

ORDINANCE NO. 5104

AN URGENCY ORDINANCE OF THE COUNTY OF SANTA BARBARA AMENDING CHAPTER 28 OF THE SANTA BARBARA COUNTY CODE TO ADD SECTION 28B, SECTIONS 28B1-12, PURSUANT TO GOVERNMENT CODE SECTIONS 8634, 25123, AND 25131 AND CALIFORNIA GOVERNOR NEWSOM'S EXECUTIVE ORDER N-33-20 AND N-60-20, TO TEMPORARILY AUTHORIZE THE PUBLIC WORKS DIRECTOR TO ISSUE ENCROACHMENT PERMITS FOR OPERATIONS BY BUSINESSES AND COMMUNITY ENTITIES IN COUNTY ROADWAY RIGHTS-OF-WAY DURING THE COVID-19 PANDEMIC RESPONSE UNTIL DECEMBER 16, 2020 OR THE PROCLAIMED SANTA BARBARA COUNTY LOCAL EMERGENCY IS TERMINATED, WHICHEVER IS EARLIER.

The Board of Supervisors of the County of Santa Barbara hereby ordains as follows:

SECTION 1. Emergency Findings. This urgency ordinance is adopted pursuant to California Government Code Sections 8634, 25123(d) and 25131 and shall take effect immediately upon its approval by at least a four-fifths vote of the Board of Supervisors. The Board of Supervisors finds that this ordinance is necessary to protect life, property, or environment and for the immediate preservation of the public peace, health and safety and to preserve social distancing requirements to slow the spread of the COVID-19 virus while business and community entities reopen. This ordinance is based upon the following declaration of facts constituting the urgency:

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 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, 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 social distancing when in operations; and

15. 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 County roadway rights-of-way to allow for adequate social distancing when local businesses and community entities reopen; and
16. The Board of Supervisors now finds that it is appropriate to authorize the Public Works Director to temporarily issue encroachment permits allowing businesses and community entities that are reopening to use County roadway rights-of-way as appropriate for adequate social distancing and to preserve and maintain the health and safety of the community; and
17. The Board of Supervisors now also finds that temporarily waiving payment of fees for encroachment permits that allow businesses to comply with social distancing and other COVID-19 response requirements is in the public benefit as it facilitates the reopening of the local economy in way that is appropriate for the safety of the community; and
18. 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
19. 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
20. 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
21. 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 order of the County of Santa Barbara Health Officer requiring social distancing and not gathering in groups; and the May 21, 2020 order of the County of Santa Barbara Health Officer regarding social distancing protocols for businesses and entities remaining in operation or reopening operations; and

22. This Ordinance is necessary for the immediate preservation of the public peace, health and safety and in accordance with Government Code Sections 8634 and Santa Barbara County Code Section 12-5, these conditions warrant and necessitate that the County adopt this ordinance to protect the health, safety, and welfare of the residents in the unincorporated area of Santa Barbara County.

SECTION 2. Chapter 28 - Roads of the Santa Barbara County Code is hereby amended to add Chapter 28B, Special Encroachment Permits Related to COVID-19 Pandemic Response, sections 28B-1 through 28B-12 inclusive, which read as follows:

Chapter 28B – Special Encroachment Permits Related to COVID-19 Pandemic Response

Section 28B-1 Purpose.

Section 28B-2 Definitions.

Section 28B-3 Permit Required for Use of County Roadway Rights-of-Way in Reopening During the COVID-19 Pandemic Response.

Section 28B-4 Issuance of Special Encroachment Permit.

Section 28B-5 Regulation of Alcoholic Beverages in County Roadway Rights-of-Way During COVID-19 Pandemic Response.

Section 28B-6 Traffic Control Plan and Road Closures.

Section 28B-7 Waiver of Fees for Special Encroachment Permit.

Section 28B-8 Expiration of Special Encroachment Permit.

Section 28B-9 Revocation or Suspension of Special Encroachment Permit.

Section 28B-10 Violations.

Section 28B-11 Supersedes Conflicting Provisions in Chapter 28, Article X and Chapter 28A During Effective Period.

Section 28B-12 Severability.

Chapter 28B – Special Encroachment Permits Related to COVID-19 Pandemic Response

Section 28B-1 Purpose.

In order to minimize the economic impacts of COVID-19, the County of Santa Barbara must encourage the speedy recovery of businesses, restaurants, retail, and other community entities

that were required to close or curtail operations under the State of California’s “Stay At Home” orders. The purpose of this ordinance is to begin implementation of the County’s Reopening in a Safe Environment (RISE) Small Business & Community Partnership Enhancement Program (SBCPEP) by providing a clear, quick path and parameters for businesses and other entities to operate temporarily in County roadway rights-of-way, to allow for social distancing. This ordinance temporarily authorizes the Santa Barbara County Public Works Director to issue encroachment permits, to businesses and community entities that reopen and resume operations, in County roadway rights-of-way to allow for adequate social distancing during operations.

Section 28B-2 Definitions.

For purposes of this Chapter, the following words and phrases shall have the meanings ascribed to them by this Chapter:

- a) “Community entity” shall include, but is not limited to, restaurants; retail establishments; country clubs; meeting facilities, public and private; faith-based/religious organizations; schools; sports and outdoor recreation facilities; day care homes; day care centers; lodging; fitness/health club or facility; libraries; bar, tavern; wineries; community centers; conference centers; convenience stores; grocery stores; banks; and medical services.
- b) “Department” shall mean the Santa Barbara County Public Works Department.
- c) “Director” shall mean the Director of Public Works or his/her designee.
- d) “Permit” shall mean County roadway right-of-way special encroachment permit related to reopening and resuming operations during the COVID-19 pandemic response.
- e) “County roadway right-of-way” shall mean the portions of the unincorporated areas of the County of Santa Barbara that the County owns, controls, or maintains for the purpose of travel, including sidewalks, parking spaces, and road right-of-way.

Section 28B-3 Permit Required for Use of County Roadway Rights-of-Way in Reopening During the COVID-19 Pandemic Response.

- a) No business or community entity shall reopen and operate in the County roadway right-of-way during the COVID-19 pandemic response unless:
 - 1. A special encroachment permit has been issued to them by the County to encroach in such manner, or
 - 2. The business or entity is operating pursuant to an existing annual encroachment permit.
- b) The Public Works Director may issue the special encroachment permit pursuant to the Director’s administrative regulations. The owner or operator of a reopening business or

community entity shall maintain and operate such business or entity in compliance with all provisions of their special encroachment permit and the administrative regulations.

Section 28B-4 Issuance of Special Encroachment Permit.

The Public Works Director may adopt administrative regulations applicable to the issuance of a special encroachment permit for reopening of businesses and community entities during the COVID-19 pandemic response. Such regulations may, without limitation, include the following:

1. A requirement that the applicant provide proof of insurance in the amount of one million dollars naming the County of Santa Barbara as additional insured.
2. A requirement that the applicant sign an indemnification agreement, provided by the Department, that holds the County of Santa Barbara, its officers, agents, and employees harmless for any actions of the applicant, its agents, and employees.
3. A requirement that the applicant meet minimum aesthetic and safety standards for design, seating and parking, including both on site and within the adjacent County roadway right-of-way.
4. Such other conditions as may be necessary to protect public health and safety or to protect public improvements.
5. A requirement that the applicant coordinate with other County departments or entities that may be affected by the proposed encroachment, including County of Santa Barbara Environmental Health Services, County of Santa Barbara Planning and Development Department, and the County of Santa Barbara Fire Department.
6. Any requirement deemed necessary to guarantee that the applicant shall restore the appearance of the sidewalk or County roadway right-of-way on termination of use.
7. Setback and clearance standards for all reasonable pedestrian uses of the sidewalk, as well as for unusual or occasional public uses that can be anticipated.
8. Maintenance standards for the outdoor dining area.
9. A requirement that the applicant follow all State and local directives regarding reopening of businesses or community entities during the COVID-19 pandemic response, including the business', community entity's, or site's certification or attestation and COVID-19 protection plan.

Section 28B-5 Regulation of Alcoholic Beverages in County Roadway Rights-of Way During COVID-19 Pandemic Response.

The service of alcoholic beverages in the County roadway right-of-way shall be allowed to the extent that service is allowed by the California Department of Alcoholic Beverage Control and in compliance with its current orders, rules, and regulations. Each of the following standards applies to any areas which provide alcoholic beverage service:

1. Any outdoor area where alcohol is allowed shall be limited to those areas licensed or authorized by the California Department of Alcoholic Beverage Control.
2. The outdoor area shall be clearly and physically separated from pedestrian traffic.

The operator shall post a written notice to customers that the drinking or carrying of an open container of alcohol is prohibited outside the outdoor area.

Section 28B-6 Traffic Control Plan and Road Closures.

The Department may require the applicant to submit a traffic control plan. Traffic control plans shall show all traffic control elements required for the business or community entity to safely operate in the County roadway right-of-way. The Department may determine road closures are necessary to allow businesses or community entities to operate safely in the County roadway right-of-way. It is the responsibility of the business or community entity to install any such traffic control or safety measures and remove them at the expiration of the permit.

Section 28B-7 Waiver of Fees for Special Encroachment Permit.

The following fees shall be waived until December 16, 2020, or the proclaimed Santa Barbara County Local Emergency based on the COVID-19 virus is terminated, whichever is earlier:

1. The issuance or monthly rental fee for a special encroachment permit issued pursuant to this rule.
2. The annual permit fee or monthly rental fee for annual permits issued pursuant to Chapter 28, Article X, Use of County Sidewalks and Rights-of-Way for Business Purposes, and Chapter 28A, Public Right-of-Way Special Event Permits and Regulations.

Temporarily waiving such fees is in the public benefit as it facilitates the reopening of the local economy in way that allows businesses to comply with social distancing and other COVID-19 response requirements.

Section 28B-8 Expiration of Special Encroachment Permit.

Permits issued pursuant to this Chapter shall be valid until December 16, 2020, or until the proclaimed Santa Barbara County Local Emergency based on the COVID-19 virus is terminated, whichever is earlier.

Section 28B-9 Revocation or Suspension of Special Encroachment Permit.

- a) The County of Santa Barbara shall have the right to revoke or suspend the permit upon twenty-four hours written notice to the operator for any cause, regardless of conformance with these provisions. Such revocation is at the sole discretion of the Public Works Director. Situations that may merit suspension or revocation include, but are not limited to:

1. Failure to comply with conditions of permit approval.

2. Failure to adhere to the business', community entity's or site's certification attestation and COVID-19 protection plan.
 3. Failure to adhere to any other State or local guidelines for reopening during the COVID-19 pandemic response.
 4. Suspension, revocation, or cancellation of any necessary permit(s).
 5. Excessive noise (in excess of sixty-five decibels), trash accumulation, neighborhood complaints, etc.
 6. Incorrect or inadequate insurance coverage.
 7. Nuisances, blight or disruption of pedestrian and vehicle traffic flow caused by operation of the business on sidewalks or in the County roadway right-of-way.
- b) Within twenty-four hours of receipt of written notice of revocation or suspension, regardless of any appeal of the action, the operation shall cease all operations in the County roadway right-of-way and, if applicable, restore the County roadway right-of-way to the condition existing prior to the placement of the outdoor facilities or to some other condition acceptable to the Public Works Director. Failure to comply shall constitute a violation and be subject to penalty.

Section 28B-10 Violations.

Violations of any terms and conditions of the permit may result in revocation or suspension of the permit, denial of future permits for a minimum of two years and/or misdemeanor or infraction charges, at the discretion of the County District Attorney.

Section 28B-11 Supersedes Conflicting Provisions in Chapter 28, Article X and Chapter 28A During Effective Period.

The provisions of this Chapter supersede any conflicting provisions in Chapter 28, Article X, Use of County Sidewalks and Rights-of-Way for Business Purposes, and Chapter 28A, Public Right-of-Way Special Event Permits and Regulations during the time period set forth in Section 28B-8, Expiration of Special Encroachment Permit, and Section 4, Effective Date, of this urgency ordinance.

Section 28B-12 Severability.

If any provision of this urgency ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions of this urgency ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this urgency ordinance are severable. The Board of Supervisors hereby declares that it would have adopted this urgency ordinance irrespective of the invalidity of any particular portion thereof.

Except as amended by this urgency ordinance, the Santa Barbara County Code shall remain unchanged and shall continue in full force and effect.

SECTION 3. Publication. Before the expiration of 15 days after passage of this urgency ordinance, 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 in compliance with Government Code Section 25124.

SECTION 4. Effective Date and Termination. This urgency ordinance adding Chapter 28B, Special Encroachment Permits Related to COVID-19 Pandemic Response, Sections 28B-1 through 28B-12, 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 until December 16, 2020, or the proclaimed Santa Barbara County Local Emergency from the COVID-19 virus is terminated, whichever is earlier. Unless otherwise extended or amended by the Board, upon expiration Chapter 28B, Special Encroachment Permits Related to COVID-19 Pandemic Response, Sections 28B-1 through 28B-12, shall be repealed and shall be of no further force or effect.

SECTION 5. California Environmental Quality Act. This urgency ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15269(c) (specific action to mitigate an emergency), Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), and Section 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly).

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PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this 2nd day of June, 2020, by the following vote:

AYES: Supervisors Williams, Hart, Hartmann, Adam and Lavagnino

NOES: NONE

ABSTAIN: NONE

ABSENT: NONE



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