



## What's all the fuss these days about "formula retail"?

We've all seen them and shopped in them. Most shopping malls these days are dominated by what have come to be known as "formula" retail outlets, places like the Gap, Williams Sonoma, Bed Bath and Beyond and others, some regional rather than national. They typically have common ownership, product lines, signage and logos but the theme is the same, a uniform business model from location to location. Until ten years ago Sanibel had no special rules in place to deal with formula retail. Then something happened that changed that.



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In 2007 a formula retail outlet that specializes in beach paraphernalia moved into a structure at the intersection of Periwinkle Way and Casa Ybel Road that had been home to several smaller shops and professional offices that mainly served the residents of Sanibel. There was a doctor's office, book store and eye care office among others. Residents, particularly those who patronized the previous businesses and professionals, were up in arms that this could happen on Sanibel, not just because they were inconvenienced by the loss of businesses they had come to rely on but because the specter of Sanibel's commercial districts becoming carbon copies of off-island strip malls threatened to undermine Sanibel's small town character.

### **City Council enacts formula retail ordinance**

The Sanibel City Council saw it the same way and in 2007 enacted a far-reaching ordinance that regulates the conditions under which formula retail outlets may operate on Sanibel. With the exception of grocery stores, gas stations, hardware stores and formula stores that had their origins on Sanibel, formula retail outlets may only operate on Sanibel as "conditional uses." The goal was not to ban formula

retail outlets but to regulate them in a way that would protect the character of the island and ensure that there would be a place on Sanibel for retailers that serve the needs of residents as well as visitors.

Here's how the process works currently: If a retailer wishing to open on Sanibel has one or more off-island outlets with the same standardized characteristics, it is considered "formula retail" and must obtain a conditional use permit after a hearing before the Planning Commission. At the hearing, these five conditions set out in section 126-102 of the Land Development Code must be met:

"(1) The formula retail store shall be compatible with existing land uses on the same site as the formula retail store and with existing and permitted adjacent and nearby land uses.

(2) The formula retail store shall be designed and operated in a non-intrusive manner that preserves and is consistent with the historic, architectural, visual character and ambiance of the commercial sector of the community. Formula, standardized, "cookie cutter" architecture, including architectural features is prohibited.

(3) The floor area of the retail store shall not exceed 2,000 square feet of commercial space.

(4) The proposed development intensity of the formula retail store shall not exceed that of other low and moderate intensity retail uses that are permitted on the site of the formula retail store.

(5) The formula retail store shall not imbalance the variety and mixture of retail, office and service uses that make up the commercial sector of the community."

A formula retail outlet that does not meet the five listed conditions will be denied a permit to operate on Sanibel.

### **A second hearing required**

But the ordinance goes even further. Once there is a total of more than 50,000 square feet of formula retail space on Sanibel (as is presently the case), there is an additional set of conditions that must be met by the applicant before the Planning Commission and at an additional hearing before the City Council:

(1) The formula retail store, in aggregation with other formula retail stores in the city, shall not produce an imbalance between resident-serving and resort (tourist) segments of the commercial sector of the community.

(2) The formula retail store, in aggregating with other formula retail stores in the city, shall not frustrate the city's desire to retain a unique and diverse service and retail base in the local economy and to provide opportunities for small, local businesses.

(3) The formula retail store, in aggregate with other formula retail stores in the city, shall not discourage the continuation of existing businesses or establishment of new businesses that serve the residential segment of the community.

(4) The formula retail store, in aggregation with other formula retail stores in the city, shall retain the historical and visual character of the commercial sector.

(5) The most basic of all of the economic assumptions for Sanibel's planning is that Sanibel's economic fortune is directly related to viability of its natural systems. The formula retail store, in aggregation with other formula retail stores in the city, must not place added demand on Sanibel's natural and human made infrastructure. Sanibel must protect the environment because of the responsibility entrusted to the people of Sanibel to care for these resources, but also as a component of a sound economic policy. The economic base of Sanibel is the environment."

### **Reasons that the process is being reviewed**

The law seems to be working. Not surprisingly, since 2007 a total of only seven new formula retail outlets have gone through the conditional use process successfully and opened for business on Sanibel. So why are the City Council and Planning Commission taking a fresh look? Well, there are several reasons:

First, some have questioned whether the ordinance is too restrictive. Should a business with only one off-island location be considered "formula retail" or should that number be higher, say 2, 3 or 4 off-island outlets?

Second, now that Sanibel has reached a total of 50,000 square feet of formula retail space, redundant hearings are required. All applications for permits to open a formula retail outlet must go through a City Council hearing in addition to a Planning Commission hearing. The City Council has asked the Planning Commission to consider whether that trigger for a City Council hearing (50,000 square feet of formula retail space) should be raised. That would of course put off to some time in the future the requirement of a redundant hearing.

Third, there have been some cases where formula retail businesses have, in effect "flown under the radar" -- and not been forthcoming about their status as formula retail before opening for business. That begs the question -- what can be done preliminarily to identify formula retail businesses so that they don't go undetected?

So, that's where things stand at the moment. Clearly, the current ordinance is too critically important to have it weakened. On the other hand, with ten years of experience as backdrop, a fresh look at how the ordinance can be improved may be in order.

My feeling is that two or three off-island outlets is a more reasonable cut-off than one in defining formula retail. On the other hand four sounds like a chain and is probably too many. That's an area where reasonable people may differ, and I'm just offering my opinion.

On the issue of the redundant hearing by the City Council, the trigger might be raised to 70,000 total square feet of formula retail space on Sanibel, as suggested by Planning Department staff. However, one might question whether there is a need for that additional level of review if the Planning Commission is required to apply the additional five conditions in the course of its review of the application. Actually, there is no other situation under the Land Development Code where a determination by the Planning Commission after a hearing is automatically followed by a redundant hearing before the City Council on the same issues. Is it really necessary?

Finally, the screening process needs to be tightened so that formula retailers are identified at the outset and made subject to the conditional use process as the City

Council intended. If there are violations, meaningful penalties, not warnings or slaps on the wrist, should be imposed uniformly.

*COTI invites your input on this and other issues affecting our island. Send an email to [coti@coti.org](mailto:coti@coti.org). To read our past commentaries on Island issues, visit our website at [www.coti.org](http://www.coti.org). Or visit Committee of the Islands on [Facebook](#).*

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