

**CITY OF LEADVILLE, COLORADO
ORDINANCE NO. 3
SERIES OF 2022**

**AN ORDINANCE AMENDING TITLE 17 OF THE LEADVILLE MUNICIPAL
CODE TO ADD A FORMULA BUSINESS EXCLUSION OVERLAY DISTRICT
AND RELATED FORMULA BUSINESS REGULATIONS AND AMENDING
THE OFFICIAL ZONING MAP OF THE CITY TO REFLECT THE
BOUNDARIES OF SUCH ZONING DISTRICT**

WHEREAS, the City Council of the City of Leadville (“City Council”) possesses the authority pursuant to C.R.S. § 31-15-401 and its general police powers to pass and enforce regulations which may be necessary or expedient for the promotion of the health, safety and welfare of the citizens of Leadville; and

WHEREAS, the City has authority to enact and enforce land use regulations pursuant to Title 31, Article 23 and Title 29, Article 20 of the Colorado Revised Statutes; and

WHEREAS, in 1961 Leadville’s National Historic Landmark District was listed on the National Register of Historic Places; and

WHEREAS, the City’s historic downtown is one of the community’s greatest assets and, as the center of the City’s community and historic identity, is important to preserve; and

WHEREAS, the City’s Comprehensive Plan includes the objectives of providing support and resources to ensure the preservation and maintenance of historic structures and landmarks in the downtown core as well as ensuring that the redevelopment and infill in the historic district are consistent and do not compromise the integrity of existing historic values; and

WHEREAS, the City’s distinctive character and aesthetics, historic relevance and economic vitality are threatened by the potential of a homogenizing effect if formula businesses are an allowed use in the City’s historic downtown area in the Retail Core (“RC”) zoning district and in the portions of the zoning districts that are adjacent to the RC district or are part of the main thoroughfare of the City; and

WHEREAS, the proliferation of formula businesses may unduly limit or eliminate business establishment opportunities for unique businesses and decrease the diversity of retail activity and dining options in key areas of the City; and

WHEREAS, at the same time, the City recognizes the importance of establishing the appropriate balance between the varying goals in the City’s Comprehensive Plan of attracting new businesses, supporting existing businesses, encouraging appropriate and sensitive redevelopment and infill, encouraging tourism, and promoting businesses that serve both local residents and visitors and that augment the inventory of businesses within the City serving the day-to-day needs of residents; and

WHEREAS, the City's Planning and Zoning Commission has carefully reviewed and considered this Ordinance in accordance with Chapter 17.92 of the Leadville Municipal Code and recommends that this Ordinance be adopted by City Council as a text amendment and map amendment to Leadville's Zoning Ordinance; and

WHEREAS, City Council has held the properly noticed public hearings required by Chapter 17.92 of the Leadville Municipal Code and has reviewed the recommendation of the Planning and Zoning Commission; and

WHEREAS, the City Council finds that this Ordinance promotes and achieves the goals and objectives of the City's Comprehensive Plan, serves to preserve the City's historic downtown in the RC zoning district and adjacent zoning district areas, balances the historic preservation goals of the City with its other, at times competing, goals and needs, will enhance the vitality and sustainability of the local economy, and is in the best interests of the public health, safety and welfare.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF CITY OF LEADVILLE, COLORADO, AS FOLLOWS:

Section 1. Recitals. The recitals contained above are incorporated herein by this reference and are adopted as findings and determinations of the City Council.

Section 2. Chapter 17.08 Amendments. Chapter 17.08 titled "Definitions," is hereby amended as follows with bold, underlined text showing additions and strikethrough text showing deletions:

17.08.020 – Definitions.

"Formula Business" means any restaurant, café, bar, lounge, hotel, motel or lodge, rooming or boarding house, any retail business, automotive sales and services, and any personal services outlet that has seven (7) or more other establishments in operation, or with local land use or permit entitlements already approved and effective, located anywhere in the United States. Electric vehicle charging stations shall not be considered formula businesses. In addition to the seven (7) establishments either in operation or with local land use or permit entitlements approved for operation, the business maintains two (2) or more of the following features: a standardized array of merchandise, standardized array of services, a standardized facade, a standardized decor and color scheme, uniform apparel, standardized sign, a trademark, or a service mark.

- 1. "Standardized array of merchandise" means fifty percent (50%) or more of in-stock merchandise from a single distributor bearing uniform markings.**
- 2. "Standardized array of services" means as a common menu or set of services priced and performed in a consistent manner.**

3. **"Trademark" means 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.**
4. **"Service mark" means a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of a service from one party from those of others.**
5. **"Façade" means the face or front of a building, including awnings, looking onto a street or an open space.**
6. **"Décor" means the style of interior furnishings, which may include but is not limited to, style of furniture, wall coverings or permanent fixtures.**
7. **"Color Scheme" means a selection of colors used throughout the establishments, such as on the furnishings, permanent fixtures, and wall coverings, or as used on the facade.**
8. **"Uniform Apparel" means standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hats, and pins (other than name tags), and standardized colors of clothing.**

"Personal services outlet" means an establishment primarily engaged in providing individual services generally related to personal needs. Typical uses may include but are not limited to beauty and barber shops, laundromats, dry cleaners, travel agencies, catering service, chiropractic clinics, funeral homes and mortuaries, massage facilities, photography studios, tailors, and shoe repair services.

Section 3. Chapter 17.12 Amendments. Chapter 17.12 titled "Zoning Districts," is hereby amended as follows with bold, underlined text showing additions and strikethrough text showing deletions:

17.12.010 – Established.

In order to carry out the purpose and intent of this title and to implement the goals, objectives and policies of the city, as contained in this title and the Leadville Comprehensive Plan, as amended, the incorporated area of the city is divided into the following zoning districts and the city of Leadville Zoning District Map is adopted:

R-1	Low density residential
R-2	Traditional residential

TR	Transitional retail/residential
<u>TC</u>	<u>Transitional commercial</u>
RC	Retail core
C	Commercial/highway
<u>FBE</u>	<u>Formula business exclusion overlay</u>
PUDO	Planned unit development overlay
NHL	National Historic Landmark District overlay

Section 4. Chapter 17.36 Added. A new Chapter 17.36 titled “Formula Business Exclusion Overlay (FBE) District,” is hereby added to read in full as follows:

Chapter 17.36 – FORMULA BUSINESS EXCLUSION OVERLAY (FBE) DISTRICT

17.36.010 – Purpose.

The purpose and intent of the formula business exclusion overlay (FBE) district is to address the adverse social and economic impact of formula businesses on Leadville’s community character. Formula businesses detract from the city’s overall historic experience and threaten its tourist economy. Formula businesses are therefore prohibited in the FBE district to prevent the negative impact on the city’s economy, historical relevance, unique character and economic vitality caused by a proliferation of formula businesses in the FBE district.

17.36.020 – Boundaries.

The FBE district shall encompass the entire RC district and the portions of the R-2, C, TC, and TR districts as shown in the city’s official zoning district map.

17.36.030 – Permitted and prohibited uses.

- A. Except as otherwise set forth in this chapter, any use permitted or prohibited in the underlying zoning district, as set forth in chapter 17.48 of this code, shall be permitted or prohibited, as applicable, in the FBE district.**
- B. Notwithstanding anything in this title to the contrary, formula businesses are prohibited in the FBE district.**

17.36.040 – Enlargement or expansion of buildings, facilities, equipment or structures.

- A. The owner or authorized agent of the owner of a property with a nonconforming formula business use in the FBE district must apply to the city for approval of the following activities:**
- 1. The enlargement or expansion of a building containing a nonconforming formula business use;**
 - 2. An expansion of existing facilities and equipment which are located on a lot and associated with a nonconforming formula business use; or**
 - 3. Adding facilities or structures to a lot which are associated with a nonconforming formula business use.**
- B. Such application must be approved by city council following review by and recommendation from the planning and zoning commission.**
- C. Applications shall be submitted on forms approved by the city. The procedure and requirements for submitting, processing, reviewing, and acting on such applications shall be the same process as set forth in Chapter 17.52 of this code.**
- D. The planning and zoning commission may make a recommendation and city council may decide to approve, conditionally approve, or deny the application. The recommendations of planning and zoning commission and decisions of city council, including any conditions of approval, on such applications shall be based on the following criteria:**
- 1. The nonconforming use shall not be changed (except to a conforming use) as a result of enlargement, expansion, or construction;**
 - 2. The nonconforming use shall not be expanded beyond the limits of the parcel of property upon which such use existed at the time it became nonconforming;**
 - 3. Additional traffic generated by an enlargement, expansion, or construction must be incorporated into the neighborhood and community transportation network without creating safety problems or causing or increasing level of service standard deficiencies;**
 - 4. The noise and vibration levels that may be generated by the nonconforming use shall not be increased beyond the levels that existed prior to the enlargement, expansion, or construction that is under consideration;**
 - 5. The enlargement, expansion, or construction shall conform to the applicable development standards of this code, including but not limited to height and setback requirements;**

6. The enlargement, expansion, or construction shall not increase or amplify any deficiencies in parking in the neighborhood where the property is located;
7. The enlargement, expansion, or construction shall not hinder the future development of surrounding properties in accordance with this code; and
8. The enlargement, expansion, or construction shall not present a threat to the health, safety or welfare of the city or its residents.

Section 5. Chapter 17.48 Amendments. Chapter 17.48 titled “By-Right, Conditional and Prohibited Uses,” is hereby amended as follows with bold, underlined text showing additions and strikethrough text showing deletions:

17.48.010 - Designated.

	R-1	R-2	T R	R C	C	TC
<u>59. Formula businesses</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>C</u>

Section 6. Chapter 17.52 Amendments. Chapter 17.52 titled “Conditional Use Permits,” is hereby amended as follows with bold, underlined text showing additions and strikethrough text showing deletions:

17.52.070 – Formula Business Approvals.

An applicant for a conditional use permit application for a formula business, where such use is permitted in accordance with this title, must demonstrate that the proposed use complies with at least five (5) of the fourteen (14) standards set forth in this section in addition to the approval criteria set forth in section 17.52.040 of this code. The standards set forth in this section promote the goals of and ensure consistency with the city’s comprehensive plan.

<u>FORMULA BUSINESS CUP STANDARDS</u>
<u>1. The formula business will not result in an overconcentration of similar uses within the block or along the street frontage of the proposed project.</u>
<u>2. The proposed use will help to diversify the mixture of uses present in the zoning district and immediate vicinity of the proposed use and will not result in duplication or over-abundance of the types of goods and services already provided in the city.</u>
<u>3. The formula business will contribute to the adequate availability and diverse mix of retail,</u>

<u>restaurant and services or commercial businesses providing basic necessities and providing for the daily needs of residents and visitors within the zoning district and the immediate vicinity of the proposed project.</u>
<u>4. The formula business will be mutually beneficial to and enhance the economic health of the surrounding uses in the zoning district.</u>
<u>5. The proposed use represents or encourages an innovative or creative business idea.</u>
<u>6. The proposed use provides an opportunity for an entrepreneur to offer new services or explore new products.</u>
<u>7. The proposed use helps to place the city in a leadership position as a place of innovation and creativity.</u>
<u>8. The proposed use offers goods and services that meet the daily or frequent needs of the city's residents and visitors.</u>
<u>9. The proposed use offers goods and services that are affordable to and needed by a broad range of the city's residents and visitors.</u>
<u>10. The formula business, together with its design and improvements, is consistent with or does not detract from the unique and historic character of the zoning district.</u>
<u>11. The proposed use provides opportunities for residents and visitors to enjoy a one-of-a-kind recreational, cultural or entertainment experience while they are in the area.</u>
<u>12. The proposed use, together with its design and improvements, will preserve and be compatible with the visual appearance and retail experience of the zoning district.</u>
<u>13. The formula business will be compatible with existing uses in the zoning district and promote the zoning district's vitality and long-term sustainability.</u>
<u>14. The formula business will provide needed employment opportunities and offer competitive wages and benefits to employees.</u>

Section 7. Chapter 17.68 Amendments. Chapter 17.52 titled "Conditional Use Permits," is hereby amended as follows with bold, underlined text showing additions and strikethrough text showing deletions:

17.68.010 – General requirements.

D. Enlargement of **or Change to** a Nonconforming Use or Building. ~~No nonconforming building or use shall be structurally altered or expanded in any way that would increase the degree or area of nonconformance.~~ **Unless otherwise permitted in this code, nonconforming uses shall not be expanded, enlarged, extended, increased, or moved to occupy an area of land or building that was not occupied on the effective date of this title or any amendment to this title that made the use nonconforming. No building or structure that contains a nonconforming use shall be enlarged unless the nonconforming use is permanently discontinued or unless otherwise**

permitted by this code. A nonconforming use shall not be changed to another nonconforming use. Except as permitted by paragraphs C, E and F of this section, structural alterations to nonconforming buildings or structures are permitted only if it is demonstrated that the alteration will eliminate the nonconformity or reduce it. In matters pertaining to the restoration of nonconforming buildings, the provisions of the Dangerous Building Code and other such building, fire, plumbing, mechanical and other codes as the city has adopted shall apply unless such provisions are in conflict with or inconsistent with provisions contained within this title, in which case the provisions contained herein shall prevail.

Section 8. **Amendment to Official Zoning Map.** The City Council hereby amends the official zoning map of the City to incorporate the Formula Business Exclusion Overlay District as shown in **Exhibit A** to this Ordinance. City Council further authorizes and directs City staff to effect such amendments to the official zoning map in accordance with Section 17.12.040 of the Leadville Municipal Code.

Section 9. **Remaining Provisions.** Except as specifically amended hereby, all other provisions of the Leadville Municipal Code shall continue in full force and effect.

Section 10. **Codification Amendments.** The codifier of Leadville's Municipal Code is hereby authorized to make such numerical, technical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Leadville Municipal Code.

Section 11. **Severability.** Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

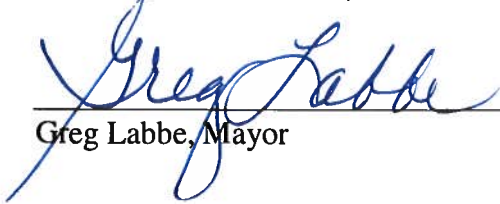
Section 12. **Repeal.** Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code provision heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance or code hereby repealed prior to the taking effect of this Ordinance.

Section 13. **Safety Clause.** The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Leadville, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 14. **Effective Date.** This Ordinance shall become effective thirty (30) days after publication following final passage.

INTRODUCED, READ, APPROVED AND ORDERED PUBLISHED in full on first reading this 1st day of March, 2022.

CITY OF LEADVILLE, COLORADO:



Greg Labbe, Mayor

ATTEST:

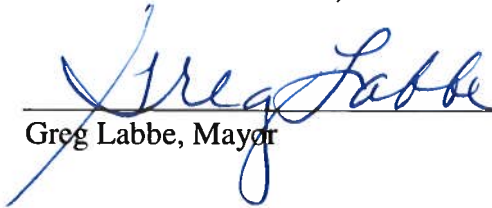


Deputy City Clerk

PUBLISHED in full in The Herald Democrat, a newspaper of general circulation in the City of Leadville, Colorado, on the 3rd day of March, 2022.

PASSED AND ADOPTED ON FINAL READING AND ORDERED PUBLISHED, with any amendments, this 15th day of March, 2022.

CITY OF LEADVILLE, COLORADO:



Greg Labbe, Mayor

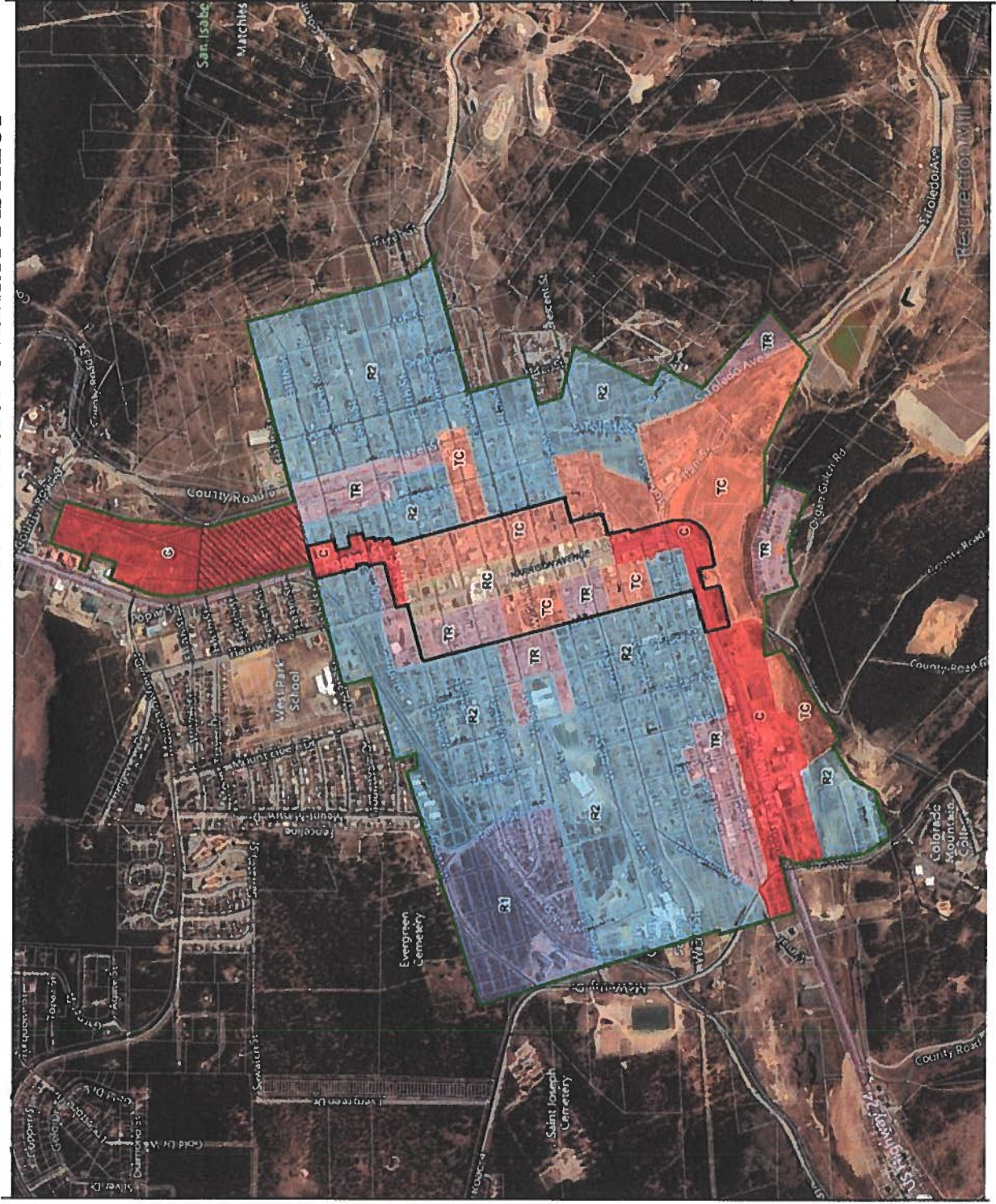
ATTEST:



Deputy City Clerk

PUBLISHED BY TITLE ONLY, with any amendments, in The Herald Democrat, a newspaper of general circulation in the City of Leadville, Colorado, following final reading on this 24th day of March, 2022.

EXHIBIT A FORMULA BUSINESS EXCLUSION OVERLAY DISTRICT



CITY OF LEADVILLE

ZONING DISTRICT MAP

FEBRUARY 8, 2021



LEGEND

- LEADVILLE CEMETERY
- C - COMMERCIAL
- TR - TRAFFIC/RURAL RESIDENTIAL
- R2 - RESIDENTIAL RESIDENTIAL
- TC - TRAFFIC CENTER
- TR - TRAFFIC/COMMERCIAL
- TR - TRAFFIC/COMMERCIAL
- TR - TRAFFIC/COMMERCIAL
- R3 - RESIDENTIAL RESIDENTIAL
- RESIDENTIAL
- LAND PARCEL
- PLANNED (PUD)
- LEADVILLE
- STREET

