

ORDINANCE NO. 2022-xx

AN URGENCY ORDINANCE OF THE CITY OF COSTA MESA TO EXTEND AND AMEND ORDINANCE NO. 2020-15 TEMPORARILY SUSPENDING THE PERMIT REQUIREMENTS AND DEVELOPMENT STANDARDS FOR OUTDOOR ACTIVITIES AND PARKING CONTAINED IN THE ZONING CODE APPLICABLE TO DINING PATIOS, PLACES OF RELIGIOUS ASSEMBLY, AND WAIVER OF VALET PARKING 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. Restaurant and 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, and

WHEREAS, currently the State of California has moved passed the *Beyond the Blueprint* order to safely and fully reopen the economy. The State has ended its restrictions for physical distancing, capacity limits on businesses and the County tier system. Mask mandates has been lifted, with a few exceptions and new recommended quarantine timeframes have been established. However, COVID-19 remains a concern to public health due to surges of COVID-19 infections and waves of highly transmittable variants. The State has outlined steps to prepare for future surges and variants in its SMARTER Plan to ensure that strain on healthcare system are minimize, keep staff and public safe, and keep businesses open and schools in person; and

WHEREAS, during the initial phases of COVID-19 pandemic businesses are proposing various outdoor activities to encourage the return of customers to restaurants

and other retail uses in a way that will provide for public health and safety while allowing business operations to continue; and

WHEREAS, on June 2, 2020 the City Council of the City of Costa Mesa did adopt Urgency Ordinance 2020-15 based on the forgoing facts, findings and circumstances, to remain in effect for 180 days unless extended; and

WHEREAS, on November 17, 2020 the City Council of the City of Costa Mesa extended the Urgency Ordinance 2020-15 based on the forgoing facts, findings and circumstances, to remain in effect until December 31, 2021 unless extended; and

WHEREAS, since the adoption of the Urgency Ordinance 2020-15, the City of Costa Mesa has processed forty-seven Temporary Outdoor Dining Permits. The program has provided economic recovery for existing dining establishments and provided safe areas where the community can experience the emerging local outdoor dining culture; and

WHEREAS, on November 2, 2021 the City Council of the City of Costa Mesa extended the Urgency Ordinance 2020-15 for an additional year and directed staff to investigate opportunities for amending the City's outdoor dining regulations to allow similar outdoor dining conditions afforded as a result of the COVID-19 pandemic, based on the forgoing facts, findings and circumstances, currently the Urgency Ordinance 2020-15 is to remain in effect until December 31, 2022 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 2020-15 as set forth herein for an additional six months; 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 Suspension of Conditional Use Permit and Minor Conditional Use Permit Requirements and Development Standards Related to Parking for Outdoor Dining for Restaurants; and Places of Religious Assembly.

- A. Scope. This Ordinance applies to all conditional use permit and minor conditional use permit requirements and development standards applicable to outdoor activities and parking of the following sections of the Costa Mesa Municipal Code to the extent that they apply or are interpreted to apply to a restaurant: Section 13-44, 13-47, 13-48, and 13-89, and Table 13-44 (Commercial Development Standards): uses underroof; Table 13-47 (Permitted and Conditionally Permitted Uses): location and operational characteristics of restaurants; 13-51.52 (General Development Standards): outdoor uses for places of religious assembly; and Table 13-89 (Non-Residential Parking Standards).
- 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 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.

SECTION 2. Criteria to Allow Outdoor Activities.

- A. Temporary Dining Opportunities on Private Property (excluding parking lots)
- All dining areas shall observe State and local health guidelines for restaurants
 - Temporary outdoor seating is restricted to serving existing, on-site restaurants
 - Temporary outdoor seating is located within a reasonable proximity to the restaurant
 - A minimum 4-foot-wide pedestrian access is provided to accommodate wheelchairs
 - Pedestrian ingress/egress to the subject or other businesses may not be obstructed
 - Any service of alcoholic beverages in these temporary areas will be subject to approval by the ABC
 - Any canopies or tents will require Fire and Building Department approval prior to installation
 - Temporary outdoor dining on a property within 200 feet of a residential zone will be required to be closed between 11 PM and 6 AM
 - Patio will be posted with a contact phone number so any noise concerns can be reported to the business owner or her/his representative

- Businesses which are permitted to have indoor entertainment shall maintain all such entertainment inside the premises, with no amplification or speakers to broadcast or pipe the entertainment to the outdoor areas

B. Temporary Outdoor Dining within Private Parking Lots

- All dining areas shall observe State and local health guidelines for restaurants
- Temporary outdoor seating be restricted to serving existing, on-site restaurants
- Parking areas and/or driveways abutting a restaurant or access to a restaurant are encouraged to be the first choice to be converted to temporary outdoor dining; staff will consider satellite patio spaces or crossing of active drive aisles where it can be shown that adequate protection and safe access between the restaurant and the dining area can be provided
- Temporary outdoor dining must allow for adequate vehicular circulation
- Clearly visible safety barriers (such as planters and other vertical barriers) will be required so drive aisles/access for drivers is clearly visible – including in the evening hours
- Any service of alcoholic beverages in these temporary areas would be subject to approval by the ABC
- Any canopies or tents will require Fire and Building Department approval prior to installation
- Temporary outdoor dining on a property within 200 feet of a residential zone to be closed between 11 PM and 6 AM
- Use of shared parking lots for temporary outdoor seating should be closely coordinated with landlords and/or other users
- Outdoor dining area will be posted with a contact phone number so any noise concerns can be reported to the business owner or her/his representative
- Businesses which are permitted to have indoor entertainment shall maintain all such entertainment inside the premises, with no amplification or speakers to broadcast or pipe the entertainment to the outdoor areas

C. Outdoor Dining within Certain Public Rights-of-Way

- All dining areas shall observe State and local health guidelines for restaurants
- Temporary outdoor seating be restricted to serving existing, on-site restaurants
- Temporary outdoor dining opportunities shall be adjoining to the restaurant
- A minimum 4-foot-wide pedestrian access is required to accommodate wheelchairs
- Pedestrian or vehicular ingress/egress to the subject and/or other businesses may not be obstructed

- Any service of alcoholic beverages in these temporary areas will be subject to approval by the ABC
- Temporary outdoor dining on a property within 200 feet of a residential zone to be closed between 11 PM and 6 AM
- An encroachment permit shall be obtained before the establishment of temporary outdoor dining spaces
- Umbrellas only will be permitted; no canopies will be allowed
- Outdoor dining area will be posted with a contact phone number so any noise concerns can be reported to the business owner or her/his representative.
- Businesses which are permitted to have indoor entertainment shall maintain all such entertainment inside the premises, with no amplification or speakers to broadcast or pipe the entertainment to the outdoor areas

D. Religious Institutions

- Temporary religious services within a parking lot are prohibited between 7 PM and 9 AM if the religious institution is within 200 feet of a residential zone
- With the exception of speech, amplification is prohibited; however, use of smart phones or car radios (if possible) to transmit audio is recommended and encouraged
- Temporary outdoor religious services may be provided for 180 days unless the temporary approvals are extended, subject to a similar reconsideration and potential extension at that time

E. The Director of Economic and Development Services, in his or her discretion, may revoke or modify an approval issued pursuant to this Ordinance for the purposes of ensuring compatible conditions and avoiding substantial impacts to nearby uses or properties.

SECTION 3. Emergency Declaration/Effective Date. The City Council declares this Ordinance to be an emergency measure, to stay in effect for six months from the previous expiration of Ordinance 2020-15 (December 31, 2022) 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 dining and religious 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 or place of religious assembly 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 1st day of November, 2022.

John Stephens, Mayor

ATTEST:

APPROVED AS TO FORM:

Brenda Green, City Clerk

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. 2022-xx was duly adopted at a regular meeting of the City Council of the City of Costa Mesa held on the 1st day of November, 2022, 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 2nd day of November, 2022.

Brenda Green, City Clerk