



Administrative Report

DISCUSSION ITEM

TO: CITY COUNCIL

FROM: Rob Mullane, AICP, Community Development Director

DATE REPORT PREPARED: May 1, 2013

MEETING DATE: May 28, 2013

SUBJECT: Formula Business Ordinance Amendment Request

Recommendation

Consider the request from Starr Market to have the Formula Business Ordinance amended and direct staff on the procedure for processing the request.

Executive Summary

Representatives of Starr Market have expressed concerns with the City's existing Formula Business Ordinance and have requested that City staff bring forth specific changes to the ordinance. The request to revisit the Ordinance was reiterated by Mr. Tom Olson of Benton, Orr, Duval, & Buckingham, the attorney representing Starr Market on this issue, at the Council's March 12, 2013 meeting under public comment. In response to this request, the Council instructed staff to prioritize work on the requested ordinance amendment. More recently, however, two Councilmembers requested that this request be discussed by the full Council prior to having staff initiate work on the requested ordinance amendment. As such, the item is being brought back to the City Council for direction to staff.

Discussion

The City's Formula Business Ordinance (Section 10-2.1713 of the City's Municipal Code) has as its purpose:

to regulate the location and design of formula business establishments in order to maintain 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.

This ordinance has been in place since December 2007, and was last revised on March 13, 2012. The March 2012 revision reduced the threshold for the definition of a formula business. Representatives of Starr Market were involved in the public hearing process for the March 2012 revision and requested that an exception to the ordinance be provided for Starr Market to allow for consideration of certain future uses at the market's location. The Council did not make the

changes requested by Starr Market at that time, but noted that their request should be considered by the Planning Commission at a later date as a subsequent amendment.

The Council heard from Mr. Tom Olson on March 12, 2013, noting that a year had passed since the Council revised the Formula Business Ordinance and expressing concern that their requested amendment had not yet been scheduled for decision-maker consideration. Mr. Olson provided the specific revised text that Starr Market is seeking at the March 12, 2013 meeting, and followed up with a letter dated April 3, 2013. The letter and the revised text for the ordinance amendment are included as Attachments A and B to this administrative report.

City staff is requesting direction from the Council on whether the City should initiate work on the ordinance amendment. Although the City has received correspondence from Mr. Olson regarding the requested amendment, the City is not in receipt of a Zoning Code Text Amendment application, nor any application fees. The initial cost for a Zoning Code Text Amendment application is \$5,050 (comprised of a \$250 core fee and a \$4,800 deposit); however, in this case, given the limited nature of the request, staff estimates that a \$1,600 deposit would be adequate to cover staff costs.

Fiscal Impact

Fiscal impacts would be limited to staff time, primarily for the Community Development Director and City Attorney, in processing the request through public hearings before the Planning Commission and City Council. Should an application be filed, these costs would be the responsibility of the applicant. Should the City Council direct staff to proceed in the absence of an application, staff costs are estimated to be approximately \$1,600.



Submitted by
Robert A. Mullane, AICP
Community Development Director



Approved for forwarding
City Manager's Office

Attachments

- A – Letter from Mr. Tom Olson dated April 3, 2013
- B – Requested Revisions to the Ordinance provided by Mr. Olson on March 12, 2013

Thomas E. Olson
Bruce Alan Finck
Donald R. Wood
Kevin M. McCormick
Carlos C. Cabral
Oscar C. González
James S. Eichler, Jr.

Ronald L. Colton
Of Counsel
Terrence J. Bonham
Of Counsel



BENTON, ORR,
DUVAL &
BUCKINGHAM

Donald L. Benton
Retired
H. Frank Orr
1888-1969
Edwin Duval
1918-1993
Henry P. Buckingham
Retired

April 3, 2013

Paul B. Blatz, Mayor
City of Ojai
401 S Ventura Street
P O Box 1570
Ojai, CA 93023

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CITY OF OJAI
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CITY MANAGERS
OFFICE

Re: **Starr Market/Formula Business**

Dear Mr. Blatz:

We have appeared both before the city counsel and the planning commission during 2012 associated with the modifications to the formula business. We understood that this was going to be working its way back through to the staff and planning commission to come up to the City Council.

I appeared on behalf of my client at the March 12, 2013 City Council meeting. There appeared to be interest in the Council in getting this matter back on track. I have had no contact since that date from anyone at the city. Any assistance you give in getting this matter appropriately on track through the city's legal channels would be greatly appreciated.

Very truly yours,
BENTON ORR DUVAL & BUCKINGHAM

By


Thomas E. Olson

TEO/vl

Cc: Dave Catlett

Sec. 10-2.1713. - Formula business establishments.

(a) Purpose. The purpose of this section is to regulate the location and design of formula business establishments in order to maintain 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.

(b) Regulation.

(1) A formula business may only be established on a site after obtaining a conditional use permit from the City for the operation of that use on such site, subject to the limitations of this section. Change of ownership, by itself, shall not require obtaining a conditional use permit pursuant to this section.

(2) No permit application of any kind shall be accepted or processed for a formula business that also possesses at least two of the following characteristics:

(i) Specializes in short order or quick service food and/or drink;

(ii) Serves food and/or drink primarily in paper, plastic or other disposable containers; and

(iii) Payment is made by customers before food and/or drink is consumed.

(3) In addition to the findings required by Section 10-2.2406 as prerequisite to the issuance of a conditional use permit, the Commission shall make all of the following findings prior to the issuance of a conditional use permit for a formula business:

(i) The proposed formula business will not result in an over-concentration of formula business establishments in its immediate vicinity or in the City as a whole;

(ii) The proposed formula business will contribute to an appropriate balance of small, medium and large-sized businesses in the City; and

(iii) The proposed formula business has been designed to preserve and enhance the City's small town character and to integrate existing community architectural and design features which will preserve such character for the City's residents and visitors.

(4) The Commission may promulgate regulations to further define the scope and meaning of the foregoing findings to ensure consistent implementation of this subsection.

(5) No conditional use permit shall be issued for a use that is a formula business located within the area of the Downtown Commercial land use designation of the City's General Plan if either of the following are true: (i) such establishment has street-level frontage exceeding twenty-five (25) linear feet on any street, or (ii) the useable area of the building or structure

wherein the formula business is to be located exceeds 2,000 square feet. For purposes of this section, "street level frontage" shall include frontage on private parking lots and access ways where the commercial building does not abut a public street.

(6) Except as provided in subsection (b)(5) of this section, no conditional use permit shall be issued for a use that is a formula business if such establishment exceeds 10,000 square feet of net total floor area.

(c) Applicability. This section is in addition to, and not in replace of, any other regulations set forth elsewhere in this title. In the event of a conflict between the provisions of this section, and any other regulations in this title, the provisions of this section shall prevail.

(d) Definitions. "Formula Business" means 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, maintains two (2) or more of the following features: (i) standardized array of merchandise or standardized menu; (ii) standardized facade; (iii) standardized décor or color scheme; (iv) uniform apparel; (v) standardized signage; or (vi) trademark or service mark; provided, however, a "formula business" shall not include an automated, standalone vending machine.

(1) "Standardized array of merchandise" means fifty (50%) percent or more of in-stock merchandise from a single distributor bearing uniform markings.

(2) "Trademark" means a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of the goods from one party from those of others.

(3) "Servicemark" means a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of a service from one party from those of others.

(4) "Decor" means the style of interior finishings, which may include but is not limited to, style of furniture, wallcoverings or permanent fixtures.

(5) "Color scheme" means selection of colors used throughout, such as on the furnishings, permanent fixtures, and wallcoverings, or as used on the facade.

(6) "Facade" means the face or front of a building, including awnings, looking onto a street or an open space.

(7) "Uniform apparel" means standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hat, and pins (other than name tags) as well as standardized colors of clothing.

(8) "Signage" means a "business sign" as defined in Section 10-2.1607(c) of this Code.

(9) "Standardized" does not mean identical, but means "substantially the same."

(e) Existing formula retail establishments. Formula business establishments existing on the date of adoption of the ordinance codified in this section are subject to Title 10, Chapter 2, Article 13 (Nonconforming Uses, Structures, and Parcels) of this Code.

(f) Burden of proof. In the event the City determines that a permit application or permit subject to this section is for a formula business, the permit applicant or holder bears the burden of proving to the City that the proposed or existing use does not constitute a formula business.

(g) Exemption for certain existing business uses. No Conditional User Permit shall be required in the following circumstances:

- (1) An existing business has been conducted at a location within the area of the Downtown Commercial land use designation of the City's General Plan for a period of at least fifteen (15) years, which is not a formula business under this Section
- (2) A change in ownership of the existing business is made to what would be a formula business under this Section.
- (3) The new owner of the business (successor business) will continue to operate substantially the same type business, within the following parameters:
 - (i) The successor business will operate with the square feet of net total floor area equal to or less than the existing business.
 - (ii) The street-level frontage on any street will be equal to or less than the existing business.
 - (iii) The successor business may introduce standardizing features described in subparagraph (d), provided that it shall not change the general nature of the products being sold from the existing business.

(§ 2, Ord. 798, eff. December 27, 2007)

(Ord. No. 808, § 2, eff. October 22, 2009; Ord. No. 819, § 2, eff. April 27, 2012)