



ORDINANCE NO.

AN URGENCY ORDINANCE OF THE EL DORADO COUNTY BOARD OF SUPERVISORS ADOPTING AMENDMENTS TO THE ZONING CODE TO TEMPORARILY EASE RESTRICTIONS ON OUTDOOR DINING AND OUTDOOR RETAIL SALES AREAS

WHEREAS, On January 30, 2020, the World Health Organization declared the outbreak of COVID-19 a “public health emergency of international concern”; and

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

WHEREAS, on March 4, 2020, California Governor Gavin Newsom issued a proclamation of a State of Emergency for the State of California due to COVID-19; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a worldwide pandemic; and

WHEREAS, on March 12, 2020, the County’s Public Health Officer declared a state of emergency in El Dorado County due to COVID-19 health and safety impacts and on March 17, 2020, the Board of Supervisors adopted Resolution 051-2020 ratifying the Sheriff’s proclamation of a local emergency due to an imminent and proximate threat to the public health from introduction of COVID-19; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20 ordering all residents “to immediately heed the current State public health directives,” which included a Department of Public Health directive that people who leave their homes or places of residences “should at all times practice social distancing”; and

WHEREAS, on May 4, 2020, Governor Newsom issued Executive Order N-60-20, which “orders” that “[a]ll residents are directed to continue to obey State public health directives ... as the State Public Health Officer may provide;” and

WHEREAS, effective July 13, 2020, the State Public Health Officer directed the closure of indoor operations for various business sectors, including dine-in restaurants, wineries, and tasting rooms; and

WHEREAS, effective November 21, 2020, the Limited Stay Home Order and its Supplement (effective December 22, 2020) required that in counties in the Widespread (purple) tier, Californians stay home between 10:00pm and 5:00am, with some exceptions; and

WHEREAS, on December 3, 2020, the Regional Stay at Home Order triggered additional restrictions after a region was announced to have less than 15% Intensive Care Unit (ICU) availability. It prohibited private gatherings of any size, closed sector operations except for critical infrastructure and retail, and required 100% masking (with certain exceptions as indicated in guidance for use of face coverings) and physical distancing; and

WHEREAS, the COVID-19 pandemic and the corresponding executive orders are directly affecting retail operations within El Dorado County since social distancing recommendations for the creation of physical space between individuals significantly reduces the ability of retail businesses to operate at financially viable levels; and

WHEREAS, easing restrictions on outdoor retail space and dining areas will preserve the health and safety of residents by protecting their health and safety while also allowing retail operations in accordance with the social distancing recommendations; and

WHEREAS, the COVID-19 pandemic, the corresponding executive orders, and social distancing measures have also resulted in reduced business operations within the County, a loss of revenue, lost employment, and impacts to the livelihood of County residents; and

WHEREAS, immediate action is necessary to ease requirements regarding outdoor eating and retail sales in an effort to facilitate compliance with the Governor's orders and protect the health and safety of patrons of those businesses while at the same time providing opportunities for businesses to continue to operate and, thus, reverse declining revenues and reduce unemployment of County residents; and

WHEREAS, Government Code section 25131 expressly authorizes the Board of Supervisors to adopt an urgency ordinance immediately upon its introduction and Government Code section 25123 makes such an urgency ordinance effective immediately; and

WHEREAS, while many of the aforementioned executive orders recently expired and are no longer in effect throughout the State, the health emergency from COVID-19 remains and the extension of the Zoning Ordinance amendments under this Urgency Ordinance will further allow for County businesses to continue to operate in a safe manner, thereby preserving the health and safety of County residents while also lessening the adverse economic impacts as a result of COVID-19.

NOW, THEREFORE, the Board of Supervisors of the County of El Dorado ordains as follows:

Section 1. The Board of Supervisors finds and declares that the above recitals are true and correct and are incorporated herein.

Section 2. The County of El Dorado Board of Supervisors wishes to provide clarity regarding outdoor dining regulations for the duration of this Ordinance. The Board finds that outdoor dining can be considered an accessory approved use to a legally permitted existing restaurant. The Board directs that for the duration of this Ordinance, existing restaurants that wish to expand their outdoor dining opportunities must comply with the El Dorado County Temporary Outdoor Program (the "Program") (**Exhibit A**), which is incorporated as if set forth in full herein. The Program specifies development standards and identifies best practices to ensure social distancing during the COVID-19 pandemic and to ensure that outdoor dining and retail sales areas function in a safe way.

Section 3. The Board of Supervisors finds that minor text edits to the County's zoning code are necessary to implement the Program and to provide clarity on increased outdoor eating and retail sales opportunities. Therefore, the following Sections of Title 130 of the El Dorado County Zoning Ordinance shall be amended as shown on an interim uncodified basis for the effective period of this Ordinance:

Sec. 130.40.220 - Outdoor Retail Sales.

A. Content. This Section regulates the operation of permanent and temporary outdoor retail.

B. Permanent Outdoor Retail Sales. Areas of commercial development intended to be used for outdoor retail sales on a permanent or ongoing basis shall be allowed where shown in the use matrices for the zone. Outdoor retail sales areas may be conducted as a primary use, such as a vehicle sales lot or plant nursery, or as an accessory use, such as a sales yard, nursery area, or vending machine in conjunction with a building materials or other retail store. Outdoor seating at a restaurant, whether conducted as a primary or accessory use, shall also be subject to the standards of this Subsection. The following standards shall apply:

1. A permanent outdoor retail sales area shall be distinct and separate from parking and loading areas, walkways, and landscaping areas and outdoor dining areas shall be in compliance with the County of El Dorado Temporary Outdoor Program.
2. Sales areas shall be included in square footage calculations when determining parking requirements under [Section 130.35.030](#) (Parking and Loading) in [Article 3](#) (Site Planning and Project Design Standards) of this Title. Outdoor dining areas shall be in compliance with the County of El Dorado Temporary Outdoor Program.
3. All development standards under the specific zone shall apply, as well as those general standards applicable to the site plan, such as landscaping, lighting, signs, and noise (See Chapters [130.33](#) (Landscaping Standards), [130.34](#) (Outdoor Lighting), [130.36](#) (Signs), and [130.37](#) (Noise Standards) in [Article 3](#) (Site Planning and Project Design Standards) of this Title. Outdoor dining areas shall be in compliance with the County of El Dorado Temporary Outdoor Program.
4. A permanent outdoor retail sales area shall be screened from the side and rear property lines adjacent to residentially zoned property.
5. Surfacing requirements of the outdoor sales area shall consist of concrete or asphalt pavement, chip seal, gravel, or other material that can be maintained in a dust-free condition. Vehicle access and parking areas shall be surfaced in compliance with County design standards.

C. Temporary Outdoor Retail Sales. Temporary outdoor retail sales such as farmers' markets, arts and craft fairs, seasonal sales, swap meets/flea markets, sidewalk sales, and mobile food vendors are allowed subject to ~~the issuance of an Administrative Permit (See [Section 130.52.010](#): Administrative Permit, Relief, or Waiver) in [Article 5](#) (Planning Permit Processing) of this Title, unless otherwise specified below and under Subsections D through H (Certified Farmers' Markets; Garage Sales; Seasonal Sales; Swap Meets/Flea Markets; Itinerant Sales, respectively) below in this Section~~ compliance with the County of El Dorado Temporary Outdoor Program. The following standards shall apply:

1. Location. The temporary sales area shall not block any emergency access route or otherwise disrupt general vehicular or pedestrian circulation of the shopping center or public street on which the retail business is located.
2. Hours of Operation. The temporary sales area shall be conducted during the hours of operation identified in the County of El Dorado Temporary Outdoor Program ~~during daylight hours only, with all sales facilities, signs, and any related vehicles removed from the site at the close of daily business. Except where otherwise prohibited by this Section, night operations are allowed only when specifically authorized through Temporary Use Permit approval (See [Section 130.52.060](#): Temporary Use Permit) in [Article 5](#) (Planning Permit Processing) of this Title.~~

3. Parking Requirements. Parking requirements shall be in conformance with Table 130.35.030.1 (Schedule of Off-Street Vehicle Parking Requirements) in [Chapter 130.35](#) (Parking and Loading) in [Article 3](#) (Site Planning and Project Design Standards) of this Title for each specific use. As specified in the County of El Dorado Temporary Outdoor Program, up to 50% of private parking spaces counted for required parking may be converted to outdoor dining space or retail space, when the lot is immediately adjacent to the parent property. This reduction in off-street parking requirements will be in effect for the period of time specified in the County of El Dorado Temporary Outdoor Program. Parking shall be available to accommodate employee and customer parking needs either on-site or on adjacent to property, provided a shared parking agreement between the applicant and the adjacent property owner has been notarized and submitted with the application. Parking along the road frontage(s) may be allowed subject to the review and approval of the Department of Transportation. If the temporary sales area is located within an existing parking lot, adequate alternative parking must be available.
4. Surfacing. Surfacing materials shall comply with Subsection B.5 (Permanent Outdoor Retail Sales) above in this Section.
5. Signs. Signs allowed in conjunction with temporary outdoor retail sales are subject to provisions of [Chapter 130.36](#) (Signs) in [Article 3](#) (Site Planning and Project Design Standards) of this Title for size and placement standards. Sign placement shall be allowed for the period of time specified in the County of El Dorado Temporary Outdoor Program, limited to one day prior to the first day of the sales event and removal shall be required at the close of business on the last day of the event.
6. Duration. Unless otherwise stated in Subsections D through H (Certified Farmers' Markets; Garage Sales; Seasonal Sales; Swap Meets/Flea Markets; Itinerant Sales, respectively) below in this Section, a sales event may run for the duration of time specified in the County of El Dorado Temporary Outdoor Program, shall run no more than three consecutive days in the same location, with no more than three such sales events occurring during a calendar year beginning January 1. This standard may be modified through Temporary Use Permit approval where it is found that the proposed site will be provided with adequate parking and restroom facilities and that the surrounding area can sustain traffic volumes generated by the sales event without adverse effects in the area.

Sec. 130.35.030 - Off-street Parking and Loading Requirements.

- A. Off-street parking shall be provided in accordance with Table 130.35.030.1 (Schedule of Off-Street Vehicle Parking Requirements) below in this Section, unless otherwise provided in this Chapter. As specified in the County of El Dorado Temporary Outdoor Program, up to 50% of private parking spaces counted for required parking may be converted to outdoor dining space or retail space, when the lot is immediately adjacent to the parent property. This reduction in off-street parking requirements will be in effect for the period of time specified in the County of El Dorado Temporary Outdoor Program. Where a parking requirement results in a fraction of a space, the number of parking spaces required shall be rounded to the nearest whole number.

Sec. 130.36.050 - Temporary Signs.

Temporary signs may include, but are not limited to, commercial signs (including sign twirlers) for grand openings, products/services, sales, special events, and new apartments/multi-family units. All temporary signs must comply with the standards listed in Table 130.36.050.1 (Allowed Temporary On-Site Sign Standards) below in this Section and are subject to the conditions herein.

- A. Time Duration. Display periods for temporary on-site signs shall be limited to ~~a cumulative maximum of 90 days per establishment per calendar year~~ the period of time specified in the County of El Dorado Temporary Outdoor Program, unless otherwise specified below.
 - 1. Apartment Signs. Signs at new or substantially renovated apartments shall be removed 6 months from opening.
 - 2. Banner Signs. All banner signs (including feather banners) utilized for grand opening events shall be limited to a maximum of 30 consecutive days per establishment per calendar year.
 - 3. A-Frame Signs, Feather Banners and Sign Twirlers. When allowed, A-frame signs, feather banners and sign twirlers shall be allowed only on-site during daylight hours and shall be removed from dusk to dawn and during all times when the establishment is closed or event is over.
- B. Illumination. Temporary signs shall not be illuminated.
- C. Message. Temporary signs displaying a commercial message shall be limited to on-site signage only. Off-site signage displaying a commercial message shall not be allowed, except as noted in Section 130.36.030.B.9 (Exempt Signs With Limitations) above in this Chapter.
- D. Illegal Signs. Illegal temporary signs shall be removed immediately.

Section 4. The provisions of this Ordinance are separate and severable. If any provision of this Ordinance is for any reason held by a court to be invalid, the Board declares that it would have passed this Ordinance irrespective of the invalidity of the provision held to be invalid and such invalidity shall therefore not affect the remaining provisions of this Ordinance or the validity of its application to other persons or circumstances.

Section 5. The Board hereby declares, based on the findings set for the above, that there is an immediate need to preserve the public peace, health, and safety constituting the urgency for adoption of this ordinance pursuant to Government Code section 25123(d). Accordingly, this ordinance is adopted as an urgency ordinance and shall take effect and be in force immediately upon adoption by the Board of Supervisors. This Ordinance shall remain in effect from the date of its adoption until rescinded by the Board or December 31, 2021, whichever occurs first.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the ____ day of _____, 20__, by the following vote of said Board:

Attest:
Kim Dawson
Clerk of the Board of Supervisors

Ayes:
Noes:
Absent:

By: _____
Deputy Clerk

Chair, Board of Supervisors