

ORDINANCE NUMBER O- 21320 (NEW SERIES)DATE OF FINAL PASSAGE MAY 18 2021

AN EMERGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO PURSUANT TO CHARTER SECTION 295 AND THE URGENCY ORDINANCE PROVISIONS IN CALIFORNIA GOVERNMENT CODE SECTION 65858 EXTENDING A TEMPORARY AMENDMENT TO SAN DIEGO MUNICIPAL CODE CHAPTER 2, ARTICLE 2, DIVISION 40, SECTION 22.4022; CHAPTER 12, ARTICLE 3, DIVISION 4, SECTION 123.0403; CHAPTER 12, ARTICLE 6, DIVISION 2, SECTION 126.0203; CHAPTER 12, ARTICLE 9, DIVISION 2, SECTION 129.0203; CHAPTER 12, ARTICLE 9, DIVISION 7, SECTION 129.0703; CHAPTER 13, ARTICLE 1, DIVISION 5, SECTION 131.0520; CHAPTER 13, ARTICLE 1, DIVISION 6, SECTION 131.0620; CHAPTER 14, ARTICLE 1, DIVISION 4, SECTION 141.0421; CHAPTER 14, ARTICLE 1, DIVISION 6, SECTION 141.0621; CHAPTER 14, ARTICLE 2, DIVISION 5, SECTION 142.0510; CHAPTER 14, ARTICLE 2, DIVISION 12, SECTIONS 142.1205 AND 142.1255; AND CHAPTER 15, ARTICLE 7, DIVISION 3, SECTION 157.0305, ALL RELATING TO SUPPORTING BUSINESSES DUE TO THE STATE OF EMERGENCY RESULTING FROM THE NOVEL CORONAVIRUS, COVID-19, BY ALLOWING THEM TO EXPAND CERTAIN BUSINESS OPERATIONS.

WHEREAS, the novel coronavirus, COVID-19, causes infectious disease and was first detected in December 2019; and

WHEREAS, COVID-19 symptoms include fever, cough, and shortness of breath, and those who have been afflicted have experienced anything from mild illness to death; and

WHEREAS, the Centers for Disease Control and Prevention considers COVID-19 to be a very serious public health threat and the World Health Organization declared the COVID-19 outbreak to be a pandemic; and

WHEREAS, on February 19, 2020, the County Board of Supervisors ratified a declaration of local health emergency related to COVID-19; and

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

WHEREAS, on March 12, 2020, Mayor Kevin Faulconer proclaimed the existence of a local emergency in the City of San Diego (City) as a result of COVID-19, which was ratified by the Council of the City of San Diego (Council) on March 17, 2020; and

WHEREAS, COVID-19 is causing, and is expected to continue to cause, severe negative impacts on the local economy and serious financial impacts to local residents and businesses, including substantial loss of income due to the loss of compensable work hours or wages, layoffs, and business closures; and

WHEREAS, in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary public exposure when allowing businesses to operate; and

WHEREAS, on June 30, 2020, effective July 1, 2020, the County Public Health Officer issued an order requiring tables designed for dining to be six feet apart, or separated by barriers or partitions that extend above the heads of customers while seated; and

WHEREAS, the Centers for Disease Control and Prevention recommends staying at least six feet from other people who are not from your household in both indoor and outdoor spaces to reduce the spread of COVID-19; and

WHEREAS, continuing to allow businesses to operate outside will support these institutions by providing a safer environment, where the COVID-19 virus is less transmissible, for patrons as the City continues to endure and recover from the devastating impacts COVID-19 has had on public health and local businesses; and

WHEREAS, COVID-19 is a threat to public health, safety, and welfare and has had a devastating impact on local businesses by reducing the number of patrons allowed in a business to comply with public health orders; and

WHEREAS, expanding allowable outdoor business activities to allow for social distancing is necessary and appropriate to expedite economic recovery efforts; and

WHEREAS, this Ordinance expands allowable uses of sidewalk cafes and allows pedestrian plazas in certain parking spaces to allow for social distancing; and

WHEREAS, this Ordinance expands allowable uses of signs to help businesses advertise; and

WHEREAS, the Ordinance allows for expanded wholesale distribution directly to consumers while allowing for social distancing; and

WHEREAS, this Ordinance relaxes permit requirements for placemaking on public property to allow for increased social distancing; and

WHEREAS, this Ordinance waives certain fees related to Special Events Permits to lower costs for businesses expanding into outdoor areas to allow for social distancing; and

WHEREAS, San Diego Charter, Article III, section 11 vests all legislative authority for the City in the Council; and

WHEREAS, California Government Code Section 65858 expressly authorizes the Council to adopt by four-fifths (4/5) vote, without following the procedures otherwise required for the adoption of a zoning ordinance, an interim urgency ordinance, which is necessary for the immediate protection of the public health, safety, and welfare; and

WHEREAS, the Council voted on July 14, 2020, to adopt San Diego Ordinance O-21218 (Jul. 14, 2020) enacting a temporary amendment to the San Diego Municipal Code to support businesses due to the state of emergency resulting from the novel coronavirus, COVID-19, by allowing those businesses to expand certain business operations, which pursuant to Government Code section 65858 may only be effective for 45 days, unless extended; and

WHEREAS, the Council voted on August 4, 2020, to adopt San Diego Ordinance O-21229 (Aug. 4, 2020) extending this Ordinance for ten and a half months; and

WHEREAS, the Council intends to keep this emergency Ordinance in effect for another year as allowed by Government Code section 65858; and

WHEREAS, the Council finds that extending this interim emergency Ordinance is necessary and appropriate to prevent or mitigate adverse effects to public health, safety, and welfare related to the significant health and economic impacts of the COVID-19 pandemic, and to further enable compliance with public health orders and recommendations related to COVID-19; and

WHEREAS, the Council finds that there is an emergency necessitating immediate adoption of this Ordinance pursuant to Government Code section 65858; and

WHEREAS, the Council finds that, pursuant to Charter section 295(e), this Ordinance is necessary to provide for the immediate preservation of the public peace, property, health, or safety; and

WHEREAS, under San Diego Charter section 280(a)(3), this Ordinance is not subject to veto by the Mayor because it is an emergency ordinance; and

WHEREAS, under California Government Code section 65858, a four-fifths (4/5) majority of the Council is required for passage of this Ordinance; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the following temporary amendments are made to the San Diego

Municipal Code:

(A) Sidewalk Cafes. The following temporary amendments are made to Municipal Code Chapter 14, Article 1, Division 6, section 141.0621 for sidewalk cafes in the *public-right-of-way*:

- (i) In addition to eating and drinking establishments described in section 141.0621(a)(3)(A), sidewalk cafes may be used by retail establishments for retail sales including the sale, lease, or rental of new or used goods.
- (ii) Applications for sidewalk cafes made pursuant to this emergency Ordinance may be approved by the City or by the Business Improvement Districts (BIDs) having jurisdiction over that *applicant's* eating, drinking, or retail establishment.
- (iii) The parking requirements for the sidewalk cafe portion in section 141.0621(a)(1)(M) are waived.
- (iv) Sidewalk cafes may extend in front of neighboring properties with written permission from the *record owner* of the neighboring property.
- (v) When required, the width requirement in section 141.0621(a)(1)(D)(ii) for the clear path of travel is replaced with a 4-foot minimum width requirement. The requirement in section 141.0621(a)(1)(D)(ii) to provide a paved sidewalk through a clear path of travel is waived when a clear path of travel is provided in an adjacent pedestrian plaza.

- (vi) The requirement in section 141.0621(a)(1)(D)(iv) for a clear path of travel may be satisfied by a pedestrian plaza adjacent to the sidewalk cafe provided that the clear path of travel meets the remaining clear path of travel requirements in section 141.0621 and all applicable Accessible Design Guidelines of the Americans with Disabilities Act and Title 24 of the California Code of Regulations accessibility standards, whichever offers the most accessibility.
- (vii) For sidewalk cafes adjacent to a pedestrian plaza, the level surface requirement in section 141.0621(a)(1)(E)(i) is waived provided that the sidewalk cafe and adjacent pedestrian plaza comply with all applicable Accessible Design Guidelines of the Americans with Disabilities Act and Title 24 of the California Code of Regulations accessibility standards, whichever offers the most accessibility.
- (viii) Sidewalk cafes shall comply with current City, County of San Diego, State of California, and federal requirements in applicable public health orders, including social distancing requirements, and all subsequent amendments to those orders, related to the novel coronavirus, COVID-19. Should any provisions of this emergency Ordinance conflict with applicable public health orders, the requirements of the public health orders shall prevail. If there is a conflict among the requirements of applicable public health orders, the most restrictive order shall prevail.

- (ix) The requirement in section 141.0621(a)(1)(C) to provide a barrier is waived, however, any barrier provided shall meet the requirements of section 141.0621(a)(1)(C).
 - (x) The requirement in section 141.0621(a)(2) to obtain a Public Right-of-Way Permit is waived. The requirement to post a Public Right-of-Way Permit in section 141.0621(a)(3)(K) is also waived.
 - (xi) The Encroachment Maintenance and Removal Agreement required under section 141.0621(a)(2) does not need to be recorded at the Office of the County Recorder.
 - (xii) A sidewalk cafe approved pursuant to this emergency Ordinance is exempt from the Building Permit requirements in Municipal Code section 129.0203(a)(24)(C), and the Neighborhood Use Permit requirements in Municipal Code sections 126.0203(a) and 157.0305(c).
- (B) Pedestrian Plazas. The following temporary additions allow for pedestrian plazas:
- (i) A pedestrian plaza for purposes of this emergency Ordinance means the conversion of parking spaces and parking lots for public uses such as pedestrian circulation and eating, drinking, or retail establishments.
 - (ii) Applications for pedestrian plazas made pursuant to this emergency Ordinance must be approved by the City.
 - (iii) Pedestrian plazas may extend from the sidewalk curb into adjacent public on-street parking spaces but must maintain a minimum two-foot wide buffer separation from bike lanes and travel lanes. Any blue curb or accessible parking spaces used for a pedestrian plaza must be replaced

pursuant to the Accessible Design Guidelines of the Americans with Disabilities Act or the accessibility guidelines of title 24 of the California Code of Regulations, whichever offers the most accessibility.

(iv) The requirements in section 142.0510 are waived for eating, drinking, or retail establishments with private parking lots. A pedestrian plaza may extend from the sidewalk curb into a private parking lot and that parking lot's drive aisles. Any blue curb or accessible parking spaces used for a pedestrian plaza must be replaced pursuant to the Accessible Design Guidelines of the Americans with Disabilities Act or the accessibility guidelines of title 24 of the California Code of Regulations, whichever offers the most accessibility.

(v) Pedestrian plazas may be used for pedestrian traffic along a *public right-of-way* when access is not available on the sidewalk, such as when a sidewalk cafe is adjacent to a pedestrian plaza. Pedestrian plazas must comply with the Accessible Design Guidelines of the Americans with Disabilities Act or the accessibility guidelines of title 24 of the California Code of Regulations, whichever offers the most accessibility.

(vi) Pedestrian plazas must provide a visible and tactile edge, pursuant to the Accessible Design Guidelines of the Americans with Disabilities Act or the accessibility guidelines of title 24 of the California Code of Regulations, whichever offers the most accessibility. The visible and tactile edge shall consist of temporary posts, wheel stops, barricades, or

their equivalents. Retro reflectors shall be installed along the edge of the pedestrian plaza.

- (vii) Pedestrian plazas shall comply with current City, County of San Diego, State of California, and federal requirements in applicable public health orders, including social distancing requirements, and all subsequent amendments to those orders, related to the novel coronavirus, COVID-19.

Should any provisions of this Ordinance conflict with the applicable public health orders at any time, the requirements of the public health orders shall prevail. If there is a conflict among the requirements of applicable public health orders, the most restrictive order shall prevail.

- (viii) Applicants for pedestrian plazas are not required to obtain a Public Right of Way permit pursuant to section 129.0703. Applicants must obtain a traffic control permit when required by section 82.27.

- (ix) Encroachment Maintenance and Removal Agreements are required pursuant to section 129.0715 for pedestrian plazas but do not need to be recorded at the Office of the County Recorder.

(C) Signs. The following temporary amendments are made to Municipal Code Chapter 14, Article 2, Division 12, section 142.1255:

- (i) An eating, drinking, or retail establishment, a commercial service, or a Business Improvement District may display temporary banner *signs* and temporary A-frame *signs*.
- (ii) Temporary banners *signs* may be attached to structures, fences, and walls.

- (iii) Temporary A-frame *signs* may be placed within the *public right of way*, provided the *signs*' placement does not impede vehicular traffic and complies with the Accessible Design Guidelines of the Americans with Disabilities Act or the accessibility guidelines of title 24 of the California Code of Regulations, whichever offers the most accessibility. The dimensions of the base of a temporary A-frame *sign* shall not exceed 2 feet by 3 feet, and the height shall not exceed 4 feet.
 - (iv) A Sign Permit pursuant to section 142.1205 is not required for temporary banner *signs* or temporary A-frame *signs*.
 - (v) Upon receiving written notice from the City requesting removal of a temporary banner *sign* or temporary A-frame *sign*, an eating, drinking, or retail establishment, a commercial service, or a Business Improvement District must remove any temporary banner or A-frame *sign* allowed by this emergency Ordinance within 10 days. In addition, any *signs* allowed pursuant to this emergency Ordinance must be removed when this Ordinance expires.
- (D) Direct to Consumer Wholesale Distribution Sales. The following temporary amendments are made to Municipal Code Chapter 13, Article 1, Division 5, section 131.0520, Commercial Base Zones, and Chapter 13, Article 1, Division 6, section 131.0620, Industrial Base Zones, to allow the following uses:
- (i) Sale of food, beverages, and groceries directly to consumers on private property is permitted by wholesale distributors as a primary use and accessory use in Commercial and Industrial Base Zones.

- (ii) Wholesale distributors selling food, beverages, and groceries directly to consumers on private property are not required to sell in an enclosed building pursuant to sections 131.0520(c) and 131.0620(c). In addition, wholesale distributors selling food, beverages, and groceries directly to consumers on private property may sell directly from commercial vehicles. Wholesale distributors selling food, beverages, and groceries directly from commercial vehicles to consumers on private property shall be allowed to utilize parking spaces designated for other uses with written permission from the *record owner* of the property. Red curb areas, blue curb parking spaces, or accessible parking spaces may not be used.
- (iii) Wholesale distributors selling food, beverages, and groceries directly to consumers on private property shall comply with current City, County of San Diego, State of California, and federal requirements in applicable public health orders, including social distancing requirements, and all subsequent amendments to those orders, related to the novel coronavirus, COVID-19. Should any provisions of this Ordinance conflict with these public health orders at any time, the requirements of those public health orders shall prevail. If there is a conflict among the requirements of applicable public health orders, the most restrictive order shall prevail.
- (iv) No permit is be required for wholesale distributors to make direct sales of food, beverages, and groceries directly to consumers on private property, including Temporary Use Permits pursuant to sections 131.0520(e) and 1310620(e).

(E) Placemaking on private property. The following temporary amendments are made to Chapter 12, Article 3, Division 4, section 123.0403, and Chapter 14, Article 1, Division 4, section 141.0421, Placemaking on Private Property:

(i) A Temporary Use Permit is not required for placemaking on private property.

(ii) Placemaking on private property shall comply with current City, County of San Diego, State of California, and federal requirements in applicable public health orders, including social distancing requirements, and all subsequent amendments to those orders, related to the novel coronavirus, COVID-19. Should any provisions of this Ordinance conflict with these public health orders at any time, the requirements of those public health orders shall prevail. If there is a conflict among the requirements of applicable public health orders, the most restrictive order shall prevail.

(F) Permit Fees. The following temporary amendments are made to Chapter 2, Article 2, Division 40, section 22.4022, and to authorized Special Event Permit fees: Special Events Permit fees allowed in section 22.4022(a) and authorized Special Event Permit application fees, per business day late fees, and Fire-Rescue Department Special Events Permit application fees for special events-public assembly are waived for Special Event Permit applicants requesting a temporary street closure to allow for businesses to operate while allowing for social distancing. These fee waivers shall be retroactive to May 1, 2020.

Section 2. That there is a current and immediate threat to the public health, safety, and welfare of the City and its communities caused by COVID-19, thereby necessitating the immediate enactment of this interim urgency Ordinance.

Section 3. That the recitals above are incorporated herein.

Section 4. That this Ordinance, being an urgency Ordinance, is effective upon the day of its passage, and is effective one additional year until after July 13, 2022.

Section 5. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Noah J. Brazier
Noah J. Brazier
Deputy City Attorney

NJB:myb
April 20, 2021
05/14/21 Cor. Copy
Or.Dept: DSD
Doc. No.:2640685_2

Passed by the Council of The City of San Diego on MAY 18 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAY 18 2021

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.
By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on MAY 18 2021, said ordinance being of the kind and character authorized for passage on its introduction by Section 275 of the Charter.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.
By [Signature], Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21320