

CITY OF OJAI

URGENCY ORDINANCE NO. 920

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF OJAI, CALIFORNIA EXTENDING A TEMPORARY
MORATORIUM UNDER GOVERNMENT CODE
SECTION 65858 ON NEW FORMULA BUSINESSES WITH
FIVE OR MORE ESTABLISHMENTS AND MEETING
CERTAIN CRITERIA PER OJAI MUNICIPAL CODE
SECTION 10-2.1713 AND DECLARING THE URGENCY
THEREOF.**

WHEREAS, the City of Ojai's Formula Business Ordinance was originally adopted in November 2007 as part of the City's protection of its community character, aesthetics, and pedestrian-oriented, small scale environment with a myriad of appropriately balanced and scaled businesses catering to residents and visitors within the City; and

WHEREAS, the purpose of the Formula Business Ordinance is to regulate the location and design of formula business establishments in order to maintain the City's existing small town character, the diversity of the community's unique commercial areas, the breadth of commercial options available to residents and tourists, and the resiliency of the community's vibrant, small-scale, diversified commercial character, and to thereby protect and ensure the community's quality of life for residents and visitors; and

WHEREAS, the ordinance is unclear about the number of locations that a business must have to be qualify as a formula business;

WHEREAS, the ordinance, in Ojai Municipal Code section 10-2.1713, subdivision (d), defines a "Formula Business" as "a type of commercial business establishment, retail sales or rental activity and retail sales or rental establishment, including restaurants, hotels and motels, which, along with ten (10) or more other establishments" meets additional specified criteria; and

WHEREAS, the staff reports that were issued shortly after adoption of the ordinance stated that a business is a formula business if it has 10 or more establishments total, including the proposed establishment(s) within the City and otherwise meets the ordinance's specified criteria, while a close reading of the ordinance supports the conclusion that a formula business is a business with 11 or more other establishments total, meaning at least one within the City and ten or more other establishments, because the section uses the phrase "along with ten (10) or more other establishments" (emphasis added) — implying a minimum total of 11 establishments that meet the other specified criteria is needed to trigger the ordinance's conditional use permit requirement and other heightened standards of approval; and

WHEREAS, on April 13, 2021, the City Council directed the Planning Commission to review and evaluate the Formula Business Ordinance for possible revisions, including considering the question of which numeric threshold to adopt and consideration of other possible amendments to update the ordinance to better preserve the community's character and small-town, small-business commercial environment; and

WHEREAS, on May 19, 2021, the Planning Commission began its work reviewing the Formula Business Ordinance and evaluating potential revisions; and

WHEREAS, on July 7, 2021, the Planning Commission continued its review of the Formula Business and recommended that staff complete further research and revise the proposed draft ordinance; and

WHEREAS, the City Council, to clear up any confusion regarding the Formula Business Ordinance and prevent any potential businesses or interested parties from misinterpreting the City's ordinances in the interim period while the City Council and Planning Commission continue to review and evaluate the ordinance decided to adopt a moratorium preventing certain new and expanded formula businesses while it completes its review and update of the provisions of the Formula Business Ordinance allowing sufficient time for the City Council, Planning Commission, and residents and community to consider the question and determine the appropriate number of similar establishments and other specified criteria to be set as the triggers for the Formula Business Ordinance's conditional use permit requirement and heightened standards; and

WHEREAS, on June 22, 2021, the City Council passed Ordinance No. 919 as an urgency ordinance imposing a forty-five (45) day moratorium on the approval and issuance of permits for the construction, reconstruction, placement, replacement, or development of any new or expanded formula businesses; and

WHEREAS, Ordinance No. 919 would have expired on its own terms on August 6, 2021; and

WHEREAS, the City Council intends to preserve the tourist attracting small town character of the City, the diversity of the community's unique commercial areas and quality of life for visitors and residents by adopting a temporary moratorium preventing certain new and expanded formula businesses while it completes its review and update of the provisions of the Formula Business Ordinance; and

WHEREAS, maintaining the economic health and one-of-a-kind distinction is vital to preserving the City's commercial character while meeting the needs of its visitors and residents; and

WHEREAS, these issues constitute a current and immediate threat to the public health, safety, and welfare, within the meaning of Government Code Section 65858, as the public's health, safety, and welfare depend on the continued vitality of a connected, engaged community, and excessive formula businesses degrade the small-town feel of the community and the City Council finds that the public health, safety, and general welfare mandate that any new or expanded formula businesses with five or more establishments require a conditional use permit; and

WHEREAS, approval of any conditional use permits for formula businesses not authorized by this Ordinance would result in these threats to the public health, safety and welfare; and

WHEREAS, Government Code Section 65858, subdivision (b) authorizes the City to extend the moratorium by up to one year, then a further 10 months and 15 days by subsequent 4/5 votes of the City Council after noticed public hearings pursuant to Government Code section 65090; and

WHEREAS, the City Council finds that the current and immediate threat to the public health, safety and welfare, as described in the findings herein and as set forth in Ordinance No. 919 still exists, and that a moratorium on the approval and issuance of permits for the construction, reconstruction, placement, replacement, or development of any new or expanded formula businesses.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF OJAI FURTHER FINDS that the adoption of this Ordinance is necessary to protect the public safety, health and welfare by ensuring well-planned development of formula businesses in the City and that it should adopt this interim urgency ordinance as authorized by Government Code Sections 65858 and 36937.

THE CITY COUNCIL OF THE CITY OF OJAI DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above set forth recitals and findings are true and correct and incorporated herein by reference, as if set forth herein in full.

SECTION 2. Moratorium. Notwithstanding any provision of the Ojai Municipal Code or any other ordinance of the City of Ojai, and except as otherwise provided in this Ordinance, no conditional use permit or other City permit shall be issued for the construction, reconstruction, placement, replacement, or development of any new or expanded formula businesses, as defined by this moratorium and Ojai Municipal Code section 10-2.1713 that have five or more establishments including those within the City, and that share any two of the following features among those five or more establishments:

- (i) standardized array of merchandise or standardized menu;
- (ii) standardized façade;

- (iii) standardized décor or color scheme;
- (iv) uniform apparel;
- (v) standardized signage;
- (vi) trademark or service mark; or
- (vii) standardized or collective marketing of the business proposed to be located within the City, including, but not limited to, via digital and online means, in conjunction with the other qualifying establishments.

SECTION 3. Exceptions. The provisions of Section 2 of this Ordinance shall not apply to any of the following:

- (a) Formula business establishments existing on the date of adoption of this ordinance are subject to Title 10, Chapter 2, Article 13 (Nonconforming Uses, Structures, and Parcels) of this Code; and
- (b) Any project for which all necessary discretionary approvals have been granted and for which a conditional use permit has been issued before the close of business on the day this Ordinance takes effect.

SECTION 4. Taking. If a person can demonstrate that the application of this Ordinance to his or her formula business would constitute a taking in violation of the United States or California Constitutions or would otherwise be unlawful, an exception to this moratorium can be made via a variance approved under Article 26 of Chapter 2 of Title 10 of the Ojai Municipal Code by the Planning Commission.

SECTION 5. Environmental Determination. The City Council determines that the following findings and conclusions reflect the independent judgment of the City Council. The City Council finds that the adoption of the foregoing amendment to the Ojai Municipal Code is exempt from the California Environmental Quality Act (CEQA) for the following independent reasons:

- a. In imposing a moratorium on conditional use permits for formula businesses the City is acting under its authority provided by Government Code section 65858 and is categorically exempt from review under CEQA pursuant to CEQA Guidelines Section 15308. (Cal. Code Regs., tit. 14, § 15308.) This section exempts “actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, enhancement or protection of the environment where the regulatory process involves procedures for protection of the environment.” The moratorium is adopted under the City’s police power and its authority provided by Government Code section 65858 to protect and preserve the City and Ojai Valley’s

existing community standards, public health, safety, and welfare, and to preserve the City's existing commercial built environment pending further action of the City Council. The exceptions to the categorical exemptions under CEQA Guidelines section 15300.2 are not applicable. There are no potentially significant environmental impacts as a result of cumulative impacts because this Ordinance will, by statute, be a temporary moratorium. There are no unusual circumstances present here that mean there is a reasonable possibility that the moratorium will have a significant effect on the environment, because the moratorium will not have any adverse effect on the environment as it freezes the status quo in place, rather than permitting new development or actions which will result in on-the-ground impacts. The scenic resources, hazardous waste sites, and historical resources exceptions all also do not apply because the imposition of the moratorium will not result in any impacts upon these special status sites. Therefore, the moratorium is exempt from review under CEQA.

- b. Additionally, the imposition of the moratorium does not meet the definition of a project under CEQA Guidelines section 15061, subdivision (b)(3) and section 15378, subdivision (a) and subdivision (b)(5). The moratorium has no potential for resulting in physical changes in the environment, directly or indirectly, because it consists of a freeze on the issuance of conditional use permits. The adoption of this Ordinance is therefore exempt from CEQA review pursuant to California Code of Regulations, Title 14, Sections 15301 and 15308 of the CEQA Guidelines.

SECTION 6. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases or portions might be declared invalid or unconstitutional.

SECTION 7. Effective Date. This Ordinance is adopted by a 4/5 vote of the Ojai City Council, shall take effect immediately upon its adoption as provided by Government Code Section 65858, subdivision (b) and Section 36937, and shall be of no further force at 11:59 p.m. on Wednesday, August 3, 2022 (one year after August 3, 2021) unless extended by a further 4/5 vote of the Ojai City Council after a public hearing before expiration or terminated by further action of the City Council in accord with Government Code Section 65858, subdivision (b). The City Council can extend the moratorium by up to a further 10 months and 15 days by subsequent 4/5 votes of the City Council after noticed public hearings pursuant to Government Code section 65090.

SECTION 8. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

CITY OF OJAI, CALIFORNIA

By Betsy Stix
Betsy Stix, Mayor

August 27, 2021
Date signed

ATTEST:

Gail Davis
Gail Davis, Deputy City Clerk


APPROVED AS TO FORM:

Matthew T. Summers
Matthew T. Summers, City Attorney

STATE OF CALIFORNIA)
COUNTY OF VENTURA)
CITY OF OJAI)

I, Gail Davis, Deputy City Clerk of the City of Ojai do hereby certify that the foregoing Urgency Ordinance was adopted at a special meeting of the City Council of the City of Ojai held on August 3, 2021 by the following vote:

AYES: Blatz, Francina, Haney, Stix, Weirick
NOES: None
ABSTAIN: None
ABSENT: None



Gail Davis
Deputy City Clerk for the City of Ojai