

***.**
***.ord
00/00/00



ORDINANCE NO. _____

AN URGENCY ORDINANCE OF THE EL DORADO COUNTY BOARD OF SUPERVISORS ADOPTING 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, Government Code 65858 allows a county to adopt, as an urgency measure, an interim ordinance for the immediate preservation of the public health, safety, and welfare without following the procedures otherwise required prior to adoption of a zoning ordinance; and

WHEREAS, such an urgency measure requires a 4/5 vote of the Board, becomes effective immediately and shall be of no further force or effect 45 days from its date of adoption unless otherwise extended; and

WHEREAS, the 2004 El Dorado County General Plan: A Plan for Managed Growth and Open Roads; A Plan for Quality Neighborhoods and Traffic Relief (General Plan) identifies distinct planning concept areas which includes Rural Centers and Rural Regions; and

WHEREAS, the many Rural Centers and Rural Regions in the County each have a small-town environment and unique character, which attracts residents and visitors because of the eclectic and diverse mix of businesses, and each of which must be protected and enhanced so that the unique character of the Rural Centers and Rural Regions of El Dorado County can flourish without incompatible changes; and

WHEREAS, the General Plan recognizes that “the rural character of the County is its most important asset. Careful planning and management can maintain this character while accommodating reasonable growth and achieving economic stability”; and

WHEREAS, among the General Plan’s listed strategies to achieve its visions and goals and to carry forward the General Plan’s principle purposes is to “provide that Plan goals, objectives, and policies reflect the significant differences in characteristics between the principal land use planning areas of Community Regions, Rural Centers, and Rural Regions;” and

WHEREAS, it is the explicit intent of the General Plan, through the appropriate

application of the planning concept areas to, among other things: foster a rural quality of life, sustain a quality environment, and develop a strong diversified, sustainable local economy; and

WHEREAS, the Objectives of the General Plan include: development of a strong diversified sustainable local economy, fostering a rural quality of life, and sustaining a quality environment; and

WHEREAS, General Plan Goal 2.1: Land Use includes “protection and conservation of existing communities and rural centers;” and

WHEREAS, General Plan Objective 2.1.2: Rural Centers, Policy 2.1.2.1 identifies the Rural Centers within the County as: Camino, Cedar Grove, Coloma, Cool, Fairplay, Garden Valley, Greenwood, Georgetown, Grey’s Corner, Grizzly Flat, Kelsey, Kyburz, Latrobe, Little Norway, Lotus, Mosquito, Mount Ralson, Mr. Aukum, Nashville, Oak Hill, Phillips, Pilot Hill, Pleasant Valley, Pollock Pines, Quintette, Rescue, Somerset, Strawberry, and Chrome Ridge; and

WHEREAS, some of the Rural Centers also have a Historic Design combining zoning district overlay to conserve the unique historic character of the Rural Centers; and

WHEREAS, General Plan Objective 2.1.3: Rural Regions, Policy 2.1.3.1 states that “All lands not contained within the boundaries of a Community Region or a Rural Center are classified as Rural Regions”; and

WHEREAS, County residents are concerned that ‘chain’ or ‘formula’ businesses will proliferate throughout the Rural Centers and Rural Regions of the County, which may detract from the unique character of the County by displacing unique local or other small businesses or by introducing standardized, non-unique establishments that will lessen the diversity and community character prized by County residents; and

WHEREAS, the El Dorado County Board of Supervisors desires to protect the character of the Rural Centers and Rural Regions of the County, to create a supportive environment for distinctive and unique small businesses and to encourage uses that form unique experiences enjoyable to both residents and visitors; and

WHEREAS, the vision for future growth in the County includes the goal to “maintain the rural character and lifestyle while ensuring the economic viability critical to promoting and sustaining community identity” (2004 General Plan – Statement of Vision); and

WHEREAS, if current regulations continue, formulaic businesses could proliferate in the Rural Centers and Rural Regions which would decrease the diversity of offerings to residents and visitors thereby negatively impacting the rural character and authenticity of the Rural Centers and Rural Regions and negatively impacting the quality of life for residents and visitors; and

WHEREAS, one method for preserving the rural, unique and/or historical

character of the Rural Centers and Rural Regions may be to place land use restrictions on formula business establishments; 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 Centers and Rural Regions 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 Centers and Rural Regions. Specifically, the unregulated and unmonitored establishment of formula businesses may change the character of the Rural Centers and Rural Regions 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 Centers and Rural Regions; 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 specific plans, 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 an immediate 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 general plan, specific plan, zoning or other land use policy which the County is considering or intends to study within a reasonable time, thus rendering such plans and policies ineffectual in preserving business diversity and the unique character of the County's Rural Centers and Rural Regions; 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

formula businesses within any zoning districts of the Rural Centers and Rural Regions of El Dorado County pending the study and consideration of permanent regulations governing such formula business establishments; and

WHEREAS, it is also necessary to suspend application of Section 130.10.040 C.1., Pending Applications, of the El Dorado County Code of Ordinances, to applications related to or required for establishment of formula businesses because such provision regarding the determination of which ordinances are applicable to a project could potentially defeat the purpose of this ordinance and would likely be in conflict with, prevent the implementation of and/or seriously impair the efficacy of any general plan, specific plan, zoning or other land use policy which the County is considering or intends to study within a reasonable time, thus rendering such plans and policies ineffectual in preserving business diversity and the unique character of the County's Rural Centers and Rural Regions; and

WHEREAS, the County has received an application for a formula business which necessitates the action contemplated herein because issuing permits or entitlements for such use could conflict with potential future regulations that may be adopted within a reasonable time that will govern such formula business establishments.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES
ORDAIN 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 within any Rural Center or Rural Region 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 for consumption whether on or off the premises which along with 10 or more other establishments, regardless of the location or ownership of any of the establishments, maintains two or more of the following standardized features: business name, menus, ingredients, food preparation, décor, signage, trademark, logo, service mark, symbol, 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 which along with 10 or more other activities or

establishments, regardless of the location or ownership of any of the activities or establishments, maintains two or more of the following standardized features: business name, array of services and/or merchandise, décor, signage, trademark, logo, service mark, symbol, color scheme, façade, architecture, uniforms, advertising, or similar standardized features.

Section 3. During the effective life of this ordinance, the County may 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. During the effective life of this ordinance, Section 130.10.040 C.1., Pending Applications, of the El Dorado County Code of Ordinances, shall not apply to any applications 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 the use or establishment of any Prohibited Use. The specific intent of this Section 4 is to prevent the establishment of or claim to vested rights based on an application being deemed complete.

Section 5. This ordinance shall not apply to:

- A. projects, including any associated ministerial permits, whose applications for land use entitlements or determinations were deemed complete prior to the adoption of this ordinance;
- 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 the effective date of this ordinance;
- C. construction required to comply with fire and/or life safety requirements;
- D. work pursuant to the Americans with Disabilities Act; or
- E. banks and gas stations.

Section 6. 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 Planning and Building Department to study and prepare for the consideration of the Board of Supervisors changes to the County's General Plan, specific plans or zoning code with respect to the regulation of Prohibited Uses, which process will take a minimum of 45 days 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 Centers and Rural Regions and could 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. The urgency findings are based upon the facts stated herein, in the recitals above, and in the staff report dated _____, as well as oral and written testimony at the _____ Board of Supervisor's meeting.

Section 7. 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 8. 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 a four-fifths vote of the Board of Supervisors and shall be in effect for forty-five days from the date of adoption, unless extended by the Board of Supervisors as provided for in Government Code Section 65858.

Section 9. Ten days prior to the expiration of this ordinance or any extension thereof, the Board of Supervisors shall issue a written report describing the measures taken to date to alleviate the condition which led to the adoption of this ordinance as required by Government Code 65858(d).

Section 10. 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 El Dorado, State of California, on this _____ day of __, 2021, by the following roll call vote:

AYES:
NOES:
ABSENT:

John Hidahl
CHAIR, Board of Supervisors

ATTEST: Kim Dawson, Clerk of the Board

By: _____

APPROVED AS TO FORM:
David Livingston, County Counsel

By: _____

DRAFT