

ATTACHMENT A

RESOLUTION NO. 2021-84

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AUTHORIZING AN ADDITIONAL EXTENSION OF THE EMERGENCY TEMPORARY USE PERMITS ISSUED TO COMMERCIAL AND INSTITUTIONAL USES TO OPERATE ON PRIVATE PROPERTY, PARKING LOTS, SIDEWALKS, AND PUBLIC PROPERTY AND TEMPORARILY WAIVING COUNCIL POLICY L-21 (PA2020-069)

WHEREAS, Section 200 of the City of Newport Beach ("City") Charter vests the City Council with the authority to make and enforce all laws, rules, and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California ("State");

WHEREAS, in response to the COVID-19 outbreak and subsequent declarations of emergency by the United States Secretary of Health and Human Services on January 31, 2020 and by Governor Newsom on March 4, 2020, the City Council adopted Emergency Ordinance No. 2020-005 on May 26, 2020 authorizing the Community Development Director to grant emergency temporary use permits ("ETUP") for commercial and institutional uses to operate on private property, parking lots, sidewalks, and public property;

WHEREAS, on July 29, 2020, the California Department of Public Health issued COVID-19 Industry Guidance for dine-in restaurants, which provides direction for dine-in restaurants, brewpubs, craft distilleries, breweries, bars, pubs, and wineries to support a safe, clean environment for workers and customers, including organization, sanitation, and social distancing guidelines;

WHEREAS, on June 8, 2021, the City Council adopted Resolution No. 2021-58 extending the expiration date for ETUPs, issued pursuant to Emergency Ordinance No. 2020-005, to September 6, 2021;

WHEREAS, in late July 2021, the Delta variant created additional challenges for businesses, making it more difficult for businesses to return to usual operations in compliance with Cal OSHA Emergency Temporary Standards and guidelines of other agencies regarding physical distancing, increased ventilation, and the use of outdoor areas as measures to reduce transmission of COVID-19; and

WHEREAS, to help assist commercial businesses and institutions to operate in a safe manner in accordance with the guidance from federal, state, and local health officials, it is necessary to continue to temporarily allow commercial and institutional uses to operate on private property, parking lots, sidewalks, and public property.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: All emergency temporary use permits (ETUP) that have been issued, and which have not been revoked, shall remain valid through December 31, 2021, subject to the ETUP permit holders compliance with the conditions of approval and procedures established by Emergency Ordinance No. 2020-005.

Section 2: ETUP permit holders may apply for a limited term permit to continue to use spaces authorized through an ETUP which will go into effect after the extensions set forth in Section 1. Applications will be reviewed on an individual basis based on the merits of the location, availability of parking, and land use compatibility. Outdoor dining design and processing guidelines will be developed to ensure permanent outdoor facilities are aesthetically integrated and do not negatively impact surrounding uses. Limited term permit fees and associated coastal development permit fees shall be waived with the exception of public noticing fees when required (for any application that proposes a term of 90 days or longer).

Section 3: For all ETUP permits and new limited term permits, the City Council hereby waives City Council Policy L-21 (Sidewalk Café Standards and Procedures) for the duration of said permits.

Section 4: Except as expressly set forth herein, nothing contained in this resolution shall be deemed to waive any fees otherwise required by any other provision of law, including fees collected by the City on behalf of any other public agency or entity, nor otherwise waive compliance with any other applicable provisions of the Newport Beach Municipal Code or any other City ordinance, policy or regulation.

Section 5: The City Council finds the adoption of this resolution is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15301 (Class 1, Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because the project consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. This exemption includes additions to existing structures that will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less.

Section 6: The recitals provided in this resolution are true and correct and are incorporated into the substantive portion of this resolution.

Section 7: Emergency Ordinance No. 2020-005, adopted by the City Council on May 26, 2020, is attached hereto as Exhibit "A" and incorporated herein by reference to this resolution.

Section 8: The City hereby rescinds Resolution 2021-58, and replaces it with the current resolution.

Section 9: If any section, subsection, sentence, clause or phrase of this resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 10: This resolution shall take effect immediately upon its adoption by the City Council and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 14th day of September, 2021.

Brad Avery
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

_____
for

Aaron C. Harp
City Attorney

Attachment: Exhibit A - Emergency Ordinance No. 2020-005

EXHIBIT A

EMERGENCY ORDINANCE NO. 2020-005

**AN EMERGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF NEWPORT BEACH, CALIFORNIA,
AUTHORIZING THE COMMUNITY DEVELOPMENT
DIRECTOR TO GRANT EMERGENCY TEMPORARY USE
PERMITS TO COMMERCIAL BUSINESSES AND
RELIGIOUS INSTITUTIONS FOR THE UTILIZATION OF
PRIVATE PROPERTY, PARKING LOTS, SIDEWALKS AND
PUBLIC PROPERTY**

WHEREAS, Section 200 of the Charter of the City of Newport Beach ("City") vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services announced a nationwide public health emergency, in response to the COVID-19 outbreak;

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for the broader spread of COVID-19 ("State of Emergency");

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic;

WHEREAS, on March 15, 2020, Governor Newsom called for all bars, wineries, nightclubs and brewpubs to close throughout the state, urged all seniors and people with chronic health conditions to isolate themselves at home, and for restaurants to reduce occupancy by half to keep people farther away from each other;

WHEREAS, on March 15, 2020, in response to the COVID-19 outbreak, Newport Beach City Manager Grace Leung, who is the Director of Emergency Services ("Director of Emergency Services") for the City, issued a Proclamation of Local Emergency ("Proclamation");

WHEREAS, on March 18, 2020, the Newport Beach City Council ratified the Proclamation and authorized the Director of Emergency Services to take certain actions to protect the health, safety, and welfare of the public;

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20, requiring all individuals living in the State of California to stay home or at their place of residence, except as needed to maintain continuity of operations of the federal critical infrastructure sectors ("Stay at Home Order");

WHEREAS, on March 19, 2020 the Federal Cybersecurity and Infrastructure Security Agency issued guidance identifying 14 critical infrastructure sectors whose workers provide services and functions that are essential to support a strong response to the COVID-19 outbreak;

WHEREAS, on April 14, 2020, Governor Newsom outlined six factors that the State of California would consider when modifying the Stay at Home Order including: (1) the ability to test, contact trace, isolate, and support the exposed; (2) the ability to protect those at high risk for COVID-19; (3) the surge capacity for hospital and health systems; (4) the therapeutic development to meet the demand; (5) the ability of businesses, schools, and childcare facilities to support physical distancing; and (6) a determination of when to reinstitute measures like Stay at Home;

WHEREAS, on April 28 2020, Governor Newsom announced four "Resilience Roadmap Stages" that the State of California would use to guide its gradual reopening process, which consists of the following four stages: Stage 1, Safety and Preparedness; Stage 2, Lower Risk Workplaces; Stage 3, Higher Risk Workplaces; and Stage 4, End of Stay at Home Order;

WHEREAS, on May 4, 2020, Governor Newsom announced that, beginning May 8, 2020, the State of California would move from Stage 1, which had been in place statewide since the issuance of the Stay at Home Order, to Stage 2, which is the gradual re-opening of some lower risk workplaces;

WHEREAS, COVID-19 has been detected in millions of people worldwide, including, as of May 13, 2020, 130 cases in the City, and is primarily spread from person to person;

WHEREAS, COVID-19 is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety;

WHEREAS, as commercial businesses and religious institutions in the City begin to re-open, it is critical that they do so in a manner where social distancing is maintained to limit the spread of COVID-19;

WHEREAS, to help existing commercial businesses and religious institutions operate in a safe manner where social distancing is maintained in accordance with guidance from the State of California and local health officials, it is necessary to temporarily allow commercial businesses and religious institutions to operate on private property, parking lots, sidewalks and public property; and

WHEREAS, Charter Section 412 provides that an ordinance necessary to preserve the public peace, health or safety, may be introduced and adopted at one and the same meeting if passed by at least five affirmative votes.

NOW, THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: The City Council of the City of Newport Beach hereby finds and declares that this emergency ordinance is necessary to help limit the spread of COVID-19 and to protect the health, safety and welfare of the public because it is essential that contact between persons, which could lead to the spread of COVID-19, be limited, and the use of private property, parking lots, sidewalks and public property is necessary to allow existing commercial businesses and religious institutions operate in a safe manner where social distancing is maintained in accordance with guidelines issued by the State of California and local health officials.

Section 2: The Community Development Director is hereby authorized to grant emergency temporary use permits, which allow for the temporary use of private property, parking lots, sidewalks and public property for commercial and religious uses.

An application for an emergency temporary use permit shall be filed with the Community Development Department, on forms approved by the Community Development Director, and shall include all information and materials specified by the Community Development Director. After consulting with City departments, as applicable, the Community Development Director may approve or conditionally approve an emergency temporary use permit if the Community Development Director finds that the temporary use would not create a hazard to the health, safety or welfare of the public. The Community Development Director may impose any conditions deemed necessary to ensure that the temporary use does not create a hazard to the public health, safety or welfare of the public.

The Community Development Director shall have the authority to immediately revoke any emergency temporary use permit granted pursuant to this emergency ordinance if the Community Development Director determines that there has been a violation of any condition of approval. Any revocation of an emergency temporary use permit shall be deemed effective upon the posting of a notice of revocation at the site of the business granted the emergency temporary use permit.

Any decision made by the Community Development Director, pursuant to the authority granted the Community Development Director under this emergency ordinance, may be appealed by the applicant/permittee to the City Manager by notifying the City Manager of the appeal within three (3) calendar days of the decision. The City Manager shall have authority to sustain, reverse or modify the decision of the Community Development Director. The City Manager's decision shall be final.

All application fees and appeal fees directly related to this emergency ordinance are hereby waived.

Section 3: As long as an emergency temporary use permit is in effect, all Newport Beach Municipal Code provisions and any restrictions set forth in a discretionary permit regulating uses, nonconforming uses, development standards, parking, signage, permit procedures or other regulations specifically addressed in the emergency temporary use permit that would otherwise regulate the use and development of private or public property, are hereby suspended for sites subject to an emergency temporary use permit, to the extent that the Newport Beach Municipal Code provisions or restrictions set forth in a discretionary permit conflict with the terms of the emergency temporary use permit.

Section 4: As a condition of receiving an emergency temporary use permit, the permittees shall agree to defend, indemnify and hold harmless the City and its employees from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to the issuance of the emergency temporary use permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding.

Section 5: Permittees that utilize public property shall obtain and maintain insurance in an amount specified by the City's Risk Manager. Unless otherwise indicated by the Risk Manager, permittees shall obtain and maintain commercial general liability insurance on an "occurrence" basis, including completed products and completed operations, property damage, bodily injury and personal and advertising injury with a limit of not less than \$1,000,000 per occurrence. This insurance shall be endorsed to name the "City of Newport Beach, the City Council, its employees, and agents" as additional insureds, and provide that this insurance is primary and non-contributory with any other insurance or self-insurance available to the City. Permittees shall also maintain workers' compensation as required by the State of California with Statutory Limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the "City of Newport Beach, the City Council, its employees, and agents." If permittee maintains broader coverage and/or higher limits than the minimums provided in this Section, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the permittee. All policies shall be issued by an agent or representative of an insurance company licensed to do business in the State of California, which has one of the three highest or best ratings from the Alfred M. Best company. All insurance policies shall contain an endorsement obligating the insurance company to furnish the Community Development Director with at least thirty (30) days written notice in advance of the cancellation of the policy. The City reserves the right to require a permittee to submit the requisite insurance documents for review at any time.

Section 6: Areas used for temporary commercial and religious uses shall be accessible to the disabled.

Section 7: The emergency temporary use permit shall expire fourteen (14) days after this emergency ordinance is terminated or repealed, as provided for in Section 11.

Section 8: The recitals provided in this emergency ordinance are true and correct and are incorporated into the substantive portion of this emergency ordinance.

Section 9: If any section, subsection, sentence, clause or phrase of this emergency ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this emergency ordinance. The City Council hereby declares that it would have passed this emergency ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 10: The City Council finds and determines that the introduction and adoption of this emergency ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15269(c) (the activity is necessary to prevent or mitigate an emergency), 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 11: This emergency ordinance shall become effective May 26, 2020, and shall continue in full force and effect until: (a) the local emergency proclaimed on March 15, 2020 and ratified by the City Council on March 18, 2020, is terminated by proclamation of the City Council; or (b) such time as this emergency ordinance is repealed in whole, or in part, by the City Council.

Section 12: The Mayor shall sign, and the City Clerk shall attest to the passage of this emergency ordinance. The City Clerk shall cause the emergency ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This emergency ordinance was introduced and adopted at a regular meeting of the City Council of the City of Newport Beach held on the 26th day of May 2020, by the following vote, to-wit:

Mayor O'Neill, Mayor Pro Tem Avery, Council Member
Brenner, Council Member Dixon, Council Member Duffield
AYES: Council Member Herdman, Council Member Muldoon

NAYS: _____

ABSENT: _____



WILL O'NEILL, MAYOR

ATTEST:



LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY



STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH }

ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing ordinance, being Emergency Ordinance No. 2020-005, was duly introduced and adopted at a regular meeting of the City Council on the 26th day of May, 2020, by the following vote, to wit:

AYES: Mayor Will O'Neill, Mayor Pro Tem Brad Avery, Council Member Joy Brenner, Council Member Diane Dixon, Council Member Duffy Duffield, Council Member Jeff Herdman, Council Member Kevin Muldoon
NAYS: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 27th day of May, 2020.




Leilani I. Brown, MMC
City Clerk
City of Newport Beach, California

CERTIFICATE OF PUBLICATION

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH }

ss.

I, LEILANI I. BROWN, City Clerk of the City of Newport Beach, California, do hereby certify that Emergency Ordinance No. 2020-005 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in *The Daily Pilot*, a newspaper of general circulation on the following date:

Published Date: May 30, 2020

In witness whereof, I have hereunto subscribed my name this 8th day of June, 2020.




Leilani I. Brown, MMC
City Clerk
City of Newport Beach, California