

ORDINANCE NO. 2020-08

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA AMENDING TITLES 1 AND 17 OF THE TEMECULA MUNICIPAL CODE RELATED TO THE ADMINISTRATION AND REVOCATION OF LAND USE ENTITLEMENTS AND OTHER PERMITS AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES SECTIONS 15378(B)(5) AND 15061(B)(3)

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Section 1.21.110 (Request for continuance of hearing.) of Chapter 1.21 (Administrative Penalties and Citations) of Title 1 (General Provisions) of the Temecula Municipal Code is hereby amended in its entirety to read as follows:

“1.21.110 Request for continuance of hearing.

A. The responsible party may request one continuance of the hearing. The request must be made in writing to the City Clerk and must be received at least five days prior to the scheduled date and time of the initial appeal hearing.

B. In no event may the hearing begin later than ninety days after the request for hearing form is filed, and the administrative fine is deposited with the city or an advance deposit hardship waiver is issued.”

Section 2. Section 1.21.140 (Failure to attend administrative hearing.) of Chapter 1.21 (Administrative Penalties and Citations) of Title 1 (General Provisions) of the Temecula Municipal Code is hereby amended in its entirety to read as follows:

“1.21.140 Failure to attend administrative hearing.

A. If the responsible party fails to appear at the hearing, the responsible party shall be deemed to have waived the right to a hearing, the adjudication of the issues related to the hearing, and shall be deemed to have failed to have exhausted their administrative remedies provided that notice of the hearing has been properly served as required by this chapter.

B. Notwithstanding this waiver and the time limits set forth in Section 1.21.100, if service of the administrative citation is made by posting the citation on real property within the city in which the responsible person has a legal interest, and the responsible person provides verifiable and substantial evidence that removal of the administrative citation from the property by a third party caused the responsible person’s failure to attend the scheduled hearing, the responsible person shall be entitled to an administrative hearing.”

Section 3. Section 17.03.080 (Revocations and modifications.) of Chapter 17.03 (Administration of Zoning) of Title 17 (Zoning) of the Temecula Municipal Code is hereby renamed as “Revocations and modifications - temporary use permits and home occupation permits” and amended in its entirety to read as follows:

“17.03.080 Revocations and modifications -- temporary use permits and home occupation permits.

A. Revocation. The planning director may revoke a temporary use permit or home occupation permit, if any of the following findings are made:

1. That the permit was obtained by omission, misrepresentation, or fraud;
2. That any of the conditions of approval for the permit have not been met;
3. That the use for which the permit was granted is operating in violation of any statute, ordinance, law or regulation;
4. That the permit is being exercised in a way that is detrimental to the public health, safety or welfare or constitutes a nuisance.

B. Notice of Revocation. The planning director, in giving notice of the revocation of a temporary use permit or home occupation permit, shall observe the following noticing requirements:

1. The planning director or his or her designee shall serve the owner of the premises involved written notice of such hearing by registered or certified mail, return receipt requested.
2. In the event the certified or registered mail is refused, returned or undelivered after ten days after deposit in the United States mail, the city clerk shall cause the same notice to be sent via first class, regular United States mail, with postage fully paid thereon, to the address in the records.”

Section 4. Chapter 17.03 (Administration of Zoning) of Chapter 17.03 (Administration of Zoning) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended to add a new Section 17.03.085 to read as follows:

“17.03.085 Revocations and modifications - conditional use permits, development plans, and other land use entitlements.

A. Revocation.

1. Notice.

a. If the planning director determines that any conditions of approval of a conditional use permit, variance, development plan, or other land use entitlement have been violated, or that the permittee is operating in a manner that is inconsistent with or that is not in accordance with the approved statement of operations, or that such entitlement is being used in a

way that is injurious to the public health, safety, or welfare, the planning director shall send notice to the permit holder and the city clerk. The planning director may consult with the chief of police or fire chief in making this determination. The notice shall provide sufficient information to inform the permit holder of the reasons why the planning director is recommending that the permit be revoked and shall specifically identify the findings for revocation as set forth in subsection (A)(4) below, and that a public hearing shall be held before an independent hearing officer to determine whether the permit should be revoked, modified, or remain unchanged

b. The city clerk shall refer the matter to the California Office of Administrative Hearings for the assignment of an administrative law judge to serve as an independent hearing officer. The matter shall be heard within forty-five days of referral to the Office of Administrative Hearings, but may be extended for due cause including scheduling limitations of the hearing officer. In the event the Office of Administrative Hearings is unable to provide a hearing officer, the city clerk shall make arrangements for the selection of a hearing officer to conduct the appeal hearing as provided in this subsection.

i. Not less than fifteen days prior to the public hearing, the city clerk shall notify the planning director and the permit holder of the names of three qualified attorneys or retired Superior Court or Appellate Court judges submitted to the city clerk by a reputable firm providing mediators and arbitrators to serve as a panel from which the hearing officer will be selected.

ii. Within five days of the date of mailing the notice of the available panel, the planning director and the permit holder may notify the city clerk in writing that he or she elects to remove one of the three potential hearing officers.

iii. The city clerk shall then request the mediation and arbitration firm to select one of the remaining names on the list as the designated hearing officer for the appeal hearing.

2. Notice of the public hearing shall be given to the general public pursuant to the provisions of Government Code section 65090 and Section 17.03.040(B).

3. Fees. The cost of the independent hearing officer shall be paid for by the City.

4. Public Hearing Before Independent Hearing Officer. A public hearing shall be held before an independent hearing officer to determine whether there are grounds to revoke the permit. At the public hearing, the hearing officer shall receive oral and written evidence from the planning director, or his or her designee, any other City personnel, the permit holder, and any member of the public wishing to be heard at the public hearing. The hearing officer shall have authority to administer oaths to those persons who will provide oral testimony. The evidence presented need not comply with the strict rules of evidence set forth in the California Evidence Code, but shall be the type of evidence upon which reasonable and prudent people rely upon in the conduct of serious affairs. The hearing officer shall have broad authority to control the proceedings and to provide for cross examination of witnesses in a fair and impartial manner. The planning director, or his or her designee, shall have the burden of proof to establish by clear and convincing

evidence the facts upon which his or her recommendation to revoke the permit is based. The public hearing shall be recorded by audio recording. The City shall, at its sole cost and expense, utilize the services of a certified court reporter to prepare the verbatim record of the hearing. The transcript shall be made available for purchase to both parties. The hearing officer may continue the public hearing from time to time, but only upon written motion of a party showing good cause for the continuance.

5. Revocation. The independent hearing officer may revoke a permit, or impose or modify any conditions imposed on the permit if he or she finds that any of the following findings can be made:

a. That the permit was obtained by omission, misrepresentation, or fraud;

b. That any of the conditions of approval for the permit have not been met, or the use is operating in a manner that is inconsistent with any of the conditions of approval;

c. That the use for which the permit was granted is operating in violation of any statute, ordinance, law or regulation;

d. That the permit is being exercised in a way that is detrimental to the public health, safety or welfare or constitutes a nuisance.

6. Independent Hearing Officer Decision. Within ten days of the conclusion of the public hearing, the hearing officer shall render his or her decision and make written findings of fact and law supporting the decision. He or she shall send the decision to the city clerk. Upon receipt of the hearing officer's decision, the city clerk shall send a copy of it to the planning director and the permit holder, along with a proof of mailing.

7. Public Hearing Before the Planning Commission. The Planning Commission shall hold a public hearing to review the independent hearing officer's decision on the permit revocation. Notice of the public hearing shall be given pursuant to subsection 2 above. The notice of public hearing shall briefly summarize the grounds for the independent hearing officer's decision to revoke the permit, modify any conditions of approval, or allow the permit to remain in place unchanged. The Planning Commission shall review the transcript of the proceeding before the independent hearing officer and the findings of fact and law issued by the independent hearing officer. The Planning Commission shall only consider the evidence presented at the hearing before the independent hearing officer as well as any new evidence presented by the public at the public hearing before the Planning Commission. The city clerk is authorized to retain an attorney to advise the Planning Commission. The Planning Commission's decision to confirm, modify or overturn the independent hearing officer's decision shall be set forth in a resolution. The city clerk shall mail a copy of the resolution to the permit holder along with a proof of service. If the Planning Commission decision is not timely appealed, the revocation of the permit or any modifications to the conditions of approval shall be effective upon adoption of the Planning Commission resolution.

8. Appeal. Within ten calendar days from date of the city clerk's mailing of the Planning Commission's decision, either party may appeal the decision to the City Council. The

appeal shall be in writing and shall state the grounds of the appeal and specify the errors in the decision. Upon receipt of the appeal, the city clerk shall schedule the appeal for review by the City Council at the next council meeting not less than twenty (20) calendar days after receipt of the appeal. The City Council review of the appeal shall be limited to determining whether the evidence received at the revocation hearing supports the findings and decision of the Planning Commission. The City Council shall be limited to the evidence presented at the revocation hearing before the independent hearing officer and Planning Commission as well as any new evidence presented by the public at the public hearing. The City Council's decision on the appeal shall be by resolution and that decision shall be final. Upon adoption of the resolution, the city clerk shall mail a copy of the resolution to the permit holder. Any legal action challenging the City Council's decision shall be filed within ninety days of the date of the proof of service of mailing the council's resolution pursuant to Section 1094.5 et seq. of the California Code of Civil Procedure. If the council upholds the revocation of a conditional use permit or any modification to the conditions of approval, the revocation of the conditional use permit or modifications to the conditions of approval shall be effective upon adoption of the City Council resolution."

Section 5. Subsection A of Section 17.04.010 (Conditional use permits.) of Chapter 17.04 (Permits) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended to read as follows:

"A. Purpose and Intent. A conditional use permit is intended to allow the establishment of those uses which have some special impact or uniqueness such that their effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location. The conditional use permit provides the city with the means to review the location, design, configuration of uses, operations, and potential impact and compatibility with the surrounding area.

No conditional use permit or permit granting a variance shall have any force or effect until the applicant thereof actually receives such permit signed by the secretary of the Planning Commission designating the conditions of its issue thereon, and executes his or her written consent or otherwise consents to the conditions imposed. No permit shall be issued until the time for filing an appeal from decisions of the Planning Commission as provided in Section 17.03.090 has expired, or in the event of such appeal, after the final determination thereof by the City Council."

Section 6. Subsection E.3 of Section 17.04.010 (Conditional Use Permits.) of Chapter 17.04 (Permits) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended to read as follows:

"3. Any conditional use permit granted or approved hereunder shall be approved or conditionally approved with the city, and its Planning Commission and City Council retaining and reserving the right and jurisdiction to review and to modify such conditional use permit—including the conditions of approval—based on changed circumstances. Changed circumstances include, but are not limited to, the modification of the business, a change in scope, emphasis, size, or nature of the business, and the expansion, alteration, reconfiguration or change of use."

Section 7. Subsection H of Section 17.04.010 (Conditional Use Permits.) of Chapter 17.04 (Permits) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended to read as follows:

“H. Time Extension. Notwithstanding the foregoing, the permittee may, prior to the expiration of the conditional use permit, apply for up to three one-year extensions of time in which to use the conditional use permit. Each extension of time shall be granted in one-year increments only.

An application for an extension of time shall be made to the planning director, on forms provided by the planning department and shall be filed with the planning department, accompanied by the appropriate filing fee. Within thirty days following the filing of an application for an extension of time, the planning director may approve, conditionally approve or deny the application. An extension of time may be granted by the planning director only upon a determination that the property and use are consistent with the general plan, land use ordinance, and all other city ordinances and regulations. For any time extension that administratively extends an approval that was originally approved at a public hearing, notice of the planning director’s decision to administratively approve a time extension shall be posted at the site and mailed at least ten days prior to its approval to the applicant and its representative (as shown on the application); to the property owner (as shown on the latest available equalized assessment roll of the county of Riverside) or the owner’s agent; to all persons whose names and addresses appear on the latest available assessment roll of the county of Riverside as owners of property within a distance of six hundred feet from the exterior boundaries of the site for which the application is filed (a minimum of thirty property owners); to anyone filing a written request for notification; and to such other persons whose property might, in the planning director’s judgment, be affected by the establishment of the use or zone requested. Notice shall also be sent to public departments, bureaus, or agencies which are determined by the planning director to be affected by the application. For matters that are considered to have special significance or impact, the planning director may refer such items to the Planning Commission for consideration at a noticed public hearing.

Any conditional use permit which is not used within the time specified in the grant of approval, or, if no time is specified, within one year of the effective date of such approval, shall become subject to termination. The planning director may extend such approval for a period not to exceed one year provided an application requesting the extension is filed prior to the original expiration date. For purposes of this section, “used” means the commencement of construction activity or any activity authorized by the grant of approval or conditional approval.

Any proceeding to enforce the expiration of any conditional use permit or variance granted hereunder shall commence with notice to the permit holder of the city’s intent to enforce the same and following the hearing requirements of the following paragraph.

The term “use” shall mean the beginning of a substantial construction of the use that is authorized, which construction must thereafter be pursued diligently to completion, or the actual occupancy of existing buildings or land under terms of the authorized use.”

Section 8. Subsection I of Section 17.04.010 Chapter 17.04 (Permits) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended to read as follows:

“I. Reservation of Right to Review Conditional Use Permit. Any conditional use permit granted or approved hereunder, shall be approved or conditionally approved with the city, and its planning director, Planning Commission, and City Council retaining and reserving the right and jurisdiction to review and modify such conditional use permit (including the conditions of approval) based on changed circumstances. Changed circumstances include, but are not limited to, the modification of the business, a change in scope, emphasis, size or nature of the business, and the expansion, alteration, reconfiguration or change of use. The reservation of right to review any conditional use permit granted or approved or conditionally approved hereunder by the city, its planning director, Planning Commission, and City Council is in addition to, and not lieu of, the right of the city, its director of planning, Planning Commission, and City Council to review and modify any conditional use permit approved or conditionally approved hereunder for any violations of the conditions imposed on such conditional use permit or for the maintenance of any nuisance condition or other code violation thereon.”

Section 9. Subsection B of Section 17.05.020 (Administrative approval of development plan.) of Chapter 17.05 (Development Plans) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended to read as follows, with all other provisions of Section 17.05.020 remaining unchanged:

“B. When Required. Administrative review is permitted for applications for minor exceptions, temporary uses, accessory dwelling units, and for minor modifications to approved development plans and conditional use permits that were previously approved pursuant to Chapter 17.05.”

Section 10. Subsection of Section 17.05.030 (Modifications to an approved development plan.) of Chapter 17.05 (Development Plans) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended to read as follows, with all other provisions of Section 17.05.030 remaining unchanged:

“B. Types of Modifications. Modifications to approved development plans are divided into two categories: major and minor. If a proposed modification includes both major and minor modifications, the application shall be considered a major modification. The final decision as to whether a modification is major or minor shall be at the sole discretion of the planning director.

1. Major modifications to approved development plans include the following types of project changes:

- a. Increasing the height of the building by more than ten feet or one-story;
- b. An increase of more than ten percent of the building footprint and/or floor area;
- c. A substantial change in the architecture of the building or substantial changes to the exterior elevations including, but not limited to, the locations of windows or doors;
- d. A modification in the approved access to the project site;

e. The shift of building location that effects the layout and location of the required parking, site access, or substantially changes the conceptual landscape plan;

f. A change in the number of primary structures;

g. Changes to a conditional use permit that requires the physical modification of the site.

2. Minor modifications to approved development plans include the following types of project changes:

a. An increase of less than ten percent of the building footprint and/or floor area;

b. A change in the layout of the parking or loading area;

c. The relocation of windows or doors on one or two wall surfaces;

d. An adjustment in the location of buildings provided the general location of each building is similar to the approved development plan;

e. Changes to a conditional use permit that does not require the physical modification of the site.

3. Modifications to approved development plans that are subject to the administrative development plan process include the following:

a. Changes to the approved landscaping plant palette;

b. Changes in exterior colors or materials.”

Section 11. Subsection H of Section 17.05.030 (Modifications to an approved development plan.) of Chapter 17.05 (Development Plans) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended to read as follows, with all other provisions of Section 17.05.030 remaining unchanged:

“H. Revocations. Development plans may be revoked following the procedures set forth in Section 17.03.085.”

Section 12. CEQA. The City Council hereby finds, in the exercise of its independent judgment and analysis, that this ordinance is not a project under the California Environmental Quality Act (CEQA) as State CEQA Guidelines Section 15378(b)(5) provides that a project does not include organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. This ordinance merely amends the procedures for continuing administrative citations hearings and amends administrative regulations for various permits and land use entitlements. In addition, this ordinance is also exempt from the California Environmental Quality Act (CEQA) as there is no possibility the proposed ordinance would have a significant impact on the environment pursuant to State CEQA Guidelines Section 15061(b)(3).

A Notice of Exemption has been prepared and will be filed in accordance with CEQA and the State CEQA Guidelines.

Section 13. Severability. If any section or provision of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, the remaining sections and/or provisions of this Ordinance shall remain valid. The City Council hereby declares that it would have adopted this Ordinance, and each section or provision thereof, regardless of the fact that any one or more section(s) or provision(s) may be declared invalid or unconstitutional or contravened via legislation.

Section 14. Certification. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

Section 15. Effective Date. This Ordinance shall take effect thirty (30) days after passage.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Temecula this 13th day of October, 2020.

Maryann Edwards, Mayor Pro Tempore

ATTEST:

Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF TEMECULA)

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Ordinance No. 2020-08 was duly introduced and placed upon its first reading at a meeting of the City Council of the City of Temecula on the 22nd day of September, 2020, and that thereafter, said Ordinance was duly adopted by the City Council of the City of Temecula at a meeting thereof held on the 13th day of October, 2020, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

Randi Johl, City Clerk