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ORDINANCE NO. 21- ____

AN URGENCY ORDINANCE OF THE CITY OF HERMOSA BEACH, CALIFORNIA, EXTENDING A TEMPORARY PERMIT PROGRAM FOR OUTDOOR DINING/SEATING AND OUTDOOR RETAIL DISPLAY TO ASSIST RESTAURANTS, FOOD, AND RETAIL ESTABLISHMENTS DURING COVID-19; AND EXTENDING TEMPORARY LANE CLOSURES TO ACCOMMODATE OUTDOOR PERMITS; AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

The City Council of the City of Hermosa Beach does ordain as follows:

SECTION 1. Findings.

- A. The findings set forth in Ordinance No. 20-1410U, an urgency ordinance to Implement a Temporary Permit for Outdoor Dining/Seating and Outdoor Retail Display to Assist in the Reopening of Restaurants, Food, and Retail Establishments During COVID-19, and Ordinance No. 20-1413U, an urgency ordinance which extended Ordinance No. 20-1410U until terminated or superseded by ordinance (together, the “Outdoor Permit Program”), are still relevant and incorporated herein by reference.
- B. On July 14, 2020, the City Council directed staff to develop options for closing parking spaces and vehicle lanes on the downtown sections of Hermosa and Pier Avenues that would encourage foot traffic and expand socially distanced outdoor dining and retail opportunities in the public right-of-way in furtherance of the Outdoor Permit Program (the “Downtown Lane Reconfiguration”).
- C. On August 11, 2020, the City Council, by minute order, authorized the City Manager to close one lane in each direction on Hermosa Avenue (between 8th and 14th) and implement traffic control plans to facilitate outdoor economic activity made possible by the Outdoor Permit Program. Council directed the lane closures on Hermosa Avenue to remain in place for at least six months beginning on the day the project was fully completed and businesses could utilize the set up.
- D. On August 20, 2020, in accordance with City Council’s direction from August 11, 2020, the City Manager acting as Director of Emergency Services issued Executive Order 2020-11, temporarily closing to vehicular traffic the northbound and southbound #2 lanes (closest to the curb) on Hermosa Avenue from the 800 block at 8th Street to the 1300 block at 14th Street for at least six months, subject to extension or termination by City Council or the Director of Emergency Services.
- E. Starting August 20, 2020, Executive Order 2020-11 also temporarily closed to vehicular traffic the right turn lanes from westbound Greenwich Village to northbound Hermosa Avenue and a part of Hermosa Avenue immediately adjacent to 2626 Avenue until January 13, 2021, subject to extension or termination by City Council.

- 1 F. On August 25, 2020, the City Council ratified Executive Order 2020-11 and authorized
2 staff to extend outdoor permits issued under the Outdoor Permit Program, consistent
3 with the approved time for the lane closures.
- 4 G. On September 8, 2020, the City Council authorized staff to implement the temporary
5 closure of parking spaces and vehicles lanes on Pier Avenue between Valley Drive and
6 Hermosa Ave as shown in Concept #1 presented to City Council, which was to remain
7 in place for at least six months beginning on the day the project was fully completed and
8 operable.
- 9 H. On June 22, 2021, by minute order, Council approved the extension of the Outdoor
10 Permit Program through December 31, 2021 and authorized implementation of a
11 reapplication process for outdoor dining and retail permits, including a new requirement
12 for deck operators to provide a surety bond or deposit.
- 13 I. On July 13, 2021, by Resolution No. 21-7290, the City Council extended through
14 December 31, 2021 the closure of certain portions of the following streets to allow for
15 open air dining and other business purposes:
- 16 • Hermosa Avenue between 8th Street and 14th Street (maximum of one lane closed
17 in each direction so that through lanes open in both directions)
 - 18 • Pier Avenue between Valley Drive and Hermosa Ave (maximum of one lane
19 closed in each direction so that through lanes open in both directions)
 - 20 • Small section of Hermosa Avenue immediately north of the intersection with
21 Greenwich Village used to make a right turn to northbound Hermosa Avenue
- 22 J. Unlike when the Outdoor Permit Program and Downtown Lane Reconfiguration were
23 first implemented, Los Angeles County businesses may now allow indoor dining and
24 shopping as long as customers wear face masks. However, COVID-19 has not been
25 eradicated. The extremely contagious Delta variant is now the dominant variant in the
26 area, and Los Angeles County has seen an uptick in cases in recent weeks. Moreover, on
27 November 26, 2021, the Centers for Disease Control and Prevention classified a new
28 variant first reported in South Africa a “variant of concern”, naming it Omicron.
Omicron is believed to increase transmissibility, and due to its significant mutations,
could evade current vaccines.
- K. State health officials are concerned about the upward trend entering the winter season
when colder weather keeps people inside, and there will be holiday gatherings at a time
when vaccine and natural immunity acquired months ago will begin to wane.
- L. The City Council desires to extend the Outdoor Permit Program and Downtown Lane
Reconfiguration to assist businesses’ economic recovery through the holidays, ease
public concerns about infection while dining and shopping during the winter months,
and reduce community transmission.
- M. This Ordinance is adopted pursuant to Government Code section 36937, for the
preservation of the public peace, health, and safety of residents living within the City,
and finds urgency to approve this ordinance immediately based on the facts described
herein and detailed in the staff report.

1 **SECTION 2. Temporary Permit Program for Outdoor Dining and Retail.** The
2 provisions of Hermosa Beach Municipal Code Sections 17.26.050 (B), (C), 17.44.030,
3 17.38.550 (B), 12.16.090 and 12.16.100, regarding outdoor dining\outdoor retail displays, and
4 off-street parking requirements for commercial and business uses continue to be temporarily
5 suspended, to the extent they conflict with this Urgency Ordinance, to allow for implementation
6 of items A and B, below, through May 31, 2022.

7 A. A “Temporary Permit Program” for Outdoor Dining/Seating to assist in the economic
8 recovery of restaurant and food establishments during the continuing COVID-19
9 pandemic as set forth in **Exhibit A** attached hereto and incorporated herein by reference.

10 B. A “Temporary Permit Program” for businesses to display merchandise to assist in the in
11 the economic recovery of retail establishments during the continuing COVID-19
12 pandemic as set forth in **Exhibit B** attached hereto and incorporated herein by reference.

13 **SECTION 3. Temporary Downtown Lane Reconfiguration.** Portions of the
14 following streets shall continue to be closed to vehicular traffic through May 31, 2022 to allow
15 for open air dining and other business purposes intended to allow the public to patronize local
16 businesses and dine outdoors in a manner that is safe and allows businesses to provide services
17 in a way that eases concerns regarding the spread of COVID-19.

18 A. Hermosa Avenue between 8th Street and 14th Street (maximum of one lane closed in
19 each direction so that through lanes open in both directions)

20 B. Pier Avenue between Valley Drive and Hermosa Ave (maximum of one lane closed in
21 each direction so that through lanes open in both directions)

22 C. Small section of Hermosa Avenue immediately north of the intersection with Greenwich
23 Village used to make a right turn to northbound Hermosa Avenue

24 **SECTION 4. Severability.** If any section, subsection, sentence, clause, phrase or word of
25 this ordinance is found to be unconstitutional or otherwise invalid by any court of competent
26 jurisdiction, such decision shall not affect the remaining provisions of this Ordinance.

27 **SECTION 5. Environmental Review.** The City Council finds that adoption and
28 implementation of this ordinance is not a “project” for purposes of the California Environmental
Quality Act (CEQA), as that term is defined by CEQA guidelines (Guidelines) sections
15061(b)(3), and 15378(b)(5). The effect of the proposed amendment will be to maintain the
status quo. No new development will result from the proposed action. No impact to the physical
environment will result. The City Council also alternatively finds that the adoption and
implementation of this ordinance is exempt from the provisions of CEQA as an administrative
activity by the City of Hermosa Beach, in furtherance of its police power, that will not result in
any direct or indirect physical change in the environment, per sections 15061(b)(3), and
15378(b)(5) of the CEQA , Guidelines, as well as CEQA Guidelines section 15064(e) (economic
regulations). The lane closures and outdoor dining and retail program effectuated by this
ordinance are necessary to facilitate outdoor economic and recreational activity to recover from
the economic damage caused by COVID-19 in a way that curbs any further spread of COVID-

1 19. Implementation of the ordinance is thus exempt from the CEQA under the statutory
2 exemption for actions necessary to prevent or mitigate an emergency (Public Resources Code §
3 21080(b)(4); CEQA Guideline § 15269(c)) and the categorical exemption for minor temporary
4 use of land (CEQA Guideline § 15304(e)). The lane reconfigurations for the Hermosa Avenue
5 and Pier Avenue are temporary measures created in direct response to the COVID-19
6 emergency. Finally, as this is a temporary measure and the improvements can be removed, there
7 is no possibility that the lane closures will have a permanent effect on the environment.

8 **SECTION 6. Urgency Declaration; Effective Date.** The City Council finds and declares
9 that the adoption and implementation of this ordinance is necessary for the immediate
10 preservation and protection of the public peace, health and safety as detailed above by the City,
11 pursuant to Government Code section 36937. As a result of prior state and local stay at home
12 orders, a significant number of local restaurants and businesses were forced to close for an
13 extended period. The rapid, immediate and unexpected loss of revenue from closure was
14 devastating to local businesses, and businesses that survived the most restrictive phase of the
15 pandemic are struggling to rebuild. Continuing to relax local zoning requirements to temporarily
16 allow outdoor dining and retail for six more months will assist in the economic recovery of local
17 businesses. This ordinance is also conducive to the public health because it will promote social
18 distancing and limit mingling indoors with others who may unknowingly carry the highly
19 contagious Delta variant, preventing further spread of the disease during the winter season. The
20 public has already begun to travel for the holidays, to gather in groups more frequently, and to
21 shop ahead of the upcoming holidays. Based on these facts, coupled with a potential winter
22 surge in COVID-19 cases noted by state health officials and the uncertainty of vaccine efficacy
23 against the new Omicron variant, this ordinance is necessary for the immediate preservation and
24 protection of the public peace, health and safety. This ordinance must be passed by four-fifths
25 of the City Council and shall take effect immediately after passage.

26 **SECTION 7. Certification.** The City Clerk shall certify to the passage and adoption of
27 this Ordinance and shall cause the same, or the summary thereof, to be published or posted in
28 the manner required by law.

PASSED, APPROVED, AND ADOPTED this 14th day of December, 2021.

PRESIDENT of the City Council and **MAYOR** of the City of Hermosa Beach, California

ATTEST:

APPROVED AS TO FORM:

Susan Morrow, Interim City Clerk

Michael Jenkins, City Attorney

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Exhibit A

OUTDOOR DINING DESIGN AND OPERATIONAL STANDARDS

I. INTRODUCTION

- A. These Outdoor Dining Design and Operational Standards are adopted pursuant to the accompanying Urgency Ordinance in order to establish specific design and operational criteria for temporary outdoor dining on public and private areas during the COVID-19 pandemic.
- B. An outdoor dining area is a place on the public sidewalk, public parking stalls, public metered parking spaces, private parking stalls, or other private areas, where patrons may consume food and/or beverages provided by an adjacent and nearby food service establishment.
- C. Establishments serving alcoholic beverages that apply for a Temporary Outdoor Dining Permit shall meet the additional requirements of the State of California Alcohol Beverage Control Board.
- D. These standards and procedures regulate the design and operation of temporary outdoor dining areas. However, they do not provide information on all the government agency requirements for starting a new restaurant or expanding an existing one. Business owners must secure the appropriate licenses and permits from the State Alcohol Beverage Control Board, Los Angeles County Health Department, the City of Hermosa Beach Community Development Department, Public Works Department, and Business License Office.
- E. Approved Temporary Outdoor Dining Permits shall be effective for the duration of the Urgency Ordinance, and will expire immediately upon termination of the Urgency Ordinance. Upon termination of the Temporary Outdoor Dining Permit, the outdoor dining area shall be returned to its previous condition.
- F. These regulations apply to outdoor dining on private property and the public right-of-way.

II. APPLICATION PROCEDURE

- A. An application for a Temporary Outdoor Dining Permit shall be obtained from the Community Development Department. A site plan drawn to-scale shall accompany the application form. The plan shall delineate the proposed outdoor dining area and the layout of furnishings and allowable amenities.

- B. An encroachment permit shall be required for outdoor areas in the public right-of-way. Proof of Certificate of liability insurance shall be provided to the Public Works Department, with the City of Hermosa Beach named as Additionally Insured, prior to issuance of an encroachment permit.
- C. If the food establishment has an existing license from the California Department of Alcohol Beverage Control (ABC), the food establishment must obtain a temporary permit from both the City of Hermosa Beach and ABC. Applicants shall adhere to ABC conditions of approval prior to serving alcohol. Outdoor permits with proposed alcohol consumption shall be reviewed by the City's Police Department prior to the City permit issuance or ABC approval process and are subject to the City's On-Sale Alcohol Beverage Establishment, General Provisions HBMC Section 17.40.080(A)(1-4).
- D. A Temporary Sign Permit Application shall be submitted in conjunction with the Temporary Outdoor Dining Permit only if temporary signage shall be displayed in the outdoor area. No additional fee shall be paid for the Temporary Sign Permit.
- E. Review of Temporary Outdoor Permits shall be expedited. Applications that do not require review from other Departments (Public Works and/or the Police Department) will be further expedited for review.

III. OUTDOOR DINING SITES

- A. The outdoor dining area shall be permitted in public sidewalks, public street parking or parking areas or other private property located nearby the business. If the business has on-site parking, a portion of the private parking may be used for outdoor dining/seating.
- B. The maximum area of either private or public areas (or the areas combined) may not exceed the area needed to compensate for the loss of capacity of the interior area of the business to achieve social distancing in accordance with LA County Health best practices for restaurant establishments.
- C. The buildings adjacent to these outdoor dining areas shall maintain building egress as defined by the California Building Code and Title 24 Disabled Access Standards.
- D. The final location and configuration of the outdoor dining area shall be subject to approval by the Director of the Community Development Department, who shall consider public safety issues and maintenance of minimum clearances to comply with ADA requirements and the safety and convenience of pedestrians and customers.

IV. DESIGN STANDARDS

- A. Establishments that serve alcoholic beverages in the outdoor dining area shall provide a physical barrier that satisfies these Standards and of the Alcohol Beverage Control Board if alcohol is to be served.
- B. Barriers shall conform to the Public Works Director's installation standards and be removable. Barriers need not be removed each evening, but shall be capable of being removed; if imbedded into the pavement they must be fixed through the use of recessed sleeves and posts, or otherwise by wheels that can be locked into place or weighted in place. No signs or banners of any kind shall be placed, displayed or erected on barriers.
- C. The appearance should be made attractive with potted plants or other decorative elements to provide an enhanced and inviting outdoor environment.
- D. No additional parking shall be required for the outdoor dining. To the extent feasible, if existing parking is available, parking spaces should continue to be available to customers. Parking approval will be determined on a case-by-case scenario.

V. STANDARDS OF OPERATION

- A. Restaurant management is responsible for operating and maintaining the outdoor dining area and shall not delegate or assign that responsibility. Outdoor dining areas shall be continuously supervised by management to ensure social distancing best practices are being used.
- B. Restaurant management shall keep the outdoor dining area clear of litter, food scraps, and soiled dishes and utensils at all times. Trash receptacles shall be provided in outdoor dining areas used for consuming take-out items.
- C. At the end of each business day, establishments are required to clean (sweep and wash) the area in and around the outdoor dining area and remove the debris to a closed receptacle. No debris shall be swept, washed, or blown into the sidewalk, gutter or street in conformance with the City's storm water quality regulations.
- D. Upon termination of the Temporary Outdoor Dining Permit, the Permittee shall immediately remove the barriers around the outdoor dining area, return the sidewalk to its original condition, and remove all personal property, furnishings, and equipment from the sidewalk. Any personal property remaining on the premises shall be removed pursuant to the laws of the State of California.

- E. The allowable hours of operation will be reviewed on a case-by-case basis, but in no case shall the hours of operation exceed the business's normal operation hours or be open after 11:00 p.m.

VI. ENFORCEMENT

- A. Notice of violation of the outdoor dining design standards or standards of operation shall be made in writing to the Permittee by any Code Enforcement Officer, Public Works Inspector, Building Inspector, Police Department Official, or Fire Department Official of the City. A copy of the notice shall be filed with the Public Works Director. The Permittee shall immediately cure the violation upon receipt of notice. If the violation is not cured within ten (10) days after issuance of the notice to the Permittee, the Director may suspend or revoke the Temporary Outdoor Dining Permit.
- B. In the case of non-compliance with conditions of approval, substantial difficulties resulting from the Temporary Outdoor Dining Permit issuance, or other unforeseen problems with the Temporary Outdoor Dining Permit, the Community Development Director has the right to reevaluate the permit or its conditions of approval; and, if the Temporary Outdoor Dining Permit has created neighborhood, Police or Code Enforcement problems, the permit may be revoked.

Exhibit B

OUTDOOR RETAIL DESIGN AND OPERATIONAL STANDARDS

I. INTRODUCTION

- A. These Outdoor Retail Design and Operational Standards are adopted pursuant to the accompanying Urgency Ordinance in order to establish specific design and operational criteria for temporary outdoor retail activity on public and private areas during the COVID-19 pandemic.
- B. An outdoor retail area is a place on the public sidewalk, public parking stalls, public metered parking spaces, private areas including parking stalls where business owners may display merchandise and patrons may purchase merchandise displayed provided by an adjacent or nearby a retail establishment.
- C. These standards and procedures regulate the design and operation of temporary outdoor retail areas. However, they do not provide information on all the government agency requirements for starting a new retail establishments or expanding an existing one. Business owners must secure the appropriate licenses and permits from the, the City of Hermosa Beach Community Development Department, Public Works Department, and Business License Office.
- D. Approved Temporary Outdoor Retail Permits shall be effective for the duration of the Urgency Ordinance, and will expire immediately upon termination of the Urgency Ordinance. Upon termination of the Temporary Outdoor Retail Permit, the outdoor retail area shall be returned to its previous condition.
- E. These regulations apply to outdoor retail on private property and the public right-of-way.

II. APPLICATION PROCEDURE

- A. An application for a Temporary Outdoor Retail Permit shall be obtained from the Community Development Department. A site plan drawn to-scale shall accompany the application form. The plan shall delineate the proposed outdoor retail area and the layout of furnishings and allowable amenities.
- B. An encroachment permit shall be required for outdoor areas in the public right-of-way. Proof of Certificate of liability insurance shall be provided to

the Public Works Department, with the City of Hermosa Beach named as Additionally Insured, prior to issuance of an encroachment permit.

- C. A Temporary Sign Permit Application shall be submitted in conjunction with the Temporary Outdoor Dining Permit only if temporary signage shall be displayed in the outdoor area. No additional fee shall be paid for the Temporary Sign Permit.
- D. Review of Temporary Outdoor Retail Permits shall be expedited. Applications that do not require review from other Departments (Public Works and/or the Police Department) will be further expedited

III. OUTDOOR DINING SITES

- A. The outdoor retail area shall be permitted in public sidewalks, public street parking or private areas including parking lots adjacent to or nearby the business. If the business has on-site parking, a portion of the private parking may be used for outdoor dining/seating.
- B. The maximum area of either private or public areas (or the areas combined) may not exceed the area needed to compensate for the loss of capacity of the interior area of the business to achieve social distancing in accordance with LA County Health best practices for retail establishments.
- C. The buildings adjacent to these outdoor retail areas shall maintain building egress as defined by the California Building Code and Title 24 Disabled Access Standards.
- D. The final location and configuration of the outdoor retail area shall be subject to approval by the Director of the Community Development Department, who shall consider public safety issues and maintenance of minimum clearances to comply with ADA requirements and the safety and convenience of pedestrians and customers.

IV. DESIGN STANDARDS

- A. Outdoor areas in the public right-of-way may be required to provide a physical barrier to the satisfaction of the Community Development Director and the Public Works Director. Physical barriers may be required for the safety of patrons.
- B. Barriers shall conform to the Public Works Director's installation standards and be removable. Barriers need not be removed each evening, but shall be capable of being removed; if imbedded into the pavement they must be

fixed through the use of recessed sleeves and posts, or otherwise by wheels that can be locked into place or weighted in place. No signs or banners of any kind shall be placed, displayed or erected on barriers

- C. Retailers with an existing license from the California Department of Alcohol Beverage Control (ABC) to sell alcohol, may not display alcoholic beverages in the outdoor retail area.
- D. The appearance should be made attractive with potted plants or other decorative elements to provide an enhanced and inviting outdoor environment.
- E. No additional parking shall be required for the outdoor area. To the extent feasible, if existing parking is available, parking spaces should continue to be available to customers. Parking approval will be determined on a case-by-case scenario.

V. STANDARDS OF OPERATION

- A. Management is responsible for operating and maintaining the outdoor retail area and shall not delegate or assign that responsibility. Outdoor areas shall be continuously supervised by management to ensure social distancing best practices are being used.
- B. Management shall keep the outdoor area clear of litter and food scraps.
- C. At the end of each business day, establishments are required to clean (sweep and wash) the area in and around the outdoor area and remove the debris to a closed receptacle. No debris shall be swept, washed, or blown into the sidewalk, gutter or street in conformance with the City's storm water quality regulations.
- D. Upon termination of the Temporary Outdoor Retail Permit, the Permittee shall immediately remove the barriers around the outdoor retail area, return the sidewalk to its original condition, and remove all personal property, furnishings, and equipment from the sidewalk. Any personal property remaining on the premises shall be removed pursuant to the laws of the State of California.
- E. The allowable hours of operation will be reviewed on a case-by-case basis, but in no case shall the hours of operation exceed the business's normal operation hours or be open after 11:00 p.m.

VI. ENFORCEMENT

- A. Notice of violation of the outdoor retail design standards or standards of operation shall be made in writing to the Permittee by any Code Enforcement Officer, Public Works Inspector, Building Inspector, Police Department Official, or Fire Department Official of the City. A copy of the notice shall be filed with the Public Works Director. The Permittee shall immediately cure the violation upon receipt of notice. If the violation is not cured within ten (10) days after issuance of the notice to the Permittee, the Director may suspend or revoke the Temporary Outdoor Retail Permit.

- B. In the case of non-compliance with conditions of approval, substantial difficulties resulting from the Temporary Outdoor Retail Permit issuance, or other unforeseen problems with the Temporary Outdoor Retail Permit, the Community Development Director has the right to reevaluate the permit or its conditions of approval; and, if the Temporary Outdoor Retail Permit has created neighborhood, Police or Code Enforcement problems, the permit may be revoked.