City of Longview

1525 Broadway
Longview, WA 98632
www.ci.longview.wa.us

Agenda
Virtual meeting on zoom.us

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Planning Commission

Wednesday, February 2, 2022	7:00 PM	City Hall

1. **ROLL CALL**

2. **APPROVAL OF MINUTES**

22-00061 **Minutes of the January 5, 2022 regular meeting.**

3. **AUDIENCE PARTICIPATION OF CORRESPONDENCE**

4. **NON-PUBLIC HEARING ITEMS**

22-00063 **WORKSHOP**
PC 2022-1 City Council direction to the Planning Commission: review the uses permitted in the Downtown Commerce district, D-C zone and recommend zoning amendments to ensure a vibrant mixture of for-profit uses including the sale of goods and services, entertainment and dining are present.

Recommended Action: Direction to staff on next steps- future workshop or set public hearing for March or April.

5. **PLANNER'S REPORT**

6. **ADJOURNMENT**

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Minutes

Agenda

In-person or Virtual Meeting
Join from a PC, Mac, iPad, iPhone or Android device: Use this URL to join. https://us02web.zoom.us/j/86788038944
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Planning Commission

Wednesday, January 5, 2022	7:00 PM	City Hall

1. ROLL CALL

Chairman Collins called the meeting to order at 7:00 p.m.

***Present**: Member Craig Collins, Member Trey Davis, Member Ramona Leber, Member Kalei LaFave, Member Jeff Rauth*
***Absent**:*

***Staff Present**: Christopher Eastwood, Assistant City Attorney; Adam Trimble, Planner; Sam Barham, Engineer; Lisa Vertrees, Administrative Assistant*

Chairman Collins called the meeting to order at 7:00 p.m.

2. APPROVAL OF MINUTES

21-0001157 Minutes of the Decmeber 5, 2021 regular meeting.

A motion was made by Member Kalei LaFave, seconded by Member Ramona Leber, to approve the regular meeting minutes of December 5, 2021. The motion carried by the following vote:

Ayes: Member Craig Collins, Member Trey Davis, Member Ramona Leber, Kalei LaFave
Nays: None

3. AUDIENCE PARTICIPATION OF CORRESPONDENCE

None at this time.

4. NON-PUBLIC HEARING ITEMS

21-0001158 **PC 2021-4 Accessory Dwelling Unit Code Amendments- Draft for review**

The Planning Commission initiated an effort to amend the regulations for accessory dwelling units to allow more opportunity for property owners to add units to existing lots. The attached draft represents a complete re-write of the code. Also attached are presentations from past workshops and the existing ordinance for reference.

Recommended Action: Motion to (accept or amend) proposed draft ADU code and direct staff to begin public outreach and collect comments on the proposed changes to the Accessory Dwelling Unit code amendments.

Mr. Trimble provided a clean re-write of the existing draft ordinance and reviewed the draft changes.

A motion was made by Member Kalei LaFave, seconded by Member Jeff Rauth, to accept the amended proposed draft ADU code and direct staff to begin the public outreach process and collect comments on the proposed changes to the ADU code amendments. The motion carried by the following vote:

Ayes: Member Craig Collins, Member Trey Davis, Member Ramona Leber, Member Kalei LaFave; Member Jeff Rauth
Nays: None

5. PLANNER'S REPORT

Public Works
** Longview Business Park development*
** Baltimore/Oregon Way work*
** Beech and 22nd work*

Planning
** Bud Clary permit for a remodel of the 7th Ave property*
** Downtown zoning review planned for the future at direction from Council*

6. ADJOURNMENT

The next regular Planning Commission meeting is scheduled for February 2, 2022.

With no further business to discuss, the meeting adjourned at 8:30 a.m.

____
Lisa Vertrees, Recorder

P.O. Box 128
Longview, WA 98632-7080
www.mylongview.com

January 30, 2022

To: **Longview Planning Commission**

From: **Adam Trimble, Interim Planning Manager**

Subject: **PC 2022-1 City Council direction to propose amendments to D-C zone uses.**

At the January 13, 2022 regular meeting, the City Council introduced and passed an emergency ordinance enacting a moratorium on all applications for new uses or developments in the D-C zone except for "sales oriented: stores selling, leasing, or renting consumer, home and business goods; or personal service oriented: financial, insurance, real estate, professional outlets and offices, and beauty/barber shops." With the adoption of the moratorium, the City Council directed the Planning Commission to review the uses permitted in the Downtown Commerce district, D-C zone and recommend zoning amendments to ensure a vibrant mixture of for-profit uses including the sale of goods and services, entertainment and dining are present. The ordinance and explanation for the action can be reviewed online (item #13) The discussion from the meeting can be viewed online here [minute 52 mark]: https://kelso-longview.vod.castus.tv/vod/?video=3a3c3d8f-d85e-4115-a52f-9aab575a1ebf

An intent statement for the D-C district we can see that:

> "The downtown commerce (D-C) district is a part of the overall central business district identified in the comprehensive plan. The D-C district has the same purpose as the CBD zoning district but is designed to reflect its unique historical heritage. Pedestrian, bicycle, and transit access is emphasized to ensure that this area is walkable. Active storefronts are vital to maintaining a walkable ambiance for the downtown area."

To meet this intent statement the permitted uses table for the zone is more limited than other commercial zones. Many uses are only allowed as a special property use, requiring a recommendation from the planning commission and public hearing and approval before the City Council. Some uses such as community centers, churches, and membership clubs such as fraternal organizations are only allowed under the following requirement: Note (6): "In the D-C district any property use intended to primarily provide meeting areas for secular and nonsecular uses without an ongoing active ground floor use is prohibited. An "active ground floor use" means a retail, business, or entertainment use where persons come and go on a constant and frequent basis."

I recommend three approaches for the Planning Commission to meet the direction from the City Council:

1) Review the boundary of the D-C zone to ensure the blocks inside the D-Z zone still fit with the purpose statement of having active storefronts… to maintain a walkable ambiance for the downtown area. The boundary could be reduced for example.

2) Review the uses permitted in the D-C zone including note 6, and recommend adding or removing uses to ensure a vibrant mixture of for-profit uses including the sale of goods and services, entertainment and dining are present. I have attached the commercial zone use table with my highlights on certain less active uses added for a starting point on discussion of what should stay or go.
3) Review the zoning codes of cities with similar downtown zones/main street districts. I will provide more research between the February and March meetings.

Resources:

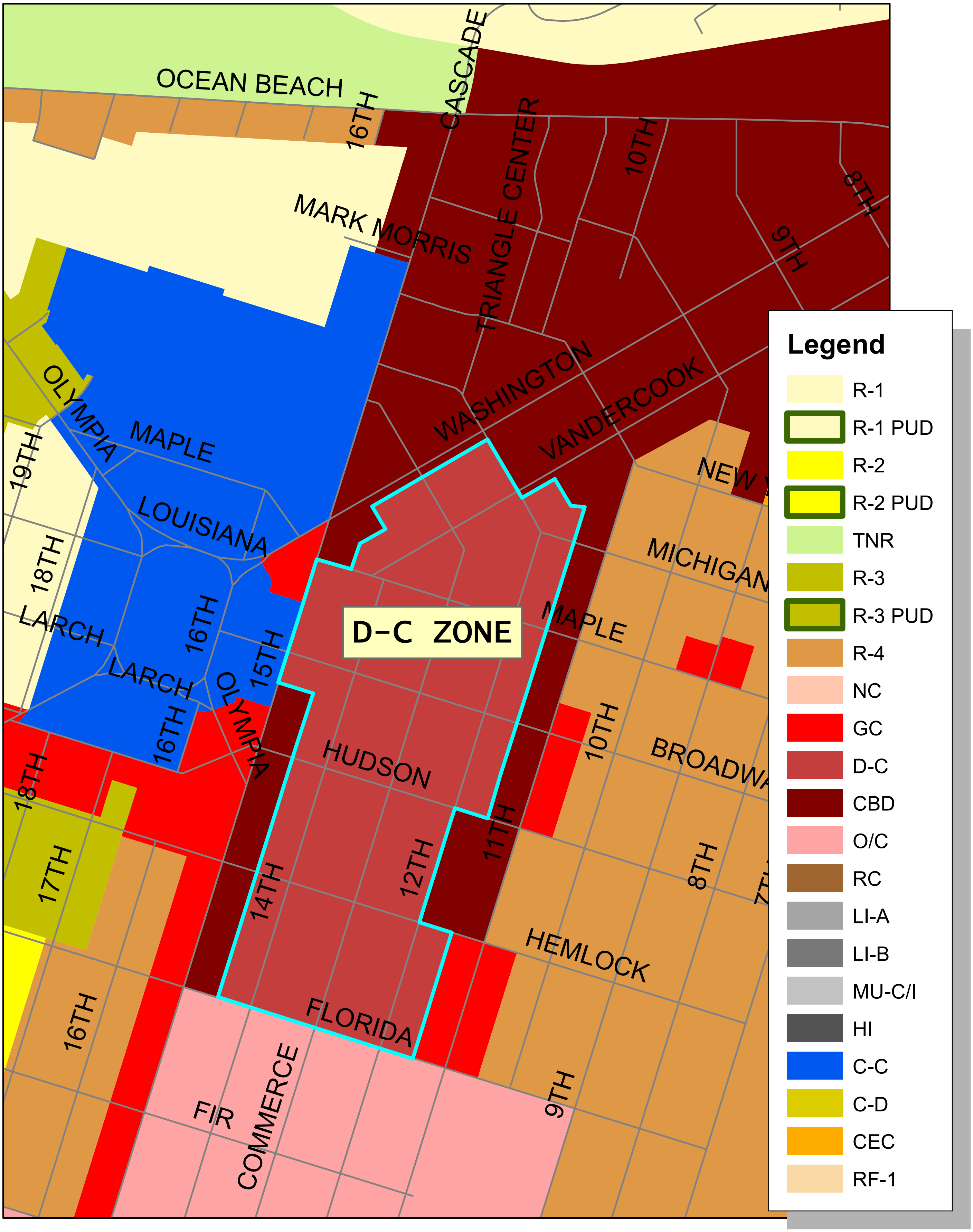
- Attached is the Permitted Uses table for the Commercial zones.
- Attached is a zoning practice publication from the American Planning Association with a focus on main streets and zoning.
- News coverage of the moratorium:

  https://tdn.com/news/local/govt-and-politics/commerce-on-pause-longview-city-council-passes-moratorium-on-new-downtown-stores/article_fe57af52-352d-5bd0-9f10-80608189f02d.html

  https://tdn.com/news/local/core-healths-youth-center-brings-new-purpose-to-downtown-longview-building/article_e059453a-8aee-5b4a-b10f-63f4b54a5043.html

If you have any questions, please contact me at (360) 442-5092.

DOWNTOWN COMMERCE DISTRICT, D-C ZONE



[As a starting point for discussion, I have highlighted uses that could be added or removed. AT]

19.44.020 Uses.

Table 19.44.020-1 includes uses that are permitted (“P”) or allowed through a special property use permit (“SPU”). If a field is blank, or the use is not listed, the use is not allowed in that particular zone.

Table 19.44.020-1. Permitted uses in commercial zones.

Use						
Retail Sales and Service	**D-C**	**CBD**	**RC[1]**	**NC[2]**	**GC**	**O/C**
Sales oriented: stores selling, leasing, or renting consumer, home and business goods	P	P	P	P	P	P[10]
Personal service oriented: financial, insurance, real estate, professional outlets and offices, and beauty/barber shops	P	P	P	P	P	P
Health care providers[3]	P	P	P	P	P	P
Repair oriented: repair of TVs, bicycles, clocks, watches, shoes, guns, appliances and office equipment; photo or laundry drop-off; quick printing; tailor; locksmith; and upholsterer	P	P		P	P	P
Stand-alone liquor store		P[8]	P		P	
Recreational marijuana retail outlets per LMC 19.44.100		P	P		P	P
Eating and Drinking Establishments	**D-C**	**CBD**	**RC[1]**	**NC[2]**	**GC**	**O/C**
Restaurant	P	P	P	P	P	P
Restaurant, with incidental consumption of alcoholic beverages	P	P[8]	P	SPU	P	P
Bars, taverns, and nightclubs	P	P[8]	P		P	
Restaurant, with drive-through facility	SPU	P	P		P	P
Restaurant, with seating in the public right-of-way	P	P		P	P	P
Walk-up food establishment with no indoor seating	SPU	P		SPU	P	SPU
Brewpub	P	P	P[9]		P	P
Lodging, temporary stay	**D-C**	**CBD**	**RC[1]**	**NC[2]**	**GC**	**O/C**
Hotels, motels and lodges	P	P			P	P
Recreational vehicle (RV) parks per Chapters 19.65 and 19.90 LMC					P	
Bed and breakfast inns	P[4]			P		
Vehicle sales, renting, service, and storage	**D-C**	**CBD**	**RC[1]**	**NC[2]**	**GC**	**O/C**
Vehicle repair and service of consumer motor vehicles, including motorcycles, all-terrain vehicles and light and medium trucks		P			P	P
Automobile, light and medium truck dealers		P			P	P[10]
Bus, heavy truck, RV, travel trailer or other large vehicle dealers						
Bicycle, motorcycle, all-terrain vehicle dealers	P[5]	P	P		P	
Boat or marine craft dealer					P	P

Use						
Vehicle storage, outdoor					P	
Vehicle washing					P	P
Vehicle renting and leasing		P			P	P
Vehicle fueling station		P	P[11]	P[12]	P	P[10]
Amusement/Cultural	**D-C**	**CBD**	**RC[1]**	**NC[2]**	**GC**	**O/C**
Indoor continuous entertainment activities such as bowling alleys, skating rinks, game arcades and pool halls	P	P	P		P	
Outdoor continuous entertainment activities such as miniature golf and skateboard facilities					P	
Theaters, indoor	P	P	P		P	
Drive-in theaters, stadiums and arenas					P	
Museums, botanical and zoological gardens, public plazas, performing and cultural arts studios	P	P			P	
Athletic, health and racket clubs	P	P	P	P	P	P
Circuses, carnivals, or amusement rides		SPU			SPU	
Membership clubs such as fraternal organizations	P[6]	P			P	
Gambling casinos, card rooms, bingo parlors, pari-mutuel betting parlors, and video arcades		SPU[8]				
Residential	**D-C**	**CBD**	**RC[1]**	**NC[2]**	**GC**	**O/C**
Residential dwellings above the first story of commercial buildings	P	P		P	P	P
Mixed-use multifamily residential/commercial developments per LMC 19.46.015					P	
Congregate care, assisted living and continuing care facilities and nursing homes for elderly individuals; including accessory services to the above uses	SPU				SPU	SPU
Existing residences without any increase in density			P			
Permanent supportive housing	P	P	P	P	P	P
Transitional housing	P	P	P	P	P	P
Emergency shelters per LMC 19.44.110	P	P			P	P
Emergency housing per LMC 19.44.110	P	P			P	P
Residential care facilities per Chapter 19.17 LMC	P	P	P	P	P	P
Education	**D-C**	**CBD**	**RC[1]**	**NC[2]**	**GC**	**O/C**
Schools that meet state requirements for elementary, secondary or higher education, public or private	SPU					
Vocational or technical institutions and colleges	SPU	P			P	P
Dance, music or art schools or studios; athletic, sports-training or martial arts facilities or schools	SPU	P		SPU	P	P
Driving school	SPU	P			P	P
Miscellaneous	**D-C**	**CBD**	**RC[1]**	**NC[2]**	**GC**	**O/C**

Use						
Day care facilities for the care of more than 12 children	SPU	P		P	P	P
Commercial off-street parking lots and garages	SPU	P			P	P
Temporary uses per Chapter 19.41 LMC	P	P	P	P	P	P
Sidewalk businesses in accordance with LMC 12.30.090 through 12.30.140	P	P		P	P	P
Funeral parlors		P			P	P
Basic utility facilities, non-building structures[13]	SPU	SPU	SPU	SPU	P	SPU
Self-service storage (mini warehouses)					P	SPU
Convention centers	SPU	P	P		P	P
Bus terminals and stations, transportation and transit facilities	SPU	P	P	P	P	P
Drive-in and drive-through facilities associated with an allowed use	SPU	P	P		P	P
Telecommunications structures and equipment, subject to the provisions of Chapter 16.75 LMC		P	P	P	P	P
Small animal clinics or veterinary hospitals	P[7]	P[7]			P[7]	P[7]
Pet grooming	P	P	P	P	P	P
Boat marinas						P
Microbrewery/microwinery/craft distillery		SPU			P	
Religious assembly and institutions, community centers	P[6]	P			P	P
Public safety facility		P	SPU		SPU	P

1. See LMC 19.44.050 for further clarification on what is a permitted use within the regional commercial district.

2. See LMC 19.44.040 for further clarification on what is a permitted use within the neighborhood commercial district.

3. Providers of ambulance services need a special property use permit.

4. Bed and breakfast inns must be located above the first floor in the D-C district.

5. No outdoor display of motorized vehicles is allowed.

6. In the D-C district any property use intended to primarily provide meeting areas for secular and nonsecular uses without an ongoing active ground floor use is prohibited. An “active ground floor use” means a retail, business, or entertainment use where persons come and go on a constant and frequent basis.

7. The medical care and services administered to animals shall occur only within the confines of the principal building located on the premises.

8. These uses are not allowed within 700 feet of the centerline of the west end of the city street named Mark Morris Court.

9. Brewpubs are permitted outright only in conjunction with LMC 19.44.050(4), sit-down restaurants with a minimum enclosed floor area of 5,000 square feet.

10. These uses are only allowed in the O/C district if they are located west of 12th Avenue, except Assessor’s Parcel Number 08749 is allowed to have these uses also.

11. Per LMC 19.44.050.

12. Per LMC 19.44.040.

13. City water, sewer, and drainage pump stations are permitted outright in all commercial districts and are not subject to setback requirements of this chapter.

(Ord. 3450 § 7, 2021; Ord. 3442 § 4, 2021; Ord. 3425 § 2, 2020; Ord. 3421 § 2, 2020; Ord. 3395 § 3, 2019; Ord. 3362 § 2, 2017; Ord. 3358 § 1, 2017; Ord. 3297 § 7, 2015; Ord. 3268 § 3, 2014; Ord. 3262 § 2, 2014; Ord. 3202 § 14, 2012).

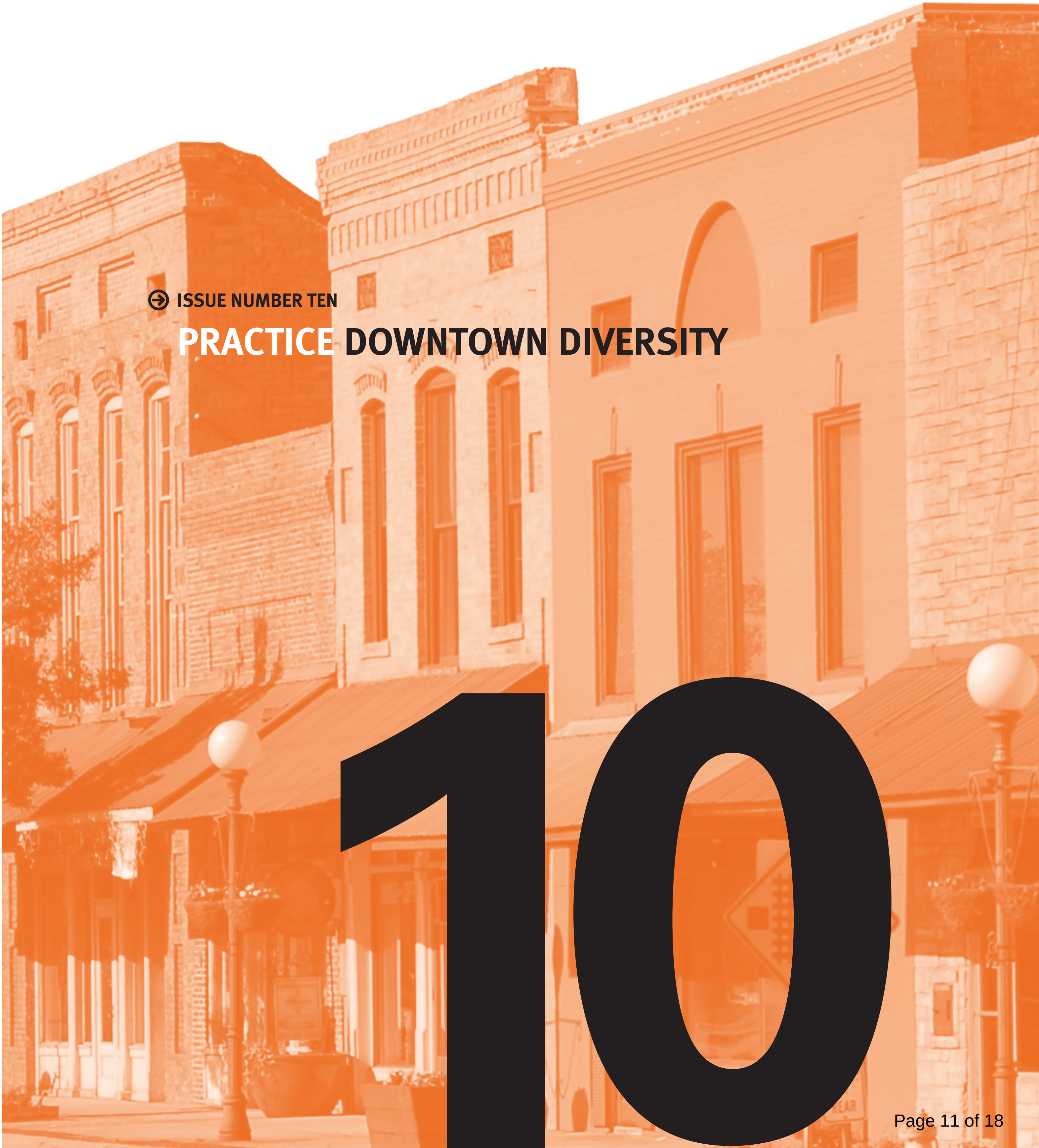
19.44.030 Downtown commerce district – Special property use.

In the downtown commerce district special property use permits are granted by the city council. Per LMC 2.03.060, the city council shall conduct an open-record public hearing prior to their decision. Per LMC 2.27.070, the planning commission shall make recommendations to the city council for the granting or denial of such permits. (Ord. 3450 § 7, 2021; Ord. 3202 § 14, 2012).

ZONING**PRACTICE** October **2007**

AMERICAN PLANNING ASSOCIATION

APA



ISSUE NUMBER TEN

PRACTICE DOWNTOWN DIVERSITY

10

Goodbye Main Street?

By Jeff Hirt and Joe Sellars

After decades of losing ground to suburban big box stores and chain restaurants, America's main streets are once again a major focus of development activity.

Jeff Hirt

➔ Chain retail and restaurants are threatening the unique character of downtown Golden, Colorado.

Thanks to new urbanism and smart growth and other infill policies that redirect development inward, these areas are witnessing a resurgence in mixed use and commercial development. With this renewed interest in downtowns and central business districts, however, comes the issue of how to create and maintain a healthy mix of uses, including locally owned and locally serving businesses. Increasingly, communities are seeing an overconcentration of high-end uses (e.g., art galleries, boutiques, and expensive restaurants) and chain store businesses that can erode the qualities and ambiance that make downtowns unique and attractive.

Local governments are beginning to use zoning regulations as a powerful tool to create a balanced mix of land uses downtown and in business districts. In doing so, they are correctly recognizing a vital component of creating and maintaining a vibrant and sustainable downtown.

Using zoning to regulate uses is nothing new, but there are some creative strategies emerging to address the thornier issue of how to achieve the appropriate mix of uses. After all, attractive downtowns and business districts are a source of identity that distinguishes one community from another. This source of identity comes from not only the history, architecture, and the built environment generally, but also the businesses located there. One of the most significant features of vibrant downtowns and central business districts is diversity, or a robust mix of land uses, whether local, national, small, or large. In many cases, the businesses contributing to an ideal mix are the smaller, locally serving, and locally owned businesses. Local governments around the country are recognizing this fact and taking creative steps to protect these businesses through zoning regulations.

This issue of *Zoning Practice* reports on some innovative strategies being employed effectively in a diverse array of communities to create a healthy mix of uses from both economic and aesthetic standpoints. This issue also discusses potential zoning approaches to providing affordable commercial space, another component of creating and sustaining a balanced mix of uses.

Specifically, this issue discusses:

- zoning strategies to preserve and protect desirable uses downtown and in central business districts (often locally serving and locally owned uses);
- potential strategies to provide affordable commercial space for desirable businesses that may not be able to afford locating downtown or in central business districts; and
- legal implications and challenges of these strategies.

FROM UNIQUE TO HOMOGENIZED

Many downtowns and business districts are beginning to lose their diversity and the availability of affordable commercial space to chain retail/restaurants and high-volume or high-end users that can pay higher rents. They are also being elbowed out by upscale residential development. Stacy Mitchell, author of *Hometown Advantage: How to Defend Your Main Street Against Chain*

ASK THE AUTHOR JOIN US ONLINE!

From November 19 to 30, go online to participate in our "Ask the Author" forum, an interactive feature of Zoning Practice. *Jeff Hirt and Joe Sellars will be available to answer questions about this article. Go to the APA website at www.planning.org and follow the links to the Ask the Author section. From there, just submit your questions about the article using an e-mail link. The author will reply, and* Zoning Practice *will post the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of* Zoning Practice *at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA* Zoning Practice *web pages.*

About the Author

Jeff Hirt and Joe Sellars work for Clarion Associates, a national land-use and real estate consulting firm specializing in community planning, land-use law, zoning ordinance review, landscape architecture, real estate appraisal, urban design, and historic preservation. Clarion Associates works nationwide with a broad range of private- and public-sector clients. More information is at www.clarionassociates.com.

Stores . . . and Why it Matters, argues that large chains can reduce the diversity of locally owned shops, leaving the economy and the customer at the mercy of an absentee-owned firm that can raise prices or abandon the community in later years. Revenues from local businesses tend to circulate within and strengthen the local economy rather than flowing to distant suppliers or corporate headquarters. An increasing number of local governments agree with this assessment and are enacting regulations to curb this problem. Port Townsend, Washington, for example, enacted a "formula" business ordinance with a purpose statement that reflected this:

> WHEREAS, the addition of formula retail businesses in the commercial areas, if not monitored and regulated could serve to frustrate the Comprehensive Development Plan goal of a diverse retail base with a unique retailing personality comprised of a mix of businesses ranging from small to medium to large and from local to regional to national.

While many communities have benefited from larger chain and formula retail and restaurants, others want to limit the proliferation of such uses, particularly in their downtowns and central business districts. From a local land-use perspective, an over-abundance of these uses in concentrated areas can erode the unique qualities associated with vibrant downtowns and central business districts. Some proactive communities have successfully counteracted the idea of a homogenized commercial core. Local governments are realizing that they do not have to be at the mercy of these retailers in regulating the uses in their downtowns and central business districts.

STRATEGIES

Relatively few local governments have addressed this issue from a land-use regulatory standpoint, but there are some innovative strategies emerging. The majority of the strategies identified here involve amendments to the zoning code, one of the most powerful tools a local government has at its disposal. However, it is important to note that many of these regulations originate from and often reference comprehensive plan policies.

ZONE DISTRICTS

Several of the communities in our case studies have adopted zone districts in their commercial core areas with tailored use lists geared to exclude certain uses they feel are too numerous or that are not locally serving. Palm Beach, Florida, and Laguna Beach, California, are two good examples.

Palm Beach, Florida—Town-Serving Zone

A town-serving zone has been in place for over 15 years in this resort community located north of Miami. The intent of the district is to "create, preserve, and enhance areas of attractive, small-scale, retail, personal, and professional/business services providing for the needs of Townspersons."

To accomplish this goal, the district imposes a 2,000-square-foot business size limit. Any businesses larger than 2,000 square feet must have an auditing firm document that more than 50 percent of receipts come from a local zip code.

Laguna Beach, California—Resident-Serving District

This upscale coastal community in Orange County enacted a resident-serving district in response to a growing concern that businesses in their commercial core increasingly catered to visitors, not locals. According to city planner Jenifer Murillo, residents in the downtown area have few affordable options for eating or shopping, and the few thriving locally owned, locally serving businesses are fortunate enough to own their buildings or have long-term leases.

In the resident-serving district, different types of uses are subject to specific criteria relating to the "resident-serving" goal. The following are excerpts from the criteria used to evaluate uses:

- General Findings (all uses)—The proposed use will maintain a balanced mix of uses which serves the needs of both local and nonlocal populations.
- Formula-Based Business—The business offers merchandise and/or services that serve the current unmet needs of the resident population.

> Local governments are realizing that they do not have to be at the mercy of chain and formula retailers in regulating the uses in their downtowns and central business districts.

Matt Goebel

South Congress in Austin, Texas, is an eclectic and thriving commercial corridor.

- Take-out Restaurants or Dessert Shops—No more than a total of 10 such establishments are to be located within the Downtown Specific Plan Boundaries.

NUMERICAL LIMITS ON SPECIFIC USES

Some communities have adopted numerical limits on certain uses (like restaurants) that they feel are overabundant and may drive out more desirable uses. This regulation has been used in communities such as Carmel, California, which adopted citywide caps on specific uses (hotel and motel units), and Laguna Beach, which adopted a cap on certain uses within a particular zone district (the resident-serving district discussed above). One large city, San Francisco (in its neighborhood commercial districts), has also utilized this tool. Now Portland, Maine, has followed suit.

Portland, Maine

An organization called Keep Portland Real in this historic seaside community lobbied successfully for the city to adopt a regulation in 2006 that puts a cap on formula businesses in the downtown area. They argued that proliferation of such uses downtown and in the harbor area would erode the uniqueness of these areas and damage the local economy.

Portland's code allows 23 formula businesses in the Extended Pedestrian Activities Overlay District (PAD) downtown. These businesses cannot be larger 2,000 square feet in size, although the regulations exempt some formula businesses, including gas stations and pharmacies, from this standard.

SPACING REQUIREMENTS

Historically, many communities have used spacing requirements to prevent the clustering of unwanted uses (e.g., requiring adult businesses to be at least 1,000 feet from a similar use) or to separate certain uses from others (e.g., bars must be 500 feet from schools). Now some local governments are using this approach to protect the vitality of their downtowns and central business districts.

Warner, New Hampshire

This small community located in the south-central part of the state amended its zoning in 2001 to limit the concentration of fast-food and drive-in restaurants in the town, particularly along highway corridors (Route 103 and Interstate 89). Under this regulation, no such use may be located within 2,000 feet of another similar use.

SIZE RESTRICTIONS

Placing size restrictions on particular uses can also be an effective way to discourage the proliferation of unwanted uses. Such restrictions were touched on in the above examples for Palm Beach and Portland. Below are some additional policies and regulations aimed more specifically at limiting business size.

Port Townsend, Washington

This historic Victorian seaport on the Olympic Peninsula adopted restrictions on formula retail and restaurants in 2005. The regulations came in response to community concern over a new chain video store opening in this small community of about 8,500.

The city's zoning states that in all but one of the city's commercial districts, formula retail and restaurants may not exceed 3,000 square feet nor occupy more than 50 feet of linear street frontage.

Kansas City, Missouri—Brookside Commercial Area

Widely regarded as one of Kansas City's most desirable neighborhoods, Brookside is a historic, compact neighborhood commercial district full of local and small-scale businesses. In order to help preserve its status as a unique and eclectic commercial area, the city in 2000 adopted size limitations for the Brookside Business District that include a 10,000-square-foot cap for all businesses, except for grocery stores, which are allowed up to 25,000 square feet.

COMPREHENSIVE PLAN POLICIES

Many of the regulations adopted reference comprehensive plan policies in their purpose statements. For example, Port Townsend's size cap on formula businesses references the comprehensive development plan's goal of establishing "a diverse retail base with a unique retailing personality comprised of a mix of businesses ranging from small to medium to large and from local to regional to national." Clear comprehensive plan policy statements can help local governments with-

An important component of achieving a healthy mix of locally oriented commercial uses is the issue of affordable commercial space.

stand legal challenges to these often controversial regulations. To illustrate, one of the Corvallis, Oregon, comprehensive plan policies states the city's goal to "support the establishment of locally owned, managed, or controlled small businesses." Similarly, in Manchester, Vermont, the town plan policies contain the following objectives:

- Create and maintain a business environment which is hospitable to locally owned and managed businesses.
- Create regulations to moderate the increased presence of retail businesses that . . . attract a nonresident customer base . . . whose presence in Manchester would tend to detract from the Town's uniqueness or distinctiveness as a place to visit.

CREATING AFFORDABLE COMMERCIAL SPACE

An important component of achieving a healthy mix of locally oriented commercial uses is the issue of affordable commercial space. Locally oriented businesses often cannot afford the high rents that characterize vibrant downtowns and successful central business districts. Many communities have implemented affordable housing requirements through inclusionary housing (i.e., a requirement that a certain percentage of new residential homes be affordable) and commercial linkage programs (a requirement that developers of nonresidential property pay a fee to the local government for the creation of affordable housing). Soon, these requirements may serve as models for creating affordable commercial space. The following are two potential strategies, one voluntary and the other mandatory, that could draw from affordable housing programs in order to create and sustain affordable commercial space in areas threatened by an overconcentration of high-end businesses and chain retailers. In some respects, these strategies may look as much like an economic development program as a zoning regulation. As land-use regulations, therefore, these approaches must seek to strike a balance in serving the public interest without being labeled an anticompetitive policy that favors certain users with subsidized lease rates.

Incentives

Local governments frequently offer incentives to developers who agree to provide affordable housing, open space, and other community benefits. These incentives often take the form of density bonuses, expedited development review and permitting, and exemptions from certain land-use regulations or requirements. These incentives could be extended to commercial or mixed use developers in downtown and other key commercial areas who provide "affordable" commercial space on the ground floor of their projects. This space could take the form of units with limited leasable square footage or restrictive covenants that cap rents for certain properties. Incentives are more palatable to most developers than direct regulations requiring provision of affordable space. Also, affordable housing programs already in place could be adapted to create additional incentives for an affordable commercial component. Incentives can help to keep residual land value (i.e., the land value remaining after regulatory restrictions such as zoning and development standards are considered) at a level that maintains project feasibility from the developer's standpoint. However, in some places incentives have proven ineffective in accomplishing goals like affordable housing. Thus, communities may want to consider imposing regulations to encourage affordable commercial space.

Regulation

One approach might be to emulate mandatory affordable housing linkage programs. Developers of commercial space, or any development that eliminated commercial space, could be required to provide off-site affordable commercial space or make a payment-in-lieu into a city affordable commercial space fund. This fund would be used by the local government to purchase or build commercial space that would be leased out to "desirable" businesses at reduced rates. Affordable housing programs could serve as a model, particularly in the areas of administration and enforcement.

Jeff Hirt

A national chain restaurant across the street from a local restaurant in Denver's Highlands neighborhood.

For multiunit commercial development, some communities may consider establishing a mandatory use list. Based on community objectives for the downtown or central business district, a use list may be drafted to implement a desired mix. So, for example, a new commercial development with 10 units must have two units with uses from use list A (that may include desired uses such as pharmacies or grocery stores, or affordable commercial space) and the rest may be from the more open commercial category (use list B). This could be a straightforward, effective approach if planners carefully consider local market conditions.

As with a strictly incentives-based approach, the success of a linkage or mandatory approach likely will depend on the degree to which it can help the developer recoup some of the costs of compliance. For example, local governments might draft regulations so that projects required to provide affordable commercial space or pay an in-lieu fee also receive an increase in density. If increased density is not feasible on-site, then perhaps affordable commercial regulations could be tied to a transferable development rights program. Similarly, local governments may need to provide owner incentives such as property tax breaks to help offset rent revenues that are below market rate.

LEGAL ISSUES

Like any zoning or land-use regulation, special provisions aimed at creating vibrant yet affordable downtowns and central business districts must be sensitive to a number of legal issues. Fortunately, these legal issues are not difficult to address. For example, constitutional issues such as substantive due process and equal protection require that land-use regulations be rationally related to legitimate objectives and not discriminatory. Another constitutional concern is the "takings" issue. However, regulations like the ones discussed above should not pose takings problems since they do not threaten to wipe out all economically viable use of the subject property. With respect to takings, however, these regulations are on safer legal ground if they are legislatively adopted and uniformly applied, as opposed to being applied on an ad hoc, discretionary basis. Affordable-space requirements should also have a sufficient nexus to the community's need to accommodate a variety of commercial users and should be roughly proportional to such need.

Interstate Commerce

As discussed above, several communities have implemented formula or chain business restrictions to protect community character. The courts, however, have a long history of striking down state laws and local ordinances that discriminate against out-of-state businesses. The reasoning behind such cases is that Congress has exclusive authority to regulate interstate commerce. If local governments were free to create disadvantages for out-of-state businesses, interstate commerce would suffer overall. As a result, zoning regulations must be aimed at creating a healthy mix of commercial uses rather than simply prohibiting national chain restaurants on the belief that there are quite enough Starbucks coffee shops in the world. The goal should be to assure that key areas such as downtowns and business districts feature a variety of uses that serve local residents and visitors, as well as people of various income groups.

Case Law

A 2003 case from California, *Coronadans Organized for Retail Enhancement v. City of Coronado*, demonstrates the importance of regulating local and out-of-state businesses with an even hand. The City of Coronado adopted certain restrictions on formula retail businesses, defined as "a type of retail sales activity or retail sales establishment (other than a 'formula fast food restaurant') that is required by contractual or other arrangement to maintain any of the following: standardized ('formula') array of services and/or merchandise, trademark, logo, service mark, symbol,

Jeff Hirt

In recent years, new bridges have made the Highlands more accessible to downtown Denver. Now the neighborhood is one of the most desirable areas in the city. Without careful planning, local retailers, like this small market, may be threatened by chain competitors or forced out by escalating rents.

The goal should be to assure that key areas such as downtowns and business districts feature a variety of uses that serve local residents and visitors, as well as people of various income groups.

decor, architecture, layout, uniform, or similar standardized feature." The ordinance requires these businesses to obtain a Major Special Use Permit to open a business or expand more than 500 square feet. In addition, the establishment may not have a street-level frontage of greater than 50 linear feet nor have its retail space occupy more than two stories (except for grocery stores, banks, savings and loans, restaurants, and theaters). The required special use permit may be approved only after the planning commission and city council make certain findings regarding the establishment's compatibility with existing surroundings and community character. Other findings include the establishment's contribution to an appropriate balance of local, regional, or national businesses in the community, and an appropriate balance of small, medium, and large businesses. The stated purpose of the ordinance was to maintain Coronado's "unique village character, the diversity and vitality of the City's Commercial Districts, and the quality of life of Coronado residents."

In upholding Coronado's formula business restrictions, the court observed that the ordinance "does not impose different regulations on interstate as opposed to intrastate businesses, nor does it distinguish between those businesses that are locally owned and those that are owned by out-of-state interests. Instead, its regulations are uniformly applied—any business that meets the definition of a Formula Retail is required to obtain a permit before it opens a business or expands the specified amount, and is subject to the specified space limitations." The court also found no intent to discriminate against out-of-state businesses. Instead, the court concluded that the city council's primary purpose was to "provide for an economically viable and diverse commercial area that is consistent with the ambiance of the city."

Contrast the California case with *Island Silver & Spice, Inc. v. Islamorada, Village of Islands*, where in 2007 a federal court in Florida reached a very different conclusion. The village had adopted formula retail restrictions not unlike those in Coronado. Formula retail businesses were allowed as conditional uses, provided that the street-level frontage did not exceed 50 linear feet and the floor area did not exceed 2,000 square feet.

Because of the regulations, a property owner was not able to sell a building to buyers who wanted to open a Walgreens drug store. Even though the intent of the ordinance was to retain a small-town community and prevent formula businesses from eroding the village's uniqueness, the court found that the village had no historic or unique area that warranted limitations on formula businesses. Small formula retail was not subject to the ordinance, and existing large formula retail businesses were allowed to continue as nonconforming uses, both of which undermined the ordinance's objective of preserving community character. In addition, the court found that the ordinance was tailored to serve local business interests by preventing competition from national chains. Even though the regulations, like Coronado's, treated local and out-of-state chain stores the same, the court found that the resulting damage to interstate commerce outweighed any local zoning benefits created by the regulations.

Formula business restrictions that discriminate against out-of-state businesses, intentionally or unintentionally, are much less likely to survive a legal challenge.

Legal Dos and Don'ts

These two cases illustrate that planners and local officials must carefully draft regulations so that they are specifically designed to achieve their stated purpose. Below are five key points to assist local governments in avoiding legal troubles when amending their zoning to encourage a balanced mix of uses in downtowns and business districts:

- Generally applicable regulations that are legislatively adopted are less likely to receive legal scrutiny than those that are imposed on an ad hoc or administrative basis.
- Formula business restrictions that discriminate against out-of-state businesses, intentionally or unintentionally, are much less likely to survive a legal challenge.
- Formula business restrictions should be limited to key areas where commercial diversity is needed to retain a vibrant mix of uses, unique character, etc..
- Affordable-space requirements must be rationally related to the stated zoning or land-use regulatory objectives and must not be out of proportion to the needs created by a proposed development.
- Staff reports, ordinance intent statements, public hearing records, and the like should not suggest any intent to discriminate against out-of-state businesses or chain stores/restaurants.

CONCLUSION

Increasingly, many downtowns and central business districts must contend with a lack of affordable commercial space and difficulties in maintaining a healthy mix of uses. Fortunately, there are proven, legally defensible land-use regulatory solutions being used effectively in some progressive communities around the country to meet these challenges. Drawing from these examples, with careful attention to legal issues and market conditions, local governments can craft regulations to further the goal of vibrant, sustainable downtowns and central business districts.

A mix of retailers thrive in the restored buildings lining St. Joseph Avenue in downtown Brewton, Alabama. © iStockphoto.com/ Perry Watson.

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ZONING PRACTICE
AMERICAN PLANNING ASSOCIATION

122 S. Michigan Ave.
Suite 1600
Chicago, Il 60603

1776 Massachusetts Ave., N.W.
Washington D.C. 20036

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10