ORDINANCE NO. 2020-9

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CHARTERED
CITY OF VISTA, CALIFORNIA, TEMPORARILY RELAXING REGULATIONS
RELATED TO SIGNAGE FOR ALL BUSINESSES AND OUTDOOR SEATING
FOR RESTAURANTS AND MICROBREWERIES DUE TO THE LOCAL
EMERGENCY CREATED BY THE COVID-19 PANDEMIC

The City Council of the City of Vista does ordain as follows:

1. **Findings.** The City Council hereby finds and declares as follows:

   A. On January 31, 2020, the Secretary of the United States Department of Public
      Health and Human Services declared a public health emergency as a result of the discovery of
      the novel coronavirus ("COVID-19").

   B. On March 4, 2020, Governor Newsom proclaimed a State of Emergency to exist
      in the State of California as a direct result of the threat presented by COVID-19.

   C. On March 15, 2020 the City of Vista's ("City") Director of Emergency Services
      declared a local emergency as a result of the continued spread of COVID-19. The City Council
      ratified the declaration of local emergency.

   D. On March 19, 2020, Governor Newsom issued Executive Order N-33-20. This
      order required all individuals living in the State of California to stay home or at their place of
      residence except as needed to maintain the continuity of operations of the federal critical
      infrastructure sections.

   E. On May 4, 2020, Governor Newsom issued Executive Order N-60-20 which
      allowed non-essential businesses to reopen in phases and in compliance with criteria set by the
      California Public Health Officer, and based on certain public health criteria being met on a
      county-by-county basis.

   F. On May 20, 2020, Governor Newsom approved the County of San Diego's
      request to proceed with modified onsite dining throughout the San Diego County.

   G. On May 20, 2020, Governor Newsom approved the County of San Diego's
      request to allow retail businesses to have customers in stores with certain restrictions.

   H. As a result of Executive Order N-33-20, the vast majority of businesses in the
      City of Vista were forced to close and have been closed for a prolonged period of time. This
      has resulted in a significant loss of business for businesses located in the City of Vista.

   I. It is in the public interest to take steps to ensure local businesses survive during
      this public health emergency, and this Ordinance temporarily relaxes certain regulations to
      support local businesses, promote economic stability, and to promote a stable business and job
      market for employers and employees to return to once the local emergency is abated.

   J. Adopting this Ordinance is necessary and appropriate to address the immediate
      threats to the public health, safety, and welfare of residents and local businesses related to the
      significant economic impacts of the COVID-19 pandemic, to support businesses to be
successful in their reopening in compliance with public health criteria, and to support compliance with public health orders and criteria related to COVID-19 to continue to mitigate the spread of COVID-19 in the City.

K. Under California Government Code section 36937, a four-fifths vote of City Council is required to pass this Ordinance.

2. Ordinance Text

SECTION 1. Each fact set forth in the recitals is true and correct and incorporated by reference.

SECTION 2. For all businesses, a temporary waiver of the restrictions on temporary on-site signs is enacted, as follows:

A. Banners. Vista Development Code Section 18.52.070(B)(1), as it may be amended, regarding time and permit restrictions for displaying banners is temporarily waived to allow displays of banners at any time without a permit. Banners shall continue to comply with Vista Development Code Section 18.58.070(B)(1), subsection “b” related to maximum sign area, and subsection “c” related to maximum number of banners per building or tenant space.

B. Portable Signs. Vista Development Code Section 18.52.060, Table 18.52.060A, as it may be amended, regarding portable signs, is temporarily waived to allow portable signs within all areas of the City and at any time without a permit.

C. Window Signs. Vista Development Code Section 18.52.060, Table 18.52.060A, as it may be amended, regarding window signs exceeding 25 percent of the window area, is temporarily waived to allow window signs exceeding 25 percent of the window area without a permit, unless prohibited by any other law, regulation, order, or the like.

D. Directional Signs. Vista Development Code Section 18.52.060, Table 18.52.060A, as it may be amended, regarding the maximum number of directional signs permitted, is temporarily waived to allow an additional four (4) directional signs per building site at any time without a permit.

SECTION 3. Establishments that primarily serve food for on-site consumption and microbreweries that qualify under any of the California Department of Alcoholic Beverage Control’s (“ABC”) regulatory relief actions (hereinafter collectively referred to as “restaurants,”) may temporarily relocate some or all of their existing indoor seating capacity to outdoor seating, as follows:

A. Seating Layout Review and Site Inspection. A Seating Layout Review and Site Inspection is required to relocate some or all of permitted indoor restaurant seating to outdoor seating in adjacent privately-owned outdoor areas not originally permitted for outdoor seating, such as landscaped areas and parking lots, and in adjacent public areas such as sidewalks and on-street parking spaces within the public right-of-way. The Seating Layout Review and Site Inspection shall be conducted by a City Building Inspector and/or Fire Inspector
who will review and either approve or require modifications to the proposed outdoor seating layout based on the following criteria:

i. Seating layout does not create a safety risk and adequate pedestrian and vehicular separation is maintained, including with movable barriers as appropriate where outdoor seating is to be placed in parking lots or on-street parking spaces.

ii. Seating layout accommodates appropriate vehicle and pedestrian circulation and maintains adequate paths of travel and complies with accessibility requirements of the Americans with Disabilities Act.

iii. Any tents comply with fire codes and safety standards set forth by the National Fire Protection Association for fire-resistant tents and must include an affixed manufacturer's label stating the tent meets NFPA requirements. A State Fire Marshal seal on the tent or a certificate is needed to prove treatment.

iv. Any placement or installation of temporary improvements, including but not limited to chairs and tables; pedestrian safety lights; heat lamps, fans, or other temperature control devices; canopies or other overhead shelter; posted signage; and other items that support table service or outdoor dining are subject to all applicable provisions of the California Building Code.

v. The use of on-street parking spaces within the public right-of-way for outdoor seating must also comply with the following:

a. The on-street parking spaces must be located within the Historic Downtown District of the Downtown Vista Specific Plan, as depicted in Exhibit A.

b. The temporary outdoor seating must be located within an existing, striped space and located immediately adjacent to the restaurant.

c. The on-street parking space must be located at least one (1) striped parking space away from an intersection or street corner.

d. The on-street parking space must have a continuous edge to buffer the street and restrict pedestrian access into the street. This can take the form of event fencing, concrete planter boxes, railing, cabling, or some other appropriate buffer that shall be equipped with retroreflective signage, markers, or lighting.

e. The use of on-street parking spaces for temporary outdoor dining is prohibited for the following: (i) on street curves or hills where horizontal or vertical sight-distance is an issue;
(ii) in bus lanes; (iii) in front of fire hydrants; (iv) at utility access points (like manholes); and (v) in reserved take out or delivery service parking spaces.

f. The use of on-street parking spaces must include setbacks on either side as a buffer from adjacent on-street parking spaces and driveways. Additionally, the outer edge of the on-street parking space must have two (2) foot clear zone from the adjacent travel lane.

B. No Fee. No fee will be charged for conducting a Seating Layout Review and Site Inspection.

C. Occupancy. Total seating occupancy (including all indoor and outdoor seating) shall not exceed the overall occupancy for which the restaurant is permitted.

D. Trash and Debris Removal. Temporary outdoor seating areas, including any adjacent landscaped areas, sidewalks, and parking areas, shall be kept free of trash and debris at all times. The restaurant shall ensure the cleanup and removal of any trash and debris at the conclusion of operation each day.

E. Indemnification and Hold Harmless. As a condition of approving outdoor seating on City-owned property including on-street parking spaces and sidewalks within the public right-of-way, the restaurant owner is required to indemnify, defend, and hold harmless the City, its officers, officials, employees, agents, and volunteers from any liability for any and all claims, demands, actions, losses, damages, and injuries, direct or indirect (including any and all costs in connection therein), which may arise from restaurant’s operations on City-owned property, except for any such claims arising out of the active negligence or willful misconduct of the City.

F. Insurance Required. At the time of the Seating Layout Review and Site Inspection that includes a request to use City-owned property including on-street parking spaces and sidewalks within the public right-of-way, the applicant shall submit proof of insurance including certificates of insurance with original endorsements as follows:

i. Commercial General Liability Coverage to be maintained no less broad that ISO form GC 00 01 in an amount not less than one million dollars ($1,000,000) per occurrence for bodily injury, personal and advertising injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to the restaurant’s use of outdoor space or the general aggregate limit shall be twice the required occurrence limit. If the restaurant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the restaurant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
ii. Liquor Liability Insurance Coverage shall cover the temporary use of outdoor spaces identified in the proposed seating layout.

iii. Any deductibles and self-insured retentions must be declared to and approved by the City. At the option of the City, either: the owner shall cause the insurer to reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officers, officials, employees, and volunteers or the owner shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

iv. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of the use of any outdoor space as authorized herein, including work or operations performed by or on behalf of the Owner involving such use of outdoor space, including materials, parts, or equipment furnished in connection with such work. General liability coverage can be provided in the form of an endorsement to the restaurant’s insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used), unless otherwise approved in advance by City.

v. For any claims related to a restaurant’s use of outdoor space as authorized herein, the restaurant’s insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the restaurant’s insurance and shall not contribute with it.

vi. Each insurance policy required by this ordinance shall provide that coverage shall not be canceled, except with reasonable advance notice to the City.

vii. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City.

G. Other Regulations and Approvals. Restaurants requesting a Seat Layout Review and Site Inspection from the City are responsible for maintaining compliance with all other applicable regulations and obtaining any approvals required from other agencies, including, but not limited to, the San Diego County Department of Environmental Health, the San Diego County Health and Human Services Agency, the San Diego County Sheriff’s Department, and the ABC. The restaurant shall post on site its COVID-19 Temporary Catering Authorization to expand its licensed footprint for serving alcoholic beverages from the ABC.

SECTION 4. Upon the expiration of this Ordinance, the City Council’s relaxation related to signage and outdoor seating shall be of no further force and effect.
Regulations relating to signage and outdoor seating shall revert back to the regulations as written and/or codified in the Vista Municipal and Development Code. All temporary signs, banners, window displays, directional displays and the like authorized pursuant to this Ordinance shall be removed immediately at the expense of the business. All improvements used for temporary outdoor seating shall be removed immediately at the expense of the business. All outdoor spaces utilized pursuant to this Ordinance shall be returned to the condition they were in just prior to their use for outdoor seating.

SECTION 5. The City Council authorizes the City Manager, or his designee, to take any further action that is necessary and appropriate to carry out the purpose and intent of this ordinance.

3. Effective Date. This Urgency Ordinance shall be introduced, passed and adopted at one and the same meeting and shall become effective immediately and shall remain in effect for the duration of the local emergency.

4. California Environmental Quality Act. This action is statutorily exempt under California Environmental Quality Act (CEQA) section 20180(b)(4) (specific actions necessary to prevent or mitigate an emergency) and is categorically exempt from CEQA under CEQA Guidelines 15301 (existing facilities), 15304(e) (minor temporary use of land having negligible or no permanent effects on the environment).

5. Codification. This Ordinance shall not be codified.

6. Severability. If any provision of this Ordinance is held invalid by a court of competent jurisdiction, such provision shall be considered a separate, distinct, and independent provision and such holding shall not affect the validity and enforceability of the other provisions of this Ordinance.

7. Certification. The City Clerk shall certify to the adoption of this Ordinance and shall cause this Ordinance or a summary thereof to be published as required by law.

8. Adoption. INTRODUCED AND ADOPTED at a meeting of the City Council of the City of Vista held on June 2, 2020, by the following vote:

AYES: Mayor Ritter, Rigby, Franklin, Green, Contreras

NOES: None

ABSTAIN: None

By: JUDY RITTER, Mayor

ATTEST: KATHY VALDEZ, CITY CLERK

APPROVED AS TO FORM:
DAROLD PIEPER, CITY ATTORNEY

By: Darold Pieper
20200602145717
CERTIFICATION

I, Kathy Valdez, City Clerk of the City of Vista, California, certify that I caused the foregoing Ordinance No. 2020-9 to be posted on June 2, 2020, at the following locations within the City of Vista: 1) the Reference Desk of the Vista Branch of the San Diego County Public Library, 700 Eucalyptus Avenue; 2) the Lobby Counter at the Gloria E. McClellan Senior Center, 1400 Vale Terrace Drive; and 3) the City Clerk’s Office, 200 Civic Center Drive.

Kathy Valdez, City Clerk