

SPECIAL REPORT ON DRIVE-THRU AND FORMULA BUSINESSES

Prepared by the Intermunicipal Task Force of the
Town of Red Hook, Village of Red Hook, and Village of Tivoli

August 31, 2016

The Intermunicipal Task Force has prepared this report for the Red Hook Town Board and the Board of Trustees of the Villages of Red Hook and Tivoli to address the following questions regarding drive-thru and formula businesses:

- (a) What is the impact of drive-thru and formula businesses on the community character of the Town of Red Hook, Village of Red Hook, and Village of Tivoli?
- (b) What are the current laws and regulations regarding these types of businesses in the three municipalities?
- (c) Do these laws suffice to protect community character or should new protections be adopted?¹

Drive-thru and Formula Businesses Defined

For the purpose of this report, drive-thru and formula businesses are defined below, along with related terms:

DRIVE-IN, DRIVE-THRU or DRIVE-IN WINDOW -- 1) A component of an establishment wherein the sale of goods, services, food or drink is provided directly to patrons while seated in automobiles which are located on the premises; or 2) Where the service such as ordering, delivering or payment is performed by a carhop, waiter or waitress located on the outside the confines of the building to patrons seated in a stationary automobile parked on the premises and where such consumption is allowed, encouraged or permitted on the premises; or 3) A component of an establishment where food and drink is served from an enclosed building to patrons seated in automobiles located outside the confines of the building for immediate consumption, and where all or part of the consumption occurs outside the confines of the building or off the premises.

FORMULA BUSINESS --- Any use, whether a principal or accessory use, that has or is required by contractual, franchise or other legal arrangements to have, along with

¹ Note: any changes that may be proposed to the Zoning Laws of the Town of Red Hook and the Villages of Red Hook and Tivoli regarding drive-thru and formula businesses would not affect existing businesses. Existing drive-thru and formula businesses may be continued indefinitely as non-conforming uses ("grandfathered"), and they may be expanded, as long as they are not discontinued for a period of time. Please see Article VIII of the Town Code, and Article VI of the Village of Red Hook and Village of Tivoli Codes for more information.

twenty or more other businesses located in the United States, the same primary business name, trademark or logo and two or more of the following: 1) distinctive exterior and/or interior signage, design and/or architecture; 2) the same or standardized uniforms; or 3) the same or an array of standardized services and/or merchandise. An agricultural support business shall not be included in the definition of a “formula business.”

AGRICULTURAL SUPPORT BUSINESS — A use described in 143-39.1C(1) and (2) and any other use principally engaged in agriculture or principally supporting agricultural operations, including the sale or rental of farm tools or implements, feed, grain, tack, and animal care products for livestock and horses, farm supplies, farm machinery and/or repairs. A “pet store” shall not be considered an “agricultural support business.”

PET STORE --- A retail business principally engaged in the sale of domestic animals, such as dogs, cats, fish, birds, and reptiles, and/or supplies, food, and services for such domestic animals. The term “domestic animal” shall exclude exotic animals and farm animals such as horses, goats, sheep, and poultry.

Impacts of Formula and Drive-thru Businesses

Many communities across the U.S. have expressed concern about the impact of formula and drive-thru businesses on community character.² Because formula businesses are by definition standardized, their uniform character can transform a distinctive community into the sameness of Anyplace USA. While the interest of a community may be to define and enhance its local identity and unique sense of place, the interest of corporations is to produce an instantly recognizable image with trademark building styles and colors. This can result in a conflict between marketing interests and community values.

It can also result in the loss of tourism revenue in locations where distinctive community character, based on such features as heritage, culture and natural beauty, attracts visitors. There is a direct relationship between community appearance and tourism, and tourists will not go out of their way to visit a place that is not distinct. As Edward T. McMahon notes in his article “Community Appearance and Tourism: What’s the Link?”

The truth is, the more a community does to enhance its unique set of assets, whether natural, architectural, or cultural, the more tourists it will attract. On the other hand, the more a community comes to resemble Anyplace, U.S.A.,

² This is reflected in the numerous publications listed on the American Planning Association website and by authors like Edward T. McMahon of the Urban Land Institute on the impact of corporate design on community character.

the less reason there will be to visit. Make a destination more appealing and people will stay longer and spend more.

Similarly, drive-thru businesses can have a disruptive effect on the walkable characteristics that define village centers, and protecting pedestrian safety is one reason many communities prohibit this type of business. Drive-thru businesses, for example, result in a site plan where the building is frequently set back from the street to provide sufficient room for stacking cars. When buildings are located away from the street, it increases the distance pedestrians must walk to reach the main entrance to the business, which discourages pedestrian activity. When buildings with drive-thrus are placed close to the street, the need to create sufficient room to stack cars safely results in the access winding around the building, with either two curb cuts across the sidewalk, doubling the points of conflict between vehicles and pedestrians, or the access winding in front of the building creating a conflict between vehicles and pedestrians walking across the access. Catering to customers in cars does not support, and in fact often detracts from, an environment that encourages walking.

Community Character of Red Hook

The Town of Red Hook, including its two Villages is defined by its rural charm and small town character. The Town's rich agricultural land, much of which is forever protected from development, is anchored by small-scale, walkable commercial centers. Both elements are major economic drivers for property values and tourism.

The Villages of Tivoli and Red Hook are valued for their historical architecture, walkability, and lack of suburban sprawl. Important public spaces in all three municipalities, and particularly the Villages, include sidewalks, narrow streets, and green spaces that encourage residents and visitors to interact with one another on a daily basis in safe, beautiful settings. These features are cherished by Red Hook residents. Their desire to protect this community character from suburban-style development is expressed again and again in adopted studies, reports, surveys and other public documents.

Moreover, Red Hook's community character is a significant draw for tourism. The Town of Red Hook and the Villages of Red Hook and Tivoli include numerous tourist destinations, including but not limited to: pick-your-own farms and farm markets, historic Montgomery Place, the Frank Gehry building at Bard College, and the Villages themselves, with their quaint shops, unique and highly rated restaurants, and walkable environment. A just-released New York State report shows that visitor spending in Dutchess County in 2015 is at a record \$528,333,000. In 2015 this spending generated \$37,670,000 in local tax revenue, and visitors' expenditures supported 9,994 tourism-related jobs. Tourism has increased considerably since the inception of Dutchess Tourism in 1984, when visitor spending was \$94 million,

generating \$950,000 in Dutchess County sales. As noted by Dutchess County Executive Marcus J. Molinaro, "Visitors from around the state, nation and world understand just what makes us Distinctly Dutchess. Tourism as an industry, employer and economic engine continues to grow." Tourism is a significant driver to the local, state and US economy, returning \$8 for every \$1 invested. The programs of Dutchess Tourism have resulted in an increase in local sales tax, visitor spending, and job growth.

Importance of Community Character to Red Hook Residents

Perhaps more than any other community in the Hudson Valley, Red Hook and its two Villages have taken significant steps to preserve and enhance their community character.

The Town of Red Hook's adopted *Comprehensive Plan* (1993) establishes the Town's principal objective to maintain and protect the rural character and scenic resources of the community. The *Plan* begins with a concise description of the Town's community's character:

Although it is experiencing moderate population growth, the Town of Red Hook remains predominantly rural in character, with many distinguishing scenic resources, including country roads; open views of agricultural fields, mountains and woodlands; streams and other waterways; and its Hudson Riverfront setting. The rural character and scenic features are identified as important elements contributing to the sense of place and the quality of the living environment within the Town.

Specifically, to maintain this sense of place, § 1h of the *Comprehensive Plan* recommends that the Town should "discourage highway commercial or franchise modern architectural styles, and associated signage and lighting design, more appropriate to urban and suburban environments." Section 1i goes on to say that the Town should "deter the proliferation of unattractive and unsafe highway strip development, whether commercial, residential, or institutional." Section 6 articulates residents' desire for "limited economic activity that is in keeping with the community's overall rural, small-town character." It discusses the importance of maintaining the Village of Red Hook as the primary commercial center of the Town and the need to encourage the creation of small retail and service businesses consistent with the rural character of the community. Section 10 concludes that, "The Town of Red Hook is adamant in its view that the accommodation of growth and change must not diminish the quality of life experienced and enjoyed by the residents of the community." Ninety-six percent of respondents to the *Comprehensive Plan* survey, conducted in 1989, favored protecting Red Hook's small town character.

In the years since the *Comprehensive Plan* was adopted in 1993, the importance of Red Hook's small town character has continued to guide the community and grow in importance. In a survey and workshops conducted in 1999 for the Town and Villages' *Open Space Plan*, respondents overwhelmingly favored more aggressive efforts by local government to preserve the community's small town character. The *Open Space Plan*, a joint undertaking of the Town and its two Villages and adopted by the Town Board in 2006, describes the character of the Red Hook community as follows:

The Red Hook community is twice blessed. First it is endowed with a bounty of open space resources that range from tidal wetlands to productive farmland, and include a variety of scenic, recreational and historic resources. Second, the Red Hook community is fortunate because its residents realize the value of these resources. Their acknowledgment of these values is demonstrated in the community survey where 88% said 'yes' to the question: "do you believe the community should actively pursue protecting open space as an 'investment' for keeping the community fiscally healthy and affordable?"

Since that time, the Town of Red Hook and its residents have made significant financial investments to preserve the Town's rural working landscape. In 2003, voters overwhelmingly approved a \$3 million bond referendum for a Purchase of Development Rights (PDR) Program to preserve farmland in the community. And in 2007 a public referendum was approved to allow for the establishment of a Community Preservation Fund (CPF) intended to permanently protect farms and other important natural and cultural resources.

A majority of the residents of the Town supported the creation of the PDR and CPF programs, and a majority spoke in favor of farmland protection and preservation of small town character in surveys conducted not only for the Town's *Comprehensive Plan* and *Open Space Plan* but also during the extensive public participation process that occurred during preparation of the "Recommendations of the Land Use, Conservation and Development Working Group" in 2004. This report became the basis of one of the most significant planning initiatives in Red Hook's recent history—the development of the Centers and Greenspaces Plan of 2009 and adoption of its implementing regulations in 2011. Based on years of public input and workshops, and significant investment of time and resources, especially by volunteers and local residents, this project emphasized not only protection of the rural landscape but also the importance of traditional village-scale walkable mixed use development within and immediately adjacent to the Villages, particularly the Village of Red Hook.

Most recently, in 2016, the Town adopted a local law that requires design review for new construction, alterations, and demolition within the Town's Hamlet District, the Historic

Landmark Overlay (HL-O) District, and for individual properties listed on the State and National Registers of Historic Places. The hamlets of Barrytown, Annandale-on-Hudson and Upper Red Hook are established settlements with many significant historic, architectural, cultural and archaeological resources. The importance of Barrytown and Annandale-on-Hudson have been recognized through their inclusion within the Hudson River National Historic Landmark District and Mid-Hudson Historic Shorelands Scenic District. River Road and Annandale Road have also been designated by NYSDEC as “scenic roads.” The hamlet of Upper Red Hook was one of the first settlements in the Town, and all three hamlets are identified as historic in the *Comprehensive Plan*. The goal of the Hamlet District is to foster compatibility in building architecture and related site design in order to sustain and enhance the small-town rural character, historic and architectural presence and sense of community and to preserve any cultural and archaeological resources that may be located within these early settlements.

The Town of Red Hook is home to the Hudson River National Historic Landmark District, the most prestigious designation of historic resources in the nation, which is coincident with the Town’s Historic Landmarks Overlay (HL-O) District. Its significance, in part, relates to the district’s importance in American history, architecture and landscape design in a scenic region that inspired the Hudson River School of Painting. A portion of the Town has also been recognized with New York State’s Mid-Hudson Historic Shorelands Scenic District designation, is located within the Estates District Scenic Area of Statewide Significance, contains state scenic byways and a coastal zone area, and is within the area designated by the federal government as an American Heritage River. It is also within the Hudson River Valley National Heritage Area and the state’s Hudson River Valley Greenway. A portion of the Town is within the State Coastal Area and is subject to the Town’s adopted Local Waterfront Revitalization Program. The 2016 Zoning amendments are designed to protect these significant historic resources.

Village of Red Hook

The Village of Red Hook is the commercial center of the Town. Here, mixed-use buildings are the historical precedent and have been actively encouraged by current zoning. The General Business District consists of predominantly 18th and 19th century buildings that create a small shop streetscape with apartments above, evoking a traditional small town Main Street character. (In fact, the Village of Red Hook was featured in a poster promoting Main Street design in the 1980’s.) The Centers and Greenspaces Plan was intentionally designed to ensure that the small-town look and feel of streetscape and architecture was continued in areas of the Town immediately adjacent to the Village of Red Hook. These areas, although located in the Town, serve as a gateway to the Village.

In 2013, the Village of Red Hook adopted a “Pattern Book and Architectural Guidelines for the Village of Red Hook” (“Pattern Book”). The “Pattern Book” was adopted pursuant to New York Municipal Home Rule Law § 10, which authorizes a municipality to adopt local laws for the “protection and enhancement of its physical and visual environment.” Similarly, General Municipal Law § 96-a authorizes local governments to adopt local laws regulating districts having “special historical or aesthetic interest or value,” including “appropriate and reasonable control of the use or appearance of neighboring private properties within public view or both.”

The “Pattern Book” serves as an illustrated guide for architects, builders and residents of the Village as they plan new projects in the Traditional Neighborhood District, design infill buildings in the General Business District or adjacent neighborhoods, and contemplate changes to the existing building stock. The design goal is to enhance and extend Red Hook’s best building traditions, to promote unity without discouraging diversity. It is a distillation of a consensus in the Village about which aspects of the existing Village new development should emulate, which current architectural features, styles, and development patterns should serve as guides for the future.

The nucleus of the Village of Red Hook is its General Business District, which is the dense, active “urban core” of the Village. Increasing appreciation of historic downtowns and commercial districts is based on their architectural character and the economic dynamism they provide. Red Hook boasts a notable collection of 18th and 19th century commercial buildings in its General Business District. Many of the buildings’ facades have survived intact and continue to reflect popular architectural styles of their original construction period. Most are 2-3 story mixed-use buildings with commercial space on the first floor and residential above. Storefronts connect buildings directly with pedestrians on the sidewalk.

Village of Tivoli

Tivoli is an important 19th century Village that has evolved as a small center for civic life, culture, and commercial activity. Tivoli’s significance is recognized by its inclusion within the Hudson River National Historic Landmark District, a State designated Scenic Area of Statewide Significance, and the Mid-Hudson Historic Shorelands Scenic District. Tivoli is also a part of the Hudson River Valley Greenway, is an important component of the Hudson River American Heritage River designation, is located within New York State’s Coastal Zone boundaries and is subject to the Village’s adopted Local Waterfront Revitalization Program.

All of these recognitions of Tivoli’s historic and scenic significance supported the creation in 2010 of the Historic Overlay (HO) District. The HO District is intended to implement the recommendations of the Village’s adopted *Comprehensive Plan* to protect and maintain the

traditional scale and architectural look of this historic area as new residential and commercial structures are built and old ones are expanded. To further implement this goal, Tivoli has adopted a Pattern Book for site layout and architecture, conformance to which is recommended Village-wide and is required in the HO District. While Tivoli has some limited potential for growth, residents are adamant that its historic character must always be preserved and protected.

The Village of Tivoli's adopted *Comprehensive Plan* specifically recommends prohibiting fast food formula businesses. This recommendation has not yet been implemented. One of the *Plan's* nine visions is for "a vital retail and commercial life concentrated in the Central Business District, with small-scale, locally-owned, non-franchise enterprises."

Impact of Drive-thru and Formula Businesses

The Intermunicipal Task Force is concerned that a proliferation of drive-thru and formula businesses throughout the Town and within the Villages would not only detract from the character of the existing business districts, but would also negatively impact the unique, historic character of the entire community and the quality of life of Red Hook residents.

In particular, the Town's recently adopted Traditional Neighborhood Development (TND) District includes large tracts of land that front State Route 9 and could be particularly negatively impacted. Formula businesses and drive-thrus in that District would undermine the Town's efforts to convert that area into an extension of the Village's historic, walkable development pattern.

Representatives of the Town and Village of Red Hook have spent the past decade working together on the Intermunicipal Task Force to achieve mutually beneficial goals for the two communities. Just as the TND District serves as the southern gateway to the Village, the B1 District on State Route 199 is the Village's eastern gateway. Allowing drive-thru and formula businesses in this District, with accompanying trademarked architecture, would not be consistent with the shared goal of the Town and Village to protect and enhance the two municipalities' historic and small town rural character and to promote tourism. Similarly, the B1 District in Upper Red Hook is located immediately adjacent to one of the earliest settled areas in the community; permitting drive-thru and formula businesses adjacent to this historic settlement would be inconsistent with the character of this hamlet, particularly since development within the Hamlet District itself is subject to Planning Board review to protect its historic character.

The Village of Red Hook's four corners are an obvious example of what can occur when community character is not protected. Three of the four corners include historic two- and

three-story buildings located directly along the street frontage with shopfronts on the ground floor and apartments above, in keeping with the Village's traditional Main Street character, as described previously. However, on the southwest corner of the main intersection a gas station and convenience store have replaced the historic Red Hook Hotel, marring the Village Center with incompatible development.

As emblems of suburban sprawl, formula businesses and drive-thru establishments would detract from the historic character and safety of all three municipalities. These types of businesses would significantly alter residents' and visitors' perceptions of Red Hook, and the unique rural character of surrounding historic and agricultural districts would be diminished. As noted previously, the more a community comes to resemble Anyplace, U.S.A., the less reason there will be to visit. On the other hand, the more a community enhances and protects the unique assets that define its community character, the more it will become a significant draw for tourism. Tourism is a growing industry in Dutchess County and Red Hook, resulting in increased local sales tax, visitor spending, and job growth. The Town of Red Hook and the Villages of Red Hook and Tivoli intend to take whatever steps necessary to grow this significant economic engine.

Walkability and Drive-Thrus

Red Hook is recognized by residents and visitors for its walkability and compact, small-scale commercial centers. These characteristics are acknowledged and supported by past land use plans and recommendations. The Town of Red Hook and its two Villages have invested significant local, county, state and federal tax dollars to make all of the community's business areas walkable with the construction of new sidewalks and complete streets planning.

Drive-thru establishments of any kind would conflict with and detract from the compact, walkable character of Red Hook's small-town 19th century environment. By promoting greater reliance upon automobiles, they adversely affect pedestrian and motor vehicle traffic and the public welfare generally. As previously noted, the small-town character of the Town and both Villages is strongly related to their walkability. Wherever curb cuts permit cars to cross the sidewalk, pedestrian safety is reduced.

In the spring of 2014, the Red Hook Public Library was one of ten libraries chosen nationwide to take part in the Libraries Transforming Communities initiative of the American Library Association. Funded by the Bill and Melinda Gates Foundation, the grant provided funds for a team of five (representing the Red Hook Public Library, Village of Red Hook, Bard College and the New York State Office of Parks, Recreation and Historic Preservation) to be trained in the Harwood Institute's community engagement tools, and to use those tools to determine what was important to Red Hook.

After listening to individuals and participating in conversations with cultural/civic organizations, members from the Village and Town Governments, and members of the business community, the Library gathered information from over 200 residents, business owners, students and visitors to help the community reach its “aspirations.” One of these aspirations included providing a safe, walkable community with a variety of small, vibrant businesses that respects its natural environment and unique cultural/historical heritage. Drive-thru and formula businesses are antithetical to this aspiration.

Current Laws and Regulations

In the preparation of this report, the Task Force reviewed the existing Town and Village Codes and concluded that adequate protection against drive-thrus and formula businesses does not currently exist. Drive-thru businesses are permitted in some business districts in all municipalities, the existing Village Zoning Laws do not address formula businesses of any kind, and the Town Zoning Law does not address all types of formula businesses.

The only type of formula business that is mentioned in the Town Zoning Law is “Fast-food or drive-in restaurants.” This use is only allowed in the B1 District, subject to a special permit. The special permit conditions appear in § 143-97, which stipulates (among other provisions) that no fast food restaurant with drive-in service is permitted within 1,000 feet of another fast-food or drive-in restaurant. It also requires that the “standard design package for any franchise facility shall be subject to modification so as to comply with the architectural and site plan preferences of the Town of Red Hook so as to achieve the community’s land use and design objectives as set forth in the Town Master Plan.”

In the TND Commercial Center Subdistrict, drive-thru businesses are recognized as having a disruptive effect on the pedestrian orientation of the district and are therefore prohibited, with the exception of banks, which are permitted a drive-thru as long as it is located to the rear of the building and is adequately screened from public streets. Franchise architecture, defined as “a building design that is trademarked, branded or easily identified with a particular chain or corporation and is generic in nature,” is prohibited in the TND District. Restaurants are permitted, excluding drive-thru. However, the reference to “restaurant” in the TND Commercial Center does not refer to “fast-food” or formula restaurants.

The Village of Red Hook currently permits drive-thru windows as an accessory use subject to issuance of a special permit. However, the numerous conditions imposed on drive-thru windows attest to the impact these businesses have on pedestrian safety. Drive-thru windows in the Village of Red Hook: “shall not be located on a lot of less than 1.5 acres; shall be located at the rear or side of a building not facing the street; shall be clearly secondary in nature to the primary use; shall not impact any vehicular and pedestrian

circulation within the site; regulates noise from speaker/talk-back devices, lighting, architectural characteristics, hours of operation; shall maintain a minimum distance of 100' from a residential district; shall not negatively impact the streets that serve the site; and requires the applicant to mitigate any negative impacts on pedestrian circulation due to the drive-thru window." There are no prohibitions against, or regulations governing, formula businesses in the Village of Red Hook.

In the Village of Tivoli, drive-thru windows are prohibited in the RB District but not in the GB District. New construction and rehabilitation in the RB District is required to reflect the traditional architecture of the community, as illustrated in the Pattern Book. In the GB District, new construction is required to follow the Pattern Book, but there are no provisions governing alterations. Formula businesses are currently allowed in the both the RB and GB Districts.

Survey of Protections in Other Municipalities

New York State law grants municipalities broad powers to enact Zoning Laws, and accordingly, numerous New York communities have restricted drive-thru and formula businesses, examples of which are given below:

- The adjacent Town of Rhinebeck has restricted fast-food establishments to a clearly defined area of the town, far from the historic district and subject to additional permitting requirements specific to that particular use. The Town of Rhinebeck Zoning Law defines a "fast-food establishment" as "An establishment required by contractual or other arrangements to offer some or all of the following: 1) Standardized menus, ingredients, food preparation, decor, external facade and/or uniforms; 2) Systemic purchasing of food, containers, wrappers, and other consumable goods from a central source; 3) Pre-prepared food in a ready-to-consume state, which is: a) Sold over the counter in disposable containers and wrappers, b) Selected from a limited menu, c) For immediate consumption on or off the premises; 4) Where the customer pays before eating."

The definition excludes bake shops, delicatessens, and restaurants. *See* Town of Rhinebeck Code § 125-135 A & B., and Town of Rhinebeck Code § District Schedule of Use Regulations.³

³ In its Community Business-South District, Rhinebeck permits fast-food establishments, subject to the Special Use permit and Site Plan approval, provided:

(1) Hours of operation shall be reviewed and approved by the Planning Board so as to be compatible with adjacent uses and residential areas and to avoid the creation of any nuisance condition; and (2) The inclusion of accessory recreational facilities or similar amusement areas, including tot lots, video games and

- The Village of Cold Spring, NY bans formula restaurants and formula businesses throughout the community. The Cold Spring Zoning Law defines Formula Restaurant as “having, or required by contractual, franchise or other legal arrangements to have, along with ten or more other restaurants located in the United States, standardized menus, ingredients, food preparation or uniforms and required to have, or having, two or more of the following: (1) the same name, trade name or trademark; (2) distinctive and/ or exterior or interior signage, design and / or architecture; (3) pre-pared food in a ready to consume state; or (4) food sold over the counter in disposable containers and wrappers.” Formula Business is defined similarly with the exception of grocery stores, which are specifically excluded from this section.
- The Village of Victor, near Rochester, bans formula fast-food restaurants completely in its Central Business District and strictly regulates them in its Gateway District.⁴ The Victor Zoning Code defines formula fast-food restaurant to include “[a]ny establishment, required by contract, franchise or other arrangements, to offer two or more of the following: (1) Standardized menus, ingredients, food preparation, and/or uniforms; (2) Pre-prepared food in ready-to-consume state; (3) Food sold over the counter in disposable containers and wrappers; (4) Food selected from a limited menu; (5) Food sold for immediate consumption on or off premises; (6) Where customer pays before eating.”

the like, as part of the fast-food establishment shall be strictly prohibited; and (3) The establishment shall not alter the identity of Rhinebeck in a way which detracts from its uniqueness or contributes to a nationwide trend of standardized fast-food offerings; and (4) The establishment shall contribute to a diverse and appropriate blend of uses in the district and shall not be located within 2,000 feet of another fast-food establishment; and (5) The establishment shall complement the uses already located in the district and must help promote and foster the economic base as a whole; and (6) The establishment shall be compatible with existing surrounding uses and shall be designed and operated in a nonobtrusive manner to preserve the community's character and appearance; and (7) The establishment shall not provide a drive-through window or drive-in service due to high volumes of traffic and potential for vehicle back-up on highways as well as vehicle idling, air quality and respiratory health concerns, greenhouse gas emissions, waste of fossil fuels and noise; and (8) The establishment shall not exceed 2,000 square feet on the ground floor; and (9) The establishment shall not create a substantial impact to the public safety from increased traffic. The Planning Board may require a traffic study. Town of Rhinebeck Code § 125-68RR.

⁴ In its Gateway District, Victor allows a maximum of two formula fast-food restaurants and prohibits more than one formula fast-food restaurant operating on the same site. Further, prior to approving any formula fast-food restaurant in that district, the Victor Zoning Law requires its Planning Board to find “that the establishment of the proposed formula fast-food restaurant, or the relocation or expansion of a formula fast-food restaurant, will not increase the intensity of use on the site to a level that will adversely impact: (a) Land uses in the area; (b) Pedestrian or motor vehicle traffic; or (c) The public welfare.” Formula-food restaurants in that district are also subject to design standards. *See* Victor Code § 170-13(C).

Further, Victor bans “[d]rive-through or drive-up window[s] through which food, beverages, or ice cream may be purchased.” *See* Victor Code § 170-13(C).⁵

- The Village of Port Jefferson, New York bans formula fast-food restaurants outright from the Village’s Central Commercial District, General Commercial District and Marina Waterfront (MW) District as a way to “protect the community’s unique character and ambiance.” The Village of Port Jefferson Code defines a formula fast-food establishment as “An establishment required by contractual or other arrangements to offer some or all of the following: (a) standardized menus, ingredients, food preparation, decor, external facade and/or uniforms; (b) pre-prepared food in a ready-to-consume state; (c) sold over the counter in disposable containers and wrappers; (d) selected from a limited menu; (e) for immediate consumption on or off the premises; (f) where the customer pays before eating.”

The definition excludes eating and drinking, and retail food establishments. *See* Port Jefferson Code § 250-9, § 250-18.⁶

- The Town of Philipstown prohibits “trademarked architecture.” Architecture which identifies a specific company by building design features is prohibited unless the applicant can demonstrate that the design is compatible with the historic architecture of the Town or the Building Form Guidelines. *See* Town of Philipstown Code § 175-65D(1)(f).

Conclusion and Recommendations

The Intermunicipal Task Force recommends that the Town of Red Hook and the Villages of Red Hook and Tivoli enact zoning provisions that would prohibit the development of drive-thru and formula businesses in each municipality. Specific recommendations for each municipality are outlined below.

⁵ Victor’s formula fast-food restaurant law has survived challenges both at the trial and appellate levels. *See Mead Square Commons, LLC v. Village of Victor*, 97 A.D.3d 1162 (4th Dep’t 2012). In that case, after demolishing a historic building to build a mixed-use structure, the property owner sought approval to operate a Subway shop on the ground floor. In July 2012, an appellate court upheld Victor’s refusal to grant the approval, ruling that the ban was a valid regulation. Victor’s zoning code notes that its purpose “is to regulate the number, location and operation of formula fast-food restaurants in order to maintain Village of Victor’s unique village character, the vitality of our commercial districts, and the quality of life of Victor residents.” Victor Code § 170-3(C).

⁶ *Ibid.*

Town of Red Hook

The Task Force recommends that the Town of Red Hook amend its Zoning Law to:

- (a) Prohibit drive-thru businesses of every kind (including banks) and formula businesses in all Zoning Districts in the Town, with the exception agriculture support businesses.
- (b) Amend the TND Commercial Center in § 143-49.1 to delete drive-thrus for banks, and to prohibit formula businesses.
- (c) Amend the AB District in § 143-39.1 to prohibit drive-thru and formula businesses.
- (d) Delete § 143-97 entitled "Fast-food or drive-in restaurants."

Village of Red Hook

The Task Force recommends that the Village of Red Hook amend its Zoning Law to:

- (a) Prohibit drive-thru businesses of every kind and formula businesses in all Zoning Districts in the Village, with the exception of: a) agriculture support businesses; and b) grocery stores.

Village of Tivoli

The Task Force recommends that the Village of Tivoli amend its Zoning Law to:

- (a) Prohibit drive-thru businesses of every kind and formula businesses in all Zoning Districts in the Village, with the exception of: agriculture support businesses; and b) grocery stores.