

# Grand Jury Report

## RESPONSE FORM

Grand Jury Report Title: *Formula Business Restriction, Nimby Overreaction?*

Report Dated: June 22, 2017

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**Response Form Submitted By:**

Mendocino County Board of Supervisors  
501 Low Gap Road  
Ukiah, CA 95482

**Response MUST be submitted, per Penal Code §933.05, no later than:**  
October 6, 2017

***I have reviewed the report and submit my responses to the FINDINGS portion of the report as follows:***

- I (we) agree with the Findings numbered:  
F5
- I (we) disagree wholly or partially with the Findings numbered below, and have **attached, as required**, a statement specifying any portion of the Finding that are disputed with an explanation of the reasons therefore.  
F1, F2, F4, F6, F7, F8

***I have reviewed the report and submit my responses to the RECOMMENDATIONS portion of the report as follows:***

- The following Recommendation(s) have been implemented and **attached, as required**, is a summary describing the implemented actions:  
\_\_\_\_\_
- The following Recommendation(s) have not yet been implemented, but will be implemented in the future, **attached, as required** is a time frame for implementation:  
\_\_\_\_\_

- The following Recommendation(s) require further analysis, and **attached as required**, is an explanation and the scope and parameters of the planned analysis, and a time frame for the matter to be prepared, discussed and approved by the officer and/or director of the agency or department being investigated or reviewed: (This time frame shall not exceed six (6) months from the date of publication of the Grand Jury Report)
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- The following Recommendations will NOT be implemented because they are not warranted and/or are not deemed reasonable, **attached, as required** is an explanation therefore:  
R1, R2

*I have completed the above responses, and have attached, as required the following number of pages to this response form:*

Number of Pages attached: 3

*I understand that responses to Grand Jury Reports are public records. They will be posted on the Grand Jury website: [www.co.mendocino.ca.us/grandjury](http://www.co.mendocino.ca.us/grandjury). The clerk of the responding agency is required to maintain a copy of the response.*

*I understand that I must submit this signed response form and any attachments as follows:*

First Step: E-mail (word documents or scanned pdf file format) to:

- The Grand Jury Foreperson at: [grandjury@co.mendocino.ca.us](mailto:grandjury@co.mendocino.ca.us)
- The Presiding Judge: [grandjury@mendocino.courts.ca.gov](mailto:grandjury@mendocino.courts.ca.gov)

Second Step: Mail all originals to:

Mendocino County Grand Jury  
P.O. Box 939  
Ukiah, CA 95482

Printed Name: John McCowen

Title: Chair, Board of Supervisor

Signed: 

Date: 10/4/17

## **MENDOCINO COUNTY BOARD OF SUPERVISORS' RESPONSE TO GRAND JURY REPORT TITLED:**

### **FORMULA BUSINESS RESTRICTION**

The Mendocino County Board of Supervisors (BOS) welcomes this opportunity to respond to the above entitled report. The BOS notes that the Grand Jury appears to be of two minds regarding zoning and land use regulations. Grand Jury finding F2 states that the Community Character Combining District Ordinance "adds additional expense and time, discouraging business permit applications in the County." Grand Jury finding F4 states that the Community Character Combining District Ordinance "reflect[s] an anti-business attitude that stymies economic growth." Finally, Grand Jury finding F8 states that the wisdom of the market place "should be allowed to determine the success or failure of business." These findings by the Grand Jury appear to be critical of applying design review to particular types of businesses, in particular locations, because doing so is perceived to be "anti-business." The Grand Jury recommends (R1) that this perceived negative impact be remedied by applying "community character design review for all business development." The Grand Jury further recommends (R2) the County "eliminate 'by right' business permits and formula business restrictions, and consistently review all business development under discretionary use permits for community character." The effect of these recommendations, if implemented, would be to apply the restrictions that are applied to some formula businesses in some locations, to all businesses in all locations. The Grand Jury appears to either not understand or not agree with the traditional exercise of local police power to adopt land use regulations. Historically, local jurisdictions are deemed best suited to adopt local regulations that protect the public health and safety. These regulations are based on local conditions which will vary from one jurisdiction to another and from one area of a jurisdiction to another. The decision to adopt the Community Character Combining District Ordinance, following extensive community input by the public, the Municipal Advisory Councils and the Planning Commission, is not a "nimby overreaction" but a measured response to an important issue of public policy and is intended to protect and enhance community character based on local conditions.

**Pursuant to the request of the Grand Jury, the Board is responding to the following:**

- F1. Formula businesses are restricted or prohibited, except when they are not. Ordinances are written and applied in different jurisdictions resulting in dissimilar treatment of similar businesses, and even applied differently in the same jurisdiction.

Disagree. As stated above, local jurisdictions are best suited to adopt local land use regulations that are intended to protect the public health and safety. These regulations are based on local conditions which will vary from one jurisdiction to another and from one area of a jurisdiction to another. The BOS incorporates by reference the response of the Interim Director of Planning and Building Services.

- F2. The proposed County Community Character Combining District Ordinance adds additional expense and time, discouraging business permit applications in the County.

Disagree. The BOS notes that the Grand Jury states in its report that “formula businesses are usually well capitalized. They plan for and can manage the development fees additional to the construction necessary to build from the ground up, which is becoming increasingly difficult for individuals.” To the extent this statement is true, formula businesses are uniquely suited to absorb the additional incremental cost that may be required by complying with the Community Character Combining District Ordinance. The BOS incorporates by reference the response of the Interim Director of Planning and Building.

- F4. The downtown Ukiah formula business prohibition and the County Community Character Combining District Ordinance reflect an anti-business attitude that stymies economic growth.

Disagree. The BOS notes for the record that this finding appears to include a statement of personal opinion that is not supported by evidence in the record. To the contrary, the Grand Jury references formula businesses that continue to seek approval to operate regardless of the requirements that are applied by local jurisdictions or lawsuits that are brought by private parties. The BOS incorporates by reference the above response to F3 and the response by the Interim Director of Planning and Building.

- F5. Community character may be achievable through design modification.

Agree. The BOS incorporates by reference the response by the Interim Director of Planning and Building.

- F6. In-N-Out Burger could have mitigated neighborhood concerns and Dollar General could have been required to provide design modifications if the code had not been written to allow “by right” commercial development.

Partially disagree. There is no formal record of “neighborhood concerns” regarding In-N-Out Burger. The BOS incorporates by reference the response by the Interim Director of Planning and Building.

- F7. The County Community Character Combining District zoning regulations go too far by adding time and expense to the application with the risk of capricious denial.

Disagree. The BOS notes for the record that this finding appears to include a statement of personal opinion not supported by evidence in the record. The BOS incorporates by reference the response of the Interim Director of Planning and Building.

- F8. The “wisdom of the market place” should be allowed to determine the success or failure of business.

Disagree. The BOS notes for the record that this finding appears to include a statement of personal opinion not supported by evidence in the record. The BOS incorporates by reference the response of the Interim Director of Planning and Building.

**Recommendations:**

- R1. The County zoning ordinance include community character design review for all business development. (F1, F2, F4, F5, F7)

This recommendation will not be implemented because it is not warranted or reasonable. The Community Character Combining District Ordinance is a well thought out response to a local public policy issue and was the subject of extensive review by the public, the Municipal Advisory Councils, the Planning Commission and the BOS. Further, it is illogical for the Grand Jury to make findings (F2, F4) that the Community Character Combining District Ordinance adds additional time and expense and discourages business permit applications and to assert the wisdom of the market place (F8) “should be allowed to determine the success or failure of business” and then recommend that these same regulations be applied to every business. Instead of protecting local community character, the recommendation of the Grand Jury would more likely present an unreasonable barrier to locally based businesses. The BOS incorporates by reference the response of the Interim Director of Planning and Building.

- R2. The County and Ukiah eliminate “by right” business permits and formula business restrictions, and consistently review all business development under discretionary use permits for community character. (F1, F4, F4, F6, F8)

This recommendation will not be implemented because it is not warranted or reasonable. The BOS incorporates by reference our response to R1 and the response of the Interim Director of Planning and Building to R1 and R2.