

ORDINANCE NO. 2020-12

AN UNCODIFIED (URGENCY) ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, ENACTING TEMPORARY BUSINESS RELIEF MEASURES AND PUBLIC HEALTH AND SAFETY PROTECTIONS RELATED TO STATEWIDE RECOVERY AND REOPENING EFFORTS DUE TO NOVEL CORONAVIRUS (“COVID-19”)

WHEREAS, in a short period of time, COVID-19, which is a new strain of coronavirus that is the cause of an outbreak of respiratory illness, has rapidly spread throughout California, necessitating stringent public health emergency orders as well as guidance and directives from federal, state, and local public officials; and

WHEREAS, on January 31, 2020, the U.S. Secretary of Health and Human Services declared a public health emergency related to the COVID-19 outbreak pursuant to Section 319 of the Public Health Service Act; and

WHEREAS, on February 14, 2020, the San Diego County Public Health Officer declared a local health emergency due to the threat of COVID-19; and

WHEREAS, on February 19, 2020, the San Diego County Board of Supervisors ratified the Declaration of Local Health Emergency and Proclamation of Local Emergency arising out of the COVID-19 outbreak; and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom proclaimed a State of Emergency to exist in the State of California as a result of the threat of COVID-19; and

WHEREAS, various health organizations throughout the world, including the Centers for Disease Control and Prevention (“CDC”) and the World Health Organization (“WHO”), consider the COVID-19 virus to be a very serious health threat, a “public health

emergency of international concern,” and as of March 11, 2020, the WHO identified it as a pandemic; and

WHEREAS, on March 12, 2020, Governor Newsom issued Executive Order N-25-20 which, in part, took various actions pursuant to the Emergency Services Act (Government Code section 8550 *et. seq.*), including an order to ensure adequate facilities to address the impacts of COVID-19; and

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States, issued a Proclamation on Declaring a National Emergency concerning the COVID-19 Outbreak; and

WHEREAS, on March 16, 2020, the City Manager for the City of Escondido (“City”), acting in his capacity of Director of Emergency Services of the City (“Director”), proclaimed, through Proclamation No. 2020-01, the existence of a Local Emergency related to COVID-19 within the City, and activated the Escondido Emergency Operations Center on that date; and

WHEREAS, as of March 18, 2020, the Escondido City Council adopted Proclamation No. 2020-01, ratifying the declaration of the Director and declaring the existence of an ongoing local emergency pursuant to COVID-19; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20, ordering all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors (also called the “Stay-at-Home Order”); and

WHEREAS, many local businesses and employers in Escondido have experienced and anticipate continuing to experience sudden and unexpected revenue

or income loss from temporary business closures and/or reduced operations as a result of the public health emergency, statewide Stay-at-Home Order, public health orders, and the precautions recommended by health authorities; and

WHEREAS, an increase in closed businesses and/or modified business activity, either temporarily or permanently, will have an immediate and potentially long-lasting impact on several of the City's most significant revenue sources, including sales tax, transient occupancy tax, property tax, and commercial rent payments, which will have a debilitating effect on security, economic security, public health or safety, or any combination thereof; and

WHEREAS, on April 28, 2020, Governor Newsom announced four "Resilience Roadmap Stages" that California would use to guide its gradual reopening process. The four stages are: 1) Safety and Preparedness, 2) Lower Risk Workplaces, 3) Higher Risk Workplaces, and 4) End of Stay-at-Home Order. The State has been in Stage 1 of the Resilience Roadmap Stages since the statewide Stay-at-Home Order took effect; and

WHEREAS, on May 4, 2020, Governor Newsom released public health guidance for some commercial retail, industrial manufacturing, and logistics businesses and if they could meet the guidelines provided by the State, certain lower-risk workplace businesses and employers were able to reopen on May 8, 2020, under certain operational conditions to continue to protect the health and safety of employees and the general public. Governor Newsom also announced new framework to allow counties to move more quickly through Stage 2 of the Resilience Roadmap Stages if they attest that they meet the State's readiness criteria. Although the State and local authorities are evaluating the feasibility and scope of economic recovery and

“reopening” efforts, and such efforts are anticipated to be authorized in stages in the coming weeks and months, those authorizations will not serve to fully mitigate the pandemic’s adverse effects on businesses and employers, residents, and visitors; and

WHEREAS, given the extraordinary health threat caused by COVID-19 and the need to take extraordinary measures to limit its spread, many businesses and employers have indicated a need for local direction or additional guidance in response to the plan to gradually reopen commercial retail, industrial manufacturing, and logistics businesses, and to help protect public health and safety and prevent or lower the risk of COVID-19 transmission; and

WHEREAS, pursuant to California Health and Safety Code section 12175.5(b) and the Order of the Health Officer and Emergency Regulations issued by the Health Officer of the County of San Diego, as updated on May 8, 2020 (“County Order”), all governmental entities in San Diego County are required to take necessary measures within the government entity’s control to ensure compliance with the County Order and reduce the risks of community spread of COVID-19; and

WHEREAS, pursuant to Chapter 7 of the Escondido Municipal Code, the Director recommends that the City Council adopt the below Ordinance, as a local measure that provides guidance and advances temporary business relief measures that protect life and property, and the general health and safety, of the businesses and employers, residents, and visitors of Escondido who are affected by the declared Local Emergency. The Director makes this recommendation to help facilitate compliance of all stated precautions recommended by health authorities, to increase and improve patron and pedestrian mobility and access, to maximize the ability of free open public or semi-public

space to facilitate business engagement practices that are conducive to social distancing, to provide special accommodation for additional signage and notifications regarding business hours or closures and on-site risk reduction measures, and to promote stability among commercial retail, industrial manufacturing, and logistics businesses, thereby allowing businesses and employers to decide whether and how to remain open providing both income to employees and needed services to residents and not simply closing due to economic or health advisory pressures; and

WHEREAS, the City Council has the power under Government Code sections 36934 and 36937 to adopt an ordinance that takes effect immediately if it is an ordinance for the immediate preservation of the public peace, health, or safety, contains a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the City Council; and

WHEREAS, the City finds it is necessary for the City Council to adopt this Ordinance as an Urgency Ordinance, as set forth in the above recitals, which are incorporated herein by reference, and pursuant to the powers under Government Code sections 36934 and 36937, for the immediate preservation of the public health and safety, as affected by the emergency caused by the spread of COVID-19; to comply with continued specific federal, state, and local public health requirements associated with the ongoing pandemic, including social distancing; and to facilitate future compliance with guidance and directives from federal, state, and local public officials related to statewide recovery and reporting efforts due to COVID-19.

NOW, THEREFORE, IT IS HEREBY RESOLVED AND FOUND that pursuant to the authority granted to the City of Escondido under Article XI, Section 7 of the California

Constitution, and as prescribed by law including the Escondido Municipal Code, the City Council hereby ordains as follows:

SECTION 1. The foregoing recitals are true and correct. City Council Proclamation No. 2020-01 ratifying the declaration of a Local Emergency and declaring the existence of an ongoing Local Emergency related to COVID-19, California Governor Gavin Newsom's Executive Orders N-25-20 and N-33-20, and the County Order are hereby incorporated into this Ordinance as if fully set forth herein.

SECTION 2. The existing conditions that prompted the Director's and City Council's Proclamation of Local Emergency continue to exist. The declaration of the Local Emergency as well as the existence of numerous similar declarations at all levels of national and state governments reflect the current and continuing health and financial circumstances of the COVID-19 emergency. In the interest of protecting the public health and safety, and minimizing and reducing the spread of the transmission of COVID-19 and loss of life, property, and essential public services, the City Council finds a compelling need to establish a series of temporary business relief measures and otherwise mitigate the adverse effects of COVID-19 and the gradual reopening process among all residents, businesses, and visitors of Escondido.

SECTION 3. California Environmental Quality Action ("CEQA"). Public Resources Code ("PRC") section 21080(b)(4) and CEQA Guidelines section 15269(c) (14 C.C.R. § 15269(c)) exempt from CEQA "specific actions necessary to prevent or mitigate an emergency." PRC Section 21060.3 defines emergency as "a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public

services.” The COVID-19 pandemic constitutes a “sudden, unexpected occurrence,” whereby the public health effects of the pandemic were felt in the City, County, and State suddenly and unexpectedly. Governmental efforts to mitigate the effects of the pandemic, such as closures and the Stay-at-Home order, also occurred suddenly, and these mitigation efforts, despite their necessity in light of the pandemic, have significantly and adversely impacted businesses, business owners, employees, and livelihoods, including having significant economic repercussions. Similarly, the pandemic and its mitigation efforts have affected the City’s delivery of its essential public services. Although the State and local authorities are evaluating the feasibility and scope of economic recovery and “reopening” efforts, and such efforts are anticipated to be authorized in stages in the coming weeks and months, those authorizations will not serve to fully mitigate the pandemic’s effects on businesses, the City, and the public, and it is likely that businesses and essential City services will not be able to survive, or public health to be negatively impacted, without the City’s imminent implementation of a near-term recovery plan. Further, the measures are necessary to comply with continued specific public health requirements associated with the pandemic, including social distancing. Thus, the COVID-19 pandemic is an emergency as defined in PRC Section 21060.3, and the recovery plan outlined herein is necessary to mitigate that emergency. For these reasons, the Urgency Ordinance is exempt from CEQA pursuant to PRC section 21080(b)(4) and CEQA Guidelines section 15269(c).

SECTION 4. During this state of Local Emergency, and throughout the State’s Resilience Roadmap Stages, the City Council hereby enacts the following temporary business relief measures:

- 1) **Building Permit Time Limits.** The building permit time limits within sections 6-15.4.1 and 6-15.4.2 of Chapter 6 of the Escondido Municipal Code, regulating the building or work authorized by building permits, are extended by one (1) year. All building permits issued by the City's Building Division that are unexpired as of the date of this Ordinance are hereby granted an automatic one (1) year time extension.
- 2) **Planning Permit Time Limits.** With respect to all Escondido Municipal Code provisions related to the time to act on approved applications and permits issued by the Planning Division, any such time provisions for applications and permits that are unexpired as of the date of this Ordinance are extended by one (1) year.
- 3) **Temporary Sign Limits.** Section 33-1396(a) of Article 66 of the Escondido Zoning regulates the time, place, and manner of temporary signs, and limits these special event signs for a total duration of not more than sixty (60) days in a calendar year. Section 33-1396(a) of Article 66 of the Escondido Zoning Code regulates temporary banner signs including an allowance for seventy-two (72) square feet and only one (1) special event banner is allowed for each street frontage, except for individual in-line shops in commercial centers where one (1) banner is allowed for each building face fronting on a parking lot or a street. The foregoing limitations of temporary banner signs are hereby provisionally modified to allow for the following:
 - a. One (1) banner sign of up to seventy-two (72) square feet and one (1) additional banner sign of up to thirty-two (32) square feet for each

street frontage or each building face fronting on a parking lot or a street.

The City Council also hereby adopts provisions to allow for the following temporary signs that are neither expressly allowed nor prohibited by the zoning ordinance, when they are on private property, project from private property over or into City property, or are located within the public right-of-way.

- a. A-frame sign(s) placed on private property adjacent to the primary entrance to the property, building, or tenant space for the purpose of identification, protection or directing persons to a use conducted therein, or identification of on-site protection or safety measures.
- b. Wayfinding or directory ground-mounted signs placed immediately adjacent to pick-up and carry-out zones, or parklets, designed or intended to be displayed for each service or delivery entrance.

Temporary signs specifically allowed by this Ordinance are exempt from and would not be counted towards the sixty (60) day calendar limit. An act to establish, erect, or maintain temporary banner, temporary A-frame signs, or wayfinding or directory ground mounted signs, as allowed by this Ordinance, shall be exempt from the application and sign permit requirements but must be in conformance with all other requirements of this section. Except as modified by this section, the provisions, terms, and limitations of Article 66 shall remain in full force and effect, including any

timeframe or permit requirements with respect to signs not otherwise described herein.

4) **Regulation of Alcohol Sales.** The City Council hereby suspends local permit restrictions on Alcohol Beverage Control (“ABC”) licensed restaurants that prevent off-site sale and delivery of alcohol, to the extent applicable, subject to the following conditions:

- a. No wine or beer shall be sold with an alcohol content of greater than fifteen (15) percent by volume.
- b. The sale of alcoholic beverages for off-site consumption shall only be made to patrons who purchase meals as defined in Business and Professions Code section 23038.
- c. All alcohol delivery persons shall be an employee of the restaurant who is twenty-one (21) years of age or older. Drivers delivering alcohol to said patrons shall document that the customer is twenty-one (21) years of age or older. No individual under twenty-one (21) years of age, or without proper identification, shall be served or sold alcohol.
- d. Restaurants shall comply with the conditions contained within the ABC’s Notice of Regulatory Relief.
- e. That the suspension of local permit restrictions on ABC licensed restaurants shall be effective during the Urgency Ordinance’s effective period and/or shall last until the withdrawal of ABC Notice of Regulatory Relief, whichever occurs first.

5) Outdoor Sale Events on Private Property (in Non-Parking Areas).

Authorization of temporary outdoor sale events in commercially zoned districts of the City, described in sections 33-1533(b) and 33-1534(c)(1) of Article 73 of the Escondido Zoning Code, are hereby provisionally modified and henceforth no permit or fees shall be required to establish an outdoor sale event on private property. Furthermore, outdoor sales events on private property shall be allowed to recur during normal business hours and for as many days as necessary within the time limits of the Ordinance's effective period. Temporary shade tents are permitted in display areas (not customer parking areas) for thirty (30) day periods, or the length of a promotion/event, whichever is less. All shade tents shall be reviewed by the building division and fire department for compliance with all building and fire codes. Except as modified by this section, the provisions, terms, and limitations of Article 73 shall remain in full force and effect.

6) Outdoor Sale Events on Private Property (Parking Areas).

Authorization of temporary outdoor display and sale events in commercial parking areas, described in sections 33-1533(b) and 33-1534(c)(1) of Article 73 of the Escondido Zoning Code, are hereby provisionally modified and henceforth so that no time limit shall be imposed (i.e. suspension of limit on the number of days) for outdoor sale events in commercial parking areas. Outdoor sale events in commercial parking areas shall be allowed to recur during normal business hours on commercially zoned properties for as many days necessary within the time limits of the Ordinance's effective

period, subject to a temporary use permit and fee. Except as modified by this section, the provisions, terms, and limitations of Article 73 shall remain in full force and effect.

- 7) **Carry-Out Zones Established.** The City Council desires to convert underutilized parking spaces into more functional spaces and to include use of parking space(s) or portion of the parking lane(s) as described herein. The City Council hereby authorizes the reservation of no more than four (4) existing, striped parking space on the same premises for curbside pick-up, restaurant carry-out zones, and/or other drop-off and pick-up related uses and activities. The City Council furthermore authorizes the temporary use of no more than two (2) existing, striped parking spaces in the public street immediately adjacent to a businesses or employer, if any, for curbside pick-up, restaurant carry-out zones, and/or other drop-off and pick-up related uses and activities to the fronting private property. Temporary use of on-street parking spaces shall be limited to streets with speed limits of thirty (30) mph or less and shall be coordinated with neighboring businesses and business associations.
- 8) **Parklets Established.** The City Council desires to convert underutilized on-street parking spaces into more functional spaces and hereby authorizes the conversion of on-street parking to parklets through the issuance of temporary use permits. The City Manager, or his designee, shall create and maintain a master permitting and/or tracking program to help implement this directive. Each application shall be reviewed for public safety issues unique

to the pedestrian and vehicular needs of the specific location. The following standards have been developed to ensure that the space used for such parklets, at all times, promote the public health, safety and welfare and allow for adequate vehicular and pedestrian circulation.

- a. Parklets are permitted on streets with less than 12,000 Average Daily Trips and speed limits of thirty (30) mph or less. Each parklet must be located within an existing, striped space and located immediately adjacent to a business or employer.
- b. In general, parklets must be located at least one (1) striped parking space away from an intersection or street corner.
- c. The parklet should have a continuous edge to buffer the street and restrict pedestrian access into the street. This can take the form of event fencing, concrete planter boxes, railing, cabling, or some other appropriate buffer that shall be equipped with retroreflective signage, markers, or lighting.
- d. Parklets are prohibited on street curves or hills where horizontal or vertical sight-distance is an issue. Parklets are also prohibited in bus lanes, in front of fire hydrants, at utility access points (like manholes), and in reserved take out or delivery service parking spaces).
- e. All parklets are required to include setbacks on either side to buffer the parklet from adjacent on-street parking spaces and driveways. Additionally, the outer edge of the parklet must have two (2) foot clear zone from the adjacent travel lane.

- f. Businesses or employers shall be granted temporary exclusive use of the parking space or portion of the parking lane for the placement or installation of temporary improvements, including but not limited to chairs and tables; pedestrian safety lights; heat lamps, fans, or other temperature control devices; canopies or other overhead shelter; posted signage; and other items that support table service or outdoor dining, subject to all applicable provisions of the California Building Code.
- g. A minimum thirty-six (36) inch ADA accessible entryway must be maintained for all parklets and along all sidewalks.
- h. The parklet area, including any adjacent landscaped areas, sidewalk, and parking areas, shall be kept free of trash and debris at all times. The business or employer shall ensure the cleanup and removal of any trash and debris at the conclusion of operation each day. All parklet areas shall be operated in compliance with storm water special event controls.
- i. The business or employer must agree to provide to the City a Certificate of Liability insurance naming the City as additional insured.
- j. Additional conditions may be included for the design and operation of a parklet prior to the issuance of the permit. The permit shall also require an indemnification of the City from liability.

9) **Accessory Retail Use in Industrial Areas.** Retail accessory uses and structures are permitted in the industrial zones, provided they are incidental to and do not substantially alter the character of the permitted principal use or structure. Said regulations, described in Section 33-565 of Article 26 of the Escondido Zoning Code, limit accessory retail use to fifteen (15) percent of the gross building square footage. The foregoing limitation is hereby provisionally modified from fifteen (15) percent to fifty (50) percent. Henceforth, no additional parking associated with this expanded accessory use authorization shall modify or change any on-site parking requirements. Except as modified by this section, the provisions, terms, and limitations of Article 26 shall remain in full force and effect.

SECTION 5. This Ordinance is effective on the date of its adoption and shall remain in effect for 90 days thereafter, unless extended by City Council. All ordinances or parts of ordinances in conflict herewith are hereby temporarily suspended, effective immediately and in effect through the time the Ordinance is in effect, unless stated otherwise. After the expiration of the Ordinance, the provisional business relief measures shall be deemed expired and of no further force or effect. All rights and obligations under this Ordinance shall be concluded, except that the additional building permit time limits and planning application and permit time limits enacted by Section 4 of this Ordinance shall survive expiration of this Ordinance.

SECTION 6. During the effective period of the Ordinance, businesses and employers have a right to undertake and complete the development and use of property or utilize any and all business relief measures, or portions thereof. These business relief

measures shall not be extended by any amendments or modifications unless expressly provided by the City Council. Upon the Ordinance's expiration, the City Council's policy shall revert to the zoning ordinance as written and all temporary displays and physical improvements authorized by this Ordinance shall be removed immediately, at the expense of the business or employer.

SECTION 7. The City of Escondido reserves the right to enforce this Ordinance pursuant to Escondido Municipal Code Section 1-13 and to pursue any other remedies legally available against individuals or entities who knowingly or intentionally violate the provisions of this Ordinance or falsifying information to qualify for the relief granted by this Ordinance.

SECTION 8. There are no assurances to residents, businesses, or visitors that the affected chapters and sections of this Ordinance will not be subject to future revisions. The establishment of this Ordinance shall not preclude, change, or impair the authority of the City to adopt and/or enforce Zoning Code provisions, Municipal Code ordinances, or other governing situations.

SECTION 9. The adoption of this Ordinance is not intended to affect or disrupt the continuity of the City's business or administration of its law, including but not limited to the following:

- Actions and proceedings that began before the effective date of this Ordinance;
- Prosecution for ordinance violations committed before the effective date of this Ordinance; and/or

- The amount, or collection, of license, fee, penalty debt, forfeiture, or obligations due and unpaid as of the effective date of this Ordinance.

SECTION 10. This Ordinance is intended to supplement, not to duplicate, supplant or contradict, applicable state and federal law, as well as the County Order, and shall be interpreted in light of that intent. If any section, subsection, paragraph, sentence, clause, or portion of this Ordinance is, for any reason, held invalid or unconstitutional, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

SECTION 11. The City Council does not request codification of this Ordinance because the Ordinance is temporary and, therefore, not a general ordinance in force.

URGENCY ORDINANCE PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 20th day of May 2020, by the following vote to wit:

AYES : Councilmembers: DIAZ, MARTINEZ, MORASCO, MCNAMARA

NOES : Councilmembers: NONE

VACANT : Councilmembers: DISTRICT 2

APPROVED:

DocuSigned by:
Paul McNamara
CAACE20782954D3...
PAUL MCNAMARA, Mayor of the
City of Escondido, California

ATTEST:

DocuSigned by:
Zack Beck
A58535D0BDC1430...
ZACK BECK, City Clerk of the
City of Escondido, California

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO : ss.
CITY OF ESCONDIDO)

I, ZACK BECK, City Clerk of the City of Escondido, hereby certify that the foregoing URGENCY ORDINANCE NO. 2020-12 was passed at a regular meeting of the City Council of the City of Escondido held on the 20th day of May, 2020 after having been read at the regular meeting of said City Council.

DocuSigned by:
Zack Beck
A58535D0BDC1430...
ZACK BECK, City Clerk of the
City of Escondido, California