

ORDINANCE NO. 744

AN URGENCY ORDINANCE OF THE CITY OF CARPINTERIA ENACTING A TEMPORARY COVID-19 OUTDOOR BUSINESS PERMIT TO ALLOW BUSINESSES TO OPERATE IN THE CITY RIGHT-OF-WAY AND OTHER PRIVATELY-OWNED OUTDOOR SPACES TO ENCOURAGE SOCIAL DISTANCING AND ECONOMIC ACTIVITY DURING 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 the state prepare the effects of Novel Coronavirus (COVID-19); 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 across the state 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 for COVID-19, and to slow further spread of COVID-19; and

WHEREAS, on March 12, 2020, the County of Santa Barbara ("County") Local Health Officer declared a local health emergency exists in the County due to an imminent and proximate threat to public health, within the meaning of Section 101080 of the Health and Safety Code, by the introduction of COVID-19 in the County, and directed local agencies in the County 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 COVID-19 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; and restaurants and other food facilities offering on-site dining should immediately transition to only offering delivery or take-out service as part of the public health effort to slow the spread of COVID-19; 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) and May 13, 2020 (via adoption of Resolution No. 5969) in order to utilize all resources necessary to respond to COVID-19 and receive any State and Federal assistance and 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.*), CMC Chapter 2.40, and all other applicable federal and state laws, and City ordinances and resolutions, to be used by authorized City personnel; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20 instructing all individuals living in the State of California 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 ("essential businesses"); and

WHEREAS, many events across the County are being canceled or postponed due to the orders and recommendations at all levels of government to stop large gatherings amid concerns over the spread of COVID-19, and these cancellations and postponements 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 in the City are either not permitted to remain open or must severely restrict activities, causing significant adverse financial impacts. Also, state and county orders and guidance calling on residents to stay at home is resulting 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 April 13, 2020, the Council found these conditions warrant and necessitate a temporary moratorium on the eviction of commercial tenants suffering from economic hardship due to of a local emergency to address the COVID-19 pandemic, the state of emergency, or governmental response and enacted Ordinance No. 741; 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 (“lower-risk businesses”) in Stage Two of the State’s Resilience Roadmap subject to certain limitations; and

WHEREAS, on May 8, 2020, the County Health Officer issued Santa Barbara County Health Officer Order (“County Health Officer Order”) 2020-8.1, which further clarifies the lower-risk businesses eligible to be open for limited operations within the County; and

WHEREAS, the State’s Resilience Roadmap provides for county variances where counties meeting certain health metrics published by the CDPH may submit a written attestation to the state that allows a qualifying county to progress further into Stage Two; and

WHEREAS, on May 18, 2020, Governor Newsom and the CDPH announced modified health metrics to submit a written attestation; and

WHEREAS, on May 18, 2020, the City Council enacted Resolution No. 5977 establishing City 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 19, 2020, the County Board of Supervisors approved the Reopening in Safe Environment – RISE guide (“RISE Guide”) and submitted a written attestation to the CDPH to move further into Stage Two of the State’s Resilience Roadmap; and

WHEREAS, on May 20, 2020, the CDPH approved the County’s attestation; and

WHEREAS, on May 21, 2020, the County Health Officer issued County Health Officer Order 2020-8.2, which allows 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; and

WHEREAS, although the State and County have entered Stage 2 of the State’s Resiliency Roadmap, which loosens some public health and safety restrictions and allows essential and lower-risk businesses to re-open with certain protections in place, these businesses are expected to still have severely restricted activities and corresponding significant adverse financial impacts; and

WHEREAS, the City Council recognizes the immediate need to enact a temporary permit program (“COVID-19 Outdoor Business Permit Program”) to allow business to operate in City right-of-ways and in other privately-owned outdoor spaces to encourage social distancing and economic activity during the COVID-19 pandemic; and

WHEREAS, cities around the State and County are either considering or already have temporarily closed their downtown streets to traffic and authorized essential and lower-risk business to utilize outdoor space to safely serve customers;

WHEREAS, the City Council recognizes that a 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.

NOW, THEREFORE, THE CITY COUNCIL HEREBY RESOLVES AND ORDERS THAT:

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 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; and

B. Without the imposition of this 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. Carpinteria Municipal Code ("CMC") Chapter 12.08 and Downtown "T" Encroachment Permit Guidelines establish a permit program for local businesses within the Downtown "T" District to apply for and receive an encroachment permit to conduct certain business operations in the City's right-of-way that provide a framework for the portion of the COVID-19 Outdoor Business Permit Program applicable to the City right-of-way and other privately-owned property, but require certain modifications to streamline the approval and implementation of permits with all due speed during the COVID-19 pandemic.

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 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.

E. The City Council recognizes that—to encourage the return of robust economic activity with social distancing measures in place during the local emergency due to the COVID-19 pandemic—the COVID-19 Outdoor Business Permit Program may require that certain temporary exceptions to the requirements of CMC Chapter 12.02, the Downtown “T” Encroachment Permit Guidelines 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.

F. For the immediate preservation of the public peace, health, and safety, the Council finds that it is necessary to adopt an Urgency Ordinance authorizing implementation of the COVID-19 Outdoor Business Permit Program, for all of the reasons set forth in the recitals above, which 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 urgently 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. Definitions.

A. “Director of Emergency Services” has the same meaning as specified in CMC Chapter 2.40 and includes his/her designee(s).

B. “Essential business” is defined as any business or organization allowed to operate by the County Health Officer Order 2020-8.2, as may be amended. The list of essential businesses set forth in Attachments A and B to County Health Officer Order 2020-8.2 is incorporated by reference and attached hereto as Exhibit A, which may be amended as specified in Section 6.

C. “Lower-risk business” is defined as any business or organization allowed to operate County Health Officer Order 2020-8.2, as may be amended. The list of lower-risk businesses set forth in Attachment B to County Health Officer Order 2020-8.2 is incorporated by reference and attached hereto as Exhibit A, which may be amended as specified in Section 5.

D. “Social distancing measures” means social distancing measures included in guidelines published by the CDPH and as defined in County Health Officer Order 2020-8.2, as either may be amended, which include, but are not limited to, maintaining at least a six (6) foot distance from all persons who are not part of the same household or living unit and not gathering in groups.

Section 5. Temporary COVID-19 Outdoor Business Permit

A. Use of City Owned-Property. The City Council directs the Director of Emergency Services to establish a COVID-19 Outdoor Business Permit Program and process COVID-19 Outdoor Business Permit applications for locations within the City right-of-way consistent with the requirements of CMC Chapter 12.08 and Downtown "T" Encroachment Permit Guidelines that are not in conflict with this Urgency Ordinance. The Director of Emergency Services shall process COVID-19 Outdoor Business Permit applications on the City's Encroachment Permit form or other application form developed pursuant to Section 6.

B. Use of Privately Owned-Property. The City Council directs the Director of Emergency Services to establish a COVID-19 Outdoor Business Permit Program and to process COVID-19 Outdoor Business Permit applications for locations on privately-owned property consistent with the requirements of CMC Chapter 14.64 and the applicable provisions of CMC Chapter 12.08 (such as CMC 12.08.130(A)) and the Downtown "T" Encroachment Permit Guidelines that are not in conflict with this Urgency Ordinance. The Director of Emergency Services shall process COVID-19 Outdoor Business Permit applications on the City's temporary use application form or other application form developed pursuant to Section 6. COVID-19 Outdoor Business Permit applications on privately-owned property shall include a writing signed by the property-owner authorizing the essential or lower-risk business to pursue said application.

C. General Requirements. The COVID-19 Outdoor Business Permit Program shall include, but not be limited to, the following requirements:

1) Only essential and lower-risk businesses authorized to be open under the County Health Officer Order 2020-8.2, as may be amended, and as listed Attachments A, which may be amended as specified in Section 8, may receive a COVID-19 Outdoor Business Permit.

2) All essential and lower-risk businesses must follow social distancing measures, including the completion of RISE Guide self-certifications.

3) All applications shall include copies of the essential or lower-risk businesses RISE Guide self-certification and Social Distancing Protocol as specified in Attachment E to the County Health Officer Order 2020-8.2, as either may be amended.

4) Members of the public and workers shall wear face coverings consistent City Resolution No. 5977 and County Health Officer Order 2020-10 (except while eating), as either may be amended.

5) Access required under the Americans with Disabilities Act shall be maintained at all times.

6) Fire hydrants must remain unobstructed.

7) All businesses must comply with all City noise regulations.

8) Businesses that produce waste, such as food service establishments, must provide conveniently located outdoor waste and recycling receptacles for customers, and the receptacles must be emptied, serviced, and maintained in a manner that does not permit overflow of the receptacle or litter.

9) Smoking is prohibited in the all areas covered by a COVID-19 Outdoor Businesses Permit.

10) Live music and amplified sound must be permitted through an Entertainment License as described in CMC Chapter 5.40.

11) In the event that the Department of Alcohol and Beverage Control ("ABC") permits a license holder to expand on-site consumption to the portion of privately-owned property covered by a COVID-19 Outdoor Business Permit, the permittee shall comply with all ABC requirements. Alcohol consumption in the area covered by the COVID-19 Business Permit and by the ABC license shall be permissible pursuant to CMC Section 9.08.040(A)(1).

12) At the sole discretion of the Director of Emergency Services, the City may temporarily waive enforcement of commercial property owners' conditions of approval (such as parking requirements) that would otherwise conflict with implementation of this Urgency Ordinance.

13) The City shall not charge a fee to process a COVID-19 Outdoor Business Permit.

D. Revocability. Notwithstanding CMC Chapters 12.08, 14.64 or the Downtown "T" Guidelines, a temporary COVID-19 Outdoor Business Permit is revocable at any time by the Director of Emergency Services in accordance with Section 11; if a permit is revoked, the permittee, at its own expense, shall remove all facilities and equipment, and shall restore the public right-of-way and/or privately-owned property to its condition prior to installation.

Section 6. Rules and Regulations.

A. Given the changing circumstances surrounding implementation of the Governor's Executive Orders and State's Resilience Roadmap, California Department to Public Health guidance, County Health Officer Orders, and local businesses' needs, the City Council authorizes the Director of Emergency Services to promulgate administrative rules and regulations, including but not limited to: application forms, signage requirements and inspection procedures, to effectuate the purpose of this Urgency Ordinance consistent with state and County directives. The Director of

Emergency Services may promulgate rules and regulations that allow for temporary modifications of the requirements in CMC Chapter 12.08, the Downtown "T" Encroachment Guidelines, and CMC Chapter 14.64 to promote social distancing measures and to encourage economic activities consistent with the purpose of this Urgency Ordinance.

B. The City Council directs the Director of Emergency Services to coordinate with the County Sheriff's Office and Carpinteria-Summerland Fire Protection District in the development of Rules and Regulations and for the implementation of this Urgency Ordinance.

Section 7. Appeal. In the event the Director of Emergency Services denies a temporary COVID-19 Outdoor Business Permit, or the applicant for the COVID-19 Outdoor Business Permit disagrees with the rules and regulations prescribed by the Director of Emergency Services, the applicant may appeal to the City Council within ten (10) days after Director of Emergency Services action by filing a written notice with the City Clerk.

Section 8. Amendments to List of Essential and Lower Risk Businesses. Given the changing definition of essential and lower-risk businesses under state guidance and County Health Officer Orders, the City Council authorizes the Director of Emergency Services to update and amend Exhibit A consistent with amendments to the County Health Officer Order 2020-8.2 or related County Health Officer Orders.

Section 9. Enforcement and Violations. Violations of this Urgency Ordinance constitute a threat to public health, safety, and welfare, and may result in (1) an immediate revocation of a business' COVID-19 Outdoor Business Permit, (2) an immediate business license suspension and mandatory closure for the duration of the Urgency Ordinance, and/or (3) citation for misdemeanor offense as set forth in Chapter 1.08 of the Carpinteria Municipal Code.

Section 10. 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.

Section 11. Effective Date and Termination. This Urgency Ordinance shall become effective immediately and shall continue until the earlier of: (1) it is terminated by the City Council or (2) the conclusion of the local emergency or (3) thirty (30) days after the State of California enters Stage Four of the Resilience Roadmap.

Section 12. Scope. This Urgency Ordinance does not expand the definitions of essential or lower-risk business under County Health Officer Order 2020-8.2, as may be amended. All essential and lower-risk businesses and persons also shall comply with all social distancing measures and directives.

Section 13. Environmental Determination. The City Council finds that the adoption and implementation of this resolution 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 apply a COVID-19 Outdoor Business Permit process, similar to existing permit processes, which is solely an administrative process resulting in no change to the environment.

SECTION 14. 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 May 26, 2020, by the following vote:

AYES: COUNCILMEMBER(S): CARTY, LEE, SHAW, CLARK, NOMURA

NOES: COUNCILMEMBER(S): NONE

ABSENT: COUNCILMEMBER(S): NONE

ABSTAIN: COUNCILMEMBER(S): NONE



Mayor, City of Carpinteria

ATTEST:




City Clerk, City of Carpinteria

I hereby certify that the foregoing resolution was adopted at a regular meeting of the City Council of the City of Carpinteria held on May 26, 2020.



City Clerk, City of Carpinteria

APPROVED AS TO FORM:



Peter Brown, on behalf of Brownstein
Hyatt Farber Schreck, LLP acting as
City Attorney of the City of Carpinteria

EXHIBIT A
LIST OF ESSENTIAL AND LOWER-RISK BUSINESSES

Exhibit A

HEALTH OFFICER ORDER NO. 2020-8.2
COUNTY OF SANTA BARBARA

**Defined Essential Businesses
that May Remain Open with Social Distancing**

These defined essential businesses may be open now, but must self-certify in accordance with Section 6 below no later than June 5, 2020.

1. Agriculture and related businesses and industries
2. Airlines
3. Alarm and security companies
4. Animal boarding, pet supply, grooming, rehabilitation and veterinary services, necessary for the health of the animal
5. Auto repair, parts and service
6. Banks and other financial services
7. Blood donation centers
8. Businesses that supply supplies or items required to work from home.
9. Cemeteries/mortuaries funeral parlor and internment services
10. Community gardens for food production
11. Convenience stores
12. Distribution and delivery of essential consumer or business goods
13. Domestic violence shelters
14. Drug stores
15. Dry cleaners and laundromats
16. Electricians
17. Essential Government services
18. Exterminators
19. Farmer's markets, produce stands
20. Faith-based services:
 - a. May be provided through streaming or other technology; or
 - b. If provided in person all of the following protocols are followed:
 - i. all activity must occur outdoors;
 - ii. all persons attending the activity must be inside a motor vehicle occupied only by persons from the same household or living unit, not exceeding five persons;
 - iii. all motor vehicles at the gathering must maintain at least a minimum distance of six feet from all other vehicles
 - iv. all persons must remain in the vehicle in which they arrived at all times

- during the event;
 - v. no restroom facilities shall be made available to persons at the facility during the event; and
 - vi. no tangible items of any kind, including food products, may be transferred to persons in the motor vehicles.
 - c. Notwithstanding the above, one or more persons, not exceeding five, may enter nearby buildings as necessary to put on the presentation.
 - d. May operate offices for administrative support to the faith-based services similar to Section 26 in this Attachment A.
- 21. Food and goods delivery services
 - 22. Food banks and other organizations that provide assistance to the disadvantaged
 - 23. **Food preparation facilities:** Food facility workers may not work while ill. "Food facility" or "food facilities" means all licensed food facilities, as defined by Section 113789 of the Health and Safety Code. No food facility worker or volunteer may work or volunteer in a food facility with symptoms of COVID-19.
 - a. The symptoms requiring exclusion from a food facility as defined by the Santa Barbara County Health Officer are found in Attachment A.
 - b. Food facility workers or volunteers who have had symptoms of COVID-19 as defined by the Santa Barbara County Health Officer (Attachment A) shall return to work only when they have been free of symptoms for at least 72 hours without medication AND at least ten (10) days have elapsed since the onset of symptoms.
 - c. The Health Officer recommends food facility operators actively screen all workers and/or volunteers, including those from outside services (such as HVAC, plumbing, or electrical contractors) for COVID-19 symptoms upon each individual's arrival at the food facility. Individuals who exhibit symptoms consistent with COVID-19 as defined by the Santa Barbara County Health Officer in Attachment D shall be immediately excluded from the facility.
 - 24. Gas stations
 - 25. Grocery stores
 - 26. Hardware stores
 - 27. Healthcare providers-doctors, dentists, mental health professionals, nurses, hospice and those who provide administrative support to such facilities
 - 28. Home-based healthcare
 - 29. Home repair and maintenance (plumbers, electricians, pool service, repairs)
 - 30. Homeless service providers, shelters
 - 31. Hospitals, clinics, and medical offices
 - 32. Information technology support (e.g., providers, repair shops)
 - 33. Liquor stores
 - 34. Mailing and shipping services
 - 35. Manufacturing of essential consumer and business goods
 - 36. Media

37. Moving companies (to move individuals, families, belongings to new residence)
38. Online wholesale or retail sales
39. **Outdoor activities:** provided persons comply with social distancing requirements, such as, for example, visiting or walking through botanical gardens, walking, hiking, running, bicycling, pleasure driving, and working around their places of residence, including gardening.
40. Pharmacies
41. Professional services (legal, insurance, title, accounting, mortgage brokers, payroll, and others as needed to assist with legally mandated or essential services)
42. Property management
43. Public transit, buses
44. Railroads
45. Ranching and related businesses and industries
46. Re-entry or rehabilitation facilities
47. Residential care facilities
48. Solid waste facilities and haulers
49. Storage facilities
50. Trucking and moving services
51. Utility providers: water, power, gas, cable, internet, cell service
52. Wholesale food facilities

