



AGENCY: City Council
MEETING DATE: October 25, 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. 973-2021 Rescinding Interim Ordinance No. 964-2021 Placing a Moratorium on the Approval of Applications for Formula Businesses

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.

On April 12, 2021, the City Council adopted Urgency Ordinance No. 964-2021, which placed a 45-day moratorium on the approval of applications and permits for Formula Businesses. The 45-day moratorium was to expire on May 27, 2021 and the Council extended it for ten months and fifteen days to allow ample time for the City Council to approve a Formula Business Ordinance and time for the Ordinance to become effective. The City Council adopted the Formula Business Ordinance on September 13 and it became effective on October 13, 2021.

Staff recommends that the Council rescind the Formula Business Moratorium by adopting the proposed urgency ordinance, so that the termination of the moratorium is effective immediately. The urgency ordinance requires four-fifths vote of the City Council. Staff is also recommending introduction of a second ordinance which will perform the same task of rescinding the Formula Business Moratorium but will follow normal ordinance adoption procedures. If introduced tonight and adopted by a majority of City Councilmembers at the November 8, 2021 meeting, the ordinance would be effective on December 8, 2021.

Adoption of the second ordinance is a best practice for urgency ordinances. An urgency ordinance requires a finding that the ordinance is necessary to protect against a threat to public safety, health and welfare related to zoning uses that may be in conflict with a contemplated general plan, specific plan or zoning proposal. Because urgency ordinances compact the time the public has to consider the impact of the ordinance, an urgency ordinance is more likely to be legally challenged. Rescinding the moratorium immediately allows the businesses impacted by the moratorium to continue forward more quickly subject to the new zoning laws which are in place to protect public safety, health and welfare.

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.

The Government Code section does not detail the method for rescinding early an urgency ordinance establishing a moratorium. However, using an urgency ordinance which is effective immediately limits the harm and protects the welfare of the businesses or developments that may have been temporarily paused in the application or approval process. One reason to use an urgency ordinance for a moratorium is that it allows for a relatively quick response to land uses that pose a threat to public safety, health and welfare. By removing the moratorium through an urgency ordinance, the City shortens the time the moratorium would impact development and potential businesses. The moratorium is no longer needed to protect against a threat to public safety, health and welfare related to zoning uses that may be in conflict with a contemplated general plan, specific plan or zoning proposal.

Formula Businesses

In late summer 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 was undergoing environmental review when the moratorium was enacted. No entitlements have been issued for this project and extension of the moratorium on approving applications and permits for Formula Businesses delayed action on the Dollar General application and as of October 13, 2021 the project is subject to the Formula Business regulation.

The City has also received an application for improvements to the existing Ebb Tide Inn at 250 S. Main Street. The current application does not include a Formula Business use but the new owner of the property has shared their plans for a Baymont Franchise at that location. Staff anticipates that an application for a formula business use for the Baymont Franchise will be submitted soon after the moratorium is lifted.

RECOMMENDED ACTION(S):

1. Waive the reading of the Ordinance and adopt by title only Urgency Ordinance No. 973-2021 of the City of Fort Bragg rescinding Interim Ordinance No. 964-2021 which placed a moratorium on the approval of applications for Formula Businesses in the Inland Zoning District of Fort Bragg.
2. Please note that a four-fifths vote is required for adoption of the Interim Urgency Ordinance.

ALTERNATIVE ACTION(S):

1. Do not adopt the Urgency Ordinance rescinding Interim Ordinance No. 964-2021 which placed a moratorium on the approval of applications for Formula Businesses in the Inland Zoning District of Fort Bragg.
2. Provide staff alternative direction.

FISCAL IMPACT:

The impact of rescinding the temporary moratorium on formula businesses to the City's revenue is likely minimal.

GREENHOUSE GAS EMISSIONS IMPACT:

Adoption of the urgency ordinance rescinding the moratorium on formula businesses will have little if any impact on greenhouse gas emissions.

CONSISTENCY:

The Community Design Element of the City's Inland General Plan provides 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.

Adoption of the Formula Business Regulations was consistent with numerous goals and policies in place to ensure that development within the City maintains and enhances the unique coastal character of our rural small town. Rescinding the Formula Business moratorium effective immediately by way of the Urgency Ordinance is consistent with the goals and policies below which support application of regulations on Formula Business uses. Rescinding the moratorium allows those developments to be processed more quickly under the new regulations.

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-3.6 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: The location, scale, and appearance of formula businesses and big box retail shall not detract from the economic vitality of established commercial businesses, and shall be consistent with the small town, rural character of Fort Bragg.

Policy LU-4.2 Large-Scale Commercial Development: To maintain scenic views along Main Street and to ensure that building sizes at the City's gateways are in scale with the community, no commercial building shall exceed the following limitations on the gross floor area: a) between the Noyo River and Pudding Creek Bridges - maximum 50,000 square feet; b) east of Highway One and north of Pudding Creek Bridge - maximum 30,000 square feet.

Policy LU-4.3 Standards for Commercial Uses in Residential Areas: Commercial uses in and adjacent to residential areas shall not adversely affect the primarily residential character of the area.

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.

Goal CD-2 Preserve the Central Business District as the commercial, civic, historic, and cultural center of the community.

Policy CD-2.1 Adaptive Reuse: Facilitate the adaptive reuse of existing older buildings in the Central Business District.

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.

Central Business District Frontage and Façade Standards

Section 18.22.060 applies to new development in the Central Business District. The policies limit the uses allowable on the ground floor (pedestrian-oriented uses, such as retail), prescribe requirements on pedestrian entrances (shall be recessed from the sidewalk), and prohibit formula design.

The following policy regulates formula design:

E. Formula design prohibited. *The architectural style and exterior finish materials of each proposed structure shall be designed based upon the architectural traditions*

of Fort Bragg and Mendocino County, and the architectural styles prevalent in the site vicinity. Buildings proposed with architectural features substantially similar to those found in other communities on buildings occupied by the same corporate or franchise entity that will occupy the proposed building are strongly discouraged.

IMPLEMENTATION/TIMEFRAMES:

If approved by a four-fifths vote of City Council, the moratorium on Formula Businesses is rescinded immediately.

ATTACHMENTS:

1. Proposed Ordinance No. 973-2021
2. Urgency Ordinance No. 964-2021

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**
4. Mike Bhatt
5. Dollar General
6. Chelsea Haskins