

ORDINANCE NO. 749

AN URGENCY ORDINANCE OF THE CITY OF CARPINTERIA AMENDING ORDINANCE NO. 744, AS AMENDED BY ORDINANCE NO. 746, TO EXTEND THE TEMPORARY COVID-19 OUTDOOR BUSINESS PERMIT PROGRAM TO ALLOW BUSINESSES TO OPERATE IN THE CITY RIGHT-OF-WAY AND OTHER PRIVATELY-OWNED OUTDOOR SPACES TO ENCOURAGE SOCIAL DISTANCING AND ECONOMIC RECOVERY FROM THE COVID-19 PANDEMIC AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

WHEREAS, Government Code Sections 8558 and 8630, *et seq.*, Health and Safety Code Section 101080, and Chapter 2.40 of the Carpinteria Municipal Code (“CMC”), empower the City of Carpinteria (“City”) Director of Emergency Services to make and issue rules and regulations on matters reasonably related to the protection of life and property during proclaimed local emergencies; and

WHEREAS, on March 4, 2020, Governor Newsom declared a state of emergency to make additional resources available, to formalize emergency actions already underway, and to help prepare the effects of the Novel Coronavirus (“COVID-19”) pandemic; and

WHEREAS, on March 11, 2020, Governor Newsom and California Department of Public Health (“CDPH”) officials recommended that non-essential gatherings should be postponed or cancelled statewide until the end of March in order to implement social distancing guidelines intended to protect all individuals, particularly those who are at high risk of severe illness from the COVID-19 virus, and to slow further spread thereof; and

WHEREAS, on March 12, 2020, the County of Santa Barbara (“County”) Health Officer declared a local health emergency exists countywide due to an imminent and proximate threat to public health, within the meaning of Health and Safety Code Section 101080, by the introduction of the COVID-19 virus and directed cities countywide to implement Governor Newsom’s social distancing guidelines; and

WHEREAS, on March 16, 2020, Governor Newsom declared in Executive Order N-28-20 that the economic impacts of the COVID-19 pandemic have been significant and could threaten to undermine Californians’ housing security and the stability of California businesses; and

WHEREAS, on March 17, 2020, the CDPH and County Public Health Department directed all bars, nightclubs, pubs, breweries, and wineries to close immediately as well as restaurants and other food facilities offering onsite dining should immediately transition to only offering delivery or take-out service as part of the public health effort to slow the spread of the COVID-19 virus; and

WHEREAS, on March 17, 2020, the City Director of Emergency Services issued a Proclamation of Local Emergency by the Director of Emergency Services for the COVID-19 pandemic (“Proclamation”); and

WHEREAS, the City's Proclamation was found necessary and ratified by the City Council at its regular meetings on March 23, 2020, via adoption of Resolution No. 5954, and re-ratified by the City Council on April 13, 2020, via adoption of Resolution No. 5954, May 13, 2020, via adoption of Resolution No. 5969, June 8, 2020, via adoption of Resolution No. 5980, June 22, 2020, via adoption of Resolution No. 5985, and July 13, 2020, via adoption of Resolution No. 5989, in order to utilize all resources necessary to respond to the COVID-19 pandemic and receive any state and/or federal funds that may be available; and

WHEREAS, the Proclamation invokes in the City all powers and mechanisms set forth in the California Emergency Services Act (Government Code sections 8550, *et seq.*), City ordinances and resolutions, and all other applicable state and federal laws to be used by authorized City personnel; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20 for all individuals living in the State of California ("State") to stay home or at their place of residence, except as needed to maintain continuity of operation of federal critical infrastructure sectors and additional sectors as the State Public Health Officer may designate as critical to protect health and well-being of all Californians (hereinafter called "essential businesses"); and

WHEREAS, many events countywide were and continue to be canceled, postponed, or implement social distancing due to the orders and recommendations at all levels of government to restrict large gatherings amid concerns over the spread of the COVID-19 virus, and these cancellations, postponements and social distancing cause a loss in revenue for the associated vendors, organizations and businesses, loss of income for the people who would have staffed the events, as well as lost revenue for surrounding local businesses that rely on such events to bring patrons to their businesses; and

WHEREAS, many businesses citywide were either not permitted to remain open or remain required to severely restrict activities, causing significant adverse financial impacts. Also, State and County health orders and guidance calling on residents to stay at home and implement social distancing continues to result in a severe decline in consumer spending and tourism, which has had significant negative impacts on revenue for most small businesses in Carpinteria; and

WHEREAS, on May 4, 2020, Governor Newsom issued Executive Order N-60-20, which is incorporated herein by reference, to allow re-opening of lower-risk business and spaces (hereinafter called "lower-risk businesses") in Stage Two of the State's Resilience Roadmap subject to certain limitations. On May 8, 2020, the County Health Officer issued County Health Officer Order 2020-8.1, which further clarified the lower-risk businesses eligible to be open for limited operations countywide; and

WHEREAS, on May 18, 2020, the City Council enacted Resolution No. 5977 establishing requirements for wearing face coverings at certain places and in certain circumstances as an additional health protection measure in response to the COVID-19

pandemic in order to protect the public health and safety of members of the public; and

WHEREAS, on May 21, 2020, the County Health Officer issued County Health Officer Order 2020-8.2, which allowed essential businesses and lower-risk business that may remain open with modified operations and social distancing to open or open more fully with self-certification. Although the State and County entered Stage Two of the State's Resiliency Roadmap, which loosened some public health and safety restrictions and allowed essential and lower-risk businesses to re-open with certain protections in place, these businesses remained severely restricted and experienced corresponding significant adverse financial impacts; and

WHEREAS, on May 26, 2020, the City Council adopted Ordinance No. 744, enacting the Temporary COVID-19 Outdoor Business Permit Program ("Temporary COVID-19 Outdoor Business Permit Program") to allow business to operate in the City's right-of-way and in other privately-owned outdoor spaces to encourage social distancing and economic activity during the COVID-19 pandemic; and

WHEREAS, on August 28, 2020, Governor Newsom announced the Blueprint for a Safer Economy Plan, which replaced the State's Resilience Roadmap and established new guidelines for business operations to encourage social distancing and economic activity during the COVID-19 pandemic; and

WHEREAS, the City Council recognizes that the Temporary COVID-19 Outdoor Business Permit Program, adopted via Ordinance No. 744, has assisted businesses to continue economic activity during the COVID-19 pandemic; and

WHEREAS, on May 10, 2021, the City Council approved and adopted urgency Ordinance No. 746, amending Ordinance No. 744, extending the Temporary COVID-19 Outdoor Business Permit to remain in effect until 11:59 pm on December 31, 2021; and

WHEREAS, as of October 28, 2021, the community transmission level of COVID-19, including the significantly more transmissible "Delta" variant of COVID-19, in Santa Barbara County was categorized as "Substantial" based on the U.S. Centers for Disease Control and Prevention's ("CDC") indicators; and

WHEREAS, to control the spread of COVID-19 and its variants, the County Health Officer issued Order No. 2021-10.6, Superseding and Replacing Health Officer Order No. 2021-10.5, ordering all individuals in the County of Santa Barbara – whether vaccinated or unvaccinated – to wear a Face Covering at all times in all Indoor Public Settings, and while inside any Business, with limited exemptions, and recommends that Businesses make face coverings available to individuals entering the Business; and

WHEREAS, the continuation of the Temporary COVID-19 Outdoor Business Permit Program remains necessary to provide businesses with opportunities to encourage social distancing and economic recovery from the negative impacts resulting from the COVID-19 pandemic and its variants; and

WHEREAS, the City Council recognizes that the Temporary COVID-19 Outdoor Business Permit Program must be flexible and responsive to changing conditions associated with the COVID-19 pandemic, the state of emergency, or governmental response, including modifications to public health and safety directives, social distancing guidance, and business operation conditions, in order to effectively achieve the dual public health and safety and economic goals of the City during the COVID-19 pandemic.

THE CITY COUNCIL OF THE CITY OF CARPINTERIA DOES ORDAIN AS FOLLOWS:

Section 1. Incorporation of Recitals. All the recitals set forth above are true, correct, and valid, and are hereby incorporated and adopted as findings of the City Council as though fully set forth herein.

Section 2. Findings. The Council hereby finds, determines and declares that this Urgency Ordinance adoption pursuant to Government Code Section 36937 is necessary because:

A. Commercial activity and businesses are essential to a vibrant and healthy community, and this Temporary COVID-19 Outdoor Business Permit Program provides flexibility to local businesses to re-open while protecting the health, safety, and welfare of members of the public during the ongoing COVID-19 pandemic; and

B. Without the amendment and extension of the Urgency Ordinance, there is an increased risk of a substantial impact to local businesses, causing further disruption by delaying local economic recovery, and imperiling the lives or property of inhabitants of the City; and

C. The Downtown "T" Encroachment Permit Program was established for local businesses within the Downtown "T" in order to apply for a permit to conduct certain business operations within the City right-of-way, which provided a framework for the portion of the Temporary COVID-19 Outdoor Business Permit Program applicable to the City right-of-way and other privately-owned property, but requires certain modifications to streamline the approval and implementation of permits with all due speed during the COVID-19 pandemic; and

D. CMC Chapter 14.64 establishes a temporary use permit to allow businesses to engage in temporary uses on privately-owned property that provides a framework for the Temporary COVID-19 Outdoor Business Permit Program applicable to privately-owned property, but requires certain modifications to streamline the approval and implementation of permits with all due speed during the COVID-19 pandemic; and

E. The City Council recognizes the Temporary COVID-19 Outdoor Business Permit Program may continue to require that certain temporary exceptions to the requirements of CMC Chapter 12.02, the Downtown "T" Encroachment Permit Program,

and CMC Chapter 14.64 may be necessary, as determined by the Director of Emergency Services through, additional rules and regulations, as described in Section 6 herein; and

F. For the immediate preservation of the public peace, health, and safety, the Council finds that it is necessary to adopt this Urgency Ordinance amending Ordinance No. 744, as amended by Ordinance No. 746, that established the Temporary COVID-19 Outdoor Business Permit Program, for all of the reasons set forth in the recitals above, which and are incorporated herein by reference.

Section 3. Urgency Need. Based on the foregoing recitals and findings, all of which are deemed true and correct, this Urgency Ordinance is needed for the immediate preservation of the public peace, health, and safety. This Urgency Ordinance shall take effect immediately upon adoption in accordance with the provisions set forth in Government Code Section 36937.

Section 4. Amendment. This Urgency Ordinance hereby amends and supersedes Section 11 of Ordinance No. 744 to read as follows:

“Section 11. Effective Date and Termination. This Urgency Ordinance shall become effective immediately and shall remain in effect until 11:59 pm on June 30, 2022, or it is terminated by the City Council.”

This Urgency Ordinance hereby also supersedes and replaces urgency Ordinance No. 746.

Section 5. Scope. Except as expressly amendment and superseded by this Urgency Ordinance, all other sections, subsections, sentences, clauses, phrases or words of Ordinance No. 744 remain in full force and effect.

Section 6. Severability. If any section, subsection, sentence, clause, phrase or word of this Urgency Ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Urgency Ordinance or Ordinance No. 744.

Section 7. Effective Date. This Urgency Ordinance shall become effective immediately.

Section 8. Environmental Determination. The City Council finds that the adoption and implementation of this Urgency Ordinance are exempt from the provisions of the California Environmental Quality Act (“CEQA”) under CEQA Guideline Section 15061(b)(3) in that the City Council finds there is no possibility that the implementation of this resolution may have significant effects on the environment. The Urgency Ordinance would amend Ordinance No. 744, that established a Temporary COVID-19 Outdoor Business Permit Program, similar to existing permit processes, which is solely an administrative process resulting in no change to the environment.

SECTION 9. Publication. The City Clerk is directed to cause this Urgency Ordinance to be published in the manner required by law.

PASSED, APPROVED AND ADOPTED on November 22, 2021, by the following vote:

AYES: COUNCILMEMBER(S): Alarcon, Carty, Lee, Clark, Nomura

NOES: COUNCILMEMBER(S): None


ABSENT: COUNCILMEMBER(S): None

ABSTAIN: COUNCILMEMBER(S): None



Mayor, City of Carpinteria

ATTEST:



Acting City Clerk, City of Carpinteria

I hereby certify that the foregoing Ordinance was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Carpinteria held on November 22, 2021.



Acting City Clerk, City of Carpinteria

APPROVED AS TO FORM:



Jena S. Acos, on behalf of Brownstein Hyatt Farber Schreck, LLP acting as City Attorney of the City of Carpinteria