

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

**AN UNCODIFIED INTERIM URGENCY
MEASURE OF THE CITY COUNCIL OF
FORT BRAGG EXTENDING INTERIM
ORDINANCE NO. 964-2021 PLACING A
MORATORIUM ON THE APPROVAL OF
APPLICATIONS AND PERMITS FOR
FORMULA BUSINESSES IN THE INLAND
ZONING AREA**

**URGENCY ORDINANCE
NO. 9XX-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, the City Council finds that the approval of applications for formula businesses in the Inland Zoning Areas while a possible amendment to Inland Land Use and Development Code and to the Inland General Plan are being developed could result in conflicts with any proposed amendments and could undermine the purpose of studying and developing such amendments, thereby reducing the quality of life within the Inland Zoning Areas to the extent that overall public health, safety and welfare are detrimentally affected; and

WHEREAS, the City of Fort Bragg City Council adopted Interim Urgency Ordinance No. 964-2021 on April 12, 2021 by four-fifths (4/5) vote placing a 45-day moratorium on the Approval of Applications and Permits for Formula Businesses in the Inland Zoning Area; and

WHEREAS, Government Code section 65858 provides that Ordinance No. 964-2021 shall expire and be of no further force and effect forty-five (45) days from its date of adoption (April 12, 2021); and

WHEREAS, on May 5, 2021, the City of Fort Bragg Planning Commission reviewed a draft ordinance adding Chapter 18.46 Formula Business Regulations to the Fort Bragg Inland Land Use and Development Code and directed staff to schedule a public hearing to consider adoption of a resolution recommending the City Council approve the formula business ordinance, approve it in a modified form or disapprove the proposed ordinance; and

WHEREAS, on May 10, 2021, the City Council issued a report on actions taken to alleviate the conditions that led to the adoption of Ordinance No. 964-2021, which placed the

45-day moratorium on the Approval of Applications and Permits for Formula Businesses in the Inland Zoning Area; and

WHEREAS, based on the report, the City Council has determined that the circumstances and conditions that led to the adoption of Interim Urgency Ordinance No. 964-2021, have not been alleviated as of the date of this Urgency Ordinance and continue to create the concerns described in Interim Urgency Ordinance No. 964-2021; and

WHEREAS, the notice and public hearing required by Government Code Section 65858(a) for the extension of Interim Urgency Ordinance No. 964-2021 have been provided in accordance with applicable law; and

WHEREAS, based on the foregoing, the City Council finds that the approving applications and permits for formula businesses prior to completion of the City's study of a zoning proposal to regulate formula businesses, would pose a current and immediate threat to the public health, safety, and welfare, and that an extension of the temporary moratorium on the approval of applications and permits for formula businesses is necessary.

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 non-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 the downtown (Inland General Plan Goal LU-4, Goal C-5, and CD-2.3). A balanced and diverse retail base in the Inland Zoning Areas 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 results 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 Inland Zoning Areas could result in conflicts with any 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 Inland Zoning Areas 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 Inland Zoning Area.

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 extends the declared moratorium on the approval of applications to establish any formula business on any parcel, which is, in whole or in part, in the Inland Zoning Area for ten months and fifteen days through April 4, 2022. 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 upon adoption by the City Council by at least four-fifths (4/5) vote and shall remain in effect for ten (10) months fifteen (15) 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 four-fifths (4/5) vote at a regular meeting of the City Council of the City of Fort Bragg held on May 24, 2021 by the following vote:

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

Bernie Norvell
Mayor

ATTEST:

June Lemos, CMC
City Clerk

PUBLISH:
EFFECTIVE DATE: