

## MLUDC ORDINANCE AMENDMENT

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING SECTION 35-2, THE SANTA BARBARA COUNTY MONTECITO LAND USE AND DEVELOPMENT CODE, OF CHAPTER 35, ZONING, OF THE SANTA BARBARA COUNTY CODE, TO IMPLEMENT NEW REGULATIONS REGARDING THE TEMPORARY SUSPENSION OF COMPLIANCE WITH CERTAIN REQUIREMENTS OF APPROVED PERMITS AND NONCONFORMING USES TO SUPPORT A PHASED RE-OPENING OF SANTA BARBARA COUNTY IN A MANNER THAT PROTECTS PUBLIC HEALTH AND EFFECTIVELY LIMITS THE SPREAD OF COVID-19 AND PROVIDE A PROCESS FOR TIME EXTENSIONS DUE TO HARDSHIPS RELATED TO COVID-19, BY AMENDING: DIVISION 35.7, MONTECITO PLANNING PERMIT PROCEDURES; AND DIVISION 35.9, MONTECITO LAND USE AND DEVELOPMENT CODE ADMINISTRATION.

Case No. 20ORD-00000-00006

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

**SECTION 1. Emergency Findings.** The Board of Supervisors finds that this ordinance is necessary to protect life, property, or the environment and for the immediate preservation of the public peace, health and safety and to preserve physical distancing requirements to slow the spread of the COVID-19 virus while business and community entities reopen. This ordinance shall take effect immediately upon its approval by at least a four-fifths vote of the Board of Supervisors pursuant to California Government Code Section 25123(d) based upon the following declaration of facts:

1. Section 12-5(a) of the Santa Barbara County Code, empowers the County of Santa Barbara, Director of Emergency Services, to proclaim a local emergency if the Board of Supervisors is not in session; and
2. Section 8558(c) of the Government Code defines a “Local Emergency” as: “the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor’s warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat”; and
3. A novel coronavirus, COVID-19, causes infectious disease. The first confirmed U.S. case occurred in January 2020 in Washington State. COVID-19 symptoms may include fever, cough, and shortness of breath; but those infected may be completely asymptomatic. Outcomes have ranged from mild to severe illness, and in some cases death. The Centers for Disease Control and Prevention considers the virus to be a very serious public health threat; and

4. On March 4, 2020, Governor Newsom declared a State of Emergency related to conditions caused by COVID-19; and on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and
5. On March 12, 2020, the Director of Emergency Services proclaimed a Local Emergency related to COVID-19 pursuant to Government Code Section 8550 *et seq.* and Chapter 12, Section 12-5(a) of the Santa Barbara County Code. The Board of Supervisors ratified this proclamation on March 17, 2020; and
6. On March 12, 2020, the Health Officer of the County of Santa Barbara determined that there is an imminent and proximate threat to public health from the introduction of COVID-19 in the County of Santa Barbara, and proclaimed a Local Health Emergency as a result. The Board of Supervisors ratified this proclamation on March 17, 2020; and
7. In direct response to the lack of healthcare infrastructure, governments across the nation are taking actions to slow the spread of COVID-19 in order to “flatten the curve” of infection and reduce the numbers of individuals infected at any one time by minimizing situations where the virus can spread; and
8. In furtherance of this effort, on March 19, 2020, Governor Newsom issued Executive Order N-33-20, requiring all persons residing in the State to remain in their homes or places of residence, except as needed to maintain the continuity of operations for critical infrastructure (the “State Stay-at-Home Order”); and
9. On March 19, 2020, the State Public Health Officer ordered 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 for the federal critical infrastructure sectors; and
10. In May 2020, Governor Newsom’s Office released a four-stage COVID-19 pandemic Resilience Roadmap for beginning to reopen businesses and community entities in the State of California and declared California to be in Stage 2 of its response; and
11. Stage 2 of California’s COVID-19 pandemic response plan allows for gradual reopening of retail starting with low risk sectors such as curbside retail, manufacturing, and logistics. Later in Stage 2, there are to be relaxed retail restrictions and reopening of schools, offices, and limited hospitality and personal services. Stage 3 of California’s COVID-19 pandemic response plan contemplates reopening of higher-risk workplaces; and
12. On May 4, 2020, Governor Newsom issued Executive Order N-60-20 to allow a County to pursue a variance to move further into Stage 2 upon notification and certification through submission of a written attestation to the California Department of Public Health Office; and
13. On May 20, 2020, the California Department of Public Health Office approved and posted to the State’s website the County of Santa Barbara’s Variance Attestation allowing the County to move further into Stage Two to include dine-in restaurants and retail; and

14. On May 21, 2020, the Health Officer of the County of Santa Barbara issued a Health Officer Order to provide guidance on the reopening of lower-risk businesses. In that order, essential and lower-risk businesses that may open or remain open are identified and required to implement physical distancing when in operations; and
15. On May 25, 2020, the County Executive Officer issued Emergency Rule #2, that temporarily suspended Chapter 35 permit restrictions, including conditions of approval, and any zoning development standards for regulations that otherwise prohibit or limit wineries and wine tasting rooms from serving food, as long as compliance with State law regulating retail food and alcohol directives regarding reopening of businesses. On June 2, 2020, the Board of Supervisors confirmed Emergency Rule #2. Action by the Board to approve the ordinance amendments discussed herein supersedes Emergency Rule #2; and
16. On May 26, 2020, the Health Officer of the County of Santa Barbara issued a Health Officer Order that defined essential businesses and defined lower risk businesses related to places of worship and provides of religious services and cultural ceremonies, schools, and hair salons and barbershops; and
17. On May 26, 2020, the Health Officer of the County of Santa Barbara issued a Health Officer Order that requires face coverings to be worn in a number of identified situations, unless an exception applies, in order to slow the spread of COVID-19 to the maximum extent possible as the County of Santa Barbara moves further into Stage Two of the Resilience Roadmap; and
18. The Board of Supervisors finds that as businesses and community entities start to reopen pursuant to State and local laws and guidance, there may be a need for increased use of outdoor areas to allow for adequate physical distancing when local businesses and community entities reopen; and
19. The Board of Supervisors now finds that it is appropriate to temporarily suspend the requirement for strict compliance to certain portions of the project description, conditions of approval, and/or the development standards for approved projects if the temporary project change is necessary to ensure physical distancing and/or comply with other public health requirements put in place by federal, State, or local public health officials to limit the spread of COVID-19 and other requirements are met; and
20. The Board of Supervisors now finds it is appropriate to temporarily suspend the limitations on the ability of nonconforming uses to expand or extend as it relates to project changes necessary to ensure physical distancing and/or comply with other public health requirements put in place by federal, State, or local public health officials to limit the spread of COVID-19 as long as other requirements are met; and
21. The Board of Supervisors now finds it is appropriate to put in place a streamlined process for approved projects to seek and obtain a time extension due to hardships related to COVID-19 and the associated economic downturn; and

22. This ordinance is based on evidence of increasing transmission of COVID-19 both within the County and worldwide, scientific evidence regarding the most effective approach to slow transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as currently known and available to protect the public from the risk of spread of or exposure to COVID-19; and
23. This ordinance is promulgated due to the propensity of the virus to spread person to person and also because the virus is causing property loss due to its proclivity to attach to surfaces for prolonged periods of time; and
24. This ordinance is intended to reduce the likelihood of exposure to COVID-19, thereby slowing the spread of COVID-19 in the County of Santa Barbara and communities worldwide. As the presence of infected individuals increases, the difficulty and magnitude of tracing individuals who may have been exposed rises exponentially; and
25. This ordinance is issued in accordance with, and incorporates by reference: the March 4, 2020 Proclamation of a State Emergency issued by Governor Gavin Newsom; the March 12, 2020 Declaration of Local Health Emergency and Proclamation of Emergency based on an imminent and proximate threat to public health from the introduction of novel COVID-19 in the County; the March 17, 2020 Resolution of the Board of Supervisors ratifying the County Declaration of Local Health Emergency and Proclamation of Emergency regarding COVID-19; the guidance issued on March 11, 2020 by the California Department of Public Health regarding large gatherings of 250 people or more; the March 13, 2020 Presidential Declaration of a National Emergency due to the national impacts of COVID-19; the guidance issued on March 15, 2020 by the Centers for Disease Control and Prevention, the California Department of Public Health, and other public health officials through the United States and around the world recommending the cancellation of gatherings involving more than fifty (50) or more persons in a single space at the same time; the March 16, 2020 order of the State Public Health Officer prohibiting all gatherings with expected presence above ten (10) individuals; Governor Newsom's Executive Order N-33-20 of March 19, 2020 ordering all persons to stay at home to protect the health and well-being of all Californians and to establish consistency across the state in order to slow the spread of COVID-19; the March 22, 2020, Presidential Declaration of a Major Disaster in California beginning on January 20, 2020 under Federal Emergency Management Agency (FEMA) Incident DR-4482-CA; Governor Newsom's Executive Order N-60-20 of May 4, 2020 allowing counties to pursue a variance to move further into Stage 2; the May 8, 2020, May 21, 2020, and May 26, 2020 orders of the County of Santa Barbara Health Officer; and the County Executive Officer's Emergency Rule #2 issued May 25, 2020.

## **SECTION 2:**

DIVISION 35.7, Montecito Planning Permit Procedures, of the MLUDC, is hereby amended to add Subsection D.7, Time extensions due to hardship related to COVID-19, of Section 35.474.030, Time Extensions, of Chapter 35.474, Post Approval Procedures, to read as follows:

## **D. Processing.**

**7. Time extensions due to hardship related to COVID-19.** In addition to the Time Extensions provided in Subsection D.1 through Subsection D.5, above, the Director may for good cause extend the expiration of a planning permit for one additional 24 month period in compliance with the following:

- a. The Director has determined that a Time Extension is necessary due to a hardship resulting from COVID-19 and/or the associated economic downturn.
- b. The application for the Time Extension is filed with the Department in compliance with the following:
  - (1) The application shall be filed in compliance with Section 35.470.030 (Application Preparation and Filing).
  - (2) The application shall be filed prior to the expiration of the planning permit that is the subject of the Time Extension request and before December 16, 2020, or when the proclaimed Santa Barbara County Local Emergency from the COVID-19 virus is terminated, whichever is earlier.
- c. Notice of the application shall be given in compliance with Section 35.496.075 (Time Extensions Under the Jurisdiction of the Director).
- d. A Time Extension application shall be approved only if the Director first finds that applicable determination or findings for approval required in compliance with Chapter 35.472 (Permit Review and Decision) that were made in conjunction with the initial approval of the planning permit for which the Time Extension is requested can still be made.
- e. The action of the Director is final and not subject to appeal.

## **SECTION 3:**

DIVISION 35.7, Planning Permit Procedures, of the Montecito Land Use and Development Code (“MLUDC”), is hereby amended to revise Subsection A, Contents of checklist, of Section 35.474.040, Changes to an Approved Project, of Chapter 35.474, Post Approval Procedures, to read as follows:

- A. Contents of application.** An application for a change to an approved or issued planning permit shall be submitted in compliance with Chapter 35.470 (Permit Application Filing and Processing).
1. Temporary suspension of compliance with the project description and/or conditions of approval to an approved project necessary to protect public health and effectively limit the spread of COVID-19, as detailed in Subsection F (Temporary suspension of compliance with the project description and/or conditions of approval to an approved project necessary to protect public health), below, do not require submittal of an application, but do require submittal of a checklist and additional materials.
    - a. Prior to implementation of the temporary changes, the owner/applicant may, and is encouraged to, submit a completed checklist, revised site plan, photos, and description of proposal describing the temporary changes and how the requirements of Subsection 35.498.090.C.3 (Requirements) will be met.
    - b. Within 30 days of implementing temporary changes to an approved project, the owner/applicant shall submit a completed checklist, revised site plan, photos, and description of proposal describing the temporary changes and how the requirements of Subsection 35.49.090.C.3 (Requirements) have been met.

## **SECTION 4:**

DIVISION 35.7, Planning Permit Procedures, of the MLUDC, is hereby amended to add Subsection F, Temporary suspension of compliance with the project description and/or conditions of approval to an approved project necessary to protect public health, of Section 35.474.040, Changes to an Approved Project, of Chapter 35.474, Post Approval Procedures, to read as follows:

**F. Temporary suspension of compliance with the project description and/or conditions of approval to an approved project necessary to protect public health.** For the time period specified in Subsection 35.498.090.C.1 (Temporary time period), approval of a Minor Change, Substantial Conformity Determination, Amendment, or Revision is not required for temporary changes to an approved project related to the standards in Section 35.498.090.C.2, below, that are necessary to protect public health and effectively limit the spread of COVID-19 and that comply with the standards set forth in Section 35.498.090.C.3, below.

## **SECTION 5:**

DIVISION 35.9, Montecito Land Use and Development Code Administration, of the MLUDC, is hereby amended to revise Subsection B, Expansion or Extension, of Section 35.491.020, Nonconforming Uses of Land and Structures, of Chapter 35.491, Nonconforming Uses, Structures, and Lots, to add a Subsection 4 to read as follows:

### **B. Expansion or extension.**

1. An existing nonconforming use may be extended throughout or relocated within an existing structure; provided, no structural alterations are made except those required by law or ordinance (e.g., Building Code regulations).
2. No existing nonconforming use shall be extended to occupy any land outside of the structure.
3. No existing nonconforming use of land outside structures, or not involving structures, shall be enlarged, extended, or increased to occupy a greater area of land than was occupied at the time the use became nonconforming, or moved to any portion of the lot not currently occupied by the nonconforming use.
4. In order to protect public health and support a phased reopening of the Santa Barbara County in a manner that effectively limits the spread of COVID-19 by allowing for the use of outdoor areas to ensure that physical distancing and/or other public health requirements can be met and to provide other forms of relief, the following provisions apply for the temporary time period specified below and take precedence over subsections 1, 2, and 3 included above, if the below provisions are applicable to a particular nonconforming use.
  - a. **Temporary time period.** This provision shall take effect on June 16, 2020 and expire on December 16, 2020 or when the proclaimed Santa Barbara County Local Emergency from the COVID-19 virus is terminated, whichever is earlier.
  - b. **Development standards.** For nonconforming uses, this section authorizes the temporary expansion or extension of a nonconforming use related to the following standards provided the requirements of Subsection B.4.c, below, are met:
    - i. Setbacks.
    - ii. Site coverage maximums.
    - iii. Minimum open space.

- iv. Parking and loading standards.
  - v. Signs.
  - vi. The requirement that uses shall occur within a completely enclosed building.
  - vii. Restrictions on uses in the right of way.
  - viii. Other development standards as determined to be necessary by the Director for the protection of public health related to COVID-19.
- c. **Requirements.** To be eligible for this temporary expansion or extension, all of the following requirements must be met:
- i. The temporary expansion or extension of aspects of the nonconforming use related to development standards listed in Subsection B.4.b, above, are necessary to ensure social distancing and/or comply with other public health requirements put in place by federal, State, or local public health officials to limit the spread of COVID-19.
  - ii. The owner/applicant of the legal nonconforming use must follow all State and local directives regarding reopening of businesses or community entities during the COVID-19 pandemic response, including certification or attestation and COVID-19 protection plan. Public health restrictions related to COVID-19 are subject to rapid change and nothing in this Subsection B.4 is intended, nor shall it be construed, to allow nonconforming uses to operate in violation of any federal, State, or local public health orders.
  - iii. Any State or local permit or approval required by regulations other than this Development Code is obtained (e.g., a business purposes encroachment permit, health permit, alcoholic beverage control license, fire department authorization).
  - iv. The nonconforming use is non-residential.
  - v. The expansion or extension of the nonconforming use does not occur within environmentally sensitive habitat. No native vegetation or environmentally sensitive habitat would be removed to accommodate the use of outdoor areas.
  - vi. The use of outdoor areas does not result in the expansion of the existing capacity of the nonconforming use (e.g., a restaurant with 20 indoor tables and 40 person capacity maintains the same number of tables and capacity with more space between the tables).
  - vii. No structures are proposed, constructed, or erected (temporary coverings, such as canopies or umbrellas, to shade occupants from the sun and/or weather are allowed).
- d. **Submittal of Checklist.**
- i. Prior to implementation of the temporary expansion or extension, the owner/applicant may, and is encouraged to, submit a completed checklist, revised site plan, photos, and description of proposal describing the temporary expansion or extension and how the requirements of Subsection 35.491.020.B.4.c (Requirements) will be met.
  - ii. Within 30 days of implementing a temporary expansion or extension, the owner/applicant shall submit a completed checklist, revised site plan, photos, and description of proposal describing the temporary expansion or extension and how the requirements of Subsection 35.491.020.B.4.c (Requirements) have been met.
- e. **Enforcement.**
- i. If a completed checklist, revised site plan, photos, and description of proposal are not submitted pursuant to Subsection B.4.d, or upon submittal the Director determines, in the Director's sole discretion, that the requirements of Subsection B.4.c, above, are not

satisfied, the Director may notify the owner/applicant that the suspension of compliance to protect public health is not applicable and the Director may initiate enforcement action. The Director's action is not subject to appeal.

- ii. If a completed checklist, revised site plan, photos, and description of proposal are submitted pursuant to Section B.4.d and the requirements of Subsection B.4.c, above, are met, as determined in the sole discretion of the Director, the temporary expansion and/or extension of the nonconforming use shall not constitute a violation subject to penalties, for the time period specified in Subsection B.4.a, above. The Director's action is not subject to appeal.

## **SECTION 6:**

DIVISION 35.9, Montecito Land Use and Development Code Administration, of the MLUDC, is hereby amended to add Subsection C, Temporary suspension of compliance in order to protect public health, of Section 35.498.090, Penalty for Violation of Conditions, of Chapter 35.498, Enforcement and Penalties, to read as follows:

**C. Temporary suspension of compliance in order to protect public health.** In order to protect public health and support a phased reopening of the Santa Barbara County in a manner that effectively limits the spread of COVID-19 by allowing for the use of outdoor areas to ensure that physical distancing and/or other public health requirements can be met and to provide other forms of relief, the following provisions apply for the temporary time period specified below.

- 1. Temporary time period.** Subsections 35.474.030.D.7, 35.474.040.F, 35.491.020.B.4, and 35.498.090.C (ordinance amendments related to COVID-19) shall take effect on June 16, 2020 and expire on December 16, 2020 or when the proclaimed Santa Barbara County Local Emergency from the COVID-19 virus is terminated, whichever is earlier.
  - a. The expiration date of these temporary amendments may be extended or revised by the Board of Supervisors by adoption of future ordinance amendments. Unless otherwise extended or amended by the Board, upon expiration this ordinance, shall be repealed and shall be of no further force or effect.
- 2. Development standards.** For approved projects, this section authorizes the temporary suspension of compliance with the project description and/or conditions of approval related to the following standards provided the requirements of Subsection C.3, below, are met:
  - a. Setbacks.
  - b. Site coverage maximums.
  - c. Minimum open space.
  - d. Parking and loading standards.
  - e. Signs.
  - f. The requirement that uses shall occur within a completely enclosed building.
  - g. Restrictions on uses in the right of way.
  - h. Other development standards as determined to be necessary by the Director for the protection of public health related to COVID-19.
- 3. Requirements.** To be eligible for the temporary suspension of compliance, all of the following requirements must be met:



- a. The temporary changes to an approved project that render the project unable to strictly comply with its project description, conditions of approval, and/or the development standards listed in Subsection C.2, above, are necessary to ensure physical distancing and/or comply with other public health requirements put in place by federal, State, or local public health officials to limit the spread of COVID-19.
- b. The owner/applicant must follow all State and local directives regarding reopening of businesses or community entities during the COVID-19 pandemic response, including certification or attestation and COVID-19 protection plan. Public health restrictions related to COVID-19 are subject to rapid change and nothing in this Subsection C is intended, nor shall it be construed, to allow approved projects to operate in violation of any federal, State, or local public health orders.
- c. The project otherwise complies with its project description, conditions of approval, applicable development standards, and Comprehensive Plan policies.
- d. Any State or local permit or approval required by regulations other than this Development Code is obtained (e.g., a business purposes encroachment permit, health permit, alcoholic beverage control license, fire department authorization).
- e. The approved project is non-residential.
- f. The use does not occur within environmentally sensitive habitat. No native vegetation or environmentally sensitive habitat would be removed to accommodate the use of outdoor areas.
- g. The use of outdoor areas does not result in the expansion of the existing capacity of the business or community entity (e.g., a restaurant with 20 indoor tables and 40 person capacity maintains the same number of tables and capacity with more space between the tables).
- h. No structures are proposed, constructed, or erected (temporary coverings, such as canopies or umbrellas, to shade occupants from the sun and/or weather are allowed).

#### **4. Enforcement.**

- a. If a completed checklist, revised site plan, photos, and description of proposal are not submitted pursuant to Subsection 35.474.040.A.1, or upon submittal the Director determines, in the Director's sole discretion, that the requirements of Subsection C.3, above, are not satisfied, the Director may notify the owner/applicant that the suspension of compliance to protect public health is not applicable and the Director may initiate enforcement action. The Director's action is not subject to appeal.
- b. If a completed checklist, revised site plan, photos, and description of proposal are submitted pursuant to Section 35.474.040.A.1 and the requirements of Subsection C.3, above, are met, as determined in the sole discretion of the Director, strict compliance to the applicable portions of the project description, conditions of approval, and/or the development standards listed in Subsection 2, above, is not required and the temporary changes to the project shall not constitute a violation subject to penalties, for the time period specified in Subsection C.1, above. The Director's action is not subject to appeal.

### **SECTION 7:**

All existing indices, section references and numbering, and figure and table numbers contained in the MLUDC are hereby revised and renumbered as appropriate to reflect the revisions enumerated above.

**SECTION 8:**

Except as amended by this Ordinance, the MLUDC shall remain unchanged and shall continue in full force and effect.

**SECTION 9:**

This ordinance shall take effect and be in full force immediately upon adoption by at least a four-fifths vote of the Board of Supervisors pursuant to Government Code Section 25123 and shall remain in effect and operative until December 16, 2020 or when the proclaimed Santa Barbara County Local Emergency from the COVID-19 virus is terminated, whichever is earlier. Before the expiration of 15 days after its passage a summary of it shall be published once together with the names of the members of the Board of Supervisors voting for and against the same in the *Santa Barbara News-Press*, a newspaper of general circulation published in the County of Santa Barbara. Unless otherwise extended or amended by the Board, upon expiration this ordinance, shall be repealed and shall be of no further force or effect.

**SECTION 10:**

Public health restrictions related to COVID-19 are subject to rapid change. Even if the Board of Supervisors adopts this Ordinance, the Board of Supervisors retains all of its statutory planning and zoning authority. For example, the Board of Supervisors may still take action(s) later to change or remove the temporary suspension and may do so without the temporary changes to a project receiving: 1) an amortization period prior to removal; and/or 2) legal nonconforming use status.

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

\_\_\_\_\_  
GREGG HART, CHAIR  
BOARD OF SUPERVISORS  
COUNTY OF SANTA BARBARA

ATTEST:

MONA MIYASATO, COUNTY EXECUTIVE OFFICER  
CLERK OF THE BOARD

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM:

MICHAEL C. GHIZZONI  
COUNTY COUNSEL

By:  \_\_\_\_\_  
Deputy County Counsel