

ORDINANCE NO. _____

**AN URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA,
ALLOWING AND ESTABLISHING REQUIREMENTS FOR
TEMPORARY BUSINESS MODIFICATIONS DURING THE COVID-19
PANDEMIC
URGENCY ORDINANCE: 4/5 VOTE REQUIRED**

The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

Section I. Findings. This urgency ordinance is adopted pursuant to California Government Code Sections 8634, 25123(d) and 25131, and California Health and Safety Code Section 101025 and will take effect immediately upon its approval by at least four-fifths vote of the Board of Supervisors. The Board finds that this ordinance is necessary for the immediate preservation of the public peace, health, and safety, based upon the following:

- A. A novel coronavirus, COVID-19, causes infectious disease and was first detected in Wuhan City, Hubei Province, China in December 2019. Symptoms of COVID-19 include fever, cough, and shortness of breath; outcomes have ranged from mild to severe illness, in even death.
- B. On January 30, 2020, the World Health Organization (WHO) declared the COVID-19 outbreak a public health emergency of internal concern, and on January 31, 2020, the U.S. Department of Health and Human Services declared the Public Health Emergency for the United States of America.
- C. The Centers for Disease Control and Prevention (CDC) has determined that the virus presents a serious public health threat.
- D. On March 4, 2020, the Board of Supervisors adopted Resolution No. 20-0074 ratifying the Declarations of a Local Emergency and Local Health Emergency, finding that conditions of extreme peril to the safety of persons and property had arisen within the County caused by the threat of COVID-19.
- E. On March 16, 2020, the Governor of the State of California proclaimed a State of Emergency as a result of the threat of COVID-19 to the public health and the economy.
- F. On March 17, 2020, the Sonoma County Health Officer (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 (Order No. C-19-03). Order No. C-19-03 was issued on evidence of increasing occurrence of COVID-19 within the community and 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.

- G. 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.
- H. On March 31, 2020, the Health Officer extended the duration of Order No. C-19-03 until May 3 and established social distancing protocol for businesses, and social distancing and hygiene protocol for individuals (Order No. C9-05); and on May 1, 2020, the Health Officer extended Order No. C9-05 without an end date and reduced restrictions on some industries while keeping the majority of restrictions in place to continue to reduce the rate of transmission and protect the most vulnerable in the community (Order No. C9-09).
- I. On May 7, 2020, May 14, 2020, and May 22, 2020, Order No. C9-09 was amended to allow retail sales by curbside pickup, delivery, or shipping, and to allow manufacturing, supply chain, and logistical support business that support retail businesses to resume operations (Amendment No. 1); to allow some office workspaces, outdoor museums, botanical gardens, car washes, pet groomers, dog walking services, and expanded childcare facilities, and to allow retailers in shopping malls to offer retail sales by curbside pickup, delivery, or shipping (Amendment No. 2); to allow restaurants, bars, and wineries to operate outdoors if they offer sit-down meals, summer day programs, drive-in ceremonies and movies, and in-person counseling provided by faith based organizations (Amendment No. 3).
- J. On June 5, 2020, the Health Officer issued Order No. C19-14 allowed additional businesses and activities to reopen, including dine-in restaurants, hair salons, outdoor recreation businesses, and limited personal services; and on June 12, 2020, the County Health Order was amended to allow restaurants, bars, and wineries to operate for outdoor alcohol-only service without food service, in compliance with the Governor's guidance.
- K. On June 18, 2020, the Health Officer issued Order No. C19-15 ("County Health Order") which largely aligned with the State's allowance for certain activities and businesses, including expanded personal services.
- L. All 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.
- M. County Health Orders and physical distancing continue to be imperative due to evidence of continued significant community transmission of COVID-19 within the County and throughout the Bay Area; 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.
- N. Particularly because individuals with COVID-19 may be asymptomatic, physical 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.
 - O. 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 15.2 percent in April 2020, up from 3.7 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.
 - P. While agricultural operations were considered essential businesses from the beginning of the shelter in place orders and allowed to continue operating, supply chains and sales were radically disrupted due to closures of restaurants, schools, and other establishment customers. Particularly for small farmers and much of the County's local producers, having additional and alternative methods for promoting and marketing agricultural products will be critical to their ability to stay in business and continue to supply our communities, while responding to COVID-19.
 - Q. Even as more indoor activities are allowed, outdoor activities remain safer due to the lower risk of transmission of COVID-19. Allowing a variety of no or low impact outdoor activities on agricultural lands provides a safer alternative to indoor or busy outdoor establishments or parks.
 - R. General Plan Policies AR-1a and AR-6a direct the County to allow a wide variety of promotional and marketing activities of County grown and processed products and to allow visitor serving uses that promote agricultural production in the County through sales, promotional activities, educational activities, and tours and are secondary and incidental to local agricultural production.
 - S. Similarly to allowing expanded physical spaces, allowing extended hours of operation, more frequent but smaller events, and small-scale alternative promotion and marketing activities, agricultural and visitor serving uses will be able to spread out visitors and customers to decrease the risk of transmission of COVID-19.

Section II. Requirements for Temporary Modifications.

- A. Purpose. The purpose of this Ordinance is to support the safe reopening and operation of local business operations during the COVID-19 pandemic.
- B. Applicability. This 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.

- C. **Effective Period.** This Ordinance will remain in effect until 30 days after expiration or termination of physical distancing requirements, or until this Ordinance is modified or revoked by the Board of Supervisors, whichever is sooner.
- D. **Administration.** This Ordinance will be administered under the direction of the Board of Supervisors, by and through the Director of the Permit and Resource Management Department (Permit Sonoma).
- E. **Administrative Policies.** The Director may establish administrative policies for use in implementing this Ordinance. The administrative policies must be consistent with Ordinance and made available to the public on Permit Sonoma’s website and upon request at the department.
- F. **Conflicts with County Code or Permit.** Where this Ordinance directly conflicts with the Sonoma County Code, a business’s land use permit, or a business’s legal non-conforming use allowance, the provisions of this Ordinance prevail.
- G. **Definitions.**
 - 1. “Agricultural experience” includes hikes, walks, picnics, tours, and other similar activities, but not events, which are conducted in support of General Plan Policy AR-6a to promote local agriculture.
 - 2. “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.
 - 3. “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 service areas, offices, kitchens, storage, etc.
 - 4. “County Health Order” means Order of the Health Officer of the County of Sonoma (No. C19-14) as amended and any future order of the Health Officer issued in accordance with Resolution No. 20-0074.
 - 5. “Home occupation” has the same meaning as that term is defined by Section 26-02-140.
 - 6. “Physical 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.
 - 7. “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 directives or guidance issued by state agencies for the purpose of reducing the risk of transmission of COVID-19.

8. “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.
9. “Temporary modification” means a 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.
10. “Temporary outdoor area” means a new or repurposed outdoor area that is used or developed to comply with a federal health order, State Shelter Order, County Health Order, or physical distancing requirements, and that was not previously entitled for that use.
11. “Temporary structure” means a structure that does not require a building permit under Chapter 7 of the Sonoma County Code.
12. “Tasting room” has the same meaning as that term is defined by Section 26-02-140.

H. Temporary Expansions.

1. Indoor Expansions.

- a. A business area can be expanded into temporary indoor areas, including into an existing nearby space or building.
- b. 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.

2. Outdoor Expansions.

- a. A business area can be expanded into temporary outdoor areas, such as parking lots, sidewalks, and streets.
- b. 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.
- c. In residential, agricultural, and resource zones, a temporary outdoor area can only be located on the same parcel that is entitled for the use.
- d. In residential, agricultural, and resource zones, a temporary outdoor area must be located at least 300 feet from any off-site residence.

- e. No amplified sound, loud equipment, or loud musical instruments, such as horns, drums, or cymbals, are allowed in temporary outdoor areas.
- f. Noise must be controlled in accordance with Table NE-2 (or an adjusted Table NE-2 with respect to ambient noise as described in General Plan 2020 Policy NE-1c) as measured at the exterior property line of an affected residential or sensitive land use.
- g. A temporary outdoor area can only be located in a previously disturbed area, such as a parking lot, crush pad, hardscape, decomposed granite, existing landscaped area, or other similar area.
- h. A temporary outdoor area must comply with the Riparian Corridor Combining Zone (Section 26-65) and cannot be located in the Biotic Habitat Combining Zone (Section 26-66).

I. Parking.

- 1. Parking Regulations Exemption. A temporary modification is exempt from additional Parking Regulations (Section 26-86).
- 2. New Parking Spaces. If a parking space is used for a temporary outdoor area, replacement parking must comply with the following:
 - a. In urban residential, commercial, and industrial zones, parking can only occur in a legally established parking space.
 - b. For zones not listed in subsection (a), parking can only occur in a previously disturbed area.

J. Delivery, Pick-up, and Take-out.

- 1. Pick-up and Take-out. A business may sell its products by curbside pick-up or take-out if this service does not present a risk for pedestrians and does not impact the flow of traffic, for example from the queuing of people or vehicles.
- 2. Delivery. A business may sell its products by delivery if there is no increase in hours of operation on site.

K. Tasting Rooms.

- 1. Food Service.
 - a. Food Service Allowed. A tasting room may conduct limited retail sales of pre-packaged food for outdoor consumption only.
 - b. No Permanent Facilities. A temporary modification cannot include permanent food preparation facilities, such as a kitchen.
 - c. Local Products. Food service must feature local food and food products.

2. Operating Hour Extension. A business may extend tasting room hours of operation from 10:00 AM until 7:00 PM between June 1 and October 31.
- L. 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.
- M. Design Review Exemption. A temporary modification is exempt from Design Review (Section 26-82).
- N. Visitor and Occupancy Limits. The total number of customers, employees, and events cannot exceed existing legal entitlements or prior occupancy, except as expressly provided in this Ordinance.
- O. Events. If a business is entitled to hold events, the business may hold additional events so long as the total number of legally entitled guests does not increase. For example, if a business is authorized to hold one 100-person event, it may instead hold ten 10-person events.
- P. Agricultural Experiences. An allowed agricultural use may conduct an agricultural experience that complies with all of the following:
 1. Incidental to a primary agricultural use.
 2. Features agricultural products grown or produced onsite.
 3. No amplified sound or loud musical instruments, such as horns, drums, or cymbals.
 4. Occurs during one day between the hours of 10:00 AM and 7:00 PM.
 5. No overnight sleeping accommodations.
 6. Up to 4 agricultural experiences per month, except that hikes, tours, and educational seminars without additional activities are not limited.
 7. Attendees cannot exceed the lesser of the following:
 - a. The maximum number of individuals in a group allowed under the County Health Order for outdoor recreation activity businesses, or for gatherings if outdoor recreation activity businesses are no longer specifically limited.
 - b. 49 attendees.
 8. No permanent improvements are necessary to accommodate or support the agricultural experience, such as construction or grading.
 9. Compliance with environmental health requirements, including those related to food service, porta-toilets, and trash containers, fire and building code requirements, the Department of Alcoholic Beverage Control, and any other applicable requirements.
- Q. Home Occupations.
 1. Permit Exemption. Home occupations do not require a land use permit.

2. Requirements. Home occupations must meet the requirements of Section 26-88-121, except for subsections (d)(5) and (f).
- R. Compliance with Other Laws. All temporary modifications must comply with all 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.
- S. No Property Rights Conferred. Use or development of a temporary modification does not confer a property interest, vested right, or entitlement to continue through the Ordinance's effective period or receive a future entitlement for use of the temporary modification.
- T. Cessation and Legalization of Temporary Modifications.
1. Cessation upon Expiration of Ordinance. The use of temporary modifications must immediately cease at the end of the Ordinance's effective period.
 2. Restoration or Retention of Temporary Modifications. Within 30 days after the end of the Ordinance's effective period, 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 of the Ordinance's effective period are encouraged to submit an application to the Department as early as possible.
 4. Continued Use of Temporary Modifications. Despite an application being filed in accordance with subsections (2) or (3), a temporary modification cannot be used after the end of the Ordinance's effect period unless and until the use is approved.
- U. Enforcement.
1. General Enforcement.
 - a. A violation of this Ordinance is subject to enforcement under Chapter 1.
 - b. A temporary modification will not be considered a violation and will not be subject to civil penalties unless it fails to comply with this Ordinance, is not removed or legalized according to this Ordinance, constitutes a nuisance, or fails to comply with an applicable provision of the county code.
 2. Complaints. Each business with a temporary modification must designate an employee to receive and address complaints that a temporary modification is a nuisance or does not comply with this Ordinance or applicable provision of the county code. If the Department receives complaints about a temporary modification, the Department will first

verify whether the complaint is valid, and then route a valid complaint to the designated business representative. The business must investigate complaints within 24 hours of receiving notification from the Department and diligently make necessary adjustments to address a valid complaint.

3. Suspension, Termination, and Modification.
 - a. If the Department determines that a temporary modification is a nuisance or does not comply with this Ordinance or applicable provision of the county code, it may, at the Director's discretion, require changes to the temporary modification, suspend use of the temporary modification, or require that the temporary modification cease.
 - b. A decision by the Director under subsection (a) is final, subject only to judicial review.

Section III. 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 IV. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

Section V. Effective Date. This Ordinance is in full force and effect immediately upon its passage by a 4/5 vote. A fair and accurate summary must be published once before the expiration of 15 days after its passage, with the names of the Supervisors

voting for or against the same, in *The Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, introduced and passed on the 7th day of July, 2020, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

Rabbitt: Zane: Gore: Hopkins: Gorin:

Ayes:

Noes:

Absent:

Abstain:

WHEREUPON, the Chair declared the above and foregoing Ordinance duly adopted and
SO ORDERED.

Chair, Board of Supervisors
County of Sonoma

Attest:

Sheryl Bratton,
Clerk of the Board of Supervisors