

ORDINANCE NO. 12-20 N.S.

AN URGENCY ORDINANCE OF THE CITY OF RICHMOND AUTHORIZING THE ZONING ADMINISTRATOR TO WAIVE REQUIREMENTS OF ARTICLE XV OF THE RICHMOND MUNICIPAL CODE RELATED TO OUTDOOR DINING, SALES AND COMMUNITY ASSEMBLY TO FACILITATE CERTAIN BUSINESS AND ORGANIZATIONAL OPERATIONS IMPACTED BY COVID-19

WHEREAS, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease named “coronavirus disease 2019” (“COVID-19”); and

WHEREAS, COVID-19 is easily transmissible from person to person, and community spread of the diseases has occurred throughout the United States and California, including in Contra Costa County; and

WHEREAS, on January 31, 2020, the Secretary of the United States Department of Health and Human Services declared a public health emergency for the entire United States to aid the nation’s healthcare community in responding to COVID-19; and

WHEREAS, on March 4, 2020, the Governor of California proclaimed a state of emergency regarding COVID-19; and

WHEREAS, on March 10, 2020, the Contra Costa County Board of Supervisors declared a local health emergency; and

WHEREAS, on March 16, 2020, the Contra Costa County Health Officer, along with six other health officers within six Bay Area counties, took a unified step to slow the spread of COVID-19 and preserve critical health care capacity across the region by issuing a legal order directing their respective residents to shelter at home beginning March 17, 2020. The order in Contra Costa County limited activity, travel, and business functions to only the most essential needs. The guidance comes after substantial input from the CDC and best practices from other health officials around the world; and

WHEREAS, on March 10, 2020, the City Manager of the City of Richmond, in her role as the Director of Emergency Services, proclaimed a local emergency; and

WHEREAS, on March 17, 2020, the City Council ratified and confirmed the proclamation of the existence of a local emergency issued by the City Manager; and

WHEREAS, on March 19, 2020, the Governor of California issued Executive Order N-33-20 ordering all individuals within the State of California to stay home or at their place of residence, except as needed to maintain continuity of operation of the federal critical infrastructure sectors, critical government services, schools, childcare, and construction; and

WHEREAS, the Contra County Health Officer has issued multiple orders extending the shelter in place order; and

WHEREAS, the State Public Health Officer has articulated a four-stage framework to allow for gradually resuming various activities while continuing to preserve public health; and

WHEREAS, On May 4, 2020, the Governor of California issued Executive Order N-60-20 ordering all individuals within the State of California to comply with the State Public Health Officer’s framework unless stricter local regulations exist; and

WHEREAS, on May 18, 2020 the Contra Costa County Health Officer issued a health order allowing certain businesses to partially resume operations with certain safety precautions, such as retail stores for curbside or storefront pickup only; and

WHEREAS, stage 2 of the State Public Health Officer’s roadmap for reopening is split into an earlier and later stage 2 (“Stage 2b”); and

WHEREAS, during Stage 2b, dine in restaurants and in-person retail shopping are allowed to occur, with certain safety precautions; and

WHEREAS, during Stage 3 of the State Public Health Officer's roadmap for reopening personal services such as hair and nail salons, gyms and fitness studios, as well as hospitality services will be allowed to operate; and

WHEREAS, on June 5, 2020 the Contract Costa County Health Officer issued an updated health order allowing outdoor dining; and

WHEREAS, business allowed to reopen are subject to health and safety guidelines to minimize the risk of spread of COVID-19, such as increased physical distance between tables, required use of face coverings by staff, frequent cleaning of high touch surfaces, suspended use of shared food items such as condiment bottles and reusable menus, and similar restrictions; and

WHEREAS, the State Department of Public Health's guidelines for restaurants specifically recommend prioritizing outdoor seating and curbside pickup to minimize cross flow of customers in enclosed environments, and guidelines for other industries contain similar recommendations and requirements; and

WHEREAS, during this time of shelter in place and other social distancing, many businesses are experiencing substantial declines in business income as a result of business closures or the loss of hours, which threatens businesses ability to pay rent, maintain payroll, and continue operating; and

WHEREAS, many businesses may face layoffs or permanent closure as a result of the pandemic; and

WHEREAS, even as certain shelter in place restrictions begin to ease, many local businesses will continue to be affected by distancing and health order requirements; and

WHEREAS, businesses are an integral part of the economy and community of Richmond; and

WHEREAS, local businesses are a significant source of jobs, tax revenue and essential services for the community; and

WHEREAS, business closures will negatively impact the local economy by laying off employees and ceasing to provide services to residents of the City, and negatively impact local health by reducing the number of retail and commercial spaces available to provide essential services while maintaining social distancing, and will decrease tax revenues available to the City to respond to COVID-19 and other public health and safety concerns; and

WHEREAS, the Zoning Ordinance (Article XV of the Richmond Municipal Code) contains various requirements regarding outdoor dining, seating, sales, off-street parking, application procedure and similar restriction; and

WHEREAS, to assist businesses that are experiencing, and will continue to experience, severe negative economic impacts due to the COVID-19 pandemic, the City desires to authorize the Zoning Administrator to approve temporary waivers from the strict application of the Zoning Ordinance to facilitate a return to business operations; and

WHEREAS, California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the public health, safety, and general welfare, of their citizens; and

WHEREAS, California Government Code Section 36937 authorizes the City Council to introduce and adopt an ordinance it declares to be necessary as an urgency measure to preserve the public peace, health, and safety at one and the same meeting if passed by affirmative votes by four-fifths of the legislative body; and

WHEREAS, COVID-19 and the public health orders designed to reduce the virus's spread have had a significant impact on the economy of the City, requiring the closure of numerous business, and this Urgency Ordinance will facilitate the prompt reopening of businesses impacted by COVID-19 consistent with anticipated public health orders thereby minimizing negative economic impacts; and

WHEREAS, the Urgency Ordinance is designed to reduce and slow the transmission of COVID-19 by facilitating required distancing between and among patrons and employees; and

WHEREAS, the Urgency Ordinance is designed to promote economic business stability and prevent business closures during the COVID-19 pandemic by streamlining the process for a business to obtain a waiver of Zoning requirements to enable business operations in a manner that complies with social distancing orders and protocols, thereby serving the public peace, health, safety, and public welfare; and

WHEREAS, the City Council finds and determines that allowing the Zoning Administrator to waive certain requirement of the Zoning Ordinance to facilitate business operations impacted by COVID-19 in compliance with applicable health orders is essential to support economic development, prevent layoffs, and maintain tax revenue in the City and thereby serve the public peace, health, and safety; and

WHEREAS, an urgency ordinance that is effective immediately is necessary to avoid the immediate threat to public peace, health, and safety as failure to adopt this urgency ordinance could result in the avoidable closure of local businesses.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Richmond, does hereby ordain as follows:

SECTION 1. Findings

The City Council of the City of Richmond finds that all of the above Recitals are true and correct and incorporated herein by reference. The provisions of the Governor's "resilience roadmap for state reopening" as published on the State of California's official COVID-19 website, www.covid.ca.gov, are incorporated herein as if fully set forth.

SECTION 2. Urgency Findings

The City Council of the City of Richmond hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public health, safety and welfare that warrants this urgency ordinance, which findings are based upon the facts stated in the recitals above, and in the staff report dated June 23, 2020, as well as oral and written testimony at the June 23, 2020 City Council meeting. This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public health, safety and welfare. The facts constituting such urgency are all of those certain facts set forth and referenced in this Ordinance and the entirety of the record before the City Council.

SECTION 3. Ordinance

The City Council hereby makes the findings contained herein and hereby adopts the uncodified Ordinance to read as follows:

ORDINANCE AUTHORIZING THE ZONING ADMINISTRATOR TO WAIVE REQUIREMENTS OF ARTICLE XV OF THE RICHMOND MUNICIPAL CODE DUE TO COVID-19.

Section I. Authority of Zoning Administrator

The Zoning Administrator shall have the authority to issue a temporary use permit waiving any requirements and/or standards of Article XV, Zoning and Subdivision, of the Richmond Municipal Code (RMC) to facilitate business operations affected by public-health orders of the federal, state, or county government designed to slow the transmission of the Novel Coronavirus

(COVID-19). Temporary use permits issued pursuant to this Ordinance shall not be subject to the requirements of RMC Article XV. The Zoning Administrator may condition the issuance of a temporary use permit on compliance with any conditions he or she determines appropriate. Failure to comply with such conditions may result in the revocation of the temporary use permit.

Without limiting the foregoing, temporary use permits may waive requirements related to outdoor seating, outdoor sales displays, required off-street parking, signage and similar restrictions, including conditions contained in existing permits. Temporary use permits shall not be issued pursuant to this Ordinance to authorize wholly new businesses, but rather only to facilitate the continued operation of existing uses in compliance with applicable health orders.

Section II. Duration of Temporary Use Permit

A temporary use permit issued by the Zoning Administrator pursuant to this Ordinance shall last for no longer December 31, 2020, except that the temporary use permit may be extended by the Zoning Administrator if the Zoning Administrator determines, in their sole discretion, that such waiver remains necessary to facilitate business operations affected by public-health orders of the federal, state, or county.

Section III. Procedures

An individual or entity seeking a temporary use permit must submit an application on a form designated by the Zoning Administrator, along with any other documentation or information required by the Zoning Administrator. No public hearings or notices are required prior to the issuance of a Temporary Use Permit. The Council acknowledges that no fee will be charged given the economic impact businesses have suffered due to COVID-19.

Section IV. Special COVID-19 Temporary Use Permit Findings

The Zoning Administrator may approve an application for a Special COVID-19 Temporary Use Permit upon making the following findings:

- A. The operations of the existing use have been impacted by COVID-19. For example, restaurants, retail stores and religious assembly with limited occupancy due to distancing requirements.
- B. The proposed outdoor use will facilitate the operations of a business and/or organization in a manner that assists in reducing the potential spread of COVID-19.
- C. The proposed use is not a wholly new businesses or business expansion, but rather facilitates the continued operation of an existing use in compliance with all applicable health and safety orders.

Section X. Use of Right-of-Way

Any individual or entity seeking to use the sidewalk or other public property for their business operations must obtain an encroachment permit from the City, and must obtain and maintain appropriate insurance as required by the City. Business operations shall not be permitted on the sidewalk or other public property if such operations will interfere with the ADA accessible path of travel or cause other safety hazards.

Section XI. Termination

The ordinance shall take effect immediately and shall remain in effect until the expiration of the declaration of local emergency by the City of Richmond.

SECTION 4. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City

of Richmond hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 5. Effective Date

Following adoption by of the City Council, this Ordinance shall be effective immediately upon adoption pursuant to Government Code section 36937. The City Clerk shall certify as to the adoption of this Urgency Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.

Passed and adopted at a regular meeting thereof held June 23, 2020, by the following vote:

- AYES: Councilmembers Choi, Johnson III, Martinez, Myrick, Willis, Vice Mayor Bates, and Mayor Butt.
- NOES: None.
- ABSTENTIONS: None.
- ABSENT: None.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:
TOM BUTT
Mayor

Approved as to form:
RACHEL SOMMOVILLA
City Attorney(Interim)

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of Ordinance No. 12-20 N.S., passed and adopted by the City Council of the City of Richmond at a regular meeting held on June 23, 2020.



Pamela Christian, City Clerk of the City of Richmond