occupancy, use or other permit, development approval, or license relating to a Formula Business.

Submitted by:
Robert L. Vitale
Feb 6, 2023