



ADMINISTRATIVE REPORT

TO: Planning Commission

FROM: Katrina Rice Schmidt, AICP, City Planner

REPORT DATE: August 30, 2007

MEETING DATE: September 5, 2007

SUBJECT: NEW ORDINANCE REGULATING FORMULA RETAIL ESTABLISHMENTS IN THE CITY OF OJAI (TA 07-02)

RECOMMENDATION

Adopt a Resolution recommending that the City Council:

1. Conduct a public hearing to receive public testimony on the amendments to the Zoning Ordinance, and environmental determination;
2. Adopt an Ordinance amending the Ojai Municipal Code adding Section 10-2.1713 (Formula Retail Establishments) and Renumbering Existing Section 10-2.1713 (Applicable Regulations) to Section 10-2.1714, Repealing Ordinance Number 794, and adopting CEQA Environmental Determination of Exemption.

BACKGROUND AND DISCUSSION

Following adoption of an urgency ordinance on May 1, 2007, which established a moratorium on any development permits for formula retail businesses, a “permanent” ordinance regulating such businesses has been under development. The first draft was presented, and reviewed by, the Planning Commission on July 18, 2007. After further discussion on August 1 and 15, the Planning Commission was not convinced that the staff recommended approach was the best for Ojai, and unanimously recommended that the City Council reject the ordinance. Instead, the Commission asked the City Attorney to draft a new ordinance significantly different from the draft that was under consideration.

On August 28, 2007, the City Council formally rejected the draft ordinance and directed staff to continue to work with the Planning Commission in the development of an alternative ordinance.

Based upon Planning Commission direction, the City Attorney has developed an ordinance that requires that all formula retail establishments located in the General Commercial (C-1), Business-Professional (B-P) and Village Mixed Use (VMU) Zoning Districts obtain a conditional use permit by the Planning Commission. The Planning Commission would then be required to make certain findings that the proposed formula retail business would not result in an overconcentration of

formula retail, that the proposed formula retail business would contribute to an appropriate balance of small, medium and large-sized businesses in the City, and that the formula retail business has been designed to preserve and enhance the City's small town character.

As of the writing of this report, staff has not fully reviewed and discussed with the City Attorney the draft ordinance as written by the City Attorney's office. Staff will be meeting with the City Attorney's office on Tuesday prior to the Planning Commission meeting. At the Planning Commission meeting on Wednesday, September 5, 2007 staff will provide the Commission with recommended modifications to the draft Ordinance, if any. The City Attorney will be at a conference on September 5, 2007, and thus will not be at the Planning Commission meeting.

If the Planning Commission finds that the draft ordinance regulates formula retail businesses in a manner acceptable to the Commission, then staff recommends that the Planning Commission recommend to the City Council that the ordinance be adopted. Alternatively, if the Commission is unable to recommend the draft ordinance as presented, the Commission may consider asking the City Council for a joint meeting to discuss policy direction.

ENVIRONMENTAL REVIEW

The Ordinance is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines 15378, 15061(b)(3), 15183, and Public Resources Code Section 21083.3(e). Under CEQA Guidelines Section 15061(b)(3), CEQA review is not required because there is no possibility that this Ordinance may have a significant effect upon the environment. Under CEQA Guidelines Section 15378, the proposed amendments are not a project under CEQA because they will not cause a "direct physical change in the environment" or a "reasonably foreseeable indirect physical change in the environment" because they do not authorize any specific development activity or promote new construction or growth. Further, any potential indirect physical change in the environment is speculative and not reasonably foreseeable, and thus is not required to be analyzed, pursuant to CEQA Guideline 15145; *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.

ATTACHMENTS

A: Draft Planning Commission Resolution & Findings including draft ordinance

**CITY OF OJAI
PLANNING COMMISSION
RESOLUTION NO. 07-04**

**A RESOLUTION OF THE CITY OF OJAI PLANNING COMMISSION
RECOMMENDING THAT THE CITY COUNCIL
APPROVE A NEW ORDINANCE REGULATING FORMULA RETAIL BUSINESSES
IN THE CITY OF OJAI (TA 07-02)**

WHEREAS, Ojai is a community with a very special environment, both natural and man-made, and the qualities of both must be respected so that the uniqueness of Ojai can flourish without inappropriate changes; and

WHEREAS, Ojai is a vital and active City that retains a small town atmosphere and a strong sense of community; and

WHEREAS, Ojai is both a tourist destination and a residential town, and the creation of a desirable living, working, and business environment that is responsive to residents will automatically provide a destination of interest to visitors; and

WHEREAS, regulating commercial development and formula retail serves to preserve the "small town character" of Ojai. A primary object of the General Plan is to maintain and enhance Ojai's special character and small town atmosphere; and

WHEREAS, as stated in the Land Use Element of the General Plan: "It is the Ojai General Plan's approach to preserve the community's "small town" character by using the physical, environmental, and social aspects of the community that form its character as the criteria for determining the appropriateness of new development"; and

WHEREAS, Land Use Element Policy LU-17 states that it is important to balance small town life with a vibrant tourist economy by "Recogniz[ing] and support[ing] visitor serving uses as an integral part of community life, and ensur[ing] that visitor serving uses and activities are designed and managed in such a manner that they are secondary to Ojai's small town character and identity as a desirable place to live;" and

WHEREAS, formula retail businesses are, by their very nature, standardized (including their architecture, décor, color schemes and signage) and not unique, and therefore do not enhance the unique small town character that the City Council finds necessary to maintain a viable visitor industry in Ojai; and

WHEREAS, the City has a legitimate interest in seeking to maintain the ambience of its town because thousands of visitors each year are attracted to Ojai who come to enjoy and experience the unique character of Ojai and its surrounding area. The character of the Ojai is recognized throughout the State of California, and is a key component in the City's visitor economy. The Zoning Ordinance Amendment (TA 07-02) advances this interest by regulating formula retail businesses, thereby ensuring that their presence is consistent with the City's land use goals. Formula businesses have, by their nature, a greater potential to conflict with the City's small town character and atmosphere than unique one-of-a-kind businesses; and

WHEREAS, the Zoning Ordinance Amendment (TA 07-02) is not premised on maintaining local ownership of businesses, or protecting existing business, or preventing formula retail business from doing business in the City. The purpose of Zoning Ordinance Amendment (TA 07-02) is to maintain Ojai's unique, special character, the diversity and vitality of the City and the quality of life of Ojai residents; and

WHEREAS, the Planning Commission finds, as support for carefully regulating formula retail, that other California small cities or towns that have significant tourist economies do not have a significant component of formula retail establishments or are not known as destinations for formula retail business (for example, Calistoga, St. Helena, and Coronado); and

WHEREAS, the Planning Commission finds as support that other cities have sought to regulate formula retail businesses to protect and preserve special characteristics of their city or town, including Bainbridge Island, Washington; Arcata, California; Bristol, Rhode Island; Calistoga, California; Carmel-by-the-Sea, California; Coronado, California; Pacific Grove, California; Port Jefferson, New York; and Port Townsend, Washington; and

WHEREAS, formula retail establishments can provide useful goods to the citizens of Ojai and should be permitted in the City's boundaries, provided the design of such establishments should be regulated to preserve the City's small town character; and

WHEREAS, in light of the foregoing considerations, the Planning Commission has determined that the public welfare of the City's residential, retail, business and tourist based community character, as articulated by the principles upon which the General Plan is premised, will be best preserved by adopting regulations for new formula retail stores within the City, and by regulating the design of such stores in the rest of the City; and

WHEREAS, the Planning Commission, on September 5, 2007, held a noticed public hearing on Zoning Ordinance Amendment (TA 07-02) and environmental exemption from the California Environmental Quality Act, took and considered all public testimony, documentary evidence and staff recommendations submitted at such public hearing and recommended adoption thereof by the City Council;

NOW, THEREFORE THE OJAI PLANNING COMMISSION HEREBY FINDS, DETERMINES, DECLARES, RESOLVES AND RECOMMENDS AS FOLLOWS:

SECTION 1. That the City Council determine that the above set forth findings are true and correct regarding Zoning Ordinance Amendment (TA 07-02) and CEQA exemption and are incorporated herein by reference.

SECTION 2. That the City Council adopt an Ordinance (Exhibit A) that would amend the Zoning Ordinance by replacing existing Section 10-2.1713 with a new Section 10-2.1713 (Formula Retail Businesses), attached hereto and incorporated herein by reference and moving existing Section 10-2.1713 (Applicable Regulations) to Section 10-2.1714.

SECTION 3. That the City Council repeal Ordinance Number 794, "An Urgency Measure Of The Ojai City Council Adopting An Interim Ordinance Prohibiting The Approval Or Issuance Of

Building Or Other Development Permits For Formula Retail Businesses In The City" as of the effective date of the new Ordinance, "An Ordinance Of The City Of Ojai Amending The Ojai Municipal Code Adding Section 10-2.1713 (Formula Retail Establishments) And Renumbering Existing Section 10-2.1713 (Applicable Regulations) To Section 10-2.1714".

SECTION 4. Environmental Determination. The Planning Commission determines that the following findings reflect the independent judgment of the Planning Commission and recommends that the City Council find that Zoning Ordinance Amendment (TA 07-02) is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines 15378, 15061(b)(3), 15183, and Public Resources Code Section 21083.3(e) for the following reasons:

(a) Under CEQA Guidelines Section 15061(b)(3), CEQA review is not required because there is no possibility that Zoning Ordinance Amendment (TA 07-02) may have a significant effect upon the environment.

(b) Under CEQA Guidelines Section 15378, the proposed amendments are not a project under CEQA because they will not cause a "direct physical change in the environment," or a "reasonably foreseeable indirect physical change in the environment" because they do not authorize any specific development activity or promote new construction or growth.

(c) Any potential indirect physical change in the environment is speculative and not reasonably foreseeable.

(d) Under CEQA Guidelines Section 15183 and Public Resources Code Section 21083.3(e), the proposed amendments are consistent with the City's General Plan. The following policies set forth in the Land Use Element of the City's General Plan support adoption of Zoning Ordinance Amendment (TA 07-02):

(1) LU-2: Preserve...a traditional small town downtown which is pedestrian friendly, of higher intensity that the balance of the community, and which has a unique historical architectural character.

(2) LU-6: Maintain an adequate inventory of commercial lands for the provision of goods and services to the community that...are visually attractive and compatible in intensity, building scale, and architectural design with the community's natural environment and small town character.

(3) LU-7: Promote a mix of attractive, employment-generating business park and industrial land uses that provide a sound and diversified economic base, and that are compatible with the community's overall small town character.

(4) LU-17: Recognize and support visitor serving uses as an integral part of community life, and ensure that visitor serving uses and activities are designed and managed in such a manner that they are secondary to Ojai's small town character and identity as a desirable place to live.

(5) LU-18: Limit the rate of residential, commercial, and office development as necessary to preserve the attributes and physical features which comprise Ojai's small town character as expressed in the General Plan.

PASSED, APPROVED AND ADOPTED by the Planning Commission this 5th day of September, 2007 by the following roll call vote:

AYES:

NOES:

ABSENT:

Tucker Adams, Chair, Ojai Planning Commission

ATTEST:

Katrina Rice Schmidt, AICP, City Planner

CITY OF OJAI

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF OJAI
AMENDING THE OJAI MUNICIPAL CODE ADDING SECTION 10-2.1713 (FORMULA
RETAIL ESTABLISHMENTS) AND RENUMBERING EXISTING SECTION 10-2.1713
(APPLICABLE REGULATIONS) TO SECTION 10-2.1714.**

WHEREAS, Ojai is a community with a very special environment, both natural and man-made, and the qualities of both must be respected so that the uniqueness of Ojai can flourish without inappropriate changes; and

WHEREAS, Ojai is a vital and active City that retains a small town atmosphere and a strong sense of community; and

WHEREAS, Ojai is both a tourist destination and a residential town, and the creation of a desirable living, working, and business environment that is responsive to residents will also provide a destination of interest to visitors; and

WHEREAS, regulating commercial development and formula retail serves to preserve the "small town character" of Ojai. A primary object of the General Plan is to maintain and enhance Ojai's special character and small town atmosphere; and

WHEREAS, as stated in the Land Use Element of the General Plan: "It is the Ojai General Plan's approach to preserve the community's "small town" character by using the physical, environmental, and social aspects of the community that form its character as the criteria for determining the appropriateness of new development"; and

WHEREAS, Land Use Element Policy LU-17 states that it is important to balance small town life with a vibrant tourist economy by "Recogniz[ing] and support[ing] visitor serving uses as an integral part of community life, and ensur[ing] that visitor serving uses and activities are designed and managed in such a manner that they are secondary to Ojai's small town character and identity as a desirable place to live;" and

WHEREAS, formula retail businesses are, by their very nature, standardized (including their architecture, décor, color schemes and signage) and not unique, and therefore do not enhance the unique small town character that the City Council finds necessary to maintain a viable visitor industry in Ojai; and

WHEREAS, the City has a legitimate interest in seeking to maintain the ambience of its small town character because thousands of visitors each year are attracted to the City. Ojai's unique character, particularly in its commercial downtown area, is recognized throughout the State of California, and is a key component in the City's visitor economy. This ordinance advances this interest by limiting the scope of formula retail businesses, thereby ensuring that their presence is consistent with the City's land use goals. Formula businesses have, by their nature, a greater potential to conflict with the City's small town character and atmosphere than unique one-of-a-kind businesses; and

WHEREAS, this ordinance is not premised on maintaining local ownership of businesses, or protecting existing business, or preventing formula retail business from doing business in the City. The purpose of this ordinance is to maintain Ojai's unique, special character, the diversity and vitality of the City's commercial districts and the quality of life of Ojai residents; and

WHEREAS, the approval of additional building or other permits without restriction for new formula businesses that are contrary to the City's small town character would threaten the public health, safety and welfare; and

WHEREAS, the City Council finds, as support for carefully regulating formula retail, that other California small cities or towns that have significant tourist economies do not have a significant component of formula retail establishments or are not known as destinations for formula retail business (for example, Calistoga, St. Helena, Sausalito and Coronado); and

WHEREAS, the City Council finds as support that other cities have sought to regulate formula retail businesses to protect and preserve special characteristics of their city or town, including Bainbridge Island, Washington; Arcata, California; Bristol, Rhode Island; Calistoga, California; Carmel-by-the-Sea, California; Coronado, California; Pacific Grove, California; Port Jefferson, New York; Port Townsend, Washington; and Sausalito, California; and

WHEREAS, formula retail establishments can provide useful goods and services to the citizens of Ojai and should be permitted within the City if properly regulated; and

WHEREAS, in light of the foregoing considerations, the City Council has determined that the public health, safety and welfare will be protected by preserving the City's residential, unique retail, business and tourist based community character, as articulated by the principles upon which the General Plan is premised, which will be best preserved by regulating the design, location, size and other similar attributes of formula retail establishments.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OJAI, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council determines that the above set forth findings are true and correct and are declared to be a part of this Ordinance and are incorporated herein by reference.

SECTION 2. Title 10, Chapter 2, Article 17 of the Code is hereby amended by replacing existing Section 10-2.1713 with a new Section 10-2.1713 (Formula Retail Establishments), as follows:

"Sec. 10-2.1713. Formula Retail Establishments.

(a) *Purpose.* The purpose of this section is to regulate the location and design of formula retail and restaurant 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) Formula Retail establishments are permitted within the C-1 Zoning District, B-P Zoning District and VMU Zoning District.

(2) A new Formula Retail establishment 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. Change of ownership, by itself, shall not require obtaining a conditional use permit pursuant to this section.

(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 Retail establishment:

(A) The proposed Formula Retail establishment will not result in an over-concentration of Formula Retail establishments in its immediate vicinity or in the City as a whole;

(B) The proposed Formula Retail establishment will contribute to an appropriate balance of small, medium and large-sized businesses in the City; and

(C) The proposed Formula Retail establishment 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) Any building permit, zoning clearance, sign permit or other development permit for a use permitted in the C-1 Zoning District, B-P Zoning District or VMU Zoning District that is also a Formula Retail establishment, shall not be issued unless the establishment conforms to all of the following restrictions:

(A) A Formula Retail establishment (other than a bank or grocery store) shall not have a street-level frontage of greater than 25 linear feet on any street or have its retail space occupy more than one story or two store fronts. 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.

(B) A Formula Retail establishment (other than a bank or grocery store) shall not exceed 2,000 square feet of net total floor area.

(C) No drive-through facilities are permitted.

(D) A Formula Retail establishment may not be located where such location would result in more than one Formula Retail establishment operating within a single building.

(E) The number of Formula Retail establishments per lot and the maximum Formula Retail establishment density shall be as follows:

Lot Size	Maximum Density of Formula Retail Establishments
Lots with less than 40,000 square feet of lot area	1
Lots with 40,000 or more square feet of lot area	1 Formula Retail establishment per 20,000 square feet of lot area.

(6) The cumulative expansion of a Formula Retail establishment not existing on the date of adoption of this Ordinance, by 500 or more square feet of floor area shall require a conditional use permit amendment.

(c) *Applicability.* This Section is in addition to, and not in replace of, any other regulations set forth elsewhere in Title 10 of this code. In the event of a conflict between the provisions of this section, and any other regulations in Title 10, the provisions of this section shall prevail.

(d) *Definitions.* "Formula Retail" 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 or more other establishments, maintains two or more of the following features: standardized array of merchandise or standardized menu; standardized façade; standardized décor and color scheme; uniform apparel; standardized signage; trademark or service mark.

(1) "Standardized array of merchandise" means 50% 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 or 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 or words, phrases, symbols or designs that identifies and distinguishes the source of a service from one party from those of others.

(4) "Décor" 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 façade.

(6) "Façade" 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 Retail establishments located in the C-1 Zoning District, B-P Zoning District and VMU Zoning District existing on the date of adoption of this Ordinance are subject to Title 10, Chapter 2, Article 13 (Nonconforming Uses, Structures, and Parcels). Notwithstanding anything to the contrary set forth in Section 10-2.1303(c) or Section 10-2.1316, the expansion of an existing Formula Retail use occupying a conforming structure by less than eighty percent (80%) of the total existing floor area of such establishment shall not be deemed an expansion or extension for purposes of Section 10-2.1303(c) or Section 10-2.1316.

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

SECTION 3. Title 10, Chapter 2, Article 17 of the Code is hereby amended by adding Section 10-2.1714, and moving existing Section 10-2.1713 (Applicable Regulations) to Section 10-2.1714.

SECTION 4. Ordinance Number 794, "An Urgency Measure Of The Ojai City Council Adopting An Interim Ordinance Prohibiting The Approval Or Issuance Of Building Or Other Development Permits For Formula Retail Businesses In The City," is hereby repealed as of the effective date of this Ordinance.

SECTION 5. Environmental Determination. The City Council determines that the following findings reflect the independent judgment of the City Council. The City Council finds that this Ordinance is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines 15378, 15061(b)(3), 15183, and Public Resources Code Section 21083.3(e) for the following reasons:

(a) Under CEQA Guidelines Section 15061(b)(3), CEQA review is not required because there is no possibility that this Ordinance may have a significant effect upon the environment.

(b) Under CEQA Guidelines Section 15378, the proposed amendments are not a project under CEQA because they will not cause a "direct physical change in the environment," or a "reasonably foreseeable indirect physical change in the environment" because they are limiting in nature and do not authorize any specific development activity or promote new construction or growth.

(c) Any potential indirect physical change in the environment is speculative and not reasonably foreseeable.

(d) Under CEQA Guidelines Section 15183 and Public Resources Code Section 21083.3(e), the proposed amendments are consistent with the City's General Plan. The following policies set forth in the Land Use Element of the City's General Plan support adoption of this Ordinance:

(1) LU-2: Preserve...a traditional small town downtown which is pedestrian friendly, of higher intensity than the balance of the community, and which has a unique historical architectural character.

(2) LU-6: Maintain an adequate inventory of commercial lands for the provision of goods and services to the community that...are visually attractive and compatible in intensity, building scale, and architectural design with the community's natural environment and small town character.

(3) LU-7: Promote a mix of attractive, employment-generating business park and industrial land uses that provide a sound and diversified economic base, and that are compatible with the community's overall small town character.

(4) LU-17: Recognize and support visitor serving uses as an integral part of community life, and ensure that visitor serving uses and activities are designed and managed in such a manner that they are secondary to Ojai's small town character and identity as a desirable place to live.

(5) LU-18: Limit the rate of residential, commercial, and office development as necessary to preserve the attributes and physical features which comprise Ojai's small town character as expressed in the General Plan.

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. The City Clerk shall cause this Ordinance to be published once, within fifteen (15) calendar days after its passage, in the *Ojai Valley News*, a newspaper of general circulation, printed, published and circulated in the City, and shall cause a copy of this Ordinance and its certification, together with proof of publication, to be entered in the Book of Ordinances of the City.

SECTION 8. This Ordinance shall become effective on the thirty-first (31st) day after its passage.

CITY OF OJAI, CALIFORNIA

Carol Smith, Mayor

STATE OF CALIFORNIA)

COUNTY OF VENTURA)

CITY OF OJAI)

I, Carlon Strobel, City Clerk of the City of Ojai do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Ojai held on _____ and adopted at a regular meeting held on _____ by the

following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Carlon Strobel
City Clerk for the City of Ojai