

ORDINANCE NO. 2023-07

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING THE BUSINESS RECOVERY ORDINANCE MODIFICATIONS THAT AMEND VARIOUS ARTICLES OF THE ESCONDIDO ZONING CODE

CASE NO.: PL23-0005

The City Council of the City of Escondido, California DOES HEREBY ORDAIN as follows:

SECTION 1. The City Council makes the following findings:

- a) WHEREAS, on March 4, 2020, California Governor Gavin Newsom proclaimed a State of Emergency to exist in the State of California as a result of the threat of COVID-19; and
- b) WHEREAS, on March 16, 2020, the city manager for the City of Escondido (“City”), acting in his capacity of Director of Emergency Services of the City (“Director”), proclaimed, through Proclamation No. 2020-01, the existence of a local emergency related to COVID-19 within the City; and
- c) WHEREAS, on March 18, 2020, the Escondido City Council adopted Proclamation No. 2020-01, ratifying the declaration of the Director and declaring the existence of an on-going local emergency pursuant to COVID-19; and
- d) WHEREAS, the City of Escondido City Council adopted an emergency business recovery strategy through Ordinance No. 2020-23 under a declaration of local emergency; and
- e) WHEREAS, the business recovery strategy was responsive to business and community needs and temporarily granted relief from certain provisions of the Escondido Municipal Code and Escondido Zoning Code in order to allow compliance with specific public health requirements associated with the pandemic and supported the City’s issuance of temporary use permits for business recovery activities; and

f) WHEREAS, Ordinance No. 2020-23 went into effect on October 21, 2020 and remains effective until 30 days after the expiration or termination of the proclamation of local emergency, or until it is modified or revoked by the City Council, whichever is sooner; and

g) WHEREAS, the Governor of the State of California has announced that the COVID-19 State of Emergency will end on February 28, 2023; and

h) WHEREAS, it is anticipated that the proclamation of local emergency pursuant to COVID-19 will be rescinded soon thereafter; and

i) WHEREAS, City staff have conducted a review of the business recovery strategy and provisions of Ordinance No. 2020-23 together with the temporary use permits issued in its support to identify those temporary measures that should be made permanent through amendments to the Escondido Zoning Code; and

j) WHEREAS, Planning Division staff identified the need to amend Articles 26 (Industrial Zones), 39 (Off-Street Parking), 57 (Miscellaneous Use Restrictions), and 66 (Sign Ordinance) of the Escondido Zoning Code; and

k) WHEREAS, the Planning Commission of the City of Escondido, on January 24, 2023, held a public hearing to consider the Zoning Code Amendments and recommended approval (3-1) of certain of City Staff now recommends the items as provided in Exhibit "B"; and

SECTION 2. The City Council of the City of Escondido did hold a duly noticed public hearing on February 15, 2023, as prescribed by law. At said hearing, this City Council received and considered the reports and recommendations of the Planning Commission and City staff, and gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter. Evidence was submitted to and considered by the City Council, including, without limitation:

- a) Written information including plans, studies, written and graphical information, and other material, submitted as part of the Project;
- b) Oral testimony from City staff, interested parties, and the public;
- c) The City Council staff report, dated February 15, 2023, with its attachments as well as City staff's recommendation on the Project, which is incorporated herein as though fully set forth herein;
- d) The Planning Commission's recommendation on the request; and
- e) Additional information submitted during the public hearing.

SECTION 3. Upon consideration of the Findings of Fact/Factors to be considered, attached hereto as Exhibit "A" and incorporated herein by reference as though fully set forth herein, the City Council desires at this time and deems it to be in the best public interest to approve said amendments, attached as Exhibit "B" and hereto and incorporated herein by this reference as though fully set forth herein.

SECTION 4. ENVIRONMENTAL REVIEW. That the proposed Zoning Code Amendments are statutorily or categorically exempt from further review pursuant to the CEQA and the State CEQA Guidelines by the following:

- a) A number of the amendments are not considered to be a Project under CEQA, as defined in section 15378(b)(5), specifically amendments that relate to error correction, formatting changes, and general reference cleans up, and for those amendments no further environmental review is required; and
- b) The amendments that relate to a zone's permitted use table (Article 26) are categorically exempt pursuant to CEQA Guidelines section 15301 (Existing Facilities) as such uses are already permitted in less intensive zones; and

- c) The amendments that relate to a signage (Article 66) and the conversion of existing, required off-street parking to outdoor dining (Article 57) are categorically exempt pursuant to CEQA Guidelines section 15301 (Existing Facilities) as such uses would result in negligible or no expansion of the existing uses.

SECTION 5. SEVERABILITY. If any section, subsection sentence, clause, phrase, or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 6. As of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7. The City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation for the City of Escondido.

SECTION 8. The Ordinance shall become effective 30 days from the date of the passage.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 8th day of MARCH, 2023 by the following vote to wit:

AYES : Councilmembers: GARCIA, GARCIA, MORASCO, MARTINEZ, WHITE

NOES : Councilmembers: NONE

ABSENT : Councilmembers: NONE

APPROVED:

DocuSigned by:
Dane White
10FF550B8C3B408...
DANE WHITE, Mayor of the
City of Escondido, California

ATTEST:

DocuSigned by:
Zack Beck
A58535D0BDC1430
ZACK BECK, City Clerk of the
City of Escondido, California

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO : ss.
CITY OF ESCONDIDO)

I, Zack Beck, City Clerk of the City of Escondido, hereby certify that the foregoing ORDINANCE NO. 2023-05 passed at a regular meeting of the City Council of the City of Escondido held on the 15th day of February, 2023, after having been read at the regular meeting of said City Council held on the 8th day of March, 2023.

DocuSigned by:
Zack Beck
A58535D0BDC1430
ZACK BECK, City Clerk of the
City of Escondido, California

ORDINANCE NO. 2023-07

FACTORS TO BE CONSIDERED / FINDINGS OF FACT**PL23-0005****Zoning Code Amendment Determinations:**

1. That the public health, safety and welfare will not be adversely affected by the proposed change in that:
 - a. the proposed batch of Zoning Code amendments codify certain measures and provisions enacted on a temporary basis as part of an emergency business recovery strategy adopted through Ordinance No. 2020-23 under a Proclamation of Local Emergency that have been deployed in the community. Codifying these measures and provisions creates options for these interim regulations to become permanent, thereby eliminating uncertainty for business owners who have relied upon the business recovery strategy to modify their business practices and the public who have benefited from the changes. The proposed Zoning Code amendments are consistent with the objectives, policies, general land uses, and programs within the General Plan as they further Goal 2, Policy 2.1 of the Land Use and Community Form chapter that supports updates and revisions to the Zoning Code and Goal 8, Policies 8.3, 8.5, and 8.6 of the Economic Prosperity chapter, goals that support the reuse of underutilized land and measures that strengthen commercial and employment centers. Among other things, the amendments create opportunities to repurpose existing parking spaces and create additional flexibility within existing industrial buildings for accessory uses while providing options for current interim regulations to become permanent, thereby eliminating uncertainty for business owners who have relied upon the business recovery strategy to modify their business practices and the public who have benefited from the changes.
2. That the property involved is suitable for the uses permitted by the proposed Zoning Code amendments in that:
 - a. there is not a project-specific site proposed for the Project. The proposed Zoning Code amendments would go into effect Citywide and would affect all properties subject to the Escondido Municipal Code and their respective land use designation and zoning district, as is appropriate for the Zoning Code amendments.
3. That the uses permitted by the proposed Zoning Code amendments would not be detrimental to surrounding properties in that:

- a. the amendments which affect uses, such as those in Articles 26 (Industrial Zones) and 57 (Miscellaneous Use Restrictions) have been reviewed under prior ordinances adopted by the City of Escondido and reviewed for their consistency with existing uses. Additionally, because the amendments have already been in effect for over two years, there is a demonstrated record that the uses addressed have not been detrimental to surrounding properties.
4. That the proposed Zoning Code amendments are consistent with the adopted general plan in that:
 - a. the Land Use and Community Form chapter states, "Escondido's growth and development patterns are to be managed in a way that does not overwhelm or reduce the quality of community services, safety and protection provided by the city." The proposed Zoning Code amendments are consistent with this statement and will not adversely impact the public health, safety and welfare because those related to Articles 26 (Industrial Zones), 39 (Off-Street Parking), 57 (Miscellaneous Use Restrictions), and 66 (Sign Ordinance). are nominal in nature; and
 - b. the proposed Zoning Code amendments codify measures and provisions enacted on a temporary basis as part of an emergency business recovery strategy adopted through Ordinance No. 2020-23 under a Proclamation of Local Emergency. The proposed Zoning Code amendments are consistent with the objectives, policies, general land uses, and programs within the General Plan as they further Goal 2, Policy 2.1 of the Land Use and Community Form chapter that supports updates and revisions to the Zoning Code and Goal 8, Policies 8.3, 8.5, and 8.6 of the Economic Prosperity chapter, goals that support the reuse of underutilized land and measures that strengthen commercial and employment centers. Among other things, the amendments create opportunities to repurpose existing parking spaces and create additional flexibility within existing industrial buildings for accessory uses while providing options for current interim regulations to become permanent, thereby eliminating uncertainty for business owners who have relied upon the business recovery strategy to modify their business practices and the public who have benefited from the changes.
5. That the relationship of the proposed Zoning Code amendments is applicable to specific plans in that:
 - a. the proposed Project would not conflict with any specific plan as the proposed Zoning Code amendments are consistent with the objectives, policies, general land uses, and programs within the General Plan as they further Goal 2, Policy 2.1 of the Land Use and Community Form chapter that supports updates and revisions to the Zoning Code and Goal 8, Policies 8.3, 8.5, and 8.6 of the Economic Prosperity

chapter, goals that support the reuse of underutilized land and measures that strengthen commercial and employment centers. Among other things, the amendments create opportunities to repurpose existing parking spaces and create additional flexibility within existing industrial buildings for accessory uses while providing options for current interim regulations to become permanent, thereby eliminating uncertainty for business owners who have relied upon the business recovery strategy to modify their business practices and the public who have benefited from the changes.

ARTICLE 66. SIGN ORDINANCE

Addition of wayfinding signs adjacent to pick-up and carry-out zones

Sec. 33-1391. Definitions.

The following definition is to be modified to specifically include wayfinding signs adjacent to pick-up and carry-out zones:

(21) Directional/informational sign means an on-premises sign which contains words such as "entrance," "in," "out," "rest rooms," "no parking", "curbside pickup", "online orders", "reserved for ___," or other similar words, or a sign containing arrows or characters indicating traffic directions used either in conjunction with such words or separately. The sign area shall not be greater than two square feet and the sign not higher than three feet. Signs exceeding this area and/or height may be allowed with approval of a comprehensive sign program, for car-wash, polishing, vacuuming, and detailing uses only. No directional/informational sign shall contain any advertising or trade name information, although minor business identification, not exceeding 20% of the sign area, is allowed for directional purposes. Real estate kiosk and directional signs as defined in section 33-1396(c) and (d) shall not be included in this category.

ARTICLE 39. OFF-STREET PARKING

Designation of off-street parking spaces for curbside pick-up, restaurant carry-out zones, and similar purposes

Sec. 33-764. Adjustments to non-residential parking.

(e) Carry-out zones. For off-street parking facilities containing at least five existing, striped parking spaces, at least one, but no more than five percent of the total number of parking spaces on the same premises may be reserved for curbside pick-up, restaurant carry-out zones, and/or other drop-off and pick-up related uses and activities. Additional spaces may be allowed through an administrative adjustment process.

ARTICLE 57. MISCELLANEOUS USE RESTRICTIONS

Update of outdoor dining provisions to remove obsolete provisions and to permit the conversion of existing parking spaces to off-street outdoor dining

Sec. 33-1111. Outdoor dining provisions.

(a) Outdoor dining for legally established restaurants and eating establishments shall be exempt from providing additional parking for an area up to 300 square feet, provided the use conforms with all required parking standards for its indoor dining area, subject to the following conditions and administrative review:

(1) The establishment requesting outdoor dining shall conform to all sections of the Municipal Code. Outdoor dining areas not in compliance with the required provisions of this article operating prior to October 5, 1994, may continue provided: (A) continuous existence; and (B) use of the outdoor dining area can be demonstrated to the satisfaction of the director department and no violations of state, federal or health and safety regulations exist.

(2) All outdoor dining furniture, including tables, chairs, umbrellas and planters, shall be movable. Umbrellas must be secured with a minimum base of not less than 60 pounds. Outdoor heaters, amplified music or speakers shall be reviewed at the time of application.

(3) No signage shall be allowed in the outdoor dining area, except for the name of the establishment on an awning or umbrella valance.

(4) The outdoor dining area may only serve food and beverages prepared or stocked for sale by the adjoining indoor eating establishment, provided that the service of alcoholic beverages solely for on-premises consumption by customers within the area of the outdoor dining area has been licensed by the state authorities to sell such beverages for consumption within the outdoor dining area.

(5) The area in which the outdoor dining area is located shall be delineated from parking spaces, drive aisles, and sidewalks by a barrier consisting of railings, fences, or walls, or a combination of railings, fences, and walls, and planter boxes that are 42 inches in height or less. Acceptable materials include decorative wrought iron, tubular steel, wood, masonry, or other durable material that is suitable for outdoor use on a permanent basis. A clear, transparent material may be used on top of the barrier, not to exceed a total height of five feet. Awnings or umbrellas may be used in conjunction with an outdoor dining area, which may also be covered with a permanent roof or shelter provided all California Building Code requirements are met. Barriers adjacent to parking stalls or drive aisles shall include reflective materials and shall be designed in a manner so as to provide protection to the outdoor dining area.

(6) The outdoor preparation of food and busing facilities are prohibited at outdoor dining areas. The presetting of tables with utensils, glasses, napkins, condiments and the like is

prohibited. All exterior surfaces within the outdoor dining area shall be easily cleanable and shall be kept clean at all time by the permittee. Restrooms for the outdoor dining area shall be provided in the adjoining indoor eating establishment and the outdoor dining seating shall be counted in determining the restroom requirements of the indoor restaurant.

(7) The permittee shall remove all trash and litter as they accumulate. The permittee shall be responsible for maintaining the outdoor dining area, including the floor surface, furniture and adjacent areas in a clean and safe condition.

(8) Hours of operation shall be identical to those of the indoor eating establishment.

(9) No required landscaping shall be eliminated unless replaced on-site.

(10) Outdoor dining shall meet current California Building Code and Americans with Disabilities Act requirements for accessibility.

(b) Outdoor dining for restaurants and eating establishments exceeding 300 square feet shall be subject to the conditions stated in subsection (a) of this section, as well as the following conditions:

(1) The establishment conforms with all required parking standards. Additionally, no required vehicle parking spaces shall be eliminated in order to accommodate the outdoor dining area unless replaced on-site.

(2) Additional parking shall be provided for the area exceeding 300 square feet at a ratio of that required for indoor dining areas. Additional parking shall be provided either on-site or along the street fronting the establishment, or through a joint use or other arrangement deemed appropriate by the city.

(3) Landscaping/buffering shall be incorporated into the outdoor dining area subject to planning division approval which may consist of container plants, permanent landscape areas, garden walls, temporary fencing or other satisfactory measures to delineate the area devoted for outdoor dining.

(c) Conversion of required off-street parking. The conversion of at least two and up to 25% of required off-street parking spaces for the establishment of permanent outdoor dining may be permitted as an administrative adjustment to nonresidential parking subject to the provisions of section 33-764 of this chapter

(d) Design review in accordance with Article 64 of this chapter shall be required for all outdoor dining areas.

ARTICLE 26. Industrial zones

Modification of floor area restriction for accessory retail use in industrial areas**Sec. 33-565. Permitted accessory uses and structures.**

(a) Accessory uses and structures are permitted in the industrial zones, provided they are incidental to and do not substantially alter the character of the permitted principal use or structure. Such permitted accessory uses and structures include, but are not limited to, the following:

Table 33-565**PERMITTED ACCESSORY USES AND STRUCTURES**

Use Title	I-O	M-1	M-2	I-P
ATM kiosk				
ATM kiosk (drive-in,* drive-through*) (section 33-341)				
Fleet storage* (subject to Article 57)	P	P	P	P
Tow truck operation incidental to repair* (subject to Article 57)		P/C	P/C	
Bus stop shelters**	P	P	P	P
Cafeteria, operated in conjunction with a permitted use for the convenience of persons employed upon the premises	P	P	P	P
Caretakers' or watchperson's dwelling	P	P	P	P
Commercial sales and service uses clearly incidental and secondary to a principal permitted use as provided for in section 33-565(b)	P	P	P	P
Cottage food operations and home occupations as provided for in Article 44	P	P	P	P
Employee recreational facilities and play areas	P	P	P	P
Other accessory uses and buildings customarily appurtenant to a permitted use	P	P	P	P
Reverse vending machines* (Article 33)	P	P	P	P
Satellite dish antennas*	P	P	P	P
Storage buildings incidental to a permitted use	P	P	P	P
Storage of materials used for the construction of a building, including the contractor's temporary office, provided that such use is on the building site or immediately adjacent thereto and provided further, that such use shall be permitted only during the construction period and the 30 days thereafter	P	P	P	P

Notes:

* Subject to special regulations—see section 33-700.

** Subject to special regulations—see section 33-1118.

(b) Sales and service uses incidental and accessory to a principally permitted use may be permitted by the director of community development provided that the following standards are met:

- (1) The operations are contained within the main structure which houses the primary use.

- (2) The use occupies no more than **50%** of the gross building square footage.
- (3) No retail sales or display of merchandise occur(s) outside the structure(s), or outside designated outdoor storage area.
- (4) All products offered for sale on the site are manufactured, warehoused, or assembled on the premises.