

ORDINANCE NO. 4362

AN URGENCY ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS
EXTENDING INTERIM RESTRICTIONS ON THE ESTABLISHMENT OF FORMULA
BUSINESSES PENDING THE STUDY AND CONSIDERATION OF ZONING AND OTHER
LAND USE REGULATIONS PERTAINING TO SUCH BUSINESSES

WHEREAS, Mendocino County contains many rural communities with a small-town environment and unique character, each of which attracts residents and visitors because of their eclectic and diverse mix of businesses, and each of which must be protected and enhanced so that the unique character of the rural communities of Mendocino County can flourish without inappropriate changes; and

WHEREAS, County residents are concerned that 'chain' or 'formula' businesses will proliferate throughout the rural communities of the County, which may detract from the unique character of the County by displacing unique local or other small businesses or introducing standardized, non-unique establishments that will lessen the uniqueness and character prized by County residents; and

WHEREAS, the Mendocino County Board of Supervisors desires to protect the character of the rural communities of the County and create a supportive environment for new and unique small businesses; and

WHEREAS, Mendocino County General Plan Policy DE-69 provides that the County should emphasize local community character and culture in community planning and development; and

WHEREAS, income earned by independent small businesses is more likely to circulate within the local economy than the money earned by formula businesses, which often have corporate offices and vendors located outside of Mendocino County, resulting in less local economic benefit and vitality, adversely affecting the County; and

WHEREAS, notwithstanding the visual attractiveness of a storefront or other business structure, the standardized architecture, color schemes, décor and signage (which said signage almost universally includes the display of registered service marks which, under federal law, cannot be modified or changed through the application of local land use regulations) of many formula businesses can detract from the distinctive character of the rural communities of the County; and

WHEREAS, the location of formula business establishments in the County, if not regulated, will hamper and irreparably impede the County's goal of a diverse business base with specific attention to the small town character of the County's rural communities. Specifically, the unregulated and unmonitored establishment of formula businesses may change the character of the rural communities of the County and unduly limit or eliminate business establishment opportunities for smaller or medium-sized businesses, many of which tend to be non-traditional or unique and which complement the small town character of the County's rural communities; and

WHEREAS, the County needs a reasonable period of time to properly and carefully consider and further study the potential effects of formula businesses on the County's General Plan and the Ukiah Valley Area Plan, its commercial districts, the County's zoning and other

development regulations and on the economic vitality and diversity of the County's business establishments. Additionally, the County needs a reasonable period of time to consider and study whether further regulating such formula businesses is warranted and, if so, what the scope, nature and form of such regulation should be; and

WHEREAS, the absence of comprehensive regulations and procedures governing formula businesses, combined with the facts recited above and the fact that formula businesses may currently apply for land use entitlements to locate and establish in the County, pose a current and immediate threat to the health, safety and welfare of the citizens of the County. Moreover, the approval of use permits, variances, building permits, grading permits, other permits licenses or other entitlements for use of land or structures by formula businesses in the areas described below would result in that threat to the public health, safety or welfare of the County and its citizens. The granting or permitting of such entitlements or uses, respectively, will likely be in conflict with, prevent the implementation of and/or seriously impair the efficacy of any specific plan, zoning or other land use policy which the County is considering or intends to study within a reasonable time for the County, thus rendering such plans and policies ineffectual in providing for the needs, assuring the business diversity and preserving the unique character of the County's rural communities; and

WHEREAS, the County has existing areas in the unincorporated area where formula businesses are appropriately located without any adverse impacts; and

WHEREAS, the purpose of this ordinance is to prohibit the establishment of certain types of formula businesses within the commercially-zoned areas of the rural communities of Mendocino County, other than in specified existing areas, pending the study and consideration of permanent regulations governing such formula business establishments; and

WHEREAS, the Board of Supervisors approved an initial urgency moratorium on September 22, 2015, for a period not to exceed forty-five days; and

WHEREAS, following notice and public hearing, the Board of Supervisors approved an extension of the urgency moratorium on November 3, 2015, for a period of ten (10) months and fifteen (15) days; and

WHEREAS, an additional 12-month extension of the term of the urgency ordinance is necessary to allow a reasonable time to properly and carefully consider and further study the potential effects of formula businesses and consider whether or what types of permanent regulations are appropriate, including to allow full review of the proposed ordinance by the County Planning Commission.

NOW, THEREFORE, THE MENDOCINO COUNTY BOARD OF SUPERVISORS ORDAINS AS FOLLOWS:

Section 1. The above recitals are incorporated herein by this reference.

Section 2. The County and its agents, employees and departments shall not approve any application for subdivision, use permit, variance, building permit or any other applicable entitlement for use which is required in order to comply with the County's zoning ordinances for any of the Prohibited Uses, as defined by this section, or make any determination that would authorize the operation of a Prohibited Use ("land use entitlements or

determinations”), in any zoning district during the term of this ordinance. For purposes of this ordinance, “Prohibited Uses” shall mean either of the following:

A. Formula Restaurant, which is defined as a restaurant devoted to the preparation and offering of food and beverages for sale to the public, regardless of location or ownership, which along with 10 or more other establishments maintains two or more of the following standardized features: business name, menus, ingredients, décor, color scheme, façade, architecture, uniforms, advertising, or similar standardized features.

B. Formula Retail, which is defined as a retail sales or rental activity or retail sales or rental establishment, regardless of location or ownership, which along with 10 or more other establishments maintains two or more of the following standardized features: business name, décor, color scheme, façade, architecture, uniforms, advertising, or similar standardized features.

Section 3. During the effective life of this ordinance, the County shall process any and all applications for Prohibited Uses in the County, but if those applications are acted upon prior to the expiration of this ordinance, they shall be denied.

Section 4. This ordinance shall not apply to:

A. those applications for land use entitlements or determinations which were deemed complete prior September 22, 2015;

B. applications for land use entitlements or determinations for the renovation or rehabilitation, but not expansion, of existing buildings already used as a Prohibited Use prior to September 22, 2015;

C. construction required to comply with fire and/or life safety requirements;

D. work pursuant to the Americans with Disabilities Act;

E. banks and gas stations; or

F. Prohibited Uses located in the following area: the area shown on Exhibit A attached hereto, which generally includes properties located north of the city limits of the City of Ukiah, south of Lake Mendocino Drive and along either Highway 101 or North State Street.

Section 5. The Board of Supervisors finds and determines that the immediate preservation of the public health, safety and welfare requires that this ordinance be enacted as an urgency ordinance pursuant to Government Code Section 65858. The Board of Supervisors hereby directs the Department of Planning and Building Services to complete its study and preparation of an ordinance with respect to the regulation of Prohibited Uses for consideration by the Board of Supervisors, including the review of any proposed ordinance by the Planning Commission, which process will take up to an additional twelve (12) months to complete. Without this urgency ordinance, approval of new or expanded Prohibited Uses may be sought that would detrimentally affect the character of the County’s rural communities and would conflict with the use regulations and development standards ultimately adopted with respect to Prohibited Uses. Therefore, this ordinance is necessary for the immediate preservation of the public peace, health and safety and its urgency is hereby declared.

Section 6. This ordinance is categorically exempt from the California Environmental Quality Act under (a) Section 15308 of the State CEQA Guidelines because it is a regulatory action taken by the County in accordance with Government Code Section 65858 to assure maintenance and protection of the environment; (b) Section 15060(c)(2) of the State CEQA Guidelines, because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; and (c) Section 15060(c)(3) of the State CEQA Guidelines because it is not a project within the meaning of CEQA since it has no potential for resulting in physical changes in the environment.

Section 7. This ordinance is an urgency ordinance adopted pursuant to Government Code Section 65858 and shall become effective immediately upon its adoption if adopted by at least four-fifths of the Board of Supervisors and shall extend the moratorium on Prohibited Uses for an additional twelve-month period, making the moratorium effective until September 19, 2017.

Section 8. If any section, subsection, sentence, clause phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 16th day of August, 2016, by the following vote:

AYES: Supervisors Brown, McCowen, Gjerde and Hamburg
NOES: Supervisor Woodhouse
ABSENT: None

WHEREUPON, the Chair declared the Ordinance passed and adopted
and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOT, County Counsel

DAN GJERDE, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions
of Government Code section 25103, delivery
of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy