

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

**AN UNCODIFIED INTERIM URGENCY
MEASURE OF THE CITY COUNCIL OF
FORT BRAGG PLACING A 45-DAY
MORATORIUM ON THE APPROVAL OF
APPLICATIONS AND PERMITS FOR
FORMULA BUSINESSES IN THE
COASTAL ZONING AREA**

**URGENCY ORDINANCE
NO. 965-2021**

WHEREAS, Government Code section 65858 allows a city to adopt, as an urgency measure, an interim ordinance for the immediate preservation of the public safety, health and welfare without following the procedures otherwise required prior to adoption of a zoning ordinance; and

WHEREAS, the City of Fort Bragg is in the process of developing an amendment to its Inland Land Use and Development Code and to the Inland General Plan in order to preserve its one-of-a-kind distinct small town character by placing land use restrictions on businesses which, along with ten (10) or more other business locations outside of Fort Bragg, are required by contractual or other arrangement to maintain at least two standardized features: an array of merchandise/menu, decor, uniforms, façade, color scheme, exterior signage including a trademark or service mark as signage; and

WHEREAS, at its regularly scheduled meeting on February 24, 2020, the City Council directed staff to work with the Planning Commission to develop an Ordinance to regulate formula businesses. That project was delayed until October 14, 2020 because of the COVID-19 pandemic, budget and staffing reductions, and turnover in the City's Community Development Department. The Planning Commission and staff have made progress on a proposed Ordinance and expect to present an Ordinance to the City Council for possible adoption before June 30, 2021; and

WHEREAS, the City Council acknowledged the additional time and efforts required to have the California Coastal Commission certify any amendment to its Coastal Land Use and Development Code and to the Coastal General Plan and directed staff to develop an ordinance that would regulate formula businesses in the Inland Zoning Area first; and

WHEREAS, it is the City Council's intention to develop a formula business ordinance that would regulate formula businesses and would apply to the Coastal Land Use and Development Code and to the Coastal General Plan modeled on and after adopting an ordinance to regulate formula businesses in the Inland Zoning Area; and

WHEREAS, the City Council finds and determines that the approval of applications for formula businesses in any Zoning District while a possible amendment to its Land Use and Development Codes and General Plans are being studied and developed, could result in conflicts with any future amendments to the Coastal Land Use and Development Code and to the Coastal General Plan and could undermine the purpose of studying and developing such amendments, thereby reducing the quality of life to the extent that overall public health, safety and welfare are detrimentally affected; and

WHEREAS, it is the intent of the City of Fort Bragg City Council to consider and possibly adopt amendments to all of its Land Use and Development Codes and General Plans that address concerns with formula businesses; and

WHEREAS, all legal prerequisites prior to the adoption of this Ordinance have occurred.

NOW, THEREFORE, the City Council ordains as follows:

Section 1: Recitals. The City Council finds that all the recitals facts, findings, and conclusions set forth above in this Ordinance are true and correct.

Section 2: Findings. Many unique local businesses and brands have made Fort Bragg distinct in its natural beauty and laid-back commercial character. Maintaining the economic health and one-of-a-kind distinction is vital to preserving Fort Bragg's commercial character while meeting the needs of its visitors and residents.

As the City continues to rely on its reputation as an emerging destination, to sustain and grow its tourism industry Fort Bragg must deter those commercial uses which detract from the City's unique character. Commercial uses should not detract from or dilute what makes Fort Bragg stand out from other cities in California. Formula retail businesses are, by their nature, not unique.

An abundance of formula retail establishments hinders the City's ability to promote its unique one-of-a-kind experience and to promote a diverse and balanced retail base within the City. A diverse retail base includes unique character that avoids overwhelming familiarity and sameness. The City Council finds that an overabundance of formula retail establishments in the coastal areas will unduly limit or possibly eliminate the availability of businesses that tend to be unique or project the history and character of Fort Bragg.

The increase of formula retail establishments may hinder the City's goal of promoting economic vitality in existing commercial areas, maintain community identity, and the continued support of economic diversity and vitality in commercial districts. (Coastal General Plan Goal LU-4, Policy LU-4.1, Goal C-4, and Policy CD-2.2). A balanced and diverse retail base in the Coastal Zoning Area should be comprised of a balanced mix of businesses, small, medium and large, familiar and unique, and offering a good variety of goods and services. The City strives to ensure that goods and services available locally, meet the regular needs of residents and visitors. The City Council finds that unregulated establishment of additional formula retail establishment uses may unduly limit or eliminate business establishment opportunities for smaller or medium-sized businesses, many of which tend to be unique and unduly skews the mix of businesses towards formula retailers in lieu of those unique or start-up retailers, and result in decreasing the diversity of goods and services available to residents and visitors.

The City Council finds that the approval of applications for formula businesses in the Coastal Zoning Area could result in conflicts with any future proposed amendments to the code. Furthermore, such approvals would allow a formula business, which itself is a threat to the public health, safety, and welfare. Moreover, such approval would undermine the purpose of studying and developing such amendments, thereby reducing the quality of life within the Coastal Zoning Area to the extent that overall public health, safety and welfare are detrimentally affected.

Furthermore, the Council finds that the approval of an entitlement of use is imminent in that the City has received one application to establish a formula business in the Coastal Zoning District.

In sum, for all of the above reasons, the Council finds that new formula businesses constitute a current and immediate threat to the public health safety and welfare. The Council further finds that approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use for such businesses would result in that threat.

Section 3: Definition of Formula Business. For the purposes of this Ordinance, “formula business” shall be defined as “businesses which, along with ten (10) or more other business locations outside of Fort Bragg, are required by contractual or other arrangement to maintain at least two of the following standardized features: an array of merchandise/menu, decor, uniforms, façade, color scheme, exterior signage including a trademark or service mark”.

Section 4: Moratorium on Formula Businesses. The City of Fort Bragg declares a moratorium on the approval of applications to establish any formula business on any parcel which is, in whole, or in part within the Coastal Zoning Area. However, the City will continue to accept and process applications for such businesses.

Section 5: Exempt from CEQA. This Ordinance is exempt from the California Environmental Quality Act (“CEQA”) because it preserves the status quo. CEQA does not apply where it can be seen with certainty that the action will not have a significant effect on the environment. See 14 C.C.R. § 15061(b)(3). This proposed Ordinance does not authorize any additional uses nor does it change the uses allowed in the City or their intensity or density.

Section 6: Inconsistencies. Any provision of the City of Fort Bragg Municipal Code thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

Section 7: Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, state, or federal law, regulation, or codes dealing with life safety factors.

Section 8: Uncodified Ordinance. This Ordinance is to be uncodified.

Section 9: Immediately Effective. This Ordinance shall become effective immediately and shall remain in effect for a period of 45 days unless extended or prematurely terminated.

Section 10: Written Report. Pursuant to Government Code Section 65858(d), ten days prior to the expiration of this Ordinance or any extension of such, the City Manager shall issue a written report on behalf of the City Council describing the measures taken to date to alleviate the condition which led to the adoption of this Ordinance.

Section 11: Certification. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be posted or published in the manner as required by law.

The foregoing Urgency Ordinance was introduced by Councilmember _____ and adopted by no less than the required 4/5 vote at a regular meeting of the City Council of the City of Fort Bragg held on April 12, 2021 by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**
- RECUSED:**

Bernie Norvell
Mayor

ATTEST:

June Lemos, CMC
City Clerk

PUBLISH: April 22, 2021
EFFECTIVE DATE: April 12, 2021