

ORDINANCE NO. 2020-23

AN UNCODIFIED ORDINANCE OF THE CITY  
COUNCIL OF THE CITY OF ESCONDIDO,  
CALIFORNIA, FOR THE CORONAVIRUS  
("COVID-19") EMERGENCY BUSINESS  
RECOVERY STRATEGY

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, new daily positive COVID-19 case counts, total test-positive cases, and per capita totals slowed in late spring 2020. Because of the downtrend movement in

new cases, there was growing interest to support modifying the statewide Stay-at-Home Order to allow more businesses that had been closed to re-open. On May 7, 2020, the State Public Health Officer announced that statewide data supported gradually re-opening commercial retail, industrial manufacturing, and logistics businesses; and

WHEREAS, pursuant to California Health and Safety Code Section 120175.5(b) and the Order of the Health Officer and Emergency Regulations issued by the Health Officer of the County of San Diego, as updated on August 8, 2020 (“County Public Health Order”), all governmental entities in San Diego County are required to take necessary measures within the government entity’s control to ensure compliance with the County Public Health Order and reduce the risks of community spread of COVID-19; and

WHEREAS, given the extraordinary health threat caused by COVID-19, the City Council adopted an Urgency Ordinance (Ordinance No. 2020-12) on May 20, 2020, and enacted temporary business relief measures and public health and safety protections related to statewide recovery and re-opening efforts in Escondido due to COVID-19, and to prevent or lower the risk of COVID-19 transmission; and

WHEREAS, individuals with COVID-19 may be asymptomatic, and physical distancing and modified business operations, such as using outdoor spaces and providing curbside pickup, takeout, and delivery, are critical and necessary for safely reopening businesses, preventing or mitigated a future spike in transmission, and helping to ensure the safety and protection of individuals participating in such business operations. Many businesses and employers need additional guidance and support in response to stabilizing operations for commercial retail, industrial manufacturing, and

logistics businesses. Furthermore, the patchwork of constantly evolving plans, health orders, and precautions recommended by health authorities has caused many local businesses and employers in Escondido to experience sudden and unexpected revenue or income loss from temporary business closures and/or modified operations; and

WHEREAS, in light of the on-going emergency regarding the COVID-19 pandemic, the City Council extended Urgency Ordinance No. 2020-12 on August 19, 2020, for an additional ninety (90) days; and

WHEREAS, the existing conditions that prompted the Director's and City Council's Proclamation of Local Emergency continue to exist. The underlying economic and health circumstances supporting the Urgency Ordinance(s) are equally true as of this date and as set forth in the above recitals, which are incorporated herein by reference.

NOW, THEREFORE, IT IS HEREBY RESOLVED and the City Council of the City of Escondido DOES HEREBY ORDAIN as follows:

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

SECTION 2. The existing conditions that prompted the Director's and City Council's Proclamation of Local Emergency continue to exist. In the interest of protecting the public health and safety, and minimizing and reducing the spread of the transmission

of COVID-19 and loss of life, property, and essential public services, the City Council finds a compelling need to establish a series of temporary business relief measures and otherwise mitigate the adverse effects of COVID-19 and the gradual re-opening process among all residents, businesses, and visitors of Escondido.

SECTION 3. California Environmental Quality Action ("CEQA"). Public Resources Code ("PRC") Section 21080(b)(4) and CEQA Guidelines Section 15269(c) (14 C.C.R. Section 15269(c)) exempt from CEQA "specific actions necessary to prevent or mitigate an emergency." PRC Section 21060.3 defines emergency as "a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services." The COVID-19 pandemic constitutes a "sudden, unexpected occurrence," whereby the public health effects of the pandemic were felt in the City, County, and State suddenly and unexpectedly. Governmental efforts to mitigate the effects of the pandemic, such as closures and the Stay-at-Home order, also occurred suddenly, and these mitigation efforts, despite their necessity in light of the pandemic, have significantly and adversely impacted businesses, business owners, employees, and livelihoods, including having significant economic repercussions. Similarly, the pandemic and its mitigation efforts have affected the City's delivery of its essential public services. Although the State and local authorities are evaluating the feasibility and scope of economic recovery and "re-opening" efforts, and such efforts are constantly evolving, those authorizations will not serve to fully mitigate the pandemic's effects on businesses, the City, and the public, and it is likely that businesses and essential City services will not be able to survive, or public health to be negatively impacted, without the City's implementation of the proposed

amendments to the Escondido Zoning Code. Further, the measures are necessary to comply with continued specific public health requirements associated with the pandemic, including social distancing. Thus, the COVID-19 pandemic is an emergency as defined in PRC Section 21060.3, and the recovery plan outlined herein is necessary to mitigate that emergency. For these reasons, the Urgency Ordinance is exempt from CEQA pursuant to PRC section 21080(b)(4) and CEQA Guidelines Section 15269(c).

As separate and independent bases, the amendments to the Escondido Zoning Code are categorically exempt from environmental review pursuant to CEQA Guidelines Section 15304(e) for minor alterations to land for temporary uses that have negligible or no permanent effects on the environment, CEQA Guidelines Section 15311(c) for the construction of or replacement of minor structures and temporary use items accessory to existing commercial, industrial, or institutional facilities.

SECTION 4. During this state of Local Emergency, the City Council hereby adopts the following temporary business relief measures:

- 1) **Temporary Sign Limits.** Section 33-1396(a) of Article 66 of the Escondido Zoning regulates the time, place, and manner of temporary signs, and limits these special event signs for a total duration of not more than sixty (60) days in a calendar year. Section 33-1396(a) of Article 66 of the Escondido Zoning Code regulates temporary banner signs including an allowance for seventy-two (72) square feet and only one (1) special event banner is allowed for each street frontage, except for individual in-line shops in commercial centers where one (1) banner is allowed for each building face

fronting on a parking lot or a street. The foregoing limitations of temporary banner signs are hereby provisionally modified to allow for the following:

- a. One (1) banner sign of up to seventy-two (72) square feet and one (1) additional banner sign of up to thirty-two (32) square feet for each street frontage or each building face fronting on a parking lot or a street.

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

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

Temporary signs specifically allowed by this Ordinance are exempt from and would not be counted towards the sixty (60) day calendar limit. An act to establish, erect, or maintain temporary banner, temporary A-frame signs, or wayfinding or directory ground mounted signs, as allowed by this Ordinance, shall be exempt from the application and sign permit

requirements but must be in conformance with all other requirements of this section. Except as modified by this section, the provisions, terms, and limitations of Article 66 shall remain in full force and effect, including any timeframe or permit requirements with respect to signs not otherwise described herein.

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

- a. No wine or beer shall be sold with an alcohol content of greater than fifteen (15) percent by volume.
- b. The sale of alcoholic beverages for off-site consumption shall only be made to patrons who purchase meals as defined in Business and Professions Code Section 23038.
- c. All alcohol delivery persons shall be an employee of the restaurant who is twenty-one (21) years of age or older. Drivers delivering alcohol to said patrons shall document that the customer is twenty-one (21) years of age or older. No individual under twenty-one (21) years of age, or without proper identification, shall be served or sold alcohol.
- d. Restaurants shall comply with the conditions contained within the ABC’s Notice of Regulatory Relief.

e. That the suspension of local permit restrictions on ABC licensed restaurants shall be effective during the Urgency Ordinance's effective period and/or shall last until the withdrawal of ABC Notice of Regulatory Relief, whichever occurs first.

- 3) **Carry-Out Zones Established.** The City Council desires to convert underutilized parking spaces into more functional spaces and to include use of parking space(s) or portion of the parking lane(s) as described herein. The City Council hereby authorizes the reservation of no more than four (4) existing, striped parking space on the same premises for curbside pick-up, restaurant carry-out zones, and/or other drop-off and pick-up related uses and activities. The City Council furthermore authorizes the temporary use of no more than two (2) existing, striped parking spaces in the public street immediately adjacent to a businesses or employer, if any, for curbside pick-up, restaurant carry-out zones, and/or other drop-off and pick-up related uses and activities to the fronting private property. Temporary use of on-street parking spaces shall be limited to streets with speed limits of thirty (30) mph or less and shall be coordinated with neighboring businesses and business associations.
- 4) **Accessory Retail Use in Industrial Areas.** Retail accessory uses and structures are permitted in the industrial zones, provided they are incidental to and do not substantially alter the character of the permitted principal use or structure. Said regulations, described in Section 33-565 of Article 26 of the Escondido Zoning Code, limit accessory retail use to fifteen (15) percent

of the gross building square footage. The foregoing limitation is hereby provisionally modified from fifteen (15) percent to fifty (50) percent. Henceforth, no additional parking associated with this expanded accessory use authorization shall modify or change any on-site parking requirements. Except as modified by this section, the provisions, terms, and limitations of Article 26 shall remain in full force and effect.

**5) Outdoor Activities on Private Property (in Non-Parking Areas).**

Authorization of temporary outdoor display and sale events in commercially zoned districts of the City, described in Sections 33-1533(b) and 33-1534(c)(1) of Article 73 of the Escondido Zoning Code, are hereby provisionally modified and henceforth to allow a variety of outdoor sale events; displays; professional, recreation or instructional services; and/or assembly in non-parking areas of private property. Henceforth, no zoning permit or fees shall be required to establish outdoor activities in non-parking areas of private property. Furthermore, outdoor activities on private property shall be allowed to recur during normal business hours and for as many days as necessary within the time limits of the Ordinance's effective period. All shade tents shall be reviewed by the building division and fire department for compliance with all building and fire codes. No fees shall be required for tent permit applications or tent inspection, if required by the Fire Chief or designee. Except as modified by this section, the provisions, terms, and limitations of Article 73 shall remain in full force and effect.

6) **Outdoor Activities on Private or Public Property (Parking Areas).** A business establishment can be expanded into temporary outdoor areas to allow a variety of outdoor sale events; displays; professional, recreation, or instructional services in parking areas located on private or public property. Outdoor activities in parking areas shall be allowed to recur during normal business hours, subject to a special temporary use permit. No permit or fee shall be required for assembly or assembly services, which may include social clubs, churches, and/or protests. All shade tents shall be reviewed by the building division and fire department for compliance with all building and fire codes. No fees shall be required to review special temporary use permit and/or tent permit applications or tent inspection.

a. A temporary outdoor use in a private parking area can only be located in a zone in which the primary use is an allowed use or conditionally permitted use under the base zoning designation. A temporary outdoor use in a private parking area can only be located on the same parcel that is entitled for the use.

b. A temporary outdoor use in a public parking lot shall obtain authorization by the City's Manager's Office or Community Services Department.

7) **Parklets Established.** The City Council desires to convert underutilized on-street parking spaces and/or public sidewalks into more functional spaces and hereby authorizes the conversion of on-street parking or public sidewalks to parklets through the issuance of special temporary use

permits. Henceforth, parklets are permitted on streets with less than 12,000 Average Daily Trips and speed limits of thirty (30) mph or less. Each parklet must be located within an existing, striped space and located immediately adjacent to a business or employer. Additional parklet space(s) and/or public sidewalk space(s) may be utilized if the associated property owner and/or business establishment assigns rights to use the associated parklet space(s) and public sidewalk.

- 8) **Temporary Indoor Expansions.** A legal and conforming business area can be expanded into temporary indoor areas subject to a special temporary use permit, including into an existing nearby space or building, when shown to be necessary to comply with continued specific public health requirements associated with the pandemic and to accommodate physical distancing without increasing the overall capacity or occupancy of the operation. However, a temporary indoor area can only be located in a zone in which the primary use is an allowed use or conditionally allowed under the base zoning designation.
- 9) **Parking Regulations Exemption.** A temporary modification is exempt from additional parking regulations. Any temporary off-site parking arrangements or reciprocal parking agreements, necessary to temporarily support a business recovery and/or implementation of a temporary outdoor use subject to a special temporary use permit, may similarly be reviewed and considered as a special temporary use.

10) **New Structures and Modifications.** A business may erect a new temporary structure or make a minor modification to an existing structure as part of a temporary modification. A temporary modification is exempt from Design Review or other zoning permits.

11) **Agricultural Experiences.** An allowed agricultural use may conduct an agricultural experience that complies with all of the following:

- a. The use is incidental to a primary agricultural use and features predominately agricultural products grown or produced onsite.
- b. Hikes, tours, educational seminars, and/or food sales or service must occur during business hours. No overnight sleeping accommodations are allowed.
- c. No permanent improvements are necessary to accommodate or support the agricultural experience, such as construction or grading.
- d. The use complies with environmental health requirements, including those related to food service, porta-toilets, trash containers, fire and building codes, the Department of Alcoholic Beverage Control requirements, and any other applicable requirements.

12) **Home Occupations.** Home occupations require a home occupation permit. Henceforth, all bona fide home occupations shall allow on-premises employees and customers.

- a. No more than two (2) non-residents who commute to the home to work may be continuously employed at any one time on the site, except where specifically permitted by law.

- b. No more than eight (8) clients or customers shall be on the premises in any one (1) day.

Each and every one of the other conditions listed in Section 33-852 of the Escondido Zoning Code must be observed at all times by the holder of a home occupation permit. A home occupation shall continue to comply with all of the codes adopted by reference (including but not limited to the Uniform Building Code, Uniform Plumbing Code, Uniform Fire Code, etc.) and shall require ADA clearances as determined necessary by the Building Official. The Director of Community Development may, upon application, issue a home occupation permit, which shall state the home occupation permitted, the conditions attached, and any time limitations thereon.

SECTION 5. In addition to the temporary uses or operational needs expressively stated within this Ordinance, the Director of Community Development, or his designee, may issue a special temporary use permit for a temporary indoor or outdoor use found to be necessary to respond to the current and continuing health, safety, and financial circumstances of the COVID-19 emergency. Such uses must serve to increase and improve patron and pedestrian mobility and access to businesses engaging in practices that are conducive to social distancing and other applicable health and safety practices, including complying with the County Public Health Order and all other applicable governmental and agency health and safety requirements. Such uses may include temporary use allowances, expanded business hours, drive-through or drop-off/pick-up operations, or other measures if it is shown necessary for business recovery or other pressing need related to the pandemic.

SECTION 6. The City Manager, or his designee, shall create and maintain a master permitting and/or tracking program to help implement this Ordinance. Each application shall be reviewed for public safety issues unique to the pedestrian and vehicular needs of the specific location. The business or employer must agree to provide to the City a Certificate of Liability insurance naming the City as additional insured. Additional conditions may be included prior to the issuance of any permit covered by this Ordinance.

SECTION 7. This Ordinance is effective on the date of its adoption and shall remain in effect until 30 days after expiration or termination of the Local Emergency, or until this Ordinance is modified or revoked by the City Council whichever is sooner. All ordinances or parts of ordinances in conflict herewith are hereby temporarily suspended, effective immediately and in effect through the time the Ordinance is in effect, unless stated otherwise. After the expiration of the Ordinance, the provisional business relief measures shall be deemed expired and of no further force or effect. All rights and obligations under this Ordinance shall be concluded.

SECTION 8. During the effective period of the Ordinance, businesses and employers have a right to undertake and complete the development and use of property or utilize any and all business relief measures, or portions thereof. All temporary modifications must comply with all other state and local laws, including encroachment, building, grading, fire, and health code requirements, the California Disabled Persons Act, the State Shelter Order, and the County Health Order.

SECTION 9. No Property Rights Conferred. Use or development of a temporary modification does not confer a property interest, vested right, or entitlement to

continue through the Ordinance's effective period or receive a future entitlement for use of the temporary modification. These business relief measures shall not be extended by any amendments or modifications unless expressly provided by the City Council. Upon the Ordinance's expiration, the City Council's policy shall revert to the zoning ordinance as written and all temporary displays and physical improvements authorized by this Ordinance shall be removed immediately, at the expense of the business or employer. Temporary modifications must either be restored to their prior condition or the applicant must apply for and diligently pursue retention of these modifications on a permanent basis.

SECTION 10. The City of Escondido reserves the right to enforce this Ordinance pursuant to Escondido Municipal Code Section 1-13 and to pursue any other remedies legally available against individuals or entities who knowingly or intentionally violate the provisions of this Ordinance or falsify information to qualify for the relief granted by this Ordinance. If the Director of the Community Development Department, or his/her designee, determines that a temporary modification is a nuisance or does not comply with this Ordinance or applicable provision of the Zoning Code, it may, at the Director's discretion, require changes to the temporary modification, suspend use of the temporary modification, or require that the temporary modification cease.

SECTION 11. There are no assurances to residents, businesses, or visitors that the affected chapters and sections of this Ordinance will not be subject to future revisions. The establishment of this Ordinance shall not preclude, change, or impair the authority of the City to adopt and/or enforce Zoning Code provisions, Municipal Code ordinances, or other governing situations.

SECTION 12. The adoption of this Ordinance is not intended to affect or disrupt the continuity of the City's business or administration of its law, including but not limited to the following:

- Actions and proceedings that began before the effective date of this Ordinance;
- Prosecution for ordinance violations committed before the effective date of this Ordinance; and/or
- The amount, or collection, of license, fee, penalty debt, forfeiture, or obligations due and unpaid as of the effective date of this Ordinance.

SECTION 13. This Ordinance is intended to supplement, not to duplicate, supplant, or contradict, applicable state and federal law, as well as the County Public Health Order, and shall be interpreted in light of that intent. If any section, subsection, paragraph, sentence, clause, or portion of this Ordinance is, for any reason, held invalid or unconstitutional, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

SECTION 14. All businesses that are allowed to open must modify operations to comply with the State and County Public Health Orders, guidelines, and regulations specific to their industry sector from relevant local and state agencies, as well as prepare, post, and implement a social distancing protocol to protect employees, customers, and the general public, and self-certify compliance. Businesses that perform group instruction or assembly must not exceed the maximum number of individuals in a group allowed under the County Public Health Order for outdoor activity businesses or for gatherings.

SECTION 15. The City Council does not request codification of this Ordinance because the Ordinance is temporary and, therefore, not a general ordinance in force.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 21<sup>st</sup> day of October, 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. 2020-23 passed at a regular meeting of the City Council of the City of Escondido held on the 21<sup>st</sup> day of October, 2020, after having been read at the regular meeting of said City Council held on the 16<sup>th</sup> day of September, 2020.

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

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