

ORDINANCE NO. 2020-07

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING CHAPTERS 16 OF THE ESCONDIDO MUNICIPAL CODE AND ARTICLES 49, 67, 70, AND 73 OF THE ESCONDIDO ZONING CODE TO ADDRESS CHANGES IN STATE LAW, CORRECT ERRORS, AND IMPROVE EXISTING REGULATIONS

APPLICANT: City of Escondido  
PLANNING CASE NO.: AZ 20-0007

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. That proper notices of a public hearing have been given and public hearings have been held before the Planning Commission and City Council on this issue.

SECTION 2. The Planning Commission conducted public hearings on March 25, 2020, to discuss and consider proposed amendments to the Municipal Code and Zoning Code; considered public testimony; and made a recommendation to the City Council.

SECTION 3. The City Council has duly reviewed and considered all evidence submitted at said hearings, including, without limitation:

- a. Written information;
- b. Oral testimony from City staff, interested parties, and the public;
- c. The staff report, dated April 8, 2020, which along with its attachments is incorporated herein by this reference as though fully set forth herein; and
- d. Additional information submitted during the Public Hearing.

SECTION 4. That upon consideration of the staff report, Planning Commission recommendation, Planning Commission staff report, all public testimony presented at the hearing held on this project, and the "Findings of Fact," attached as Exhibit "A" to this

Ordinance and incorporated herein by this reference as though fully set forth herein, this City Council finds the Municipal Code and Zoning Code Amendments are consistent with the General Plan.

SECTION 5. This action is exempt from environmental review pursuant to California Environmental Quality Act Guidelines (“CEQA” and “CEQA Guidelines”) by statutory and categorical exemptions. Because the project includes provisions that restate existing law, includes organizational and administrative actions, allows temporary uses that are controlled by the regulatory department issuing permits for such uses, and breaks no new legal ground, the project is covered pursuant to several classes of exemption (CEQA Guidelines Sections 15301, 15304, 15311, and 15323). The portion of the proposed code amendments that relate to accessory dwelling units are statutorily exempt from CEQA pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h), which exempts adoption of ordinances regarding accessory dwelling units. The project is also covered by CEQA Guidelines Section 15061(b)(3), “common sense rule,” in that by its general nature, the project is an activity undertaken that has no potential for a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

SECTION 6. That the specified sections of the Municipal Code and Zoning Code are amended as set forth in Exhibit “B” to this Ordinance and incorporated herein by this reference as though fully set forth herein

SECTION 7. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and

independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 8. That as of the effective date of this Ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed. Renumbering and relabeling of existing ordinance title, chapter, article, and/or section headings by this ordinance does not affect the continuing validity of existing laws. Any existing reference to an ordinance, title, chapter, article, or section heading which is renumbered or relabeled by this ordinance must be construed to apply to the corresponding provisions contained within this ordinance.

SECTION 9. The adoption of this ordinance is not intended to affect or disrupt the continuity of the City of Escondido's ("City") 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. That the City Clerk is hereby directed to certify to the passage of this Ordinance and to cause the same or a summary to be prepared in accordance with Government Code Section 36933, to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the County and circulated in the City of Escondido.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 6<sup>th</sup> 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

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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 ORDINANCE NO. 2020-07 passed at a regular meeting of the City Council of the City of Escondido held on the 6<sup>th</sup> day of May, 2020, after having been read at the regular meeting of said City Council held on the 8<sup>th</sup> day of April, 2020.

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

ORDINANCE NO. 2020-07

**AZ 20-0001****FATORS TO BE CONSIDERED / FINDINGS OF FACT****Municipal and Zoning Code Amendment Determinations:**

1. Over the years, staff and customers have found certain sections of the Municipal Code and Zoning Code are vague, unclear, or conflicting, which results in confusion and disagreement in code interpretation. It is important that the City of Escondido review policies and procedures on an on-going basis to ensure a customer-focused government through transparent services and positive organizational culture.
2. The Planning Division maintains a regular process and schedule for maintaining the City's codes and regulations. Those issues that have been identified are being addressed as part of this clean-up effort, whereby all code amendments have been combined in a single batch, called an omnibus. Additional items to correct or improve the Zoning Code may be considered in the next annual omnibus code clean-up cycle.
3. In October 2019, the State adopted Assembly Bill (AB) 1763 and changed the State's density bonus law, which imposes new State housing mandates on California cities regarding required density bonuses and incentives for housing developers. The proposed Zoning Code Amendment would ensure compliance with Government Code Section 65915 et. seq., which requires cities to adopt an implementing ordinance that provides affordable housing density bonuses and offers concessions and incentives for specified housing developments.
4. In October 2019, AB 68, AB 881, and Senate Bill (SB) 13 reformed many aspects of the State accessory dwelling unit law. As amended, California's accessory dwelling unit law establishes statewide standards for local regulations governing accessory dwelling unit and junior accessory dwelling unit development. The proposed Zoning Code Amendment would ensure compliance with Government Code Section 65852.2 et. seq.
5. This ordinance continues the City's long-standing commitment to affordable housing and the provision of incentives for the creation of this desired housing type and is integrated with the City's other existing regulations promoting affordable housing production.

6. The City Council's decision is based, to the extent required by law, on applicable factors pursuant to Section 33-1263 of the Escondido Zoning Code. The public health, safety, and welfare would not be adversely affected by the proposed batch of Zoning Code Amendments because they correct internal inconsistencies, improve readability, update references to other code sections or regulatory documents, codify prior interpretations, and make the code consistent with changing state or federal regulations. The proposed batch of Zoning Code amendments would be consistent with the goals and policies of the General Plan because they address changes in state laws, correct errors, and improve existing regulations to eliminate uncertainty for staff, customers, and the public. This effort is not intended to be a comprehensive update to the local code or change land use densities or intensities. The proposed Zoning Code amendments do not conflict with any specific plan.
  
7. There are no assurances to residents or project proponents that the affected chapters and sections of this project will not be subject to future revisions.

## **AZ 20-0001**

### **FACTORS TO BE CONSIDERED / FINDINGS OF FACT**

#### **SECTION I.**

*Repeal the following, various sections of Chapter 16 of the Escondido Municipal Code and replace with new text, as follows:*

#### **CHAPTER 16. LICENSES AND BUSINESS REGULATIONS GENERALLY**

##### **ARTICLE 7. MOBILE FOOD FACILITIES**

##### **Sec. 16-406. Separate business license and permit required.**

An operator shall have a business license and a responsible person shall obtain a mobile food facility permit, as required by this article.

- (a) It is unlawful for an operator to operate a mobile food facility without a separate business license for each vehicle.
- (b) It is unlawful for an operator or a responsible person to allow, authorize, operate, or use a mobile food facility without a mobile food facility permit unless otherwise permitted by city, state or federal law.
- (c) A mobile food facility permit is nontransferable and is valid only for the person and location of permit issued, unless it is suspended or revoked for cause, for the period indicated. If a permittee changes the location of his or her business, that permittee must obtain a new permit prior to acting as a retailer at the new location. If a business licensed is sold or transferred, the new owner must obtain business license for that location pursuant to section 16-406(a) before acting as a retailer.

#### **CHAPTER 16. LICENSES AND BUSINESS REGULATIONS GENERALLY**

##### **ARTICLE 7. MOBILE FOOD FACILITIES**

##### **Sec.16.407. Permit requirements.**

- (a) It shall be unlawful for any person to act as a mobile food facility retailer without first obtaining and maintaining a valid mobile food facility permit pursuant to this chapter for each location at which that activity is to occur, unless otherwise exempted by Section 16-407(d) and Section 16-407 (e). The director of community development, or the director's designees, shall administer mobile food facility permits issued pursuant to this article.

(b) An application for a mobile food facility permit shall be submitted on an application form obtained from the Planning Division and shall be accompanied by a nonrefundable fee. The application shall provide information necessary for review of the application by appropriate city departments.

(1) No such license or permit shall be issued for mobile food facilities, uses, or purposes where the same would be in conflict with the provisions of this article. The operating requirements of Section 16-409 shall be regarded and applied as the minimum requirements.

(2) When the review of a mobility facility permit application provides for discretion on the part of the director or designee, that discretion may be exercised to impose more stringent requirements than identified in Section 16-409, as may be necessary to promote the purposes of this article.

(c) Location requirements. The director may issue a mobile food facility permit to a responsible person, only for properties in the following zoning districts and locations:

(1) Residential agricultural or industrial zones, as an accessory use to a beer or wine manufacturing business;

(2) Commercial or industrial zones, as an accessory and incidental use to a swap meet; or

(3) Designated districts of specific planning areas (SP zones), pursuant to specific plan use authorization.

(d) The following events shall exempt an operator or a responsible person from the mobile food facility permit required in section 16-406(b) and may exempt the operator or responsible person from the operating requirements in section 16-409.

(1) An approved special event permit or facility use permit from the city, specifically authorizing a mobile food facility at the event or facility.

(2) An approved temporary use permit from the city, pursuant to Section 33-1534(c)(7) of the Escondido Zoning Code.

(e) A mobile food facility that stops for not more than twenty (20) minutes on a scheduled route to provide service directly at a construction site or other business and does not vend to the general public during the scheduled stop will exempt any operator or responsible person from the requirements identified in sections 16-406(b) and 16-409.

## **CHAPTER 16. LICENSES AND BUSINESS REGULATIONS GENERALLY**

### **ARTICLE 7. MOBILE FOOD FACILITIES**

#### **Sec. 16-408. Permit enforcement.**

(a) Nothing in this chapter shall be construed to grant any person obtaining and maintaining a mobile food facility permit any status or right other than the right to act as a retailer at the location in the city identified on the face of the permit.



(b) The director of community development may issue administrative citations or take any other enforcement action authorized by this code, including permit revocation or suspension, upon finding a violation of this article.

## **SECTION II.**

*Repeal the following, various sections of the Escondido Zoning Code and replace with new text, as follows:*

### **ARTICLE 49. AIR SPACE CONDOMINIUM AND COMMUNITY APARTMENT PROJECTS**

#### **Sec. 33-951. Condominium or condominium conversion application.**

(a) Permit required for new condominium projects and conversions to condominium ownership. A condominium permit and design review shall be required for all condominiums to be constructed or for existing buildings to be converted to condominiums in the City of Escondido.

(1) Application for a condominium permit in the Downtown Specific Plan, East Valley Specific Plan, and South Centre City Specific Plan shall be made to the director of community development, unless the action includes discretionary permits for which the Planning Commission or City Council is the decision-maker.

(2) Application for a condominium permit in any other area of the city not covered by subsection (a)(1) shall be made to the city council, through the planning division and planning commission in accordance with procedures set forth in this chapter.

(3) The director shall prescribe the form and content of all condominium permit applications.

(b) Exceptions to required permits. The following projects are not required to process a condominium permit through this article:

(1) Condominiums requested concurrently with a planned development application pursuant to Article 19.

(2) Condominiums requested concurrently with resident purchase of mobilehome parks pursuant to section 32-401 of Article 4 of Chapter 32, subdivisions.

(3) Condominiums requested for a non-residential development entitlement application in conformance with the California Subdivision Map Act, and subject to the following provisions:

(A) The project is not a mixed-use development that includes residential units.

(B) A maintenance and replacement program, as well as a contingency fund is provided to adequately address required improvements to the satisfaction of the director of community development (for conversion projects only).

(C) The developer files with the city, a declaration of covenants, conditions and restrictions pursuant to section 33-1108.

(D) Public notice of the condominium project complies with section 33-1300(b) and (c).

### **ARTICLE 49. AIR SPACE CONDOMINIUM AND COMMUNITY APARTMENT PROJECTS**

**Sec. 33-952. Commission action.**

If required under section 33-951(a)(2), the planning commission shall review the application for a condominium permit and recommendation of the planning division. A public hearing on the application shall be held in accordance with Division 6 of Article 61 of this chapter, and a recommendation shall be forwarded to the city council.

**ARTICLE 49. AIR SPACE CONDOMINIUM AND COMMUNITY APARTMENT PROJECTS****Sec. 33-953. Findings of commission and council.**

In order to grant a condominium permit, the decision-making authority shall find that:

- (a) Except as specifically addressed in section 33-955 of this article, the project meets current zoning, design review, drainage, engineering, fire protection, seismic and building code requirements as if the project were newly constructed. However, the conversion of existing legal nonconforming multifamily residential developments to condominium units is exempt from current density requirements providing no increased density is proposed. Conversion requests may also utilize the same administrative adjustment procedures available to new construction as specified in the underlying zone;
- (b) Required upgrades or modifications correcting a nonconforming condition may be permitted notwithstanding the provisions of section 33-1243 of this code, if the project otherwise conforms to applicable criteria;
- (c) Residential projects will contain architectural and site-planning features commonly found in projects that maintain a majority of owner-occupied units;
- (d) The project provides sufficient parking commensurate with its location and design;
- (e) The project's open space is well-designed, properly distributed, and does not unreasonably restrict disabled access;
- (f) The project conforms to the general plan and applicable zoning provisions. However, a conversion to residential condominiums may occur notwithstanding the fact that existing densities exceed currently permitted general plan densities provided no additional units are proposed;
- (g) The project's maintenance and replacement program adequately addresses required improvements and appears to be sustainable;
- (h) That all tenant notification and information, as required by the California Subdivision Map Act, this chapter, and the City of Escondido subdivision ordinance has been, or will be provided; and

(i) That provisions have been made for the timely release of security deposits and provision of rental payment history reports if requested by existing residential tenants.

## **ARTICLE 49. AIR SPACE CONDOMINIUM AND COMMUNITY APARTMENT PROJECTS**

### **Sec. 33-954. City council action.**

If required under section 33-951(a)(2), after the submission of a formal recommendation by the planning commission, the city council shall review the application and recommendation during a public hearing held in accordance with Division 6 of Article 61 of this chapter, and shall approve, modify or disapprove the action of the planning commission.

## **ARTICLE 49. AIR SPACE CONDOMINIUM AND COMMUNITY APARTMENT PROJECTS**

### **Sec. 33-955. Development standards.**

Condominiums approved and authorized shall be developed or upgraded to comply with the city's current design review, building, seismic, drainage, engineering, zoning and fire protection standards for new construction. Limited departures, in accordance with applicable building code provisions, may be granted for condominium conversions providing that proposed conditions will substantially conform to current requirements, feasible upgrades have been provided, and no health and safety issues will exist.

Condominium permit approvals shall comply with the findings outlined in section 33-953 of this article. Additionally, minimum standards for residential condominium units include the following:

(a) Minimum square footages as follows:

Studio	600 square feet
One-bedroom units	700 square feet
Two-bedroom units	800 square feet
Three-bedroom units	1,000 square feet
Additional bedrooms	150 square feet for each additional bedroom

(b) Washer and dryer hook-ups in each unit.

(c) Minimum of eighty (80) cubic feet of private storage area for each unit with minimum dimensions of at least two (2) feet. Said storage shall be in addition to normally expected cabinets and closets.

## **ARTICLE 67. DENSITY BONUS AND RESIDENTIAL INCENTIVES**

### **Sec. 33-1412. Implementation.**

(b) For projects proposing a density bonus:

(1) The city shall grant, according to Government Code Section 65915, a density bonus and/or concession(s) or incentive(s), waiver(s) or reductions of development standards and parking ratios, or financially equivalent incentive(s) as required by State Density Bonus Law. Each housing development is entitled to only one (1) density bonus. If a housing development qualifies for more than one (1) density bonus based on the number of target units provided, or as otherwise granted under State Density Bonus Law, the developer shall select the category under which the density bonus is granted and may not combine bonus density calculations.

(2) In order to qualify for this bonus, a housing development must consist of five (5) or more dwelling units, including mixed use developments, except those housing developments located within the South Centre City Specific Plan, may consist of three (3) dwelling units to qualify for this bonus. In determining the total number of units to be granted, a developer for a housing development must seek and agree to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this article, that will contain at least any one (1) of the following target households:

(A) At least ten (10) percent of the total units allowed by the maximum permitted density at affordable housing costs for and occupied by low-income households; and/or

(B) At least five (5) percent of the total units allowed by the maximum permitted density at affordable housing costs for and occupied by very low-income households; or

(C) At least ten (10) percent of the total dwelling units in a common interest development, as defined in Section 4100 of the Civil Code, for persons and families of moderate-income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase; or

(D) At least ten (10) percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Section 11301 et seq.); or

(E) Twenty (20) percent of the total units for lower income students in a student housing development that meets the following requirements:

(i) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the director that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into pursuant to this section is not violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.

(ii) The applicable twenty (20) percent units will be used for lower income students. For purposes of this clause, "lower income students" means students who have a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award

recipients as set forth in Section 69432.7(k) of the Education Code. The rent provided in the applicable units of the development for lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.

(F) One hundred (100) percent of the total units, exclusive of a manager's unit or units, are for lower income households, except that up to twenty (20) percent of the total units in the development may be for moderate-income households. The rent for at least twenty (20) percent of the units in the development shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code. The rent for the remaining units in the development shall be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

(G) The project proposes to convert apartments to a condominium project agrees to provide at least fifteen (15) percent of the total units of the proposed condominium project to very low-income households, or at least thirty-three (33) percent of the total units of the proposed condominium project to low-income households, at least thirty-three (33) percent of the total units for moderate-income as defined in Section 50093 of the Health and Safety Code; or

(H) The project is a senior citizen housing development; or

(I) The project donates at least one (1) acre of land to the city in compliance with Government Code Section 65915(g) and the land has the appropriate general plan designation, zoning, permits and approvals, and access to public facilities needed for such housing; or

(J) The project is the result of a bona fide joint commercial and housing partnership, where the housing developer provides at least fifteen (15) percent of the total units for very low-income households or at least thirty (30) percent of the total units for low-income households.

## **ARTICLE 67. DENSITY BONUS AND RESIDENTIAL INCENTIVES**

### **Sec. 33-1414. Project application procedure.**

(a) Density Bonus Projects. After notification to the applicant regarding the city's determination on the preliminary application review and/or granting additional concessions or incentives, or waiver of development standard(s), the applicant may submit the development application, which shall be subject to a separate permit. The proposal shall be submitted in conjunction with a subdivision map, conditional use permit application, plot plan, or planned development application. All appropriate requirements shall be delivered to the planning division in order for the application to be deemed complete. Not later than thirty (30) calendar days after the city has received the planning application, the planning division shall notify the developer in writing whether the application is complete as required by Government Code Section 65943.

At time of application, a notice shall be posted on the project site detailing a general description of the proposal in conformance with section 33-1300 of this chapter.

## **ARTICLE 67. DENSITY BONUS AND RESIDENTIAL INCENTIVES**

### **Sec. 33-1415. Concessions, incentives, equivalent financial incentives.**

(a) In addition to the density bonus, the city shall also provide one (1) or more "incentives" or "concessions" to each housing development project, which qualifies for a density bonus.

(1) A concession or incentive is defined as a reduction in site development standards or a modification of zoning code or architectural design requirements, such as a reduction in setback or minimum square footage requirements; or approval of mixed use zoning; or other regulatory incentives or concessions which actually result in identifiable and financially sufficient cost reductions.

(2) The number of required incentives or concessions is based on the percentage of affordable units in the housing development project:

(A) One (1) incentive or concession for projects that include at least five (5) percent of the total units for very low-income households, or at least ten (10) percent for low-income households, or at least ten (10) percent for moderate-income households in a common interest development.

(B) Two (2) incentives or concessions for projects that include at least ten (10) percent of the total units for very low-income households, at least twenty (20) percent for low-income households, or at least twenty (20) percent for moderate-income households in a common interest development.

(C) Three (3) incentives or concessions for projects that include at least fifteen (15) percent of the total units for very low-income households, at least thirty (30) percent for lower income households, or at least thirty (30) percent for moderate-income in a common interest development.

(D) Four (4) incentives or concessions for projects meeting the criteria of Section 33-1412(b)(2)(F). If the project is located within one-half mile of a major transit stop, as defined in Section 21155(b) of the Public Resources Code, the applicant shall also receive a height increase of up to three (3) additional stories, or thirty (33) feet.

(E) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(3) A concession or incentive shall also mean approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(4) Nothing in this section shall be construed as to limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(5) The granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(b) The city shall grant the concession or incentive proposed by the developer unless it finds that the proposed concession or incentive is not required in order to achieve the required affordable housing costs or rents, or would cause a public health or safety problem, cause an environmental problem, harm historical property, or would be contrary to law.

(c) A developer shall be ineligible for concessions or incentives when the housing development is proposed on any property that includes rental dwelling units that are, or if the units have been vacated or demolished in the five (5) year period preceding the application, subject to a recorded covenant, ordinance, or law that restricts rents to affordable levels or subject to any other form of rent or price control; or occupied by very low- or low-income households, unless the proposed housing development replaces those units and meeting the requirements of Government Code Section 65915(c)(3).

(d) A development qualifying for a density bonus also receives two (2) additional forms of assistance, which the State Legislature has determined to have important benefits for a housing development project. The following additional forms of assistance do not count as an incentive or concession as described herein this section.

(1) Waiver or Reduction of Development Standard(s). If any other development standard would physically prevent the project from being built by the developer at the permitted density and with the granted concessions or incentives permitted by State Density Bonus Law, the developer may propose to have those standards waived or reduced. The city is not required to waive or reduce development standards that that would cause a public health or safety problem, cause an environmental problem, harm a historical building, or would be contrary to law.

(2) Parking Requirements. Upon the developer's request, the city or county may not require more than one (1) on-site parking space for studio and one-bedroom units, two (2) on-site parking spaces for two- and three-bedroom units, two and one-half (2-1/2) on-site parking spaces for units with four (4) or more bedrooms, and other on-site parking requirement reductions identified by Government Code Section 65915(k). On-site spaces may be provided through tandem or uncovered parking, but not on-street parking.

(A) If a development includes the maximum percentage of low-income or very low income units provided for in paragraphs (1) and (2) of Government Code Section 65915(f) and is located within one-half mile of a major transit stop, as defined in Public Resources Code Section 21155(b), and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, the city shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

(B) If a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:

(i) If the development is located within one-half mile of a major transit stop, as defined Public Resources Code Section 21155(b), and there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.

(ii) If the development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code, the ratio shall not exceed 0.5 spaces per unit. The development shall have either paratransit service or

unobstructed access, within one-half (1/2) mile, to fixed bus route service that operates at least eight (8) times per day.

(C) If a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, and the development is either a special needs housing development, as defined in Section 51312 of the Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the Health and Safety Code, then, upon the request of the developer, the city shall not impose any minimum vehicular parking requirement. A development that is a special needs housing development shall have either paratransit service or unobstructed access, within one-half (1/2) mile, to fixed bus route service that operates at least eight (8) times per day.

## **ARTICLE 70. ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS**

### **Sec. 33-1470. Purpose and intent.**

The purpose of this article is to provide regulations for the establishment of accessory dwelling units and junior accessory dwelling units. The intent of the article is to provide additional housing opportunities in areas where adequate public facilities and services are available, and where impacts upon the residential neighborhoods directly affected would be minimized. Notwithstanding the intent of California Government Code Section 65852.2 or Section 65852.22, should any provision of this article be found not to be in compliance with state law, that provision should be severed and stricken from Article 70 as if it had never been adopted.

## **ARTICLE 70. ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS**

### **Sec. 33-1472. Permitted zones.**

Accessory dwelling units and junior accessory dwelling units shall be permitted in areas zoned to allow single-family or multi-family dwelling residential use, subject to the approval of an accessory dwelling unit permit.

## **ARTICLE 70. ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS**

### **Sec. 33-1473. Occupancy limitations.**

(a) Allowed use.

(1) One attached or detached accessory dwelling unit may be permitted in conjunction with an existing or proposed single-family residence on a lot zoned for single-family or multi-family residential use.



(A) The accessory dwelling unit is either attached to, or located within, the proposed or existing main building or attached garages, storage areas, or similar use; or a detached accessory structure and located on the same lot as the proposed or existing single-family home.

(B) An accessory dwelling unit may be permitted on a lot where a junior accessory dwelling unit exists or is proposed.

(2) One junior accessory dwelling unit may be permitted in conjunction with an existing or proposed single-family residential use.

(A) The junior accessory dwelling unit is located within the proposed or existing main building or attached garages, storage areas, or similar use.

(B) A junior accessory dwelling unit may be permitted on a lot where an accessory dwelling unit exists or is proposed.

(3) Number of accessory dwelling units on legal lots with existing or proposed multifamily dwelling units:

(A) Shall be permitted to construct at least one accessory dwelling unit within the portions of existing multifamily dwelling structures that are not used as livable space and shall allow up to twenty-five (25) percent of the existing multifamily dwelling units.

(B) Not more than two (2) accessory dwelling units are permitted that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling.

(b) Owner-occupied.

(1) The owner-occupancy requirement shall not be applied to any accessory dwelling unit.

(2) A junior accessory dwelling unit may be used as habitable space, only so long as either the remaining portion of the main dwelling unit, or the newly created junior accessory dwelling unit is occupied by the owner of record of the property, unless otherwise exempted by this section.

(A) Owner-occupancy for a junior accessory dwelling unit shall not be required if the owner is an agency, land trust, or housing organization.

(3) Deed restriction. The City shall require the recordation of a deed restriction if owner-occupancy is required pursuant to this section.

(A) Prior to issuance of a building permit, the property owner shall execute a deed restriction setting forth the owner-occupancy requirements, in a form and substance satisfactory to the director of community development and City Attorney's Office, which shall be recorded in the office of the County Recorder. The covenant shall also include the following terms and limitations:

(i) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, and shall not be subdivided in any manner that would authorize such sale or ownership.

(ii) A statement that the deed restriction may be enforced against future purchasers and the restrictions shall be bindings upon any successor in ownership of the property.

(iii) The junior accessory dwelling unit shall be a legal unit, and may be used as habitable space, only so long as the owner of record of the property occupies the premises.

(iv) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section, and if applicable the occupancy limitations of the California Health and Safety Code Section 17958.1.

(c) All local building and fire code requirements apply, as appropriate, to accessory dwelling units and junior accessory dwelling units.

(1) A certificate of occupancy shall not be issued for the accessory dwelling unit and/or junior accessory dwelling unit until the Building Official issues a certificate of occupancy for the main building.

(2) Prior to approval on properties with a private sewage system, approval by the County of San Diego Department of Environmental Health, or any successor agency, may be required.

(d) The accessory dwelling unit and/or junior accessory dwelling unit is not intended for sale, except in conjunction with the sale of the primary residence and property.

(e) The accessory dwelling unit and junior accessory dwelling unit may be rented separate from the primary residence, but only with a rental agreement and with terms greater than thirty (30) days.

(f) The accessory dwelling unit and/or junior accessory dwelling unit shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the premises. However, accessory dwelling units and/or junior accessory dwelling units shall be incidental, appropriate, and clearly subordinate to the primary use of the property.

(1) The accessory dwelling unit and/or junior unit shall be deemed to be a legal unit and permit such accessory use of property, which use is specifically identified by the accessory use regulations for the underlying zone; and shall allow such other accessory uses which are necessarily and customarily associated with, and are appropriate, incidental, and subordinate to, such principal residential use of the premises, except as otherwise provided by this subsection.

(A) An accessory dwelling unit and/or junior accessory dwelling unit shall be deemed an independent dwelling unit for the sole purpose of establishing a home occupation permit within the accessory dwelling unit and junior accessory dwelling unit, subject to the terms and limitations of Article 44. The limitations for home occupations shall be shared with the principal use and/or main building.

(B) No more than the quantities of animals specifically listed in Table 33-95(a) of Article 6 or Section 33-1116 of Article 57 is permitted on the premises. The limitations for animal keeping and household pets shall be shared with the principal use and/or main building.

(C) For all other accessory use of property, the accessory dwelling units and/or junior accessory dwelling unit shall be controlled in the same manner as the principal use within each zone, and shall not expand or be conveyed separately from the primary use. When provided by these regulations, it shall be the responsibility of the director of community development to determine if a proposed accessory use is necessarily and customarily associated with, and is appropriate, incidental, and subordinate to the principal use, accessory dwelling unit, and/or junior

accessory dwelling unit, based on the director's evaluation of the resemblance of the proposed accessory use and the relationship between the proposed accessory use and the principal use.

## **ARTICLE 70. ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS**

### **Sec. 33-1474. Development standards.**

(a) Accessory dwelling units shall be subject to all development standards of the zone in which the property is located, except as modified below. Notwithstanding, this section shall be interpreted liberally in favor of accessory dwelling unit construction. Furthermore, any property development standard provided herein that regulates the minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings shall permit at least an 850 square foot accessory dwelling unit to be constructed in compliance with all other local development standards and building code requirements.

(1) Number of bedrooms. For units eight hundred (800) square feet or less, a maximum of one (1) bedroom shall be permitted. Two (2) bedrooms may be permitted if the living area of the accessory dwelling unit exceeds eight hundred (800) square feet. No more than two (2) bedrooms shall be permitted.

(2) The accessory dwelling unit shall be provided with a separate exterior entry. The accessory dwelling unit shall not have direct, interior access into the main building.

(3) The accessory dwelling unit shall include separate bath/sanitation facilities and include a separate kitchen.

(4) Setbacks. Attached accessory dwelling units shall conform to the setback requirements of the underlying residential zone for the primary structure. Detached accessory dwelling units, other than those structures otherwise regulated within this section, may have a building height and setbacks as outlined for accessory residential structures of the underlying zone, except that a setback of no more than four (4) feet from the side and rear lot lines shall be required for a detached accessory dwelling unit. Roof eaves and other architectural projections for accessory dwelling units shall comply with Section 33-104.

(A) An accessory dwelling unit proposed to be constructed above an existing detached garage shall have a minimum five (5) foot setback to side and rear property lines.

(B) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit. The accessory dwelling unit may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress, subject to the terms and limitations of this article.

(5) Maximum unit size. The maximum accessory dwelling unit size is determined by the size of the lot as provided in Table 33-1474. The living area of the accessory dwelling unit

shall not exceed more than fifty (50) percent of the existing or proposed living area of the primary residence.

(A) If authorized by the underlying zoning, an accessory dwelling unit may be attached to a guest house provided that the overall combined floor area of the combined building or structure does not exceed seventy-five (75) percent of the main unit.

(B) When an accessory dwelling unit is attached to other accessory building(s) or structure(s), such as a garage, carport, or patio cover, the overall combined building area of the structure(s) shall not exceed the existing floor area of the main residence.

## **ARTICLE 70. ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS**

**Table 33-1474**

<b>Lot size</b>	<b>Maximum Permitted Accessory Dwelling Unit Size</b>
Less than 20,000 square feet	850 square feet
> 20,000 square feet	1,000 square feet

(6) Minimum unit size. The minimum permitted size of an accessory dwelling unit shall be the size of an efficiency unit as defined by the California Health and Safety Code Section 17958.1. The minimum unit size of the residential zone shall not apply to the accessory dwelling unit that is built on the same legal lot as the primary residence in compliance with all local development standards.

(7) Height. Accessory dwelling units shall conform to the height limits of the zone.

(8) Lot coverage. The combined area of all structures on a lot shall conform to the lot coverage limitation of the zone in which the property is located.

(b) Junior accessory dwelling units, as constructed within the existing or proposed single-family residence, shall be subject to all development standards of the zone in which the property is located, except as modified below.

(1) Number of bedrooms. A maximum of one (1) bedroom shall be permitted.

(2) The junior accessory dwelling unit shall be provided with a separate exterior entry and may have direct, interior access into the main building.

(3) A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(4) The junior accessory dwelling unit shall include an efficiency kitchen.

(5) Maximum unit size. The maximum junior accessory dwelling unit size shall not exceed 500 square feet in total floor area and shall be contained entirely within an existing or proposed single-family residence and may include an expansion of not more than 150 square feet beyond the same physical dimensions of the existing residence to accommodate ingress and egress.

(6) Minimum unit size. The minimum permitted size of a junior accessory dwelling unit shall be the size of an efficiency unit as defined by the California Health and Safety Code Section

17958.1. The minimum unit size of the residential zone shall not apply to the junior accessory dwelling unit that is built on the same legal lot as the primary residence in compliance with all local development standards.

(7) Except as provided herein, a junior accessory dwelling unit shall comply with all other zoning code standards, including but not limited to setbacks, building height, floor area ratio, and lot coverage.

(c) Parking requirements.

(1) Notwithstanding any other law, the city will not impose parking standards for an accessory dwelling unit or junior accessory dwelling unit.

(2) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, replacement parking is not required.

(d) Garage conversions and personal storage. If an existing garage is converted to an accessory dwelling unit or junior accessory dwelling unit and no replacement garage space is provided, a minimum of one hundred sixty (160) additional cubic feet of lockable, enclosable storage must be provided on the same lot to mitigate the loss of personal storage space.

(e) Design of the unit. Accessory dwelling units shall be designed to minimize the effect of the new accessory dwelling unit on adjacent properties.

(1) Any potential impacts shall be oriented to the primary residence. Access doors and entry for the accessory dwelling unit shall not be oriented to the nearest adjacent property line or create a second "front door" that is comparable to the main entrance. The design, construction, and presence of the accessory dwelling unit shall conform with the single-family character of the neighborhood.

(2) Proposed accessory dwelling units shall respect the residential scale and design character of existing homes. The accessory dwelling unit's color and materials must match those of the primary residence, maintaining compatibility with the neighborhood. The director shall review accessory dwelling unit applications to ensure the addition is integrated with the primary structure with respect to roof design, height, compatible materials, color, texture, and design details. If the accessory dwelling unit is an addition to a site with known historic resources or has been determined to have historic value by the director, all improvements shall retain the historical and/or architectural value and significance of the landmark, historical building, or historical district as specified by Section 33-1475. The improvements shall be compatible with and retain the texture and material of the primary building(s) and/or structure(s) or its appurtenant fixtures, including signs, fences, parking, site plan, landscaping and the relationship of such features to similar features of other buildings within an historical district.

(f) Addresses. The addresses of both units shall be displayed in such a manner that they are clearly seen from the street.

(g) Fire sprinklers. Accessory dwelling units and junior accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

## **ARTICLE 70. ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS**

### **Sec. 33-1475. Other regulations.**

(a) Historic Buildings.

(1) An accessory dwelling unit and/or junior accessory dwelling unit proposed for any lot that includes a building listed in the National Register of Historic Places, California Register of Historic Places, or the local historic inventory shall conform to the requirements for the historic structure.

(2) An accessory dwelling unit and/or junior accessory dwelling unit proposed for a property under a Mills Act Contract must comply with all Mills Act guidelines, including design conformance with the United States Secretary of the Interior Standards.

(3) An accessory dwelling unit and/or junior accessory dwelling unit proposed for any lot that includes a building listed in the National Register of Historic Places, California Register of Historic Places, or the local historic inventory are encouraged to comply with any historic preservation plans as may be approved by the City Council. Notwithstanding the foregoing, if the City Council acts to establish mandatory design standards for historically classified structures, the accessory dwelling unit and/or junior accessory dwelling unit shall conform to the mandatory standards.

(b) Guest house. An attached guest house may be converted to an accessory dwelling unit provided all provisions of this article and the building code and zoning code are met. A guest house and an accessory dwelling unit and/or a junior accessory dwelling unit may occur on the same lot provided the lot is over twenty thousand (20,000) square feet in area and provided the guest house does not contain kitchen facilities and is not rented. No more than one (1) accessory dwelling unit or no more than one (1) guest house are permitted on a lot. Nothing in this section shall be construed to prohibit the construction of an accessory dwelling unit and/or junior accessory dwelling unit in compliance with this article.

(c) The city may require a new or separate utility connection for any attached or detached accessory dwelling units that are not contained within the existing space of a single-family residence or accessory structure.

## **ARTICLE 70. ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS**

### **Sec. 33-1476. Existing nonpermitted accessory units.**

This article shall apply to all accessory dwelling units or junior accessory dwelling units which exist on the date of passage of the ordinance. All units which do not have a permit, or cannot receive a permit, upon passage of the ordinance codified herein shall be considered in violation and shall be subject to code enforcement action.

(a) Existing nonconforming units. Accessory dwelling units or junior accessory dwelling units that exist as of the effective date of this section that have previously been legally established may continue to operate as legal nonconforming units. Any unit that exists as of the effective date of this section, and has not previously been legally established, is considered an unlawful use, unless the director of community development determines that the unit meets the provisions of this section and a permit is approved and issued.

(1) Conversion of legally established structures. The conversion of legally established structures that exist as of the effective date of this section shall require that the unit meet the provisions of this Code. Any legally established waivers or nonconformity that exist on the effective date of this section may continue, provided that in no manner shall such waiver or nonconformity be expanded.

## **ARTICLE 70. ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS**

### **Sec. 33-1477. Application and procedure.**

The director of community development shall approve or disapprove an application for an accessory dwelling unit or junior accessory dwelling unit, ministerially, within sixty (60) days after receiving a complete application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the director may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the director acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the sixty (60) day time period shall be tolled for the period of the delay. The director may refer any application to the planning commission or historic preservation commission prior to the director's decision for conformance with the specific criteria outlined in section 33-1474, subject to an approval process that includes only ministerial provisions and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision.

## **ARTICLE 73. TEMPORARY USES, OUTDOOR DISPLAY AND SALE OF RETAIL MERCHANDISE**

### **Sec. 33-1530. Purpose.**

Short-term activities and events can enhance the city's lifestyle and provide benefits to area residents, businesses, and other community members through the creation of unique venues for expression, recreation, and entertainment that are not normally provided. However, the city council recognizes that short-term activities and events, if unregulated, can have an adverse effect on the public health, safety and welfare due to noise, traffic, safety, and health hazard impacts. The purpose of this article is to authorize limited and/or short-term activities or events

to which public may be invited (with or without charge) and set forth reasonable regulations by establishing a process for permitting short-term activities and events. Temporary activities or events may occur indoors or outdoors, on improved or unimproved property, and may include outdoor displays, temporary outdoor sales, temporary uses, and special events. Such uses are appropriate when regulated as set out herein.

This article also encourages the economic vitality of public property, facilities, or parks; sidewalks, streets, or other areas of the public right-of-way; and developed or undeveloped private property. This article also affords increased merchandise visibility through the establishment of standards for the outdoor display of special interest retail items in an ongoing manner, and the allowance of temporary parking lot sales for other retail items as a limited special use. The safe and orderly outdoor display of merchandise can be beneficial by attracting interest, adding character, and increasing pedestrian traffic to a commercial area which can extend economic benefits to all commercial enterprises within that area.

## **ARTICLE 73. TEMPORARY USES, OUTDOOR DISPLAY AND SALE OF RETAIL MERCHANDISE**

### **Sec. 33-1531. Definitions.**

(a) *Outdoor display* refers to the outdoor display of retail goods on a daily basis during business operating hours in a manner which is incidental to and a part of the operation of the adjacent indoor use. The merchandise would be removed at the close of business and securely stored inside the building.

(b) *Temporary outdoor sales* refers to outdoor sales events or promotions of a limited duration and frequency. Events include, but are not limited to, weekend parking lot sales, tent sales, and seasonal or promotional events.

(c) *Temporary uses* are activities, which by their nature are non-recurring, and are beneficial to the public for a limited and/or specific period of time.

(d) *Special events* mean the temporary use of public property, facilities, parks, sidewalks, streets, or public right-of-way as and that as defined in Section 16-201 of Article 4 in Chapter 16 of the Municipal Code.

## **ARTICLE 73. TEMPORARY USES, OUTDOOR DISPLAY AND SALE OF RETAIL MERCHANDISE**

### **Sec. 33-1532. Permitted zones.**

(a) The outdoor display of retail merchandise shall be permitted as an accessory use subject to the approval of an outdoor display permit as discussed in Section 33-1534 in the commercially



zoned districts of the city (CG, CP, CN, and existing PD-C zones, and to the extent permitted in the South Centre City Specific Plan and East Valley Parkway Area Plan).

(b) Temporary outdoor sales are permitted in the aforementioned zones and specific and area plans subject to the approval of a temporary use permit as discussed in section 33-1534.

(c) Other temporary uses in various residential, commercial, and industrial zoning districts, subject to the approval of the permit required under Section 33-1534.

(d) Special events permitted in the locations as designated by Article 4 of Chapter 16.

## **ARTICLE 73. TEMPORARY USES, OUTDOOR DISPLAY AND SALE OF RETAIL MERCHANDISE**

### **Sec. 33-1533. Permitted uses and permit type.**

(a) Outdoor display.

(1) The following items are acceptable for outdoor display if permitted by the applicable zone in which the associated business is located.

- (A) Antiques
- (B) Artwork
- (C) Automotive supplies (gas stations only)
- (D) Bicycles
- (E) Books
- (F) China and glassware
- (G) Clothing
- (H) Crafts
- (I) Firewood
- (J) Flowers and plants
- (K) Food sales
- (L) Hardware
- (M) Gardening and landscape equipment and supplies
- (N) Jewelry
- (O) Motorcycles and scooters
- (P) Newspapers and magazines
- (Q) Sporting goods
- (R) Tires
- (S) Propane tank exchange units
- (T) Retail vending machines.

(2) The director of community development is authorized to permit additional retail items to be displayed outdoors if it can be determined that the use is consistent with the purpose of this article.

(3) All outdoor displays shall be subject to the issuance of an outdoor display permit. Prior to the issuance of an outdoor display permit, an application shall be submitted and approved

by the planning department. Outdoor display permits shall be valid for a maximum of one (1) year from the date of issuance; provided, that the permit shall be extended automatically for an additional year unless written notice of termination is given to the permittee no less than thirty (30) days prior to the expiration of the permit.

(b) Temporary outdoor sales. All retail items proposed for temporary outdoor sales will be reviewed for consistency with the purpose of this article on a case-by-case basis through the temporary use permit process as discussed in section 33-1536.

(1) Merchandise displayed or sold must be customarily sold on the premises. All such sales shall be conducted by a business located on and conducting business within a building on the property upon which the temporary use is proposed.

(2) All temporary outdoor sales shall be subject to the issuance of a temporary use permit. A temporary use permit can be issued for multiple events on the same site for the length of time specified under section 33-1534(c)(1) and shall be valid for no longer than one (1) year from the date of issuance; provided, that the permit shall be extended automatically for an additional year unless written notice of termination is given to the permittee no less than thirty (30) days prior to the expiration of the permit.

(c) Temporary uses as permitted and regulated by this article.

(1) The following some short-term activities and events can be approved with a temporary use permit.

(A) Amusement, entertainment or recreation activities or events, often upon payment of a fee, or nonprofit or government entity-sponsored, including concerts, carnivals, attractions, circuses, fairs, festivals, and amusement rides.

(B) Animal displays.

(C) Historical re-enactments.

(D) Special temporary seasonal sales such as Christmas trees, wreaths, pumpkin retail sales or similar sales are limited to the period of time around the holiday.

(E) Temporary health care structures.

(F) Temporary modular school classrooms.

(G) Temporary structures and tents for social or religious groups for services.

(2) Some short-term activities and events can be approved through the issuance of a special temporary use permit or agreement, as provided herein.

(A) Community gardens with an agricultural operations permit.

(B) Donation bins through an administrative permit, subject to Section 33-694.

(C) Off-site staging areas or off-site storage yards with a city agreement.

(D) Real estate model homes and/or sales offices with a model home permit/agreement.

(E) Roadside sales of agricultural products with an agricultural operations permit, subject to Section 33-1534(e).

(F) Special events on public property as defined by Article 4 of Chapter 16 with a special event permit.

(3) Some short-term activities and events can be authorized without additional or special zoning clearances (i.e. otherwise exempt from needing a temporary use permit or special temporary use permit or agreement).

(A) Activities of an organization which is receiving governmental grant funds to be used for public or community purposes when holding an event less than three (3) days in duration for the purpose of raising funds to supplement the governmental grant funds and to support the public or community purpose for which the grant funds were received.

(B) City, state, federal, school district, community college district or other public agencies' event when conducted wholly on that agency's public property or with the consent of another public property owner and which will not require public road closures or significantly impact on traffic on adjacent public streets.

(C) Garage or yard sales conducted at the same residential location more than four (4) times per year, subject to Section 16-116 of Article 2 in Chapter 16 of the Municipal Code.

(D) Groundbreaking, ribbon-cutting, or similar initiation event for an active or completed construction project for not more than one (1) day conducted wholly on the same site as the project.

(E) Homeowners association events for not more than one (1) day conducted wholly in common areas within the boundaries of the association and which do not impact public streets or other public facilities.

(F) On-site staging of construction equipment or trailers necessary for a specific aspect of a construction project. On-site storage yards shall screen storage of construction equipment, vehicles, and/or excavated materials to the extent practicable for the duration of the construction project, not to exceed fifteen (15) calendar days before project commencement and fifteen (15) days after task completion. A copy of the active construction permit, or permit number, is required.

(G) Outdoor fire sales (duration not to exceed three (3) calendar days) for a business with an active business license, for the site where the fire occurred.

(H) Portable on-site storage and cargo containers, subject to Article 36.

(I) Temporary dumpsters for the sole purpose of collecting and removing refuse or excavated material generated from the same property of the dumpster location, associated with an active grading or building permit. A copy of the active construction permit, or current permit number, is required.

(4) Other temporary uses that are not specifically listed in the zoning code. The director of community development at his/her discretion may determine whether such use should be authorized and regulated by this section. This determination shall be based on the similarities and differences with those listed uses and an assessment of the proposed temporary use's compatibility with the zoning district and the surrounding land uses. Those uses and activities which do not fit within the criteria for a temporary use permit shall be addressed through a Plot Plan, Minor Conditional Use Permit, or other type of permit identified by the Zoning Code; or be expressly prohibited as an authorized land use activity.

(5) Approval of any type of permit addressed within this article that authorizes a temporary use for a specific time period does not waive the permit holder from obtaining other city, state, or federal permits or licenses, which may also be required as determined by the appropriate regulatory agency.

## **ARTICLE 73. TEMPORARY USES, OUTDOOR DISPLAY AND SALE OF RETAIL MERCHANDISE**

### **Sec. 33-1534. Development standards.**

All short-term activities, events, and outdoor displays of retail merchandise and temporary outdoor sales shall be subject to the following development standards:

(a) Outdoor displays on private property.

(1) The outdoor display area shall not extend beyond the actual frontage of the associated commercial use. Displays shall be identical and accessory to items sold indoors. Displays shall be temporary and removed at the end of each business day. A display/use may, on a case-by-case basis, be displayed permanently outdoors, as determined by the director. The director may refer a request for a permanent display to the planning commission for review and comment.

(2) Parking lot circulation and all required parking spaces shall remain unobstructed at all times. Private sidewalks, courtyards, or entry areas may be utilized for display provided a minimum four (4) foot wide pedestrian area remains clear and unobstructed and all fire, building and handicapped access requirements are met. See subsection (b) of this section for clearance requirements for displays within the right-of-way.

(3) All displays shall be located in such a manner so that vehicular sight distance is not impeded to the satisfaction of the engineering department.

(4) Display and sale of merchandise is permitted only by the tenant of an existing commercial development on the same site. Outdoor displays are not permitted on vacant property.

(5) No sales or display of merchandise from cars, trucks, or any other vehicle is permitted. Vending from pushcarts may be permitted subject to compliance with all development standards in this section. Specialized food sales from pushcarts either on private property or within the public right-of-way shall be subject to applicable code requirements.

(6) All signage associated with an outdoor display shall be as approved pursuant to an outdoor display permit and shall be limited to a maximum of four (4) square feet per commercial tenant.

(7) All displays shall be located within hardscape areas. No merchandise may be displayed in any landscaped area, or be situated in such a manner as to be detrimental to any existing landscaping on the site.

(8) All food sales shall be correlated with food that is customarily sold on the same premises and be conducted in compliance with health department regulations.

(9) All exterior lighting utilized in conjunction with outdoor displays shall conform to the requirements of Article 35, Outdoor Lighting.

(10) No electricity shall be utilized, nor any noise generated by an outdoor display.

(b) Outdoor displays within the public right-of-way.

(1) Display of merchandise within the public right-of-way is permissible only within the downtown retail core district subject to approval of an encroachment permit (an approved copy must be submitted concurrently with the application for an outdoor display permit), proof of insurance, and compliance with all development standards in this section.

(A) Proof of insurance can be satisfied by documentation of an insurance policy issued by an insurance company licensed to do business in the State of California, protecting the licensee and the city from all claims for damages to property and bodily injury, including death, which may arise from operations in connection with the display activity. Such insurance shall name as additionally insured the city for an amount of three hundred thousand dollars (\$300,000.00) or more and shall provide that the policy shall not terminate or be canceled prior to the expiration date without thirty (30) days' advance written notice to the city.

(B) The merchandise display shall be permitted only within the four (4) feet of public right-of-way nearest the property line, and parallel to the curb in front of the business to which it pertains. The merchandise display shall be limited to fifty (50) percent of the lineal length of the associated commercial frontage or sixty (60) square feet whichever is less.

(C) In front of the displayed merchandise there shall be at all times a minimum four (4) foot wide sidewalk area clear of any obstructions and in conformance with all fire, building and handicapped access requirements.

(D) The merchandise is not permitted within any landscaped area of the right-of-way.

(E) All merchandise shall be located in such a way that it does not block the sight distance of the streets to the satisfaction of the engineering department. Any merchandise found obstructing the sight distance will be subject to removal by the city and the encroachment permit canceled.

(F) All merchandise items and displays should have no sharp edges or corners.

(G) The city also reserves the right to remove merchandise which causes any interference with vehicular traffic or pedestrian traffic, or in the event of any emergency situation or if the merchandise interferes with any work that is to be performed upon the street by or on the behalf of the city or a public utility.

(H) All merchandise and display racks shall be removed from the public right-of-way at the end of business hours.

(2) No sales or display of merchandise from cars, trucks, or any other vehicle is permitted. Vending from pushcarts may be permitted subject to compliance with all development standards in this section. Specialized food sales from pushcarts either on private property or within the public right-of-way shall be subject to applicable code requirements.

(3) All signage associated with an outdoor display within the public right-of-way shall be as approved pursuant to an outdoor display permit and shall be limited to a maximum of two (2) square feet per commercial tenant.

(4) All displays shall be located within hardscape areas. No merchandise may be displayed in any landscaped area, or be situated in such a manner as to be detrimental to any existing landscaping on the site.

(5) All food sales shall be conducted in compliance with health department regulations.

(6) All exterior lighting utilized in conjunction with outdoor displays shall conform to the requirements of Article 35, Outdoor Lighting.

- (7) No electricity shall be utilized, nor any noise generated by an outdoor display.
- (c) General development standards for other temporary uses and outdoor sales.
- (1) Short short-term activities and sales events at anyone (1) location or commercial center shall not exceed three (3) calendar days during any three (3) month period and are subject to the issuance of a temporary use permit.
- (2) Some short-term activities of the type as described herein will be allowed to recur on a property for longer than that provided in subsection (c)(1):
- (A) Amusement, entertainment, or recreation activities and events for up to ten (10) calendar days within a six (6) month period.
- (B) Community gardens, for the duration as stated on the agricultural operations permit.
- (B) Donation bins in commercial zoning districts, excluding specific plan areas, for the duration as stated on the administrative permit.
- (C) Off-site staging areas, for the duration as stated on the off-site staging area agreement/permit.
- (D) Real estate model homes and/or sales offices, for the duration as stated on the model home permit.
- (E) Roadside sales of agricultural products in residential zoning districts for up to forty-five (45) days within a three (3) month period in the residential zoning districts, pursuant to Section 33-1534(e).
- (i) Exception in R-A and R-E Zones. Pursuant to Article 6 of the Zoning Code, roadside sales are a permitted as an accessory use in the R-A and R-E Zones. As such, sales may be continued beyond the forty-five (45) day limitation on the parcel of land on which such produce is grown in the R-A and R-E Zones. Such authorization shall be made by approval of an agricultural operations permit and design review permit provided that the principal use of said parcel is agricultural or plotted for community gardening and the use is consistent with the terms and limitations of Section 33-1534(e).
- (F) Special temporary seasonal sales for up to forty-five (45) days within a three (3) month period.
- (G) Temporary health care structures for up to sixty (60) days within a twelve (12) month period only by the tenant of an existing commercial development on the same site.
- (H) Temporary modular school classrooms for sixty (60) days within a twelve (12) month period as a temporary use. A time extension may be provided through the approval of a Plot Plan or Conditional Use Permit (based on the use allowance of the underlying zoning district).
- (I) Temporary structures and tents for social or religious groups for services for up to ten (10) days within a six (6) month period.
- (3) Location of each event shall be restricted to private property only and shall not adversely impact parking lot circulation. Events shall not be permitted within parking areas containing less than twenty (20) spaces. A maximum of twenty (20) percent of the required parking spaces for the sponsoring business, or five (5) percent of the spaces within a commercial center containing multiple tenants may be utilized for the display and sale of merchandise. No encroachment into the public right-of-way shall be permitted.

(4) Any structure used in conjunction with a sales event shall be subject to all building, engineering, and fire department requirements.

(5) All merchandise and/or temporary structures shall be set back a minimum of five (5) feet from any public right-of-way or driveway.

(6) All exterior lighting utilized in conjunction with a temporary sales event shall conform to the requirements of Article 35, Outdoor Lighting.

(7) All food sales shall be conducted in compliance with health department regulations.

(A) Through the approval and issuance of a temporary use permit, some amusement, entertainment, or recreation attractions or events; and/or special temporary seasonal sales events may accommodate a food truck or mobile food facility as defined by Article 7 of Chapter 16 of the Municipal Code. If the mobile food facility is authorized by this section, the mobile food facility must be parked in a legal parking space, or other area subject to approval of the director, and must not occupy the premises past 10:00 p.m. Not more than one (1) mobile food facility and one (1) operator is permitted to park on the premises, for the duration of time authorized by this section and for the period of time provided by the permit. Any mobile food facility or mobile food facility operation or activity not exercised within the days and duration specified on an approved temporary use permit shall automatically forfeit the time, day, and duration not utilized and/or become void.

(8) All businesses participating in a temporary outdoor sales event must have a valid City of Escondido business license to conduct business at the site of the event. Each participating business or entity shall be listed on the permit application prior to approval of the permit.

(9) All noise/sound generated by a temporary outdoor sales event shall conform to the noise level limits established in the noise ordinance (Ord. No. 90-08) for commercial zones. If an event is located adjacent to a residential zone, all noise generated shall conform to the noise level limits of the affected residential zone.

(10) Signs for temporary outdoor sales are permitted provided adequate detail is shown on the temporary use permit application to determine that the following standards are met:

(A) Signs shall be limited to flags, pennants and streamers, banners, or other similar devices.

(B) Large inflatable displays must be ground-mounted and may not exceed thirty (30) feet in height.

(C) One (1) banner is allowed for each street frontage and each banner shall not exceed sixty (60) square feet in area.

(D) No event signage (of any type) may be displayed on or attached to any public property including telephone or utility poles, traffic control signs or devices, street lights or other structures located on public property without the express written consent of the City of Escondido.

(E) No signage of any type shall interfere with or restrict vehicular or pedestrian access or visibility.

(d) Outdoor retail vending machines. Outdoor retail vending machines are allowed in all commercial zones subject to the following standards:

(1) Retail vending machines shall not sell, store, or dispense anything other than the commercial products, merchandise, food or beverages permitted by the underlying zone or authorized by the Escondido Municipal Code.

(2) Retail vending activities may be established only in conjunction with an otherwise allowed and authorized principal land use activity and may not exceed a maximum of two (2) machines per site or occupy not more than twenty (20) feet of the wall facing the street or access drive.

(3) Retail vending machines shall be located along the face of a building or flush against a structure designed to accommodate them and be located on the site in a manner which will ensure compatibility with surrounding uses. The machine(s) shall not be within ten (10) feet of an entranceway to any business open to the public nor block any store window.

(4) All machines shall be visible in well-lit areas from access drives or public streets and be maintained in a litter free condition.

(5) Retail vending machines shall not obstruct private pedestrian walkways. A minimum four-(4) foot-wide pedestrian area remains clear and unobstructed and all fire, building and handicapped access requirements shall be kept clear of obstructions, or more if pedestrian traffic volume warrants.

(6) Retail vending machines are not allowed on public sidewalks, alleys, drive-aisles, or within the public right-of-way.

(7) The business owner or operator of said principal land use activity is responsible for the accessibility, maintenance, appearance, and safety in regards to retail vending.

(8) Business owner or operator shall not utilize or permit the utilization of any device which produces loud noise, or use and operate any loudspeaker, public address system, radio, sound amplifier, or similar noise creating device to attract the attention of the public, subject to the noise restrictions of the underlying zone.

(e) Roadside Sales of Agricultural Products. Operation of a stand, by the owner/occupant of the premises, for the display and sale of agricultural products primarily produced on the premises. This category includes flower sales (non-mobile), vendor stands (non-mobile), and seasonal sales of agricultural products for limited periods of time, which at no time may be conducted in the public right-of-way. All roadside sales of agricultural products covered by this article shall be submitted on an agricultural operations permit application form obtained from the Planning Division and shall be accompanied by a nonrefundable fee.

(1) Location and size requirements.

(A) In the R-A and R-E Zones, the ground coverage of the stand shall not exceed 300 square feet, and it shall be set back from the street or highway right-of-way line a distance of at least 20 feet.

(B) The stand shall not exceed an area of 200 square feet in the R-1, R-2, R-3, R-4, and R-5 Zones. The stand shall not be closer than 24 feet to any street or highway.

## **ARTICLE 73. TEMPORARY USES, OUTDOOR DISPLAY AND SALE OF RETAIL MERCHANDISE**

**Sec. 33-1535. Reserved**



## **ARTICLE 73. TEMPORARY USES, OUTDOOR DISPLAY AND SALE OF RETAIL MERCHANDISE**

### **Sec. 33-1536. Application and determination.**

(a) All permit applications covered by this article shall be submitted to the planning department in a form provided by the planning department. The application form and content required may be modified as determined by the director for a recurring type of application request so that the permit can be renewed by providing the same documentation as done with the original permit issuance.

(1) Fee. A nonrefundable fee, as set forth in the schedule of service costs approved by city council resolution, reasonably calculated to reimburse the city for its reasonable and necessary costs in receiving, processing, and reviewing applications for permits to hold a short-term activity or event must be paid to the City of Escondido when an application is filed.

(A) If the application includes the use of any city facility and/or property, or if any city services are required for the special event, the applicant must file a special event permit in accordance with agree to pay for the services in accordance with a schedule of service costs approved by city council resolution.

(B) Third Party Fee. If the permittee provides for or allows third party vendors to participate in the special event, the permittee shall pay an additional nonrefundable fee, as set forth in the schedule of service costs approved by city council resolution, reasonably calculated to reimburse the city for its actual and necessary costs in receiving, processing and reviewing the application that includes third party vendors. The amount of the additional fee shall be established by resolution of the city council and shall be based on whether the application is for a major or minor event.

(b) City staff shall review outdoor display permit and temporary use permit applications, or and any other permit prescribed by this article, for planning and zoning compliance.

(c) Applications for outdoor display permits and temporary use permits, or any other permit prescribed by this article, shall be made at least thirty (30) days in advance of the event. Within twenty (20) days from the submittal of a complete application, staff may approve, conditionally approve or deny the proposed application. Any aggrieved party may appeal a decision of the staff to the planning commission using the provisions outlined in Division 6 of Article 61 of this chapter.

(1) The City shall require evidence that all related permits and approvals, such as fire prevention, health and sanitation, police, animal regulations, and business licenses, have been obtained for each outdoor display and temporary use permit or any other permit prescribed by this article. Under the authority of the California Health and Safety Code, the County of San Diego Environmental Health Department has the responsibility to regulate the selling of food.

(2) The application shall be accompanied by:

(A) A map showing the area on which the event will be conducted.

(B) A description of the event for which the permit is requested.

(C) The name(s) of the organization or business and principals within the organization or business applying for the permit.

(D) An estimate of the number of persons who will attend, all vendors who are anticipated to operate at the event, and a description of hours, noise, security, trash collection and disposal, occupant loads, lighting, sanitary facilities, traffic control, dust control, and/or other related concerns that are correlated with the proposed use.

(E) Such additional information as may be required by the director to determine whether the event will be compatible with the surrounding uses, satisfy applicable laws, and to be consistent with the public health, safety, and welfare.

(F) Written assurance that all conditions of the permit shall be complied with, and that in the event the permittee fails to perform any obligation covered by the conditions or terms and limitations of this ordinance, the owner of the property shall perform such obligations upon notice of violation. Property owner and permittee are subject to enforcement and citation, subject to Section 33-1537.

(3) The City may require building and/or engineering design of the temporary buildings, certification of the structure, mechanical, electrical, and other equipment and devices.

(4) The police chief may determine whether and to what extent additional police protection, civilian traffic control personnel, private security and volunteer staff are reasonably necessary to ensure traffic control and public safety for the short-term activity, event, outdoor display and temporary use. The police chief will base this decision on the size, location, duration, time and date of the permitted use, the expected sale or service of alcoholic beverages, the number of streets and intersections blocked off from use by the public, and the need to detour or preempt pedestrian and vehicular travel from the use of public streets and sidewalks. The police chief shall provide an estimate of the cost of extraordinary city services and equipment required in writing, if police protection and/or other emergency and safety services or equipment is deemed necessary for the permitted use. The applicant will be billed for services after the event.

(d) Appeal. Appeals from the decision of the director shall be made pursuant to Article 61. The decision of city staff, or on appeal the planning commission, to grant an outdoor display permit or a temporary use permit or other permit prescribed by this article shall be made based on the following finding:

(1) The proposed short-term activity, event, or outdoor display or temporary outdoor sales event conforms with all development standards for said events and will not negatively impact adjacent commercial or residential areas.

(2) The nature of the proposed use is not detrimental to the public health, safety, or welfare of the community.

(e) Conditions. Failure to comply with the following requirements and conditions shall be cause for revocation of the permit and enforcement under this chapter.

(1) Any permit prescribed by this article not exercised within the duration specified or withdrawn by the applicant shall automatically become void.

(2) Expiration. Each valid permit, unless earlier revoked, shall expire and become null and void at the time specified in the permit. An extension of outdoor display permits and temporary use permits or any other permit prescribed by this article cannot be granted; a new use

for a different timeframe requires a new application. If the use is discontinued or abandoned, the site must be cleaned up within seven (7) calendar days of the discontinuance or abandonment.

(3) Transfer. No permit shall be transferrable to another location or to another permittee.

(4) Posting. The permit (along with any other required permits) shall be posted on the premises where the event is conducted and/or a copy of the permit must be in the possession of the person responsible for the event at all times while it is occurring.

(5) Permittee agrees to waive and release the City of Escondido and its officers, agents, employees and volunteers from and against any and all claims, costs, liabilities, expenses or judgments including attorney's fees and court costs arising out of the activities of this temporary use or event or any illness or injury resulting therefrom, and hereby agree to indemnify and hold harmless the City of Escondido from and against any and all such claims, whether caused by negligence or otherwise, except for illness and injury resulting directly from gross negligence or willful misconduct on the part of the city or its employees.

(6) The director may attach whatever additional conditions and limitations necessary to protect public health, safety, and welfare that the director determines are reasonably required and roughly proportionate to the proposed use, activity, or event in order to make the finding that the characteristics of such are compatible with the uses in the surrounding area. Such conditions may include, but not be limited to, items that address the following topic areas: hours, noise, security, trash collection and disposal, occupant loads, lighting, sanitary facilities, traffic control, dust control, and/or other related concerns.

## **ARTICLE 73. TEMPORARY USES, OUTDOOR DISPLAY AND SALE OF RETAIL MERCHANDISE**

### **Sec. 33-1537. Violations.**

(a) Any person, firm or corporation violating any of the provisions of this article, or disregarding any condition or term imposed by the planning department, or on appeal, the planning commission, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding one thousand dollars (\$1,000.00) or imprisonment in the county jail for a period not exceeding six (6) months, or by both such fine and imprisonment. Each separate offense, or each day on which an ongoing offense is committed shall be a separate violation. Any violation as described in this section shall be subject to immediate revocation of the permit to display outdoors or conduct a temporary outdoor sales event.

(b) The police chief may revoke a special event permit without prior notice upon violation of the permit or when a public emergency arises where the police resources required for that emergency are so great that deployment of police services for the special event would have an immediate and adverse effect upon the health, safety, and welfare of persons or property. Written notice of the revocation setting forth the reasons therefor, shall be hand delivered or mailed to the applicant at the address provided on the application

(c) Reinstatement. When a permit has been revoked, it may not be reinstated. A new Temporary Use Permit application for the same activity shall not be approved until the causes of revocation have been corrected and all costs incurred by the City have been paid as estimated by the building official.