

Ordinance No. 07-08-13

**Town of Chesapeake City, Maryland
Formula Business Zoning Ordinance**

AN ORDINANCE OF THE TOWN OF CHESAPEAKE CITY, MARYLAND ADOPTING FINDINGS AND AMENDING THE TOWN OF CHESAPEAKE CITY ZONING ORDINANCE TO DEFINE CERTAIN FORMULA BUSINESSES AND TO ELIMINATE CERTAIN FORMULA BUSINESSES IN CERTAIN ZONES LOCATED WITHIN THE TOWN AND TO ALLOW CERTAIN FORMULA BUSINESSES IN CERTAIN OTHER ZONES BY SPECIAL EXCEPTION WITH CERTAIN CONDITIONS DEPENDING ON THE ZONE AND TO MAKE CERTAIN NONSUBSTANTIVE CHANGES TO THE TOWN OF CHESAPEAKE CITY ZONING ORDINANCE.

WHEREAS, the General Assembly of the State of Maryland (hereinafter "the General Assembly") has enacted a zoning enabling statute governing municipal corporations having been delegated home rule authority pursuant to Article XI-E of the Constitution of Maryland; and

WHEREAS, the General Assembly has resolved that in order to achieve its stated policy that orderly development and use of land requires comprehensive regulation through the implementation of planning and zoning controls by local government, that local government action may displace or limit economic competition by owners and users of property through the planning and zoning controls set forth in the Maryland Annotated Code, Article 66B and other public local and general laws; and

WHEREAS, the Mayor and Council of the Town of Chesapeake City, Maryland (hereinafter "the Town"), adopted the Town of Chesapeake City Comprehensive Plan (hereinafter "the Comprehensive Plan") on February 9, 1998, pursuant to the Maryland Annotated Code, Article 66B, Sections 3.01 through 3.09; and

WHEREAS, the Comprehensive Plan states that the Town's vision statement and overall goal to guide the Town's land use decisions is to "firmly establish picturesque, tranquil and scenic Chesapeake City as the upper eastern shore's most: Culturally-enriched, Historically-significant, and Aesthetically-pleasing, Moderately-growing, safe small town, offering the area's: Highest quality family housing, Family oriented events and activities, Shopping that serves all, Finest inns, Best casual and fine dining, and Outstanding boat docking and marine facilities, while maintaining an historic small town character, charm and quality of life exceeded by none to be enjoyed and admired by its residents and visitors alike"; and

WHEREAS, the Comprehensive Plan particularly addresses the preservation and enhancement of the Town's "special qualities and the rural historic character of the Town," and that the "sense of uniqueness and pride of place are the guiding forces and strongest motivation for those who have contributed to the realization of this document (the Comprehensive Plan)"; and

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WHEREAS, the Comprehensive Plan further states amongst its land use objectives that the Town will “[m]aintain opportunities for a viable economic base which encourages further economic investment, diversification and expansion which offer a broad range of employment and business opportunities adequate to meet Town and County residents needs and enhance the tax base of the Town”; and

WHEREAS, the Town desires to preserve its unique historic, rural and small town character while strengthening the local economy by limiting or further regulating in certain districts the siting and proliferation of cookie-cutter chain or “formula” businesses that serve to undermine the Town’s unique sense of place and history; and

WHEREAS, the Town finds that preservation of the existing character, small town charm and scale of the Town’s residential, commercial and historic districts is essential to attract residents, tourists and visitors alike; and

WHEREAS, the Town finds that large-scale retail businesses, and formula retail, restaurant business developments will conflict with the Town’s distinctively historic residential, maritime and retail character and will adversely alter the existing character and scale of Town’s historic and commercial districts, therefore, posing a threat to the Town’s health, safety and welfare; and

WHEREAS, the Town, a municipal corporation, is authorized by the Maryland Annotated Code, Article 66B, Section 4.01, *et seq.* and the Charter of the Town of Chesapeake City, Section 26-20(53) to enact a comprehensive zoning ordinance; and

WHEREAS, the Town has previously enacted such a comprehensive zoning ordinance (Ordinance No. 98-10-1), the same being codified as the Town of Chesapeake City Zoning Ordinance (hereinafter “Zoning Ordinance”); and

WHEREAS, the Town has determined that certain provisions of the current Zoning Ordinance governing the Town should be amended; and

WHEREAS, the Town is mandated and guided by the Maryland Annotated Code, Article 66B, Section 4.04, to provide for a manner in which the Town’s zoning regulations may from time to time be amended, supplemented, modified, or repealed; and

WHEREAS, the Town Council pursuant to Section 318 of the current Zoning Ordinance may from time to time on its own motion amend, supplement, modify or repeal the regulations established by the Zoning Ordinance; and

WHEREAS, the Town Council has considered a number of such amendments and modifications and has determined that such amendments and modifications described herein are in the best interest of the Town and are designed to further implement the

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legislative intent of the Town of Chesapeake City Zoning Ordinance as described in Section 3 of said Zoning Ordinance.

NOW, THEREFORE, THE TOWN OF CHESAPEAKE CITY, MARYLAND HEREBY ORDAINS, that the sections of the Town of Chesapeake City Zoning Ordinance as codified and set forth below be amended as hereinafter provided (Except as otherwise stated herein, language to be deleted from the existing Ordinance is indicated in strikethrough (e.g. ~~strikethrough~~) format and language to be added is indicated in bold (e.g. **bold**) typeface):

Section 1.

A. Amendment #1 –

ARTICLE II BASIC DEFINITIONS AND INTERPRETATIONS

Part I Definitions

Section 12. Definitions of Basic Terms

...

Formula Business – Except for a service establishment (such as a professional office, insurance agent, stock broker, travel agent, bank, drive-in bank, financial institution, barber shop, beauty shop, dry cleaning/laundry, laundromat, plumbing, mechanical contractor, repair and painting, animal services and automotive services shop), a class of retail or wholesale sales establishment including but not limited to a convenience store, drive-in establishment, retail store, wholesale store, restaurant (standard, fast food, fast food cafeteria, fast food carry-out, drive-in or drive-thru), bar, pub, dance hall, nightclub, cocktail lounge, or tavern that along with 50 or more other establishments regardless of location in the United States is required by contractual or other business arrangements to maintain any two or more of the following substantially identical features:

- a. **Standardized menu or standardized array of merchandise with 50% or more of in-stock merchandise from a single distributor bearing uniform markings,**
- b. **Trademark or service mark, 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, on products or as part of store design,**
- c. **Standardized interior décor including but not limited to style of furniture, wall-coverings, displays or permanent fixtures,**

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- d. Standardized color scheme used throughout the interior or exterior of the establishment,**
- e. Standardized uniform including but not limited to aprons, pants, shorts, shirts, smocks or dresses, hat, and pins (other than name tags), or**
- f. Standardized building facade, floor area design or layout.**

B. Amendment #2 –

ARTICLE II BASIC DEFINITIONS AND INTERPRETATIONS

Part II Zoning Maps

Section 15. Interpretation

...

- 4. Except as stated otherwise in this subsection, to avoid undue hardship, nothing in this Zoning Ordinance shall be deemed to require change in the plans, construction, or designated use of any building or premises on which an application for a certificate or permit was filed with the Town prior to the date of adoption of this Ordinance or amendment thereof, providing that the application meets all zoning and other requirements in effect on the date of said application. The issuance of said certificate or permit shall be valid only if it is exercised within 180 days from the date of issuance of the certificate or permit, "Exercised", as set forth in this section, shall mean that binding contracts for the construction of the main building or other main improvement have been let, or in the absence of contracts, that the main building or other main improvement is under construction to a substantial degree or that prerequisite conditions involving substantial investments shall be under contract, in development, or completed. When construction is not a part of the use, "exercised" shall mean that the use is in operation in compliance with the conditions as set forth in the permit or certificate. Any application for a certificate or permit pending approval by the Town upon the effective date of any amendment to this Ordinance and having a stop work order or citation for any violation issued to the property owner or other liable person by any state, county or Town official shall be deemed to have been filed with the Town after the effective date of any amendment enacted while the certificate or permit was pending approval.**

C. Amendment #3 –

ARTICLE III ADMINISTRATIVE MECHANISMS

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Section 32. Town Council

1. The Town Council ~~is~~ are the local elected legislative body. The Town Council's primary responsibility relative to this Ordinance shall be to make final decisions on zoning amendment petitions, annexations, stormwater management waivers and to make such appointments as identified in this Ordinance. In considering proposed changes in the text of this Ordinance or in the zoning map, the Council acts in ~~its~~ their legislative capacity and must proceed in accordance with the requirements of Article ~~XIX~~ XVIII.

D. Amendment #4 –

ARTICLE IV DEVELOPMENT APPROVAL

Part I Building and Zoning Permits

Section 36. Permits Required

1. No building or other structure shall be erected, nor shall any existing building or structure be moved, added to, enlarged, or structurally altered, **or changed in use without the requisite reviews and approvals**, and no excavation for any building or other structure shall begin until a Zoning Permit, certifying compliance with these regulations, has been issued therefore by the Planning Commission.

E. Amendment #5 –

ARTICLE IV DEVELOPMENT APPROVAL

Part I Building and Zoning Permits

Section 52. Effect of Permit on Successors and Assigns

...

3. Nothing in this Section shall be construed to allow any change in use including a change in use to a formula business as defined in Section 12 of this Ordinance, regardless of the need for or lack of any deviations or physical changes proposed for an existing building or proposed development, without obtaining the necessary approvals from the Town.

F. Amendment #6 –

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ARTICLE VII ENFORCEMENT AND REVIEW

Section 90. Penalties and Remedies for Violations

1. Any person, firm, or corporation that violates any of the provisions of this Ordinance by allowing an impermissible use on the land; or by constructing or altering any building not in accordance with a plan approved under the regulations herein, or defaces, removes, or destroys an official warning, safety, or stop work sign, or who interferes with or threatens, in any manner, any person engaged in the performance of a duty required by the terms of this Ordinance shall be guilty of a misdemeanor and shall be subject to a fine not to exceed \$500.00 or imprisonment not to exceed 90 days, or both fine and imprisonment. Each day such violation continues shall constitute a separate offense.

G. Amendment #7 –

ARTICLE IX ZONING DISTRICTS

Part I Zoning Districts

Section 108. Districts Established

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1. The incorporated area of the Town of Chesapeake City shall be divided into seven (7) ~~six (6)~~ zoning districts: "R-1", Single Family District; "R-2", Mixed Residential District; "R-3", Multi-Family District; "VC" Village Center District; "TND", Traditional Neighborhood Development; "M-1" (also known as "MC"), Maritime Commercial District and "GC", General Commercial District. The districts shall be established to regulate and restrict the location of residences, trades, industries, and buildings erected or altered for specific uses; to regulate and limit the height and bulk of buildings hereafter erected or structurally altered; to regulate and limit population density and the intensity of the use of lot areas; to regulate and determine the areas of yards, courts, and other open spaces with and surrounding such buildings; and the implement the recommendations of the Chesapeake City Comprehensive Plan and the Chesapeake City Critical Area Program.

H. Amendment #8 –

ARTICLE X PERMISSIBLE USES

Section 164. Permissible Uses Tables

...

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USES DESCRIPTION	R-1	R-2	R-3	TND	VC	M-1	GC	PR
2.400 Animal Services								
...								
3.000 FORMULA BUSINESS USES								
3.100 Formula fast food, formula drive-in, and formula drive thru restaurants,							SC	
3.200 All other formula businesses							SE	

(Note nonsubstantive change: Strike in its entirety the column having the heading "PR" from the Permissible Uses Tables found in Section 164 as depicted, in part, above.)

I. Amendment #9 –

ARTICLE XI SUPPLEMENTAL USE REGULATIONS

Part II Commercial, Office and Services

...

Section 180.A. Formula fast food, formula drive-in, and formula drive thru restaurants

Except for those uses and developments reviewed and approved pursuant to an annexation agreement or developer's agreement, the following conditions also apply to formula fast food, formula drive-in, and formula drive thru restaurants permitted by Special Exception by the Board of Appeals in the GC District, in addition to the supplemental use regulations enumerated in Section 180:

1. Buildings shall be designed so that facades, signs, and other appurtenances will have an integrated, harmonious and attractively arranged appearance, and in a size and manner, which will not adversely affect the appearance of surrounding developments.
2. In place of box-type or internally illuminated signs, the Town may require use of halo-lit signs and dye-cut metal sign panels with individually illuminated letters or logos, and may also require alternative materials or lighting solutions, and adjustments to the scale of trademark logos and graphics.
3. The Town may require adjustments to the extent, size or scale of the color scheme, trademark, service mark, signage and décor used throughout the

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interior or exterior of the establishment to mitigate contrasting color schemes and harmonize the color scheme, trademark, service mark, signage and décor with the surrounding neighborhood.

J. Amendment #10 –

**APPENDIX A
BASIC INFORMATION REQUIRED WITH ZONING AND BUILDING
PERMIT APPLICATIONS**

...

Item#	DESCRIPTION	Concept Plan	Minor Site Plan	General Develop. Plan	Prelim.	Final
...						
83.	For retail and wholesale businesses (to determine status as formula business): Articles of Incorporation, Lease (if applicable), Franchise Agreement (if applicable), Trade Name Registration, Building Elevation Drawings, Sign Design, Employee Uniform Policies, Menu, Management Agreement (if applicable) and business affiliation/franchise certification letter issued by the Town Clerk-Treasurer.	X	X	X	X	X

Section 2.

BE IT FURTHER ENACTED AND ORDAINED by the Mayor and Council of Town of Chesapeake City, Maryland that this Ordinance shall be known as the Formula Business Zoning Ordinance and may be cited as such.

BE IT FURTHER ENACTED AND ORDAINED by the Mayor and Council of Town of Chesapeake City, Maryland that severability is intended throughout and within the provisions of this Ordinance. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Ordinance.

BE IT FURTHER ENACTED AND ORDAINED by the Mayor and Council of the Town of Chesapeake City, Maryland that the Zoning Ordinance approved by the Mayor and Council on January 11, 1999, as amended, which is further amended by this ordinance,

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shall remain in full force and effect until the effective date of this ordinance and thereafter.

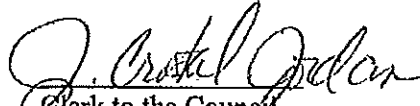
BE IT FURTHER ENACTED AND ORDAINED by the Mayor and Council of Town of Chesapeake City, Maryland that this Ordinance shall become effective at the expiration of 10 days following approval by the Mayor and Council.

AYES: 5 NAYES: 0 ABSENT: 0

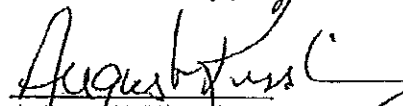
INTRODUCED and read in a public session of the Mayor and Town Council on this 12th day of August, 2007:


Clerk to the Council


PASSED by the Council of the Town of Chesapeake City, Maryland on this 12th day of August, 2007, by:


Clerk to the Council

ORDAINED, APPROVED AND finally passed by the Mayor and Council of the Town of Chesapeake City, Maryland on this 12th day of August, 2007, by:

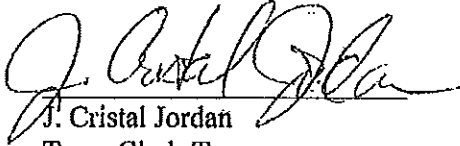

August W. Kiessling
Mayor

Approved as to form:


Kevin J. Best, Esq.
Linowes and Blocher LLP
Special Legal Counsel

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Attest:


J. Cristal Jordan
Town Clerk-Treasurer

ORDINANCE SCHEDULE

PROPOSED ORDINANCE SUMMARY
NEWSPAPER PUBLICATION DATES:

1. (8/13/07)

2. (8/20/07)

ORDINANCE INTRODUCTION DATE:

(8/13/07)

ENACTMENT DATE (AFTER PUBLIC HEARING):

(8/27/07)

ENACTED ORDINANCE SUMMARY
PUBLICATION DATE:

(8/29/07)

EFFECTIVE DATE (10 DAYS AFTER ENACTMENT):

(9/6/07)