

Attachment 3: 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 EXTEND REGULATIONS REGARDING THE TEMPORARY SUSPENSION OF COMPLIANCE WITH CERTAIN REQUIREMENTS OF APPROVED PERMITS, NONCONFORMING USES, AND TIME EXTENSIONS DUE TO HARDSHIPS RELATED TO COVID-19 TO SUPPORT RE-OPENING OF SANTA BARBARA COUNTY IN A MANNER THAT PROTECTS PUBLIC HEALTH AND EFFECTIVELY LIMITS THE SPREAD OF COVID-19 AND SUPPORTS ECONOMIC RECOVERY FROM THE IMPACTS OF COVID-19 AND MAKE OTHER AMENDMENTS TO SUPPORT ECONOMIC RECOVERY BY AMENDING: DIVISION 35.7, MONTECITO PLANNING PERMIT PROCEDURES; AND DIVISION 35.9, MONTECITO LAND USE AND DEVELOPMENT CODE ADMINISTRATION.

Case No. 21ORD-00000-00007

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

SECTION 1:

DIVISION 35.7, Montecito Planning Permit Procedures, of the MLUDC, is hereby amended to revise 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 ~~the Board of Supervisors declares the proclaimed Santa Barbara County Local Emergency from the COVID-19 virus is terminated, June 30, 2023~~ or when the COVID-19 provisions (Sections 35.474.030.D.7, 35.474.040.A.1, 35.474.040.F, 35.491.020.B.4, and 35.498.090.C) are terminated earlier by ordinance amendment.

- 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 2:

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 and/or to support economic recovery from the impacts 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 and/or to support economic recovery from the impacts of COVID-19), 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 3:

DIVISION 35.7, Planning Permit Procedures, of the MLUDC, is hereby amended to revise 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 and/or to support economic recovery from the impacts of COVID-19.** 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/or to support economic recovery from the impacts of COVID-19, -and that comply with the standards set forth in Section 35.498.090.C.3, below.

SECTION 4:

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 revise 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~~the 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 to support economic recovery from the impacts of COVID-19, 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 shall expire the earlier of ~~when the Board of Supervisors declares the proclaimed Santa Barbara County Local Emergency from the COVID-19 virus is terminated~~June 30, 2023 or when the COVID-19 provisions (Sections 35.474.030.D.7, 35.474.040.A.1, 35.474.040.F, 35.491.020.B.4, and 35.498.090.C) are terminated by ordinance amendment.
 - 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 and/or to support economic recovery from the impacts of 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-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/or to support economic recovery from the impacts of COVID-19.~~

- ii. The owner/applicant of the legal nonconforming use must follow all applicable 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, rules, or regulations.
- 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.~~vi. No permanent 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 ~~and/or to support economic recovery from the impacts of COVID-19~~ is/are 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 5:

DIVISION 35.9, Montecito Land Use and Development Code Administration, of the MLUDC, is hereby amended to revise 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 and/or to support economic recovery from the impacts of COVID-19.** In order to protect public health and support ~~a phased~~the 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 to support economic recovery from the impacts of COVID-19, 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 shall expire the earlier of ~~when the Board of Supervisors declares the proclaimed Santa Barbara County Local Emergency from the COVID-19 virus is terminated~~June 30, 2023 or when the COVID-19 provisions (Sections 35.474.030.D.7, 35.474.040.A.1, 35.474.040.F, 35.491.020.B.4, and 35.498.090.C) are terminated by ordinance amendment.
 - 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 and/or to support economic recovery from the impacts of 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, and/or support economic recovery from the impacts of COVID-19.
 - b. The owner/applicant must follow all applicable 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, rules, or regulations.

- 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).~~
- hg. No permanent 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 and/or support economic recovery from the impacts of COVID-19 are-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 6:

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 7:

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

SECTION 8:

This ordinance shall take effect and be in full force 30 days from the date of its passage and shall remain in effect and operative according to the time periods set forth in the ordinance. 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, it shall be repealed and shall be of no further force or effect.

SECTION 9:

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 of any provisions 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 _____, 2021, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

BOB NELSON, 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:

RACHEL VAN MULLEM
COUNTY COUNSEL

By: _____
Division Chief