

Attachment A

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AN URGENCY ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, DUE TO THE COVID-19 PANDEMIC, AUTHORIZING AUTOMATIC TEMPORARY EXTENSION OF CONSTRUCTION AND DISCRETIONARY PERMITS AND ESTABLISHING A PROCESS FOR TEMPORARY MINISTERIAL AMENDMENTS TO DISCRETIONARY PERMITS

County Counsel Summary

This ordinance is an urgency ordinance for the immediate preservation of the public peace, health and safety of the County of Monterey while the Monterey County Health Officer's Shelter-In-Place Orders are in effect due to the COVID-19 pandemic. This ordinance would automatically extend the expiration dates of approved land use and construction permits, except for subdivision maps, for the period from March 17, 2020 through the term of this urgency ordinance. The ordinance would also establish a ministerial process by which applicants could apply for temporary amendment to a discretionary land use permit to allow certain temporary modifications to the permit to enable physical distancing while the Shelter-in-Place Order is in effect. This ordinance would remain in effect until the Shelter-in-Place Orders no longer include physical distancing requirements, the Shelter in Place Orders are terminated, or the ordinance is terminated, whichever occurs first. This ordinance is an urgency ordinance pursuant to Government Code section 25123 and requires a four-fifths vote for adoption.

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, on March 6, 2020, the County Administrative Officer of the County of Monterey issued a proclamation declaring the existence of a local emergency in the County, and on March 13, 2020, the Monterey County Board of Supervisors ratified and extended the Declaration of a Local Emergency; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency; and

WHEREAS, the Governor has issued from time-to-time Executive Orders establishing regulations restricting certain activities to protect the public health and safety during the COVID-19 pandemic; and

WHEREAS, on March 17, 2020, Health Officer of the County of Monterey issued a Shelter-In-Place Order, which the Health Officer has extended and modified periodically, enacting restrictions on activities in Monterey County, including requiring physical distancing, to protect the public health and safety in compliance with the State Public Health Officer Orders setting baseline restrictions due to COVID-19; and

WHEREAS, on March 19, 2020, the Governor and the State Public Health Officer issued statewide Stay at Home orders; and

WHEREAS, the local Shelter-In-Place and state Stay at Home Orders prohibited construction and development activity from March 17 through May 1, 2020; and

WHEREAS, on May 1, 2020, the state designated the construction industry an “essential” business, thus allowing that industry sector to resume activity; and

WHEREAS, the Health Officer of the County of Monterey issued a new Shelter-In-Place Order on May 26, 2020, which took effect when the State approved and posted the County’s Variance Attestation on May 30, 2020, which allows certain categories of business to open with certain restrictions, including maintaining physical distancing measures; and

WHEREAS, the termination of the Shelter-In-Place and Stay at Home Orders are not known and cannot be known at this time; and

WHEREAS, in light of the declared federal, state, and County emergency due to the occurrence of COVID-19 and the Orders of the County Health Officer and State Public Health Officer, there is an immediate need to facilitate extensions of and temporary amendments to previously approved discretionary land use permits, including amendments to permits to accommodate physical distancing requirements, to protect the public health, safety, and welfare as businesses reopen; and

WHEREAS, pursuant to California Government Code section 25123, the immediate preservation of the public peace, health, safety and welfare requires adoption of this urgency ordinance to establish a process for temporary ministerial amendments to land use permits to enable already permitted uses to continue in a manner that provides a safe and healthy condition for the public during this pandemic; and

WHEREAS, the local Shelter-In-Place and state Stay at Home Orders prohibited, from March 17 through May 1, 2020, holders of land use permits from performing substantial work under their permits prior to the permit expiration dates, and the social distancing requirements of those orders will, for the foreseeable future, impact and delay the ability of permit holders to further perform substantial work under permits prior to their expiration dates, thereby contributing to the pandemic’s potential deleterious economic impact on the County; and

WHEREAS, it is necessary and appropriate for the immediate protection of the public peace, health, safety and welfare of the County to allow automatic extensions of land use permits for the period in which the Shelter-In-Place and Stay at Home Orders are in effect to enable permit holders time to recover from the economic effects of the pandemic and to reduce the economic impact of the pandemic on the County; and

WHEREAS, this ordinance is statutorily exempt under the California Environmental Quality Act pursuant to section 15269(c) of the CEQA Guidelines because it is a specific action necessary to mitigate an emergency; NOW THEREFORE,

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1: Purpose

It is the purpose of this urgency ordinance to provide an immediate means to extend automatically the expiration dates of already granted land use and construction permits, and to allow applicants desiring to temporarily amend an approved or existing permit to make application to the Appropriate Authority to ministerially approve any amendment application that meets the listed criteria, for the period in which the Public Health Order, as defined herein, remains in effect.

SECTION 2: Definitions

“Appropriate Authority” means, for the purpose of this ordinance, the Chief of Planning for Design Approvals, Tree Removal Permits, Administrative Permits, Use Permits, Coastal Administrative Permits, Coastal Development Permits, Combined Development Permits, and Variances, and the Chief of Building for Construction Permits.

“Expiration Date” means the date that a ministerial or discretionary permit expires prior to vesting.

“Public Health Order” means, for the purpose of this ordinance, the Shelter-In-Place Order of the Health Officer of the County of Monterey dated March 17, 2020, as may be extended, modified, or superseded by another Shelter-In-Place Order by said Health Officer, based on the occurrence of COVID-19 within the County and that specifically includes physical distancing requirements.

SECTION 3: Term

This ordinance shall remain in effect until the earlier of the following: modification of the Public Health Order to no longer include physical distancing requirements; termination of the Public Health Order; or termination of this ordinance.

SECTION 4: Uses Allowed

Uses previously approved through discretionary permit of the County of Monterey which comply with the Public Health Order.

SECTION 5: Extension of Permits

The Expiration Date of all ministerial and discretionary land use permits that are in effect as of March 17, 2020 are hereby automatically extended. The period of the extension is

the effective period of the Public Health Order, which is the period from March 17, 2020 through the term of this urgency ordinance. This automatic extension does not apply to Tentative Maps or Tentative Parcel Maps for subdivisions.

SECTION 6: Ministerial Amendment of Permits: Temporary

Written request may be submitted for a temporary ministerial amendment to the terms of any discretionary permit that has not expired or been revoked as of March 17, 2020. All such applications shall be approved by the Appropriate Authority ministerially if the following criteria are met:

- A. The use shall comply with the Public Health Order.
- B. The use requires modification to comply with the Public Health Order, or modifications are requested to temporarily operate pursuant to the requirements of the Public Health Order.
- C. The applicant shall submit a written request that describes how the proposed amendment will allow the use to operate in compliance with the Public Health Order, provide a narrative and/or plan that describes the modifications requested, and describe how the proposed amendment will comply with the criteria listed in this ordinance. The Appropriate Authority may request additional information to ensure that the ordinance requirements are fulfilled prior to approval.
- D. Temporary modifications proposed may include, but are not limited to, allowing outdoor seating or staging areas within other developed portions of the site (e.g., parking or landscaped areas), constructing or installing temporary structures to accommodate the modified operations, or relocation of uses within the site.
- E. The application meets the following criteria:
 1. Proposed modifications shall be accommodated completely within the previously approved development footprint.
 2. Landscape areas may be temporarily converted as long as permanent structures are not proposed for those areas, no native vegetation is impacted, and the landscaping is restored to its approved condition within 60 days of the Public Health Order being modified to no longer require physical distancing.
 3. For a site with multiple businesses on a property, the applicant shall submit a written statement listing all businesses and uses within 100 feet and describing how parking and access will not be impacted for those uses. The Appropriate Authority may request additional information prior to approval.
 4. Parking areas may be temporarily converted as long as permanent structures are not proposed for those areas, and:
 - a. For uses requiring greater than twenty (20+) parking spaces, no more than twenty percent (20%) of the parking spaces shall be converted for the temporary use; or
 - b. For uses requiring one to twenty (1-20) parking spaces, no more than twenty five percent (25%) of the parking spaces shall be converted for the temporary use.

- c. No ADA parking space may be eliminated for the temporary modification.
 - 5. The amendment shall comply with all current county noise and lighting requirements. If new lighting is proposed, a lighting plan showing compliance to county standards shall be submitted with the amendment request.
 - 6. All necessary sanitation facilities, as determined by the Environmental Health Bureau, are provided.
 - 7. There is no reasonable possibility that the activity will result in a new significant environmental impact or more severe environmental impact than was analyzed when the original project was approved.
 - 8. The use is not intensified beyond the limits of the approved permit.
- F. The decision on the amendment is ministerial. Accordingly, no notice or public hearing shall be required for a temporary amendment pursuant to this ordinance.
- G. The temporary amendment to the permit shall be in effect only until termination of this ordinance pursuant to Section 3.
- H. The applicant shall fully restore the site to comply with its original permit requirements within 60 days of the temporary amendment termination.

SECTION 7: Effective Date

This ordinance shall take effect immediately as an urgency ordinance based on the finding of the Board of Supervisors that this ordinance is adopted in compliance with Government Code Section 25123, that it is necessary for the immediate protection of the public peace, health, and safety, and that it is necessary to prevent the County of Monterey from suffering significant deleterious impacts to the public health during this COVID-19 pandemic emergency.

PASSED AND ADOPTED this ____ day of June 2020, by the following vote:

AYES:

NOES:

ABSENT:

Christopher Lopez
Chair, Monterey County Board of Supervisors

A T T E S T:

VALERIE RALPH
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM
/s/
Wendy S. Strimling
Assistant County Counsel