

ORDINANCE NO. 2021-XX

AN URGENCY ORDINANCE OF THE CITY OF COSTA MESA TO EXTEND AND AMEND ORDINANCE NO. 2020-16 OF THE CITY OF COSTA MESA TEMPORARILY SUSPENDING THE PERMIT REQUIREMENTS AND DEVELOPMENT STANDARDS FOR OUTDOOR ACTIVITIES AND PARKING CONTAINED IN THE ZONING CODE APPLICABLE TO RETAIL SALES AND SERVICE BUSINESSES AND DECLARING THE ORDINANCE TO BE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY UPON ADOPTION

WHEREAS, the City of Costa Mesa, pursuant to its police power, may enact regulations for the public peace, morals, and welfare of the City; and

WHEREAS, on March 4, 2020, the Governor declared a State of Emergency in California due to the threat of Coronavirus Disease 2019 ("COVID-19"). On February 26, 2020, the Orange County Board of Supervisors and Department of Public Health declared a public health emergency in Orange County due to COVID-19. On March 12, 2020, pursuant to Proclamation No. 2020-01, the City Manager did proclaim the existence of a local emergency pursuant to Title 6 of the Costa Mesa Municipal Code, and on March 13, 2020 the City Council pursuant to Resolution No. 2020-9 did ratify Emergency Proclamation No. 2020-01; and

WHEREAS, the City has been impacted by the health crisis of this global pandemic. As a result, retail business has significantly declined and workers have been impacted by lost wages and layoffs; and

WHEREAS, on June 11, 2021, the State of California Public Health Officer issued the *Beyond the Blueprint* order, which accounted for the State entering into a new phase of the Covid-19 pandemic and confirmed that California must remain vigilant against variants of the disease especially given high levels of transmission in other parts of the world. For these reasons, COVID-19 remains a concern to public health and, in order to prevent its spread, limited and temporary public health requirements remain necessary at this time.

WHEREAS, businesses are proposing various outdoor activities to encourage the return of customers to retail and personal services uses in a way that will provide for public health and safety while allowing business operations to continue; and

WHEREAS, the need for parking spaces required by the Zoning Code for most commercial and retail uses has been reduced during the state of emergency, such that temporarily modifying the requirements for sidewalk/parking lot sale permits will not cause an impact to the surrounding areas within the City; and

WHEREAS, on July 21, 2020 the City Council of the City of Costa Mesa did adopt Urgency Ordinance 2020-16 based on the forgoing facts, findings and circumstances, to remain in effect for 180 days unless extended; and

WHEREAS, on November 4, 2020 the City Council of the City of Costa Mesa did extend Urgency Ordinance 2020-16 based on the forgoing facts, findings and circumstances, to remain in effect until December 31, 2021 unless extended; and

WHEREAS, the forgoing facts, findings and circumstances remain un-abated such that the City Council desires to extend and amend Urgency Ordinance 2020-16 as set forth herein, for an additional one-year; and

WHEREAS, the City of Costa Mesa, pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA Guidelines (Sections 15000 et seq., Title 14 the California Code of Regulations) has determined that the Ordinance is exempt from the provisions of CEQA pursuant to the following sections of the CEQA Guidelines: Section 15269(c) (specific actions necessary to prevent or mitigate an emergency); and Section 15061(b)(3) because it can be seen with certainty that the adoption of this Ordinance will not have an effect on the environment; and

WHEREAS, the City Council has the authority to adopt this Ordinance under Government Code Section 8630, and also its authority under California Constitution Art XI, section 7.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES ORDAIN AS FOLLOWS:

SECTION 1. Temporary Modification of Sidewalk/Parking Lot Sales

- A. Scope. This ordinance applies to all uses under roof/sidewalk sale and parking lot sale standards of the following sections of the Costa Mesa Municipal Code Sections 13-44 (Commercial Development Standards), 13-53 (Industrial Development Standards) and 13-58 (Planned Development Standards), CMMC 13-89 – non-residential parking requirements and associated Tables 1313-58 and 13-89.-44, 13-53.
- B. Applicability. The temporary suspension of the requirements set forth herein shall apply only to those uses which operate in full compliance with all otherwise applicable state and local laws and regulations, and all health, safety, welfare, operational and traffic control standards established by the

Health Officer and/or the Zoning Administrator for each such use. Temporary outdoor uses which will only affect private areas around a business shall require submittal of a sidewalk/parking lot sale permit application. Temporary outdoor uses which affect or are located in the public right-of-way, parking lots, drive aisles, and similar areas shall require submittal of a temporary Use Permit (TUP) application. The Zoning Administrator may, in his or her reasonable discretion, determine that a TUP application is required when a sidewalk/parking lot sale permit application has been submitted.

SECTION 2. The Director of Development Services shall continue to have the discretion to temporarily suspend any other provisions of the Zoning Code relating to businesses located in the City during the course of the declared emergency to allow for adaptation to changing state or local health orders and the maximum flexibility to allow business operations to continue, provided that each affected business complies with all health, safety, welfare, operational and traffic control standards established by the Health Officer and/or the Zoning Administrator for each such use.

SECTION 3. Emergency Declaration/Effective Date. The City Council declares this Ordinance to be an emergency measure, to stay in effect for one-year from the expiration of Ordinance 2020-16 (December 31, 2021) upon adoption pursuant to California Government Code section 36934, unless extended. The facts constituting the emergency are as follows: Due to the directives from health officials to contain the spread of COVID-19, a significant loss of business, work furloughs, loss of wages, and lack of work for employees has occurred in many sectors. Furthermore, the economic impacts of this public health crisis is resulting in irreparable harm to the residents and businesses within the City. A temporary emergency measure is necessary to protect the public by enabling and encouraging temporary solutions to allow retail and services suited to the emergency restrictions imposed on residents and business that would otherwise be prohibited, hindered or delayed by the provisions of the Zoning Code.

SECTION 4. Term. This Ordinance shall remain in effect for one-year with the potential for City Council to extend as needed. Nothing herein shall be deemed to create any permanent or vested right to any business to continue using private exterior space, private parking lot space, or public rights of way beyond the term of this ordinance or without an appropriate permit.

SECTION 5. Uncodified Ordinance. This Ordinance shall not be codified in the Costa Mesa Municipal Code.

Section 6. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of the Ordinance, to the extent of such inconsistencies and no further, are suspended or modified to that extent necessary to affect the provisions of this Ordinance, but only during the term of this Ordinance.

Section 7. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, state, or federal law, regulation, or codes dealing with life safety factors.

SECTION 8. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance as required by law.

PASSED, APPROVED AND ADOPTED this 2nd day of November, 2021.

John Stephens, Mayor

ATTEST:

Brenda Green, City Clerk

APPROVED AS TO FORM

Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, **BRENDA GREEN**, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that the above and foregoing Urgency Ordinance No. 2021-__ was duly adopted at a regular meeting of the City Council of the City of Costa Mesa held on the 2nd day of November, 2021, by the following roll call vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of
Costa Mesa this ____ day of _____, 2021.

Brenda Green, City Clerk