

## **ORDINANCE NO.**

### **AN URGENCY ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS ALLOWING AND ESTABLISHING REQUIREMENTS FOR TEMPORARY BUSINESS MODIFICATIONS DURING COVID-19 PANDEMIC**

**WHEREAS**, on March 4, 2020, Governor Newsom issued a Proclamation of a State of Emergency in the State of California related to the COVID-19 pandemic; and

**WHEREAS**, the County of Mendocino Health Officer (Health Officer) declared a local health emergency related to the COVID-19 on March 4, 2020; and

**WHEREAS**, the County of Mendocino Director of Emergency Services proclaimed the existence of a local emergency related to COVID-19 on March 4, 2020; and

**WHEREAS**, on March 10, 2020, the Board of Supervisors of the County of Mendocino adopted Resolution No. 20-0024 ratified the local emergency related to COVID-19 as proclaimed by the Chief Executive Officer/Director of Emergency Services and ratified the existence of a local emergency as proclaimed by the Health Officer; and

**WHEREAS**, in light of the COVID-19 pandemic and Governor Newsom's state of emergency proclamation, on March 12, 2020, the Governor issued Executive Order N-25-20, ordering residents to heed any order by local public health officials, "including but not limited to the imposition of social distancing measures, to control the spread of COVID-19"; and

**WHEREAS**, on March 18, 2020, the Health Officer ordered all individuals living in the County to shelter in their place of residence, except to provide or receive certain essential services, engage in certain essential activities, and work for essential businesses and governmental services. This Order was issued on evidence of increasing occurrence of COVID-19 throughout the Bay Area, and the need to slow the rate of transmission to protect the most vulnerable and prevent the health care system from being overwhelmed; and

**WHEREAS**, on March 19, 2020, Governor Newsom issued Executive Order N-33-20 imposing a statewide shelter-in-place order requiring individuals to remain in their places of residence except as needed to maintain continuity of operations of critical infrastructure, access necessities such as food, prescriptions and healthcare, or engage in other authorized activities, and which remains in place with certain modifications to authorized activities and business operations; and

**WHEREAS**, the operative Health Officer Order, effective September 22, 2020, requires social distancing (also referred to as "physical distancing" by the State of California) by all individuals and require all businesses operating at facilities in the County visited or used by the public or personnel to follow the COVID-19 Industry Guidance and according to the Blueprint for a Safer Economy; and prepare (or continue to maintain) and post a "Social Distancing and Hygiene Protocol"; and

**WHEREAS**, in accordance with the State Blueprint for a Safer Economy, those businesses which are allowed to open outdoors, while the County is in the Widespread (purple) Tier, include certain personal care services, museums, zoos, aquariums, Places of Worship, movie theaters, gyms and fitness centers, restaurants and wineries. In addition, retail businesses are encouraged and authorized to offer curbside sales, pickup and delivery to help

minimize in-store contact and maintain social distancing; and

**WHEREAS**, businesses that are allowed to open must modify operations to comply with the County Health Order and guidelines and regulations specific to their industry sector from relevant local and state agencies, as well as prepare, post, and implement a physical distancing protocol to protect employees, customers, and the general public, and self-certify compliance; and

**WHEREAS**, social distancing continues to be imperative due to evidence of continued significant community transmission of COVID-19 within the County and throughout the region; continued uncertainty regarding the degree of undetected asymptomatic transmission; scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically; evidence that the age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID- 19; and further evidence that others, including younger and otherwise healthy people, are also at risk for serious outcomes; and

**WHEREAS**, particularly because individuals with COVID-19 may be asymptomatic, social distancing and modified business operations, such as using outdoor spaces and providing curbside pickup, takeout, and delivery, are critical to safely reopening businesses and preventing or mitigating a future spike in transmission; and

**WHEREAS**, unemployment rates in the County, the State, and the country have increased drastically during the shelter in place orders. The California Economic Development Department reported that the unemployment rate in the County was 14.8 percent in April 2020, up from 5.9 percent in March 2020. Safely reopening businesses is urgently necessary to prevent or mitigate a severe economic emergency that exacerbates risks to public health, safety, and welfare; and

**WHEREAS**, even as more indoor activities are allowed, outdoor activities remain safer due to the lower risk of transmission of COVID-19; and

**WHEREAS**, the immediate implementation of this ordinance is necessary because businesses need to be able to build temporary structures and modifications to operate through the winter months and continued COVID-19 pandemic, State Shelter Orders and County Health Orders; and

**WHEREAS**, Government Code section 25131 expressly authorizes the Board of Supervisors to adopt an urgency ordinance immediately upon its introduction.

**NOW, THEREFORE**, The Board of Supervisors of the County of Mendocino, State of California, ordains as follows:

## **SECTION 1. Findings and Purpose.**

The Board of Supervisors of the County of Mendocino finds and declares all of the following:

- A. The above recitals are true and correct, and are incorporated herein.
- B. The purpose of this ordinance is to support the safe reopening and operation of

local business operations during the COVID-19 pandemic.

## **SECTION 2. Definitions.**

- A. "Business" includes a for-profit, non-profit, religious organization or educational entity, whether a corporate entity, organization, partnership or sole proprietorship, and regardless of the nature of the service, the function it performs, or its corporate or entity structure.
- B. "Business Area" means an indoor or outdoor area that the business is legally entitled to use for any business purpose, such as employee areas, customer services areas, offices kitchens, storage, etc.
- C. "County Health Order" means the Order of the Health Officer of the County of Mendocino dated September 22, 2020, as amended and any future order of the Health Officer.
- D. "Department" means the County of Mendocino Planning and Building Services Department.
- E. "MCC" means Mendocino County Code.
- F. "Social Distancing Requirements" means the Social Distancing and Hygiene Protocol required by the County Health Order and any future requirements by a federal, state, or local agency that require physical separation between individuals for the purposes of reducing the risk of transmission of COVID-19.
- G. "State Shelter Order" means all Executive Orders issued by the Governor of the State of California, including E.O. N-33-20 and E.O. N-60-20, Public Health Orders issued by the California Public Health Order, and any public health directions or guidance issued by state agencies for the purpose of reducing the risk of transmission of COVID-19.
- H. "Temporary Indoor Area" means an area inside an existing building that is used or altered to facilitate compliance with a federal health order, State Shelter Order, County Health Order, or physical distancing requirements and that was not previously entitled for that use.
- I. "Temporary Modification" means any temporary indoor area, temporary outdoor area, temporary structure, or activity that is used or developed to comply with a federal health order, State Shelter Order, County Health Order, or physical distancing requirements.
- J. "Temporary Outdoor Area" means a new or repurposed outdoor area that is used or developed to comply with federal health order, State Health Order, County Health Order, or physical distancing requirements, and that was not previously entitled for that use.
- K. "Temporary Structure" means a structure that does not require a building permit under Title 18 of Mendocino County Code.

### **SECTION 3. Applicability of Ordinance.**

- A. The Ordinance only applies to temporary modifications undertaken in order to comply with a federal health order, State Shelter Order, County Health Order, or physical distancing requirements to reduce the risk of transmission of COVID-19.

### **SECTION 4. Administration and Administrative Policies.**

- A. This Ordinance will be administered under the direction of the Board of Supervisors, by the Planning and Building Services Department (the "Department").
- B. The Department may establish administrative policies for use in implementing the Ordinance. The administrative policies must be consistent with the Ordinance and made available to the public on the Department website and upon request at the Department.
- C. Where this Ordinance directly conflicts with Mendocino County Code, a discretionary permit for a particular business, or a business's legal non-conforming use allowance, the provisions of this Ordinance shall prevail.

### **SECTION 5. Temporary Modifications.**

#### **A. Indoor Modifications.**

- 1. A business area can be expanded into temporary indoor areas including into an existing nearby space or building.
- 2. A temporary indoor area can only be located in a zone in which the primary use is an allowed use under the base zoning designation or on the same parcel as a conditional use operating legally under a Use Permit or on the same legal parcel as a legal non-conforming use.

#### **B. Outdoor Modifications.**

- 1. A business area can be expanded into temporary outdoor areas.
- 2. A temporary outdoor area can only be located in a zone in which the primary use is an allowed use under the base zoning designation or on the same parcel as a conditional use operating legally under a Use Permit or on the same legal parcel as a legal non-conforming use.
- 3. A temporary outdoor area must comply with zoning standards and height standards for the base zoning designation in terms of setbacks from parcel boundaries, except for the following exemptions:
  - i. Temporary outdoor areas do not count towards lot coverage.
  - ii. A temporary outdoor area located in a zoning district that requires setbacks in excess of 30 feet are authorized to construct temporary

outdoor areas at a setback distance of no less than 30 feet from any parcel boundary, unless expressly allowed by the zoning code or an approved variance to be less than 30 feet.

4. A temporary outdoor area is exempt from Corridor Preservation Setbacks (MCC Sections 20.152.020, 20.444.020, and 20.692.015) but shall not be located within a public right-of-way unless an encroachment permit has been granted by the applicable department of transportation.
  5. No loud equipment, or loud musical instruments, such as horns, drums, or cymbals, are allowed in the temporary outdoor area.
  6. Noise must be controlled in accordance with Mendocino County Code Exterior Noise Limit Standards (Title 20, Division I, Appendix C and Title 20, Division II, Appendix B of Mendocino County Code), including amplified music.
  7. No additional signage is authorized for a temporary outdoor area without complying with standard regulations of Mendocino County Code.
  8. All lighting in a temporary outdoor area shall be downcast and shielded. Decorative lights may be hung but shall be turned off at the end of the business day.
  9. A temporary outdoor area can only be located in a previously disturbed area, such as a parking lot, hardscape, existing landscaping area, or other similar area.
  10. A temporary outdoor area may utilize an existing parking area provided they do not utilize any California Disabled Persons Act (ADA) required spaces and no more than 5 of their required off-street parking spaces.
- C. Parking Regulations Exemption. A temporary modification is exempt from Chapters 20.180 Off-Street Parking, 20.472 Off-Street Parking, and 20.714 Circulation and Parking, as applicable.
- D. New Structures and Modifications. A business may erect a new temporary structure or make a minor modification to an existing structure as part of a temporary modification.
- E. Discretionary Review Exemption. A temporary modification is exempt from Discretionary Review, including Mendocino Historical Review Board Permits and Coastal Development Permits, unless the business wishes to retain it after the end of the effective period of this ordinance as provided in Section 5(H) of this ordinance.
- F. Compliance with Other Laws. All temporary modification must comply with other state and local laws, including encroachment, building, grading, fire, and health code requirements, the California Disabled Persons Act, the State Shelter Order and the County Health Order.
- G. No Property Rights Conferred. Use or development of a temporary modifications must immediately cease at the end of the effective period of this Ordinance.

#### H. Cessation and Legalization of Temporary Modifications.

1. Cessation upon Expiration of the Ordinance. The use of temporary modifications must immediately cease at the end of the effective period of this Ordinance.
2. Restoration or Retention of Temporary Modifications. Within 30 days after the end of the effective period of this Ordinance, Temporary modifications must either be restored to their prior condition or the applicant must apply for and diligently pursue retention of these modifications on a permanent basis.
3. Early Application for Maintenance of Temporary Modifications. Businesses seeking to use a temporary modification after the end the effective period of this Ordinance are encouraged to submit an application to the Department as early as possible, including any required discretionary permits.

#### **SECTION 6. Enforcement.**

- A. Enforcement. A violation of this Ordinance is subject to enforcement by any legal means available, including but not limited to the enforcement provisions in MCC Chapter 1.08, and Chapters 20.216, 20.552 and 20.736 as applied to the zoning district where the violations occurs.
- B. Suspension, termination and modification. If the Department determines that temporary modifications are made in a manner that does not comply with this Ordinance, the Department may require changes to the temporary modification, suspend use of the temporary modification, or require that the temporary modification cease. A decision by the Director of the Department under this section is final, subject only to judicial review.

#### **SECTION 7. Environmental Determination.**

Adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to the following: Public Resources Code Section 21080(b)(4) and CEQA Guidelines Section 15269(c) as an action immediately necessary to mitigate or prevent an emergency because the Ordinance establishes temporary measures to enable physical distancing to reduce the risk of transmission of COVID-19 and because the anticipated time to conduct environmental review would pose a grave risk to public health, safety, and welfare, and because the action is immediately necessary to allow businesses to safely reopen to prevent an economic emergency that similarly poses a grave risk to public health, safety, and welfare; CEQA Guidelines Section 15301 (Class 1) as an action authorizing the use or minor alteration of existing facilities in order to accommodate physical distancing for existing entitled uses; CEQA Guidelines Section 15303 (Class 3) as an action authorizing the conversion of existing small structures and the installation of only small, temporary structures to accommodate physical distancing for existing entitled uses; CEQA Guidelines Section 15304 (Class 4) as an action authorizing minor temporary uses of previously disturbed land having negligible or no permanent effects on the environment in order to allow use of lower risk outdoor spaces for existing entitled uses; and CEQA Guidelines Section 15061(b)(3) (Common Sense) because it can be seen with certainty that there is no possibility that the action will have a significant effect because allowed modifications to existing legal uses are temporary and minor in scale.

## **SECTION 8. Severability.**

The provisions of this ordinance are separate and severable. If any provision of this ordinance is for any reason held by a court to be unconstitutional or invalid, the Board declares that it would have passed this ordinance irrespective of the invalidity of the provision held to be unconstitutional or invalid. Such unconstitutionality or invalidity shall therefore not affect the remaining provisions of this Ordinance, or the validity of its application to other persons or circumstances.

## **SECTION 9. Effective Date.**

This Ordinance shall take effect immediately as an urgency ordinance, and will remain in effect until 30 days after expiration or termination of social distancing requirements, or until this Ordinance is modified or revoked by the Board of Supervisors, whichever is sooner.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Mendocino, State of California, on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by the following roll call vote:

AYES:	Supervisors
NOES:	None
ABSENT:	None

**WHEREUPON**, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO  
Clerk of the Board

\_\_\_\_\_  
JOHN HASCHAK, Chair  
Mendocino County Board of Supervisors

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Deputy

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

*APPROVED AS TO FORM:*  
CHRISTIAN M. CURTIS  
County Counsel

BY: CARMEL J. ANGELO  
Clerk of the Board

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Deputy