

## **Resolution 2020-53**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ENCINITAS EXPANDING THE FOOTPRINT OF ABC LICENSED PREMISES AND ALLOWING OFF-SITE SALE AND DELIVERY OF ALCOHOL BY LICENSEES WITHOUT KITCHEN FACILITIES**

WHEREAS, in response to the COVID 19 pandemic the Governor of California has declared a state of emergency;

WHEREAS, on March 18, 2020, the City of Encinitas ("City") City Council ratified the Emergency Director's proclamation of the existence of a local emergency in response to the COVID 19 pandemic;

WHEREAS, on March 19, 2020, Governor Gavin Newsom issued an Executive Order (N-33-20) for all non-essential workers to stay-at-home (shelter-in-place), for individuals to practice "social distancing" of at least six feet from other individuals, for individuals to avoid congregating in groups of 10 or more, and generally for individuals to avoid contact with others in order to protect the health and well-being of all Californians and to slow the spread of COVID-19;

WHEREAS, pursuant to the Constitution of the State of California, Article XX, Section 22, and in furtherance of the Governor's emergency declarations and orders regarding the spread of the COVID-19 virus the Department of Alcoholic Beverages ("ABC") has, through a series of Notices of Regulatory Relief (collectively "ABC Notices"), temporarily suspended enforcement of certain legal prohibitions relating to the off-site sale of alcohol by ABC licensed restaurants;

WHEREAS, on May 6, 2020 the City Council adopted Resolution No. 2020-33 temporarily suspending the restrictions on off-site sale and delivery of alcohol by ABC licensed restaurants;

WHEREAS, ABC has issued a Fourth Notice of Regulatory Relief which allows ABC licensed premises to expand and include property adjacent to the licensed premises that are under the control of the licensee, and where bona fide meals are being served. The licensee must obtain a COVID 19 Temporary Catering Authorization from the ABC to avail themselves of this expansion right;

WHEREAS, the ABC has issued a Fifth Notice of Regulatory Relief which allows current ABC licensees that do not operate kitchen facilities and do not prepare bona fide meals on the licensed premises to partner with businesses that do offer meals (meal providers) to sell bona fide meals in conjunction with to-go containers of alcohol beverages subject to the parameters set forth in the Fifth Notice of Regulatory Relief;

WHEREAS, the purpose of the ABC Notices is to support the alcohol beverage industry in its effort to assist in slowing the spread of the virus while assisting the industry in dealing with the economic challenges resulting from the COVID 19 virus;

WHEREAS, the ABC Notices do not exempt licensees from local ordinances, zoning restrictions or conditional use permits which the ABC has no jurisdiction or control;

WHEREAS, the City's permit restrictions include restrictions on service areas and restricts to-go sale of alcohol to bona fide restaurants with on-site kitchen facilities;

WHEREAS, the City Council hereby finds that it is in the public interest to support the local alcohol serving establishments industry during this state of emergency and suspend the local permit restrictions which limits the service areas to those approved under the conditional use permits and to provide for

flexibility for licensed establishments to meet the bona fide restaurant requirements for allowing off-site sale and delivery of alcohol; and

WHEREAS, the City Council hereby finds that the suspension of the local permit restrictions which limit the service areas to those approved under the conditional use permits and restricting off-site sale and delivery of alcohol, exercised on a temporary basis, will not jeopardize the public health, welfare or safety.

NOW, THEREFORE IT IS HEREBY RESOLVED, ORDERED AND FOUND by the City Council of the City of Encinitas, State of California, as follows:

1. That the City Council finds and determines the foregoing recitals to be true and correct.
2. That the City Council hereby suspends local permit restrictions on ABC licensed establishments which limit the service areas to those approved under the conditional use permits and/or ABC Issued License, subject to the following conditions:
  - a. A Temporary Conditional Use Permit with a fee of \$140 shall be required for an expansion of alcohol service and/or modifications to operation characteristics and conditions of approval of an approved conditional use permit.
  - b. The applicant shall demonstrate that the expanded service areas are necessary to maintain pre-COVID19 service capacity and comply with social distancing and sanitary protocols per the County Health Official's Order.
  - c. All conditions of approval of the approved conditional use permit shall remain in full force and effect unless specifically modified herein.
  - d. Landlord/property owner authorization shall be required.
  - e. ABC approval shall be required.
  - f. Sheriff's Department review and approval shall be required.
  - g. Any off-site sale of alcohol allowed under this resolution shall comply with the applicable conditions included in City Council Resolution No. 2020-33.
3. That the City Council hereby authorizes staff, in the event ABC issues additional Notices of Relief further modifying the suspensions covered by the Fourth and Fifth Notices of Regulatory Relief, to modify the conditions of the Temporary Conditional Use Permit consistent with the additional ABC Notices of Relief.
4. That this suspension shall last until the local emergency is terminated or the withdrawal of ABC Notice of Regulatory Relief, whichever occurs sooner.

PASSED, APPROVED AND ADOPTED this 17<sup>th</sup> day of June, 2020 by the City Council of the City of Encinitas, State of California.

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Catherine S. Blakespear, Mayor

ATTEST:

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Kathy Hollywood, City Clerk

APPROVED AS TO FORM:

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Leslie E. Devaney, City Attorney

CERTIFICATION: I, Kathy Hollywood, City Clerk of the City of Encinitas, California, do hereby certify under penalty of perjury that the foregoing Resolution was duly adopted at a regular meeting of the City Council on the 17<sup>th</sup> day of June, 2020 by the following vote:

AYES: Blakespear, Hinze, Kranz, Mosca

NOES: None

ABSENT: Hubbard

ABSTAIN: None

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Kathy Hollywood, City Clerk