

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

URGENCY ORDINANCE NO. 2020-005

URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA FOR ENFORCEMENT OF PROVISIONS AND CONDITIONS OF ENCROACHMENT PERMITS FOR OUTDOOR DINING AND AUTHORIZATION OF CODE COMPLIANCE COORDINATOR TO ISSUE CITATIONS

WHEREAS, the City of Carmel-by-the-Sea ("City") is authorized by Article XI, Section 7 of the California Constitution to make and enforce all regulations and ordinances using its police powers; and

WHEREAS, the California Emergency Services Act (California Government Code Section 8550, et. seq.) defines a local emergency as the existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a city, caused by conditions such as an epidemic, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of a city, and require the combined forces of other political subdivisions to combat (Emphasis Added); and

WHEREAS, Section 2.64.020 of the City Municipal Code defines "emergency" as the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within this City caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, earthquake, or other conditions, including conditions resulting from war or imminent threat of war, but 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 this City, requiring the combined forces of other political subdivisions to combat (Emphasis Added); and.

WHEREAS, in December 2019, reports began spreading worldwide about a flu-like virus first found in China that was significantly more deadly than the flu generally, with the virus becoming known as the Coronavirus ("COVID-19"); and

WHEREAS, the federal Centers for Disease Control and Prevention ("CDC") has confirmed thousands of cases of individuals who have severe respiratory illness caused by COVID-19, as well as deaths caused by this illness; and

WHEREAS, on or about March 4, 2020, as part of the State of California's response to address the global COVID-19 outbreak, Governor Gavin Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19; and

WHEREAS, on March 6, 2020, the County Administrative Officer of Monterey County proclaimed a Local Emergency due to the threat of COVID-19 in the County; and

WHEREAS, on March 11, 2020, the World Health Organization ("WHO") classified the spread of COVID-19 internationally as a global pandemic; and

WHEREAS, on March 12, 2020, the City Administrator of the City of Carmel-by-the-Sea, acting in his capacity as the Director of Emergency Services for the City, declared the existence of a local emergency within the City due to COVID-19; and

WHEREAS, on March 13, 2020, the City Council adopted Resolution 2020-021 ratifying the City Administrator's Proclamation of the Existence of a Local Emergency Due to the Worldwide Spread of the Coronavirus ("COVID-19"); and

WHEREAS, on March 19, 2020, Governor Gavin Newsom issued Executive Order N-33-20 in which all residents were directed to immediately heed the State public health directives which the Governor ordered the Department of Public Health to develop for COVID-19; and

WHEREAS, on May 4, 2020, Governor Gavin Newsom issued Executive Order N-60-20 which directed all residents to continue to obey State public health directives; and

WHEREAS, Governor Gavin Newsom has issued multiple Executive Orders due to COVID-19 which have significantly impacted individuals and the operations of businesses and local governments; and

WHEREAS, the State Public Health Officer & Director of the California Department of Public Health ("State Public Health Officer") has issued multiple Orders and directives due to COVID-19 which have significantly impacted individuals and the operations of businesses and local governments; and

WHEREAS, Health & Safety Code Section 120155 authorizes the City's peace officers to enforce orders of the State Public Health Officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease; and

WHEREAS, the Monterey County Public Health Officer ("County Public Health Officer") has issued multiple Orders due to COVID-19 which have significantly impacted individuals and the operations of businesses and local governments; and

WHEREAS, Health & Safety Code Section 101029 authorizes the City's peace officers to enforce orders of the County Public Health Officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease and Government Code Section 41601 further authorizes the City's Chief of Police to enforce local health orders to prevent the spread of disease; and

WHEREAS, the COVID-19 pandemic continues to spread rapidly worldwide and in the U.S., continuing to present an immediate and significant risk to public health and safety, and resulting in serious illness or death to vulnerable populations, including the elderly and those with underlying health conditions; and

WHEREAS, heightened levels of public health and safety planning and preparedness have been necessitated in preparation for and response to confirmed cases of COVID-19 in the County of Monterey, and rapid response not lending itself to otherwise applicable notice and approval timelines has been and will be necessary to respond to the rapidly evolving pandemic and to mitigate against the spread of COVID-19 and its resulting public health and safety impacts; and

WHEREAS, in the absence of such actions, County wide health services may become overwhelmed and unable to keep up with medical demand for care and availability of hospital or care facility capacity; and

WHEREAS, the City has issued, and may issue in the future, Encroachment Permits with provisions and conditions to allow restaurants to use public space for outdoor dining in order to allow restaurants to continue to operate during limitations imposed by Orders from the Governor, State Public Health Officer and County Public Health Officer and for such outdoor dining operations to be conducted in a manner consistent with public peace, health and safety; and

WHEREAS, based upon the foregoing, the City Council finds pursuant to Government Code Section 36937 (b) that this Urgency Ordinance is necessary for the immediate preservation of the public peace, health and safety.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARMEL- BY-THE-SEA DOES ORDAIN AS FOLLOWS:

Section 1: Incorporation of Findings. The City Council of the City of Carmel- by-the-Sea incorporates the Findings in the Whereas Clauses above by reference as though fully set forth here.

Section 2: Codification. This Ordinance shall not be codified in the Carmel-by-the-Sea Municipal Code.

Section 3: CEQA/Environmental Findings. The City Council exercises its independent judgment and finds that this Urgency Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, sections: 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment); 15060(c)(3) (the activity is not a project as defined in Section 15378); and 15061(b)(3), because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed Urgency Ordinance maintains the status quo and prevents changes in the environment pending the completion of the contemplated municipal code review. Because there is no possibility that this Urgency Ordinance may have a significant adverse effect on the environment, the adoption of this Urgency Ordinance is exempt from CEQA.

Section 4. Authority Pursuant to Applicable Law. Pursuant to California Government Code Section 8610, the City, while in a state of emergency proclaimed by the Director of Emergency Services and ratified by the City Council, may establish rules and regulations for dealing with the local emergency. The City Council finds and determines that it has the authority to enact this Urgency Ordinance pursuant to all applicable laws including, but not limited to, the California Emergency Services Act, the City Municipal Code, the declaration of local emergency issued by the City Council on March 13, 2020, Government Code Section 36937 (b) and the Findings set forth herein.

Section 5. Local Emergency. A local emergency continues to exist throughout the City, and the City has been undertaking, and will continue through cessation of this emergency to undertake, necessary measures and incur necessary costs, which are directly related to the prevention of the spread of the COVID-19 Virus and are taken in furtherance of: the Governor's Proclamation of a State of Emergency on March 4, 2020; the President of the United States' Declaration of a National Emergency on March 13, 2020; the City Council Resolution 2020-021 declaring the existence of a local emergency with the City due to COVID 19, the Orders issued by the Governor, State Public Health Officer and the County Public Health Officer due to COVID 19 and all applicable laws.

Section 6. Powers of City Director of Emergency Services. During the existence of the local emergency due to COVID 19, the powers, functions, and duties of the City Director of Emergency Services shall be those prescribed by state law, ordinances, and resolutions of this City notwithstanding otherwise applicable procedures, timelines or methods of action and the City Director of Emergency Services is expressly authorized to take any and all actions in furtherance of emergency powers to address the local emergency.

Section 7. Outdoor Dining. The City has issued, and may issue in the future, Encroachment Permits with provisions and conditions to allow restaurants to use public space for outdoor dining. The failure of any restaurant to fully comply with any of the provisions and conditions of an Encroachment Permit for outdoor dining is hereby declared to be a violation of this Urgency Ordinance and the City and City peace officers may proceed with enforcement for such a violation in the manner provided in the City Municipal Code including, but not limited to, Section 1.16.010 or as otherwise allowed by law.

Section 8. Authorization of City Code Compliance Coordinator. Pursuant to California Penal Code § 836.5, city code compliance coordinator is authorized to issue criminal citations following the procedures set forth in California Penal Code §§ 853.5 through 853.6a, or such other procedures as the State of California may subsequently enact for violations of this Urgency Ordinance and violations of any section of the City Municipal Code or violation of any City ordinance.

Section 9. Authorization of City Director of Emergency Services. The City Director of Emergency Services and his/her designee(s) are hereby authorized to take all necessary action to implement and enforce this Urgency Ordinance.

Section 10: Severability. If any section, subsection, sentence, clause, or phrase of this Urgency Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this Urgency Ordinance. The City Council declares that it would have passed this Urgency Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Urgency Ordinance would be subsequently declared invalid or unconstitutional.

Section 11: Effective Date and Duration. This Urgency Ordinance enacted under California Government Code Section 36937 will take effect immediately upon adoption by a four fifths (4/5) vote of the City Council. This Urgency Ordinance will remain in effect until rescinded by the City Council.

Section 12: Publication. The City Clerk is directed to certify this Urgency Ordinance and cause it to be published in the manner required by law.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL BY-THE-SEA this 4th day of August, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk