

ORDINANCE NO. 18-891

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FILLMORE, CALIFORNIA, AMENDING CHAPTER 6.04.58 OF THE FILLMORE MUNICIPAL CODE PERTAINING TO TEMPORARY USE PERMITS, TO ALLOW “POP-UP” BUSINESSES AND FINDING OF AN EXEMPTION FROM CEQA

Summary: This ordinance authorizes “pop-up” businesses to obtain a temporary use permit for up to a total of 90 days in the Commercial Highway, Central Business District, Commercial Neighborhood, Manufacturing/ Industrial and Business Park zones.

WHEREAS, the Fillmore Municipal Code (“FMC”) currently allows for certain short-term uses to obtain a temporary use permit in accordance with Chapter 6.04.58 of the FMC, including outdoor display and sales of merchandise, seasonal/ holiday retail uses, and exhibits, concerts, fairs, and outdoor events; and

WHEREAS, the uses currently permitted subject to obtaining a temporary use permit are generally of a seasonal/ holiday nature or are limited to no more than five consecutive days at one time; and

WHEREAS, the City of Fillmore (“City”) now wishes to allow additional commercial uses to obtain a temporary use permit in the Commercial Highway, Manufacturing/ Industrial and Business Park zones in the City, for an initial time period of 45 days and not to exceed 90 days; and

WHEREAS, allowing additional temporary uses in the aforementioned zones as “pop-up” businesses would promote economic vitality in areas of the City by allowing businesses and uses to temporarily locate in buildings and structures which might otherwise remain vacant; and

WHEREAS, the City Council now desires to adopt this ordinance to allow “pop-up” business uses in the City of Fillmore, subject to the requirements and limitations of this ordinance; and

WHEREAS, on May 16, 2018, following a duly noticed public hearing, the Planning Commission of the City recommended that the City Council adopt this ordinance; and

WHEREAS, in accordance with Fillmore Zoning Ordinance section 6.04.7405, the City Clerk caused to be published in the Fillmore Gazette on May 3, 2018 a notice of a public hearing on this ordinance to be held at Fillmore City Hall on May 16, 2018 at 6:30 p.m. before the City Council; and

WHEREAS, on June 12, 2018, the City Council conducted a duly noticed public hearing on this ordinance; and

WHEREAS, evidence was heard and presented from all persons interested in this ordinance, from all persons protesting the same and from members of the City staff, and the City Council has reviewed, analyzed and studied this ordinance.

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

SECTION 1. The above recitals are true and correct and hereby incorporated by this reference.

SECTION 2. The City Council hereby makes the following findings:

a. This zoning amendment ordinance is consistent with the City of Fillmore General Plan, specifically the following goals and policies: i) Land Use Element Goal 22, to “[e]ncourage a balanced community with a variety of housing, economic activities, and employment investment opportunities[;]” ii) Land Use Element Goal 25, to “provide a variety of retail opportunities, including downtown and highway commercial development[;]” iii) Land Use Element Policy LU-37, to “[p]rovide incentives for development that will contribute significant social and economic benefits to the community[;]” and iv) Land Use Element Policy LU-42, to “encourage commercial and business development along Highway 126.”

b. This zoning amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City of Fillmore. Any “pop-up” businesses allowed pursuant to this ordinance would be required to comply with California Building and Fire Code standards.

c. This zoning amendment is internally consistent with the City of Fillmore Municipal Code, including the City of Fillmore Zoning Ordinance.

SECTION 3. Subsection 7 of Section 6.04.5805 of the Fillmore Municipal Code, entitled “Permitted Uses,” is hereby deleted.

SECTION 4. A new Section 6.04.5806 is hereby added to the Fillmore Municipal Code, to read, in its entirety, as follows:

“Section 6.04.5808. POP-UP BUSINESSES; SPECIAL REQUIREMENTS FOR POP-UP BUSINESSES

Within the Commercial Highway, Central Business District, Commercial Neighborhood, Manufacturing/ Industrial and Business Park zones, “pop-up” businesses may be temporarily permitted pursuant to a Temporary Use Permit in accordance with the requirements of this section.

1. Zoning. “Pop-up” businesses shall only be allowed in the Commercial Highway, Central Business District, Commercial Neighborhood, Manufacturing/ Industrial and Business Park zones of the City.

2. Permissible uses. Any use which is considered a Permitted use or a use allowed pursuant to a Development Permit, as designated by a “P” or “D” respectively in the land use matrix for the zones in which a “pop-up” business is allowed, may be allowed as a “pop-up business” under this Section.

3. Limitation on duration. A Temporary Use Permit for a “pop-up” business uses under this Section may be issued for up to 45 days and renewed once, for a total operating period not to exceed 90 days, with no extensions. However, if the business submits a business license application for a permanent license before expiration of the last day of its permitted operation of the pop up business, the business will be allowed to continue operating, up to 120 additional days, if the business continues to pursue the permanent business license diligently, as determined in the sole discretion of the Community Development Director. A Temporary Use Permit for the same use may not be issued more than once per calendar year.

4. Compliance with Building and Fire Code requirements. The “pop-up” business must be located in a building or structure that meets the most current requirements of the California Building Code and Fire Code requirements for commercial buildings, as those codes are adopted and amended through Fillmore Municipal Code Chapter 5.04. The “pop-up” business must have an approved certificate of occupancy or temporary certificate of occupancy.

5. Uses not permitted as a “pop-up” business. The following uses and activities may not be permitted as or associated with a “pop-up” business under this subsection:

- (a) the storage of hazardous materials; or
- (b) the inclusion of a portable toilet to serve the “pop-up” business, whether located inside or outside of the business.”

SECTION 5. Subsection 11 of Section 6.04.5820 of the Fillmore Municipal Code, entitled “Conditions of Approval,” is hereby amended to read, in its entirety, as follows:

“11. A requirement that the applicant sign an agreement in a form approved by the City Attorney agreeing to indemnify, defend and hold harmless the City of Fillmore and its officers, employees and agents from any and all claims, demands, and causes of action in any way relating to or arising out of or in connection with the issuance of the permit including as a result of any activities undertaken or improvements constructed as part of the permit or because of the permit and releasing the City of Fillmore from all such claims, demands, and causes of action.”

SECTION 6. A new subsection 12 of Section 6.04.5820 of the Fillmore Municipal Code, entitled “Conditions of Approval,” is hereby added to read, in its entirety, as follows:

“12. Any other conditions which will ensure the operation of the proposed temporary use in an orderly and efficient manner and in full compliance with the purpose/intent of this Section and is considered a “Permitted” in the Land Use matrix.”

SECTION 7. This ordinance is exempt from the California Environmental Quality Act (“CEQA”) under Section 15061(b)(3) of the CEQA Guidelines, which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where, as here, it can be seen with certainty that there is no possibility that the activity in question would have a significant effect on the environment, the activity is not subject to CEQA. The amendments to the Fillmore Municipal Code would only allow certain temporary uses not currently permitted under the Fillmore Municipal Code.

SECTION 8. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 9. The City Clerk shall cause a summary of this Ordinance to be published once, within fifteen (15) calendar days after its passage, in the *Fillmore Gazette*, 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 10. This Ordinance shall become effective on the thirty-first (31st) day after its passage.

PASSED AND ADOPTED this ____ day of _____, 2018.

Manuel Minjares, Mayor

ATTEST:

Oliva Carrera Lopez, City Clerk

APPROVED AS TO FORM:

Tiffany J. Israel, City Attorney

CITY OF FILLMORE)

COUNTY OF VENTURA)

STATE OF CALIFORNIA)

I, Oliva Carrera Lopez, City Clerk of the City of Fillmore, California, do hereby certify that the foregoing Ordinance No. 18-891 was duly passed and adopted by the City Council of the City of Fillmore at the regular meeting thereof, held on the ____ day of _____, 2018, and was signed by the Mayor of the said City, and that the same was passed and adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Oliva Carrera Lopez, City Clerk