



AGENCY: City Council
MEETING DATE: April 12, 2021
DEPARTMENT: City Manager
PRESENTED BY: Tabatha Miller
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AGENDA ITEM SUMMARY

TITLE:

Receive Report and Consider Adoption of Urgency Ordinance No. 964-2021 Placing a 45-Day Moratorium on the Approval of Applications and Permits for Formula Businesses in the Inland Zoning Areas

Please note that this staff report will address both the Temporary Moratorium on the Approval of applications and permits for Formula Businesses in all Inland Zoning Areas and the Temporary Moratorium on the approval of applications and permits for Formula Businesses in all Coastal Zoning Areas.

ISSUE:

The City Council discussed regulating formula businesses on October 24, 2019 and February 24, 2020. After the second discussion, the City Council directed staff to bring the matter to the Planning Commission to draft an ordinance that would apply to the Inland area of the City and then bring back to City Council for adoption. After delays related to the COVID-19 pandemic, staffing reductions and staff turnover in the Community Development Department, the Planning Commission began working on developing a complete Ordinance in October 2020. Staff anticipates a final Ordinance will be presented to the City Council for possible adoption before the end of the fiscal year (June 30, 2021).

During development of the formula business regulation ordinance, members of the Planning Commission, City Council and the public have inquired whether the formula business ordinance could or would apply to projects already in the application process. As a general rule, a new regulation or law is not retroactively applied to projects with completed applications that have not yet been approved. The Temporary Urgency Ordinance would allow the City to pause approval of current applications and any applications received during the temporary moratorium that meet the definition of a formula business as set forth in the proposed Ordinance.

ANALYSIS:

Urgency Ordinances

Under [California Government Code Section 65858](#), a city or county may adopt an interim ordinance to temporarily prohibit certain land uses that may be in conflict with a contemplated general plan, specific plan or zoning proposal that the City Council and/or Planning Commission is considering or studying. The temporary prohibition or moratorium provides municipalities time to study the impact of certain activities and develop appropriate regulations, if deemed necessary.

An urgency ordinance can be passed without advance notice to the public and is effective

immediately for up to 45-days but must be approved by four-fifths vote of the legislative body. The urgency ordinance may be extended for a total period of two years as set forth in the IMPLEMENTATION/TIMEFRAMES section of this report. Any extension of the moratorium must also be approved by a four-fifths vote of City Council.

Formula Businesses

The City is currently processing two planning applications for projects that meet the definition of a Formula Business:

1. Grocery Outlet

In late 2019, pre-application meetings commenced with developers of a Grocery Outlet for the property at 825, 845 and 851 S. Franklin Street, in the City's Coastal Zone. The completed application was received in 2020; the project's environmental document was prepared in early 2021 and is currently undergoing planning review.

2. Dollar General

In late summer of 2020 a completed application was received for a Dollar General to be located at 251 S. Franklin Street, which is regulated by the City's Inland Code. The Dollar General Project is currently undergoing environmental review.

No entitlements have been issued for either project to date, although staff anticipates both projects will be scheduled for a Planning Commission public hearing within the next month or two.

The two projects are subject to separate land use codes. The Grocery Outlet project is located in the Coastal Zone and the Dollar General project is subject to the Inland Land Use and Development Code. The formula business regulations that the City Council and Planning Commission are currently developing would initially only apply to the Inland Land Use and Development Code and the Inland General Plan, although the City Council could direct staff to revise its scope of work to also include the Coastal Zone. The process to update the Inland Codes is much simpler and less time consuming, as it does not require the additional reiterative process of review and certification by the Coastal Commission.

If the City Council does not adopt a moratorium, it is likely that both would be issued entitlements in the near future. As such, if the City Council is concerned with the propagation of formula business uses in the Coastal Zoning Area or Inland Zoning Area, the City Council could find that because such uses are imminent, that either or both uses constitute a current and immediate threat to the public health, safety or welfare.

Development in the Coastal Zone triggers a Coastal Development Permit (CDP), which while different from formula business regulations, does provide a level of review and application of additional Coastal General Plan goals and policies. A recent example of the CDP involving what would likely be defined as a formula business in Fort Bragg was the AutoZone development proposed in the City's southern gateway. The [Planning Commission denied](#) the CDP permit, in part, based on Goals and Policies in the City's Coastal General Plan that

encouraged regulation of formula businesses. The City Council [upheld the denial on appeal](#) by the applicant.

The proposed Ordinance attached to this staff report and agenda item only places a temporary moratorium on approving applications for “formula businesses” in the Inland Zone and not the Coastal Zone. A separate agenda item addresses the possibility of a moratorium on approval of formula business projects in the City’s Coastal Zone. In order to enact a temporary moratorium on the approval of all formula businesses in the City, both Ordinances must be approved by at least four Councilmembers.

Attractive Commercial and Central Business Districts are a source of identity when allowed to maintain a healthy mix of uses. Many communities struggle with losing the diversity that smaller local businesses provide. When formula businesses proliferate and the same goods and services are offered in every community, our nation’s communities start to look like Anywhere, USA. For communities like Fort Bragg which are dependent on tourism, this transition can be fiscally devastating. Most of the communities with successful formula business ordinances are small unique towns that depend on the local character to attract visitors and residents.

In October 2020, staff conducted a non-scientific and informal [survey of community members](#) to gauge support for or against further regulation of formula businesses. Over 1,100 responses were received and approximately two-thirds of respondents favored some regulation of formula businesses. Of those in favor, the largest number of respondents indicated a desire to regulate the total number and type of businesses allowed.

POSSIBLE ACTION(S):

1. City Council upon review may waive the reading of the Ordinance and adopt by title only an Urgency Ordinance of the City of Fort Bragg placing a 45-day moratorium on the approval of applications and permits for formula businesses in the Inland Zoning Area of Fort Bragg.
2. Do not adopt by title only an Urgency Ordinance of the City of Fort Bragg placing a 45-day moratorium on the approval of applications and permits for formula businesses in the Inland Zoning Area of Fort Bragg.
3. Provide staff alternative direction.

FISCAL IMPACT:

The impact of the 45-day temporary moratorium on formula businesses to the City’s revenue is likely minimal.

GREENHOUSE GAS EMISSIONS IMPACT:

Adoption of the temporary moratorium on formula businesses will have little impact on greenhouse gas emissions but could slow down development and resulting construction that causes an increase in greenhouse gas emissions.

CONSISTENCY:

The Community Design Element of both the City's Inland and Coastal General Plans provide support for regulating formula businesses. The intent of the Community Design Element is to establish goals, policies and programs to preserve and enhance Fort Bragg's authentic, small town character, and is concerned primarily with the visual quality of the City. Furthermore, the City's coastal regulations implement California's Coastal Act, and development within the coastal zone requires additional analysis to ensure coastal resources are maintained, enhanced and protected.

Adopting these urgency ordinances would be consistent with numerous goals and policies because these regulations are in place to ensure that development within the City maintains and enhances the unique coastal character of our rural small-town. The moratorium on formula businesses would provide an opportunity for the community and decision makers to evaluate current policies and consider creating new policy language to ensure future development is in line with community objectives.

Inland General Plan

Policy LU-3.1 Central Business District: Retain and enhance the small-scale, pedestrian friendly, and historic character of the Central Business District (CBD)

Policy LU-3.6 Re-Use of Existing Buildings: Encourage the adaptive re-use and more complete utilization of buildings in the Central Business District and other commercial districts.

Goal LU-4 Promote the economic vitality of the City's existing commercial areas.

Policy LU-4.1 Formula Businesses and Big Box Retail: Regulate the establishment of formula businesses and big box retail to ensure that their location, scale, and appearance do not detract from the economic vitality of established commercial businesses and are consistent with the small town, rural character of Fort Bragg.

Policy LU-4.2 Require that a fiscal and economic analysis be performed as part of the conditional use permit process for big box retail projects. The analysis shall evaluate the economic effects of the project for a minimum five-year time frame. A consultant selected by the City and paid for by the project proponent shall carry out the analysis.

Goal C-5 Regard the quality of life in Fort Bragg and maintaining community identity as more important than accommodating through-traffic.

Policy C-5.1 Community Priorities for Transportation Improvements: Place a higher priority on maintaining a sense of place and enhancing the attractiveness of the Central Business District than on efficient traffic flow and movement.

Policy CD-1.5 Strip Development: Discourage strip development along Main Street. Strip development is typically characterized by street frontage parking lots serving individual or strips of stores or restaurants. It differs from central business districts and

shopping centers in that typically there are no provisions for pedestrian access between individual uses, the uses are only one-store deep, the buildings are arranged linearly rather than clustered, and there is no design integration among individual uses.

Policy CD-2.3 Economic Vitality: Continue to support the economic diversity and vitality of downtown businesses.

Policy CD-2.5 Strengthen the Distinctive Identity of the Central Business District: Strengthen the distinctive identity and unique sense of place of the Central Business District.

Policy CD-3.2 Gateway Development: Encourage a higher quality of development at the City's gateways.

Policy CD-6.1 Protect and Preserve Buildings and Sites with Historic and Cultural Significance to the Community.

Coastal General Plan

Goal LU-3 Ensure that the Central Business District remains the historic, civic, cultural, and commercial core of the community.

Policy LU-3.1 Central Business District: Retain and enhance the small-scale, pedestrian friendly, and historic character of the Central Business District (CBD).

Policy LU-3.3: Historic Buildings and Mixed Uses: In the Central Business District and in other commercial areas with historic residential structures, encourage residential uses, mixed residential, and commercial uses, and the preservation of historic structures.

Policy LU-3.4 Encourage Infill Development: Encourage infill development of vacant and underdeveloped land in the Central Business District and adjacent commercial areas before amending the Coastal General Plan and rezoning to obtain additional commercial land elsewhere.

Policy LU-3.5 Re-Use of Existing Buildings: Encourage the adaptive re-use and more complete utilization of buildings in the Central Business District and other commercial districts.

Goal LU-4 Promote the economic vitality of the City's existing commercial areas.

Policy LU-4.1 Formula Businesses and Big Box Retail: Regulate the establishment of formula businesses and big box retail to ensure that their location, scale, and appearance do not detract from the economic vitality of established commercial businesses and are consistent with the small town, rural character of Fort Bragg.

Policy LU-4.2: Require that a fiscal and economic analysis be performed as part of the conditional use permit process for big box retail projects. The analysis shall evaluate the

economic effects of the project for a minimum five-year time frame. A consultant selected by the City and paid for by the project proponent shall carry out the analysis.

Goal C-4 Regard the quality of life in Fort Bragg and maintaining community identity as more important than accommodating through-traffic.

Policy CD-2.2 Large Commercial Development: Ensure that large commercial development, such as shopping centers, big box retail, and mixed use development, fits harmoniously with the scale and design of existing buildings and streetscape of the City.

Goal CD-2: Ensure that new development demonstrates excellence of design and sensitivity to the character of the surrounding neighborhood.

Goal CD-3 Preserve the Central Business District as the commercial, civic, historic, and cultural center of the community.

Policy CD-3.1 Adaptive Reuse: Facilitate the adaptive reuse of existing older buildings in the Central Business District.

Policy CD-3.3 Economic Vitality: Continue to support the economic diversity and vitality of downtown businesses.

Policy CD-3.5 Strengthen the Distinctive Identity of the Central Business District: Strengthen the distinctive identity and unique sense of place of the Central Business District.

Goal CD-7 Preserve cultural and historic resources.

Policy CD-7.1 Protect and Preserve Buildings and Sites with Historic and Cultural Significance to the Community.

IMPLEMENTATION/TIMEFRAMES:

An urgency ordinance may remain in effect for only 45 days, unless it is extended by another four-fifths vote. Ten days prior to the expiration of the Urgency Ordinance or any extension, City Council will need to issue a written report describing the measure taken to alleviate the condition that led to the adoption; the draft Ordinance directs City staff to issue that report on behalf of the City Council. After notice and a hearing, the City can extend the Ordinance for either ten months and 15 days, with the option to extend it once more for an additional one-year, or once for 22 months and 15 days. Either option equates to a total moratorium period of up to two years and each requires the four-fifths votes. The City Council may rescind the Urgency Ordinance prior to its stated termination.

ATTACHMENTS:

1. Proposed Ordinance

NOTIFICATION:

1. Economic Development Planning, **Notify Me subscriber list**
2. Tourism and Marketing, **Notify Me subscriber list**
3. Fort Bragg Downtown Businesses, **Notify Me subscriber list**