

ORDINANCE NO.ORD U14-0019

AN INTERIM ORDINANCE OF THE CITY OF MANHATTAN BEACH IMPOSING INTERIM REGULATIONS ON THE ESTABLISHMENT OF FORMULA USES IN THE DOWNTOWN AREA AND DECLARING THE URGENCY THEREOF

THE MANHATTAN BEACH CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

Section 1. Legislative Findings. On October 7, 2014, the City Council considered the adoption of this Ordinance at a duly noticed public meeting, and on the basis of the record thereof, finds and determines as follows:

- A. The City is currently studying land uses in the area commonly known as the Downtown Area and depicted on Exhibit A, which may require amendments to the City's General Plan and Zoning Ordinance. The City Council finds that property owners are likely to submit applications for land use entitlements for property within the Downtown Area. Due to the potential proliferation of formula uses, as defined in Section 3, in the Downtown Area, the City needs to adopt this Ordinance to give the City time to study whether formula uses may conflict with contemplated General Plan or Specific Plan provisions or Zoning Code proposals.
- B. The City intends to study, within a reasonable time, the adequacy of its existing General Plan provisions and Zoning Ordinance as they apply to property within the Downtown Area, and has distributed requests for proposals to consultants to develop a development plan or specific plan for the area. The Planning Commission, the City Council and the people of Manhattan Beach require a reasonable, limited, yet sufficient period of time to consider and study legally appropriate and reasonable policies regulating commercial uses, and especially formula uses, in the Downtown Area. Given the time required to undertake adequate study and planning, the City Council finds that this Ordinance is necessary to prevent the proliferation of formula uses that might conflict with the City's contemplated new policies, General Plan, Specific Plan or zoning proposals. The City Council has the authority to adopt an interim ordinance pursuant to Government Code Section 65858 in order to protect the public health, safety, or welfare.
- C. Accordingly, the City Council finds that there is a current and immediate threat to the public health, safety and welfare presented by the potential proliferation of formula uses in the Downtown Area. In the absence of a use permit, the approval of a business license, building or related permit, occupancy permit, plan review application, subdivision map or any other land use entitlement that allows the establishment of a formula use could result in the proliferation of formula uses, without City review, that may threaten the public health, safety, and welfare. Due to the foregoing circumstances, development of the properties in the Downtown Area before the City can enact regulations specifically tailored to address formula uses poses an immediate threat to the public health, safety, and welfare. Therefore, it is necessary for the preservation of the public health, safety and welfare for this Ordinance to take effect immediately. This Ordinance is an urgency ordinance for the immediate preservation of the public peace, health and safety within the meaning of Government Code Sections 65858 and 36937(b) and therefore shall be passed immediately upon its introduction and shall become effective immediately upon its adoption.
- D. There is an urgent necessity, therefore, for the City to adopt this interim Ordinance, which prohibits the approval of a business license, building or related permit, occupancy permit, plan review application, subdivision map or any other land use entitlement for the establishment of a formula use,

without the prior approval of a use permit pursuant to the regulations in this Ordinance. Notwithstanding the foregoing, this Ordinance does not apply to uses that already have made substantial expenditures in reliance on a valid building permit as of October 7, 2014.

Section 2. Interim Regulations Established. Notwithstanding any other ordinance or provision of the Manhattan Beach Municipal Code, no person shall establish a formula use, as defined in Section 3 of this Ordinance, in the Downtown Area, as depicted on Exhibit A, without first obtaining a use permit pursuant to Manhattan Beach Municipal Code Section 10.84.060. In addition to the criteria included in Section 10.84.060, the decision making authority shall consider the following in determining whether to approve a use permit for a formula use:

- (A) The existing concentrations of formula uses within the Downtown Area.
- (B) The availability of other similar uses within the Downtown Area.
- (C) The compatibility of the proposed formula use with the existing architectural and aesthetic character of the Downtown Area.
- (D) The existing vacancy rates within the Downtown Area.
- (E) The existing mix of uses within the Downtown Area.

Section 3. Definitions. The term “formula use” is defined for the purposes of this Ordinance as a type of use that has 11 or more other establishments located in the United States, and which maintains two or more of the following features: (1) a standardized array of merchandise, (2) a standardized facade, (3) a standardized decor and color scheme, (4) standardized employee uniforms/apparel, (5) standardized signage, or (6) a trademark or a service mark. For the purposes of this Ordinance,

- (A) A standardized array of merchandise is defined as 50% or more of in-stock merchandise from a single distributor bearing uniform markings.
- (B) A “trademark” is defined as 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.
- (C) A service mark is defined as 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.
- (D) Decor is defined as the style of interior furnishings, which may include but is not limited to, style of furniture, wall coverings or permanent fixtures.
- (E) A color scheme is defined as selection of colors used throughout, such as on the furnishings, permanent fixtures, and wall coverings, or as used on the facade.
- (F) Facade is defined as the face or front of a building, including awnings, looking onto a street or an open space.
- (G) Standardized employee uniforms/apparel means the use of standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hats, and pins (other than name tags) and/or standardized colors of clothing.

A list of the uses regulated by this Ordinance is attached hereto as Exhibit B.

Section 4. Term. This Ordinance shall expire, and the interim regulations established hereby shall terminate 45 days after the date of its adoption unless extended by the City Council at a regularly noticed public hearing pursuant to California Government Code Section 65858.

Section 5. CEQA Finding. The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance, and establishment of the interim regulations hereby, will have a significant effect on the environment, because the interim regulations impose greater limitations on formula uses in the City than the current limitations required under the Municipal Code, and will thereby serve to reduce potential significant adverse environmental impacts. The Ordinance is, therefore, exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations. This interim Ordinance will maintain current environmental conditions.

Section 6. Penalty. Violation of any provision of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed \$1,000 or by imprisonment for a period not to exceed 6 months, or by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of this Ordinance. In addition to the foregoing, any violation of this Ordinance shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law.

Section 7. Hardship Exemption. An application for a business license, building or related permit, occupancy permit, plan review, subdivision map or any other land use entitlement to establish a formula use may be approved without obtaining a use permit first if the applicant has obtained a hardship exemption from the City Council. Hardship exemption applications shall be filed in writing with the Director of Community Development and shall contain all documentation relied upon to support the hardship claim. A hardship exemption application must be filed no later than 10 days in advance of a regular meeting of the City Council in order to be considered at such meeting; otherwise the application shall be considered at the following regular meeting. The City Council shall grant a hardship exemption upon making a finding that denial of the exemption and requiring a use permit would result in the applicant being deprived of all economically viable use of the property. The City Council may consider other factors in order to determine hardship.

Section 8. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Ordinance or any part hereof. The City Council of the City of Manhattan Beach hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared invalid.

Section 9. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

PASSED, APPROVED and ADOPTED this ____ day of _____, 2014.

AYES:
NOES:
ABSENT:
ABSTAIN:

WAYNE POWELL
Mayor

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM:

QUINN M. BARROW
City Attorney

EXHIBIT A
ORD-U 14-0019
October 7, 2014

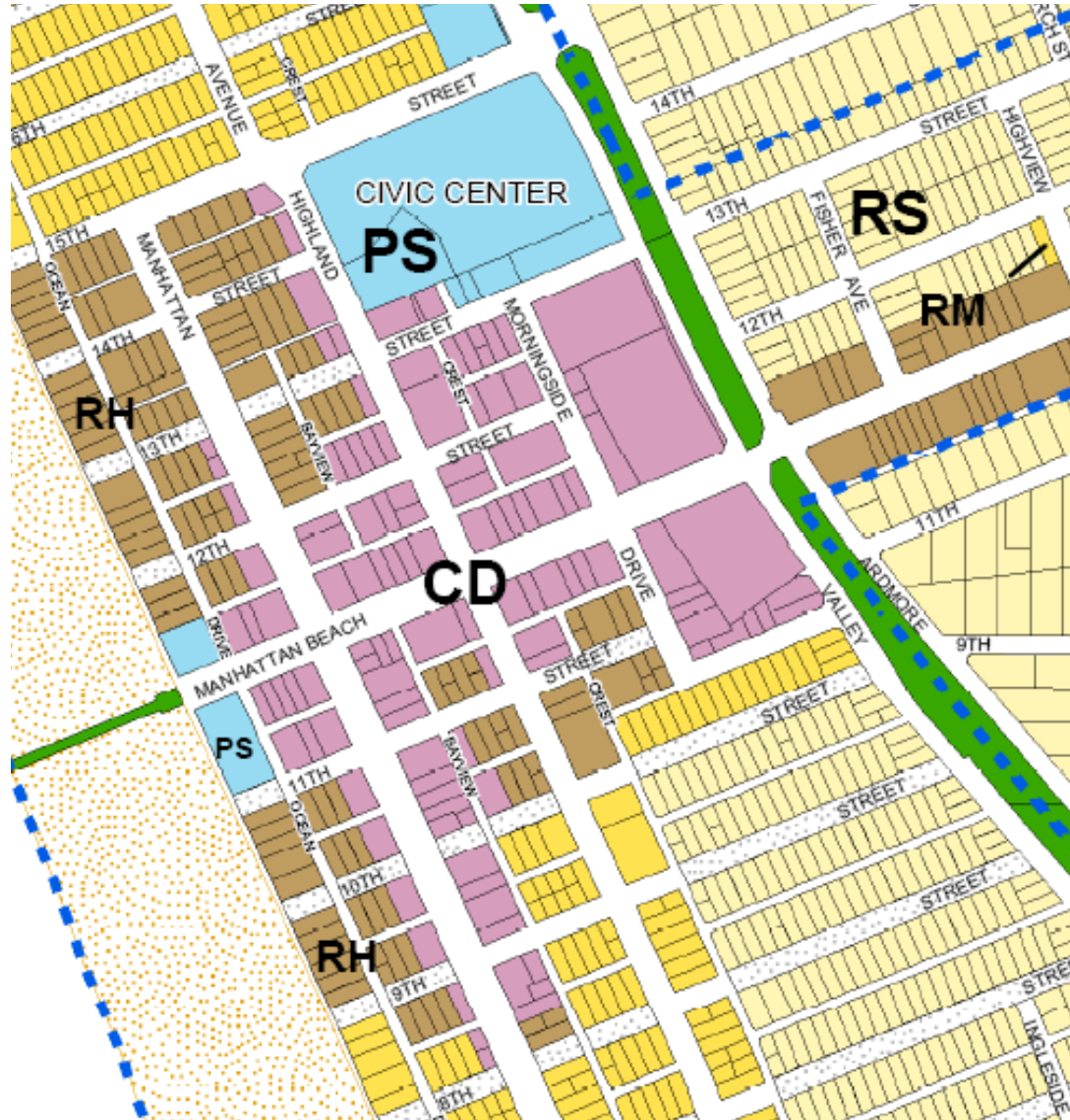


EXHIBIT B

ORDINANCE NO. ORDU14-0019

IZO- FORMULA USES

OCTOBER 7, 2014

The **formula** definition applies to the following types of commercial uses per City of Manhattan Beach Municipal Code Section 10.16.020:

- 1) Eating and Drinking Establishments
with fast-food or take-out
- 2) Food and Beverage Sales
- 3) Personal Improvement Services
- 4) Personal Services
- 5) Retail