CALIFORNIA APPEALS COURT UPHOLDS FORMULA BUSINESS LAW

A California Appeals Court has upheld a local ordinance restricting the proliferation of formula retail businesses in Coronado, a city of 24,000 people near San Diego. The court ruled that the ordinance does not violate the US Constitution's commerce and equal protection clauses, and is a valid use of municipal authority under California state law.

The ordinance, enacted in December 2000, requires anyone seeking to open a formula retail business to obtain a special permit. Approval hinges on demonstrating that the store will be compatible with surrounding uses, will be designed and operated in a manner that preserves the community's character and ambiance, and will contribute to an "appropriate balance of local, regional, or national-based businesses." The ordinance further requires that formula retail stores be limited to no more than 50 linear feet of street frontage and no more than two stories.

The law defines formula retail businesses as those "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, decor, architecture, layout, uniform, or similar standardized feature."

A group of property owners challenged the law several months after it was enacted. The ordinance was upheld at the superior court level and then again on appeal.

Most of the appeals court ruling deals with the property owners' primary contention, which is that the ordinance discriminates against out-of-state companies. The court found that the law does not in fact "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." The court notes the law focuses on whether the store is contractually required to have standardized features, regardless of whether it is part of a national chain or owned by a California resident.

The court further ruled that the law does not have a discriminatory purpose. The ordinance's lengthy preamble states that the city seeks to maintain a vibrant and diverse commercial district, and that the unregulated proliferation of formula businesses would frustrate this goal and lessen the commercial district's appeal. The court concludes that this is a legitimate purpose, noting that "the objective of promoting a diversity of retail activity to prevent the city's business district from being taken over exclusively by generic chain stores is not a discriminatory purpose under the commerce clause."

The court also dismissed the equal protection and state law challenges, stating that the ordinance is rationally related to a legitimate public purpose.

Formula Business Restrictions

Formula businesses include retail stores, restaurants, hotels and other establishments that are required by contract to adopt standardized services, methods of operation, decor, uniforms, architecture or other features virtually identical to businesses located in other communities.

Several communities have banned certain types of formula businesses. These laws do not prevent a chain store from coming in, but they do require that the incoming chain not look or operate like any other branch in the country. This has proved a significant deterrent to chains, which generally refuse to veer from their standardized, cookie-cutter approach.

Several cities have prohibited formula restaurants, but not other types of formula businesses (including Bainbridge Island, Carmel, Pacific Grove, Sanibel, Solvang, and York). Others (including Bristol, Calistoga, Coronado, and San Francisco) have placed restrictions on formula retail stores as well.

Rather than banning formula businesses entirely, some communities have capped their number. Arcata, for example, allows no more than nine formula restaurants in the city at any one time.

Most of these ordinance apply citywide, but they may also be written to cover only a specific area within the community, such as a historic downtown district (see Bristol and Port Jefferson).

San Francisco, the only large city with a formula business ordinace, has chosen to take a neighborhood-by-neighborhood approach. Under the law, whenever a formula retail business applies to open, residents in the surrounding neighborhood are notified. They have the option of requesting a public hearing and subjecting the applicant to additional scrutiny. The ordinance allows for varying degrees of regulation in each neighborhood. Some have banned formula businesses entirely. Others neighborhoods may petition the city to allow formula businesses without notification.

These ordinances have been upheld in court. See the June 2003 California Appeals Court decision upholding Coronado's formula business ordinance.

RULES:
Arcata, CA
In June 2002, the city of Arcata, California, enacted the following ordinance, which limits the number of formula restaurants in the city to no more than nine at any one time. (The community currently has nine formula restaurants. If one closes, the ordinance allows another formula restaurant to take its place.) A formula restaurant is defined as one that shares the same design, menu, trademark, and other characteristics with twelve or more other establishments.

Bainbridge Island, WA
On June 8, 1989, a public hearing on the subject of formula restaurants was held. Overwhelming public comment favored elimination of formula take-out food restaurants in all zones within the city. A finding and recommendation to that effect was thereafter made to City Council. The City Council finds that formula take-out food restaurants represent a type of business that is automobile-oriented or of a particular nature that the existence of one such restaurant in the High School Road zone is a sufficient maximum number of that use for the village character to be preserved.

Bristol, RI
In May 2004, Bristol, Rhode Island, a community of 23,000 people about half an hour southeast of Providence, adopted the following ordinance, which restricts formula businesses in the town's historic downtown. The ordinance bars formula businesses larger than 2,500 square feet or that take up more than 65 feet of street frontage from locating in the downtown.

Calistoga, CA
In 1996, the town of Calistoga, California enacted an ordinance that prohibits formula restaurants and visitor accommodations, and requires that other formula businesses undergo review and apply for a special use permit from the Planning Commission. The city council concluded that regulating formula businesses was necessary to preserve the unique character of Calistoga's downtown commercial district, including "regulating the aspect of businesses. . . that is reflective of the history and people of the community."

Carmel-by-the-Sea, CA
This small city in the mid-1980s became the first town in the country to enact a formula restaurant ban, which prohibits fast food, drive-in and formula food establishments. In Carmel a business is considered a formula restaurant if it is "required by contractual or other arrangements to offer standardized menus, ingredients, food preparation, employee uniforms, interior decor, signage or exterior design," or "adopts a name, appearance or food presentation format which causes it to be substantially identical to another restaurant regardless of ownership or location."

Coronado, CA
This city of 20,000 in southern California has two zoning ordinances that limit formula businesses. A formula business is one that is required by contractual or other arrangement to maintain a standardized array of services or merchandise, and standardized architecture, uniforms, logos, decor, etc. Coronado has a formula restaurant ordinance and a formula retail ordinance.

Pacific Grove, CA
City Code forbids any permits for food establishments that have the following characteristics: specializes in short order or quick service food service, food is served primarily in paper, plastic or other disposable containers, customers may easily remove food or beverage products from the food service establishment for consumption, and it is a formula food service establishment required by contractual or other arrangements to

operate with standardized menus, ingredients, food preparation, architecture, decor, uniforms, or similar standardized features.

Port Jefferson, NY
On June 26, 2000, Port Jefferson, New York enacted an ordinance barring formula fast food restaurants from the village's historic commercial and waterfront districts. The measure was proposed by the Port Jefferson Civic Association, which has fought to prevent McDonald's from locating in the village center and to protect the community's unique character and ambiance.

San Francisco, CA
San Francisco's Formula Business Ordinance adds formula businesses to the list of uses that require neighborhood notification under city law. Residents will be notified whenever a formula retail business applies to open in their neighborhood. They will then have the option of requesting a public hearing and subjecting the applicant to a list of criteria. In addition, formula retailers are banned entirely from the four-block Hayes Valley business district and are automatically required to undergo a hearing and review in the Cole Valley neighborhood.

San Juan Bautista, CA
In 2004, San Juan Bautista, CA, a village of 1,700 people 45 miles south of San Jose, adopted the following ordinance, which bars all formula retail stores and restaurants, and all stores over 5,000 square feet.

Sanibel, FL
As part of Sanibel's efforts to write a Vision Statement which reflects the public's desires to remain a small town community, remain unique through a development pattern which reflects the predominance of natural conditions and characteristics over human intrusions, and avoid "auto-urban" development influences, the city enacted an ordinance banning formula restaurants in 1996.

Sausalito, CA
The city has determined that preserving a balanced mix of local, regional, and national-based businesses and small and medium sized businesses will maintain and promote the long-term economic health of visitor-serving businesses and the community as a whole. Therefore, the over-concentration of formula retail businesses will not be allowed, and all permitted formula retail establishments shall create a unique visual appearance that reflect and/or complement the distinctive and unique historical character of Sausalito, and that no such establishment shall project a visual appearance that is homogenous with its establishments in other communities.

Solvang, CA
The Land Use Element of the City's General Plan provides that a key issue identified in the process of preparing the General Plan was to maintain the image of Solvang as a small-town village in an open space/agricultural setting. This unique character would be adversely affected by a proliferation of "formula restaurants" which are required by

contractual or other arrangements to be virtually identical to restaurants in other communities as a result of standardized menus, ingredients, food preparation, decor, uniforms and the like. Therefore, the City Council finds that in order to preserve the character of the Village, it is reasonable and necessary to adopt this ordinance which would preclude the development of new formula restaurants in the Village.

York, ME
At a town meeting in May 2004, residents of York, Maine, voted to amend the town's zoning ordinance to prohibit formula restaurants. York is a coastal community of 13,000 people about ten miles north of the New Hampshire border. The measure, which was endorsed by the Planning Board and the Board of Selectmen, notes that York has retained a large concentration of historic buildings and locally owned businesses, and that the town's unique character is important to York's "collective identity as a community."

CORONADANS ORGANIZED FOR RETAIL ENHANCEMENT et al., Plaintiffs and Appellants,

v.

CITY OF CORONADO et al., Defendants and Respondents.

COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION ONE

2003 Cal. App. Unpub. LEXIS 5769

June 13, 2003, Filed

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PRIOR HISTORY: APPEAL from a judgment of the Superior Court of San Diego County, Super. Ct. No. 766111. Charles R. Hayes, Judge.

DISPOSITION: Affirmed.

JUDGES: HALLER, Acting P. J. WE CONCUR: McINTYRE, J., McCONNELL, J.

OPINION: Several Coronado property owners and an unincorporated association (collectively Property Owners) challenged the constitutionality of a City of Coronado ordinance requiring a permit for a "Formula Retail" establishment to open or expand in Coronado. After the parties submitted the matter for trial on a written record, the court found the constitutional challenges to be without merit and entered judgment in Coronado's favor. On appeal, Property Owners contend the ordinance facially violates the federal Constitution's commerce clause and the state and federal equal protection guarantees. We reject these contentions and affirm.

FACTUAL AND PROCEDURAL [*2] SUMMARY

In January 2001, the Coronado city council adopted an ordinance (Ordinance) placing restrictions on certain types of retail businesses that seek

to open or expand in Coronado. (Coronado Ord. No. 1919.) The restrictions apply only to businesses identified as "'Formula Retail,'" defined to mean "a type of retail sales activity or retail sales establishment (other than a 'formula fast food restaurant') which 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, decor, architecture, layout, uniform, or similar standardized feature." (Coronado Mun. Code, ß 86.04.682.) n1

n1 All further section references are to the Coronado Municipal Code unless otherwise specified.

The Ordinance places two primary restrictions on businesses that fall within this definition: (1) the business owner must obtain a "Major Special Use Permit" to open a business or expand more than 500 square feet; [*3] and (2) the establishment may not have a street level frontage of greater than 50 linear feet or have its retail space occupy more than two stories (except for grocery stores, banks, savings and loans, restaurants, and theaters). (ß 86.55.370.) The required special use permit may be approved only after Coronado's planning commission and city council hold public hearings and make four required findings: (1) the establishment is "compatible with existing surrounding uses, and has been designed and will be operated in a non-obtrusive manner to preserve the community's character and ambiance"; (2) the establishment is consistent with the General Plan and Local Coastal Program; (3) the establishment "will contribute to an appropriate balance of local, regional or national-based businesses in the community"; and (4) the establishment "will contribute to an appropriate balance of small, medium and large-sized businesses in the community." (ß 86.55.370(C).) The fee to process the special use permit will be approximately $ 3,000. The Ordinance's express purpose "is to regulate the location and operation of formula retail establishments in order to maintain the City's unique village character, [*4] the diversity and vitality of the community's commercial districts, and the quality of life of Coronado. . . ." (ß 86.55.370.)

Several months after the Ordinance was enacted, Property Owners filed an action against Coronado and its city council (collectively Coronado), claiming the Ordinance violates the federal Constitution's commerce clause, the federal and state Constitutions' equal protection clauses, and California's general planning and zoning laws. The parties stipulated to submit the case for trial based on a written record.

In support of their claims at trial, Property Owners relied on the Ordinance's language and its legislative history, which consisted primarily of transcripts of

numerous city council and planning commission meetings from March 2000 through January 2001. They also produced declarations from several of the individual property owner plaintiffs who lease commercial property in Coronado, stating that that because the special permit process will take "at least two or three additional months" the Ordinance will encourage commercial landlords to "negotiate a quick and easily implemented lease with the least creditworthy, least experienced tenants, and to [*5] eschew national chains." These property owners also stated the Ordinance would put Coronado commercial landlords at "a competitive disadvantage with other [non-Coronado] commercial property owners" if a Formula Retail operator is denied a permit.

Coronado objected to the court's consideration of the legislative history record, arguing the lawmakers' subjective motivations for enacting the Ordinance were irrelevant and inadmissible. Coronado additionally submitted a zoning map showing Coronado has a small commercial area that is close to residential areas and the average commercial lot in Coronado is 25 feet wide, although many owners own two or more adjacent lots. Coronado also submitted the declaration of Coronado's planning director, who reiterated that the express 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."

After considering the written submissions, the trial court sustained Coronado's evidentiary objections to the legislative history evidence, found that Property Owners failed to prove their claims, and entered judgment in Coronado's [*6] favor.

DISCUSSION

I. *Federal Constitution's Commerce Clause*

As their primary appellate contention, Property Owners argue the trial court erred in finding the Ordinance does not facially violate the federal Constitution's commerce clause. In examining this contention, we first summarize the generally applicable legal principles, and then we apply these principles to the challenged Ordinance.

A. *Summary of Legal Standards*

The commerce clause of the federal Constitution limits a state's power to regulate interstate commerce. (*Camps Newfound/Owatonna, Inc. v. Town of Harrison (1997) 520 U.S. 564, 571-572, 137 L. Ed. 2d 852, 117 S. Ct. 1590.)* This limitation potentially applies to the Ordinance because the Ordinance's regulations apply to businesses that operate in interstate commerce.

To determine whether a law violates the commerce clause, a court must first determine if the challenged statute *discriminates* against interstate commerce. If so, it is generally held to be per se unconstitutional. If not, and the law does not directly regulate commerce, the courts apply a deferential balancing test where the statute will be upheld unless the [*7] incidental burden on interstate commerce is "clearly excessive" as compared with the putative local benefit. (*Pike v. Bruce Church, Inc. (1970) 397 U.S. 137, 142, 25 L. Ed. 2d 174, 90 S. Ct. 844.)* The party challenging the law has the burden to show unlawful discrimination or that the burden on interstate commerce is clearly excessive. (*Hughes v. Oklahoma (1979) 441 U.S. 322, 336, 60 L. Ed. 2d 250, 99 S. Ct. 1727.)*

Further, because Property Owners bring a facial challenge to the constitutionality of the Ordinance (as opposed to an "as-applied" challenge), they are subject to a difficult proof burden to establish a commerce clause violation. (See *S.D. Myers, Inc. v. City and County of San Francisco (9th Cir. 2001) 253 F.3d 461, 467-468; Hatch v. Superior Court (2000) 80 Cal.App.4th 170, 192-193.)* To support a facial unconstitutionality claim, a plaintiff "'cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute . . . . Rather, [the plaintiff] must demonstrate that the act's provisions inevitably pose a [*8] present total and fatal conflict with applicable constitutional prohibitions.' [Citations.] The last portion of this quote . . . is the most important, for it requires plaintiffs to demonstrate '"that *no set of circumstances exists under which the [Ordinance] would be valid.*"'" (*Personal Watercraft Coalition v. Bd. of Supervisors (2002) 100 Cal.App.4th 129, 137-138.)* Thus, success on a facial challenge "comes only if the challenger demonstrates that the law is [unconstitutional] '*under any and all circumstances . . . .*'" (*Ibid.*; accord *S.D. Myers, Inc. v. City and County of San Francisco, supra, 253 F.3d at p. 467.)*

Guided by these principles, we turn to examine Property Owners' commerce clause claim.

B. *The Ordinance Does Not Discriminate Against Interstate Commerce*

In determining whether a challenged law "'discriminates'" against interstate commerce, "'discrimination' . . . means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." (*Oregon Waste Systems, Inc. v. Department of Environmental Quality of Oregon (1994) 511 U.S. 93, 99, 128 L. Ed. 2d 13, 114 S. Ct. 1345.)* [*9] Improper discrimination "may take any of three forms: first, the state statute may facially discriminate against interstate or foreign commerce; second, it may be facially neutral but have a discriminatory purpose; third, it may be facially neutral but have a discriminatory effect." (*Pacific Merchant Shipping*

Assn. v. Voss (1995) 12 Cal.4th 503, 517, 907 P.2d 430; Waste Management of Alameda County v. Biagini Waste Reduction Systems, Inc. (1998) 63 Cal.App.4th 1488, 1495; Smithfield Foods, Inc. v. Miller (S.D.Iowa 2003) 241 F. Supp. 2d 978, 986-987.) We conclude the Ordinance does not improperly discriminate under any of these three tests.

First, the Ordinance is not facially discriminatory. It 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 evenhanded - *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 [*10] limitations. (ß 86.55.370(B).) Further, the Formula Retail definition is not limited to interstate businesses as opposed to intrastate or locally owned businesses. A local business that sells solely in the intrastate market can be contractually required to have uniform or standardized features within the meaning of the Ordinance's Formula Retail definition. By treating all interstate and intrastate businesses evenhandedly, "'there is no "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter."'" (*Waste Management of Alameda County, Inc. v. Biagini Waste Reduction Systems, supra, 63 Cal.App.4th at p. 1497;* see also *Great Atlantic & Pacific Tea Co., Inc. v. Town of East Hampton (E.D.N.Y. 1998) 997 F. Supp. 340, 351.)*

Property Owners nonetheless claim the Formula Retail definition is facially discriminatory because it refers to a standardized "trademark" and "service mark," which apply only to interstate businesses. However, on a facial challenge, Property Owners can prevail on this argument only if they establish the Formula Retail definition could *never* potentially apply to an intrastate [*11] or locally owned business. (See *S.D. Myers, Inc. v. City and County of San Francisco, supra, 253 F.3d at p. 467.)* Property Owners have failed to do this. Because the Formula Retail definition includes numerous types of standardized features in addition to trademarks (such as decor, architecture, and/or layout), the definition it is not necessarily limited only to interstate businesses.

The record likewise does not support that the Ordinance has a discriminatory purpose. In a lengthy preamble section, the Ordinance sets forth the nondiscriminatory purposes of the law by first explaining that Coronado is a seaside tourist and residential community with a "very special environment" and "village atmosphere." (Coronado Ord. No. 1919.) To maintain and preserve this environment, "Coronado established the Business Areas Advisory Committee" (Committee), which, after a lengthy public process, developed the Business Areas Development Plan (Plan), "to provide a coherent

framework to foster a vibrant commercial sector in the City that is economically sound for merchants and property owners, well-balanced in its appeal to a mixed residential and visitor market, and aesthetically [*12] and environmentally suitable to the small-town, low-density residential character of the City of Coronado." (*Ibid.*) In the Plan, the Committee articulated a goal of seeking "open and inviting retail storefronts that impart a sense of streetscape continuity to pedestrians that enhances the village atmosphere" and offering "a diverse and wholesome environment . . . ." (*Ibid.*) But the Committee cautioned that "an over-abundance of certain kinds of businesses" can "detract from the appeal of the streetscape" and recognized that the community "requires a strong and diverse retail base." (*Ibid.*)

The preamble section then states that based on these Committee findings, the city council recognized that "the long-term health of the commercial zones would be advanced by a blend of smaller, medium, and larger sized businesses and by a blend of local, regional, and national-based businesses, which provides diverse and unique retail businesses for residents and visitors," and that it was "anticipated that additional formula retail properties will in the foreseeable future find their way to the rental/lease market in the commercial districts." (Coronado Ord. No. 1919.) The preamble further [*13] states that if these "formula retail" properties are not "monitored and regulated," they would "frustrate" the Plan's 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." (*Ibid.*) Based on these facts, the city council determined "the public welfare of the City's residential, retail, business and tourist-based community, as articulated by the principles upon which the [Plan] is premised, will now be served and advanced by monitoring and regulating the establishment of formula retail stores in the commercial areas through the mechanism of special use permits issued by the City Council . . . ." (*Ibid.*)

These stated purposes do not reflect the city council enacted the Ordinance with the intent to discriminate against interstate commerce or out-of-state entities. Instead, these recitals disclose 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, and that it believed the best way to achieve these goals was to subject to greater scrutiny those retail stores [*14] that are contractually bound to use certain standard processes in displaying and/or marketing their goods or services, and to limit the frontage area of these businesses to conform with existing businesses. These declared purposes of the Ordinance are not discriminatory under the commerce clause because they treat interstate businesses the same as they treat intrastate or local businesses.

Property Owners urge this court to nonetheless determine the Ordinance has a discriminatory purpose because one of the 13 paragraphs in the Ordinance's preamble refers to a goal of protecting "local or regional" businesses over "national retailers." n2 (Coronado Ord. No. 1919.) Read in context, this language does not reflect a discriminatory purpose. The cited paragraph discusses the city council's conclusion that without the proposed regulatory scheme, smaller or medium sized businesses and/or local or regional retailers that offer "non-traditional or unique" goods or services will be wholly eliminated and replaced by "national retailers," and that this scenario would be inconsistent with the City's existing business development plan that seeks to promote a "diversity of retail activity." ([*15] *Ibid.*) The objective of promoting a diversity of retail activity to prevent the city's business district from being taken over exclusively by generic chain stores is not a discriminatory purpose under the commerce clause. Further, when viewed in its entirety, the preamble does not suggest that the permit requirements or size limitations apply only to interstate as opposed to intrastate businesses, or to out-of-state businesses as opposed to locally owned businesses.

n2 This paragraph reads: "Whereas, the addition of formula retail businesses in the commercial areas, if not monitored and regulated, will serve to frustrate the Business Areas 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. Specifically the unregulated and unmonitored establishment of additional formula retail uses will unduly limit or eliminate business establishment opportunities for smaller or medium sized businesses, many of which tend to be non-traditional or unique, and unduly skew the mix of businesses towards national retailers in lieu of local or regional retailers, thereby decreasing the likelihood of a diversity of retail activity of the type contemplated by the Business Area Development Plan . . . ."

[*16]

Property Owners alternatively argue the Ordinance's stated purposes are merely a pretext for the "true" purpose of the Ordinance drafters, which is the "economic protection of local businesses." To support this argument, Property Owners rely on various statements by city council and planning commission members contained in transcripts of the hearings leading to the adoption of the Ordinance.

The trial court properly found this evidence to be inadmissible. Federal courts have generally held that evidence of a lawmaker's allegedly discriminatory motivations are not relevant to establishing a commerce clause

violation. (*Government Suppliers Consolidating Services, Inc. v. Bayh (S.D.Ind. 1990) 133 F.R.D. 531, 537-539* (*Government Suppliers*); see *Minnesota v. Clover Leaf Creamery Co. (1981) 449 U.S. 456, 463, fn. 7, 66 L. Ed. 2d 659, 101 S. Ct. 715; Norfolk Southern Corp. v. Oberly (3rd Cir. 1987) 822 F.2d 388, 403.)* The *Government Suppliers* court observed that "despite the occasional [United States] Supreme Court references to such motive, no opinion has yet held that such evidence is relevant, let alone dispositive [to establish [*17] a commerce clause violation]. If used at all, such evidence appears to be only considered as part of parenthetical digressions. . . . The critical test of motive . . . is to be judged from an objective perspective, not from a subjective one." (*Government Suppliers*, *supra*, 133 F.R.D. at p. 539.) California courts have reached similar conclusions in analyzing challenges based on the federal commerce clause. (See *Burbank-Glendale-Pasadena Airport Authority v. City of Burbank (1998) 64 Cal.App.4th 1217, 1224* [the discrimination prohibited by the commerce clause "is measured by the economic impact of a local regulation, not the evil motives of local legislators"].) We find the reasoning and conclusions of these decisions to be persuasive, and adopt them here.

We find unavailing Property Owners' argument that the legislative history is nonetheless relevant in this case because of ambiguities in the Ordinance. There is nothing in the Ordinance's preamble or substantive provisions that would suggest the stated purposes are ambiguous, untrue or pretextual. Specifically, we reject Property Owners' argument that Coronado's existing design review ordinance (ß 70.12) [*18] shows the stated justifications for the Ordinance are duplicative and therefore a "complete sham." Because Coronado's design review ordinance permits a review of the proposed design of a store's exterior, and not the nature and intended uses of the business or the compatibility of the establishment to ensure a proper balance of businesses in the community, the existence of the design review process does not mean the Ordinance is unnecessary or duplicative, or that the stated purposes are pretextual. (*Ibid.*)

Moreover, even assuming we could properly consider the legislative history submitted by Property Owners, it does not support Property Owners' commerce clause challenge. To show a discriminatory purpose, Property Owners cite to various comments by city council members expressing a desire to protect smaller "mom and pop" stores and to ensure these stores remain viable businesses. However, there is nothing in the record showing these smaller stores are necessarily owned by local individuals or that they do not engage in interstate commerce. Although a law "may well be intended to favor small retailers over large retailers and, in that sense, be a form of economic protectionism[, [*19]] . . . that preference does not implicate interstate commerce where both intrastate and out-of-state large retailers are equally affected." (*Great Atlantic & Pacific Tea Co., Inc. v. Town of East Hampton, supra, 997 F. Supp. at p. 351.)* Put otherwise, it is not a violation of the

commerce clause to treat large and small businesses differently if the rule applies equally to interstate and intrastate businesses and does not favor businesses owned by in-state interests. (*Ibid*.)

We also find unavailing Property Owners' reliance on the few isolated comments made by city council and planning commission members referring to the need to protect "locally owned businesses" from being replaced by "national-based chains." When these isolated remarks are viewed in the context of the lengthy hearings, they do not suggest a primary purpose of the permit requirement and size limitations was to treat out-of-state entities differently from local businesses. Further, at most these remarks reflect the particular understanding or viewpoint of an individual lawmaker and thus cannot be used to establish the intent of the legislation. As our Supreme Court has repeatedly stated, "the [*20] statements of an individual legislator . . . are generally not considered in construing a statute, as the court's task is to ascertain the intent of the Legislature as a whole in adopting a piece of legislation." (*Quintano v. Mercury Casualty Co. (1995) 11 Cal.4th 1049, 1062, 906 P.2d 1057.)*

We further conclude Property Owners did not meet their burden to show a discriminatory effect of the Ordinance. Property Owners argue the Ordinance will have a discriminatory effect because most of the businesses falling within the definition of "Formula Retail" will be national retail chains and businesses that operate in an interstate market. However, the fact that "most" of the affected businesses are interstate businesses does not mean that in every single case this will be true. The definition of a Formula Retail applies to local as well as national businesses. (ß 86.04.682.)

Moreover, the fact that many stores falling within the Formula Retail definition are interstate businesses does not mean that the Ordinance will have a "discriminatory effect" as that phrase is understood by the United States Supreme Court. The high court has made clear there is no legal basis for [*21] finding a discriminatory effect merely because out-of-state interests bear the brunt of the state or local law. (See *Exxon Corp. v. Governor of Maryland (1978) 437 U.S. 117, 125-126, 57 L. Ed. 2d 91, 98 S. Ct. 2207.)* In *Exxon*, a Maryland statute barred petroleum producers and refiners from operating retail gas stations in the state. (*Id. at p. 119.)* Because there were no petroleum producers or refiners based in Maryland when the statute was enacted, its initial impact was felt only by out-of- state firms. (*Id. at p. 125.)* The Supreme Court nonetheless concluded that "this fact does not lead, either logically or as a practical matter, to a conclusion that the State is discriminating against interstate commerce . . . ." (*Ibid.*; see also *Commonwealth Edison Co. v. Montana (1981) 453 U.S. 609, 619, 69 L. Ed. 2d 884, 101 S. Ct. 2946.)* Likewise, in this case there was no showing the Ordinance will have an improper discriminatory effect. It does not advantage in- state retail

businesses in relation to out-of-state retail businesses, nor does it distinguish between in-state and out-of-state companies.

C. *Pike* [*22] *"Incidental Burdens" Test*

Having decided that the Ordinance does not overtly discriminate against interstate commerce and does not directly regulate commerce, we are next required to apply a balancing test to determine whether "the burden imposed on . . . commerce is clearly excessive in relation to the putative local benefits." (*Pike v. Bruce Church, Inc., supra, 397 U.S. at p. 142;* see *Brown-Forman Distillers v. N. Y. Liquor Auth. (1986) 476 U.S. 573, 579, 90 L. Ed. 2d 552, 106 S. Ct. 2080; Waste Management of Alameda County, Inc. v. Biagini Waste Reduction Systems, Inc., supra, 63 Cal.App.4th at p. 1498.)* In applying this balancing test, we are mindful the Ordinance is a proper exercise of Coronado's police power to regulate land use and that the United States Supreme Court "has consistently held that a state's power to regulate commerce is at its zenith in areas traditionally of local concern." (*Kleenwell Biohazard Waste v. Nelson (9th. Cir. 1995) 48 F.3d 391, 398.)*

The Ordinance is not unconstitutional under the *Pike* balancing test. First, the record does not show the Ordinance will place anything more [*23] than a negligible burden on interstate commerce. The Ordinance requires Formula Retail businesses to submit to a public approval process and pay approximately $ 3,000 for processing the permit. The only evidence in the record of a resulting burden is the individual plaintiffs' statements in their declarations suggesting it will take "two or three" months to process a permit and therefore commercial landlords would be more likely to rent to non-Formula Retail tenants. However, these assertions are without foundation and speculative at best. Further, even if these assertions were admissible, the trial court had ample basis to find this evidence did not show the additional time imposed by the permit process will have a meaningful effect on a landlord's willingness to rent to an interstate business or on the ability of the business to open or expand in Coronado. Significantly, there is no evidence in the record showing a Formula Retail business will ever be denied a special use permit. Property Owners have likewise not produced any evidence that the size limitation will have a material effect on a business. Absent a record as to how a size limitation in Coronado's business district will [*24] affect a retail business, we cannot infer a substantial detrimental effect.

As compared with the lack of evidence of detrimental impact, the record supports that Coronado could potentially obtain substantial benefits from having a public approval process to ensure proper land use planning for its commercial areas. As set forth in the Ordinance's preamble, the regulations reflect Coronado's attempt to address a matter of substantial public interest. The city made specific findings after a public hearing process that the

Ordinance will provide it with the essential tools to provide for the continued economic success of its downtown and to ensure a proper mix of businesses and a vibrant commercial center that is economically sound and aesthetically and environmentally suitable for the city's continued viability. On this record, any incidental burden on commerce from requiring formula retail businesses to submit to a public approval process and to limit their frontage size is not "clearly excessive" as compared to the potential benefits to the local community. (*Pike v. Bruce Church, Inc., supra, 397 U.S. at p. 142.)*

II. *Equal Protection*

Property Owners contend [*25] the Ordinance violates the equal protection clause of the federal and state Constitutions because it regulates only one class of retail stores (those defined as Formula Retail). They acknowledge, however, a highly deferential review standard applies to their challenge because the Formula Retail definition does not implicate a suspect classification or a fundamental interest. Without the presence of a suspect class or fundamental right, "the general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." (*Cleburne v. Cleburne Living Center, Inc. (1985) 473 U.S. 432, 440, 87 L. Ed. 2d 313, 105 S. Ct. 3249.)*

The Ordinance's classifications (requiring only Formula Retail businesses to obtain special use permits and adhere to size limitations) are rationally related to a legitimate state interest. As discussed, Coronado has a legitimate interest in seeking to maintain the village ambiance of its commercial district and to ensure the long-term economic viability of the community. It was not irrational for the city council to decide that this objective could best [*26] be met by imposing a public permit process and frontage size limitation on "Formula Retail" businesses. The city council could reasonably conclude that this type of store requires special scrutiny because it is more likely to be inconsistent with Coronado's land use goals than would a unique one-of-a-kind business and that such "formula" businesses - by their nature - have a greater potential to conflict with the village atmosphere of the community.

In asserting their equal protection arguments, Property Owners argue that an ordinance that wholly excludes a business from a local jurisdiction or that discriminates against nonresidents in the right to engage in business violates equal protection rights. However, the Ordinance, as written, does not restrict nonresident businesses in these ways. If the city's planning commission and city council in fact implement the Ordinance to per se exclude all nonresident businesses from opening or expanding in Coronado, this would be subject to an as-applied constitutional challenge. But, on this facial challenge, Property Owners' equal protection arguments are unsupported.

III. *State Law*

In one section of their appellate brief, Property [*27] Owners discuss the legal principles prohibiting discrimination against "inter-city commerce in favor of local business" and zoning restrictions that create a monopoly and/or improperly regulate competition. Assuming Property Owners have not waived these arguments by failing to apply the cited legal principles to the circumstances of this case, the arguments fail on their merits.

First, as we have observed, there is nothing in the record showing the Ordinance discriminates against nonlocal businesses. Under the terms of the Ordinance, the permit process applies to all Formula Retail businesses, regardless whether the business is owned by a Coronado resident or by a nonlocal entity. Property Owners' argument that the Ordinance is invalid because the sole purpose was to create a monopoly and/or to improperly regulate competition is likewise unsupported. There is nothing in the record showing the Ordinance was enacted for this purpose. Moreover, it is well settled that a zoning ordinance seeking to encourage the most appropriate use of land and/or provide for orderly and beneficial development is not invalid even though it is enacted to protect business development and might have an [*28] indirect impact on economic competition. (See *Ensign Bickford Realty Corp. v. City Council (1977) 68 Cal. App. 3d 467, 476, 137 Cal. Rptr. 304; Van Sicklen v. Browne (1971) 15 Cal. App. 3d 122, 127- 128, 92 Cal. Rptr. 786;* see also Hagman et al., Cal. Zoning Practice (Cont.Ed.Bar 1969) ß 5.13, p. 135; *id.* (2002 supp.) ß 5.13, p. 235.) A zoning ordinance that affects competition is invalid only when its sole purpose is to restrict competition. There is no evidence that the Ordinance in this case was enacted solely for this purpose.

DISPOSITION

Judgment affirmed.

HALLER, Acting P. J.

WE CONCUR:

McINTYRE, J.

McCONNELL, J.