

City Council Meeting: May 9, 2023

Santa Monica, California

ORDINANCE NUMBER 2746 (CCS)

(City Council Series)

AN INTERIM ZONING ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA EXTENDING INTERIM ZONING REGULATIONS ADOPTED BY INTERIM ZONING ORDINANCE NUMBER 2738 (CCS) AMENDING SANTA MONICA MUNICIPAL CODE SECTION 9.10.040 TO ELIMINATE THE PROHIBITION ON FAST FOOD RESTAURANTS IN ESTABLISHMENTS WITH FRONTAGE ON THE THIRD STREET PROMENADE

WHEREAS, on July 25, 2017, the City Council of the City of Santa Monica (the “City Council”) adopted the Downtown Community Plan (“DCP”) which sets forth a vision for the continued vitality of the Third Street Promenade as a major public space framed by a mix of retail, restaurants, and services that form unique experiences enjoyable to both residents and visitors; and

WHEREAS, the DCP supports activities that enrich the Promenade, including street performances and events that enliven the street and provide memorable experiences for visitors, while also seeking to expand cultural opportunities including live music venues and upgraded state-of-the art cinemas; and

WHEREAS, the DCP acknowledges that the Promenade is an essential component of the Downtown’s economic sustainability and emphasizes the importance of reevaluating and refreshing the Promenade so that it remains attractive and exciting to residents and visitors alike; and

WHEREAS, DCP Goal LU3 contemplates that the Downtown will continue to be the economic center for the City, providing a diverse and flexible mix of uses that can meet future resident, business and visitor demand; and

WHEREAS, fast food chains are formula establishments with numerous locations and standardized features, such as façade, décor, color scheme and signage, dependent on brand recognition created through repetition of the same characteristics for each store in multiple locations; and

WHEREAS, the DCP permits fast food chains on the Third Street Promenade; and

WHEREAS, on November 27, 2018, the City Council adopted Urgency Interim Zoning Ordinance Number 2594 (CCS) (“Interim Zoning Ordinance 2594”), which created new use classifications for Restaurant, Fast Food and Restaurant, Limited-Service and Take-Out for the BC (Promenade) District and prohibited Restaurant, Fast Food with more than 100 locations nationwide in establishments with frontage on the Promenade; and

WHEREAS, Interim Zoning Ordinance 2594 was designed to preserve the authentic character of the Third Street Promenade and provide visitors with a distinctive experience not found in most downtown shopping districts while the City evaluated current zoning regulations for opportunities to retain the Promenade’s authenticity, encourage local uses, and promote unique visitor experiences through the “Promenade 3.0” planning process; and

WHEREAS, on January 8, 2019, in accordance with Santa Monica Municipal Code Section 9.46.090(D) and Government Code Section 65858(b), the City Council adopted Urgency Interim Zoning Ordinance 2600 (CCS) (“Interim Zoning Ordinance 2600”) extending Interim Zoning Ordinance 2594 for 10 months and 15 days to November 26, 2019; and

WHEREAS, on November 12, 2019, in accordance with Santa Monica Municipal Code Section 9.46.090(D) and Government Code Section 65858(b), the City Council adopted Urgency Interim Zoning Ordinance 2625 (CCS) (“Interim Zoning Ordinance 2625”) extending Interim Zoning Ordinances 2594 and 2600 for 12 months to November 26, 2020; and

WHEREAS, on March 13, 2020, the City Manager, in his role as the Director of Emergency Services, (“Director of Emergency Services”) proclaimed the existence of a local emergency pursuant to Chapter 2.16 of the Santa Monica Municipal Code to ensure the availability of mutual aid and an effective the City’s response to the novel coronavirus (“COVID-19”) and this local emergency was restated on March 14, 2020, through a revised declaration of local emergency to ensure compliance with all digital signature requirements (the “Executive Order”); and

WHEREAS, on March 16, 2020 the Director of Emergency Services issued a Third Supplement to the Executive Order, requiring the closure of a wide range of businesses including bars, nightclubs, on-premises restaurant service, movie theatres, live performance venues, gyms, fitness centers, spas, hair salons, massage parlors, and nail salons; and

WHEREAS, on March 19, 2020, California Governor Gavin Newsom issued Executive Order N-33-20 directing all residents of the State of California to heed directives issued by the State Health Officer on the same date instructing all Californians to stay home except as needed to maintain continuity of operations of the federal critical infrastructure sectors; and

WHEREAS, on March 19, 2020, the Los Angeles County Department of Public Health issued an enhanced Health Officer Order, the Safer at Home Order for Control of COVID-19, amending and superseding its earlier March 16, 2020, Order, closing all nonessential businesses, and limiting gatherings to 9 people or less; and

WHEREAS, since March 19, 2020, the Los Angeles County Department of Public Health has on multiple occasions amended and modified its Health Officer Order, recognizing the issues posed by existing community transmission of COVID-19 in Los Angeles County, and in response maintaining public health measures that have, at differing times, included strict limitations on public gatherings, required closures of certain businesses, and strict limitations and protocols for the operations of businesses permitted to remain open; and

WHEREAS, the economic impacts of the COVID-19 closures of and limitations on businesses have been devastating to the local Santa Monica economy; and

WHEREAS, the hardest hit sectors in Santa Monica include retail and arts/entertainment/leisure, initially representing the temporary closure of over approximately 1,300 businesses employing approximately 11,000 people; and

WHEREAS, the City's business improvement districts have reported that at least 70 small businesses have permanently closed across many sectors, including retail, leisure, and restaurants; and

WHEREAS, some of the actions that the City has taken during this state of emergency to support local business are: commercial eviction protections; suspension of late fees for City-imposed bills and taxes and parking restrictions in green zones; a website with business resources; and assistance for restaurants and food retailers by

allowing sales of alcohol via delivery and takeout, providing flexibility for restaurants to sell groceries, and allowing curbside pickup; and

WHEREAS, the City is also building upon the existing Buy Local program and providing free marketing support through an interactive map showing available essential services providers that are open providing an avenue for Santa Monica residents to support local businesses; and

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WHEREAS, on April 14, 2020, the City Council directed that restructuring City services be prioritized on foundational services, emergency response, and economic recovery; and

WHEREAS, on January 26, 2021, the City Council adopted Ordinance Number 2661 (CCS) amending the text of the Zoning Ordinance to prohibit certain fast food chains with more than 150 locations nationwide in establishments with frontage along the Third Street Promenade while Promenade planning efforts and economic recovery continued; and

WHEREAS, the City has continued to engage in an economic recovery strategy that involves a multi-pronged approach focusing on five areas: business retention and reopening; business process and permitting; publicity and marketing, community economic development, re-employment, and local hiring; and federal and state resources; and

WHEREAS, the Promenade's past success has resulted from the creation of an authentic urban retail, dining, and cinema experience; and

WHEREAS, as the commercial and economic landscape evolves, the Promenade's economic recovery and competitive advantage will depend on its ability to deliver on a diverse range of unique dining, retail, and entertainment uses; and

WHEREAS, the ongoing COVID-19 pandemic and subsequent economic recovery has been difficult for many segments of the economy, even in light of economic efforts that are currently underway, the Downtown area is experiencing economic uncertainty, with the vacancy rate along the Promenade recently rising to 27%; and

WHEREAS, the City has an important government interest in maintaining a thriving business community and protecting the health, safety, and economic welfare of its citizens and businesses; and

WHEREAS, vacancy rates, in addition to economic impacts that threaten the health, safety and economic welfare of its citizens and business, may lead to public safety impacts, including, but not limited to, increased calls for emergency services; and

WHEREAS, as restaurant environments across the region and country continue to evolve, there is a need to adjust allowed uses and dining options to enable economic recovery and provide increased flexibility to minimize vacancies on the Third Street Promenade; and

WHEREAS, recent inquiries have been made to potentially enable additional dining options on the Promenade; and

WHEREAS, due to the continued economic uncertainty arising out of the COVID-19 pandemic, the high vacancy rate along the Promenade, the City Council desires to

eliminate the prohibition on fast food chains with more than 150 locations nationwide in establishments with frontage on the Promenade to increase flexibility of use and opportunities for economic recovery; and

WHEREAS, on March 14, 2023, the City Council adopted Interim Zoning Ordinance Number 2738 (CCS) (“IZO 2738”), which established interim zoning regulations to amend Santa Monica Municipal Code Section 9.10.040 by eliminating the prohibition on fast food chains with more than 150 locations nationwide in establishments with frontage on the Promenade (the “interim zoning regulations”); and

WHEREAS, in accordance with Santa Monica Municipal Code Section 9.46.090(C), the interim zoning regulations established by IZO 2738 will expire on June 12, 2023, sixty days after its effective date; and

WHEREAS, Section 9.46.090(C) authorizes the City Council, after notice and a public hearing, extend interim zoning regulations established by an interim zoning ordinance for up to 60 months; and

WHEREAS, the City Council desires to extend the interim zoning regulations in accordance with Section 9.46.090(C) to allow the City ensure that an over proliferation of fast food chain restaurants does not occur on the Promenade by monitoring increases to the number of those fast food restaurants along the Promenade; and

WHEREAS, on April 25, 2023, the City Council conducted a duly-noticed public hearing to consider an extension of the interim zoning regulations, and, after considering oral and written testimony, the City Council finds and declares that a current and immediate threat to the public health, safety, and general welfare continues to exist due to the devastating impact the COVID-19-mandated closures and limitations have had on

the local economy, including, but not limited to, the high vacancy rate on the Third Street Promenade, and the approval of additional subdivisions, use permits, variances, building permits or any other applicable entitlement for use which is required in order to comply with the prohibition on fast food chains with more than 150 locations nationwide in establishments with frontage on the Third Street Promenade would result in a threat to public health, safety, and welfare.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Interim Zoning Regulations. Notwithstanding anything to the contrary in Santa Monica Municipal Code Section 9.10.040, Specific Limitation 22 shall not apply.

SECTION 2. Any provision of the Santa Monica Municipal Code or any appendix thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

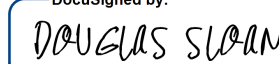
SECTION 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official



newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

SECTION 5. This Ordinance shall be of no further force or effect as of April 13, 2028.

APPROVED AS TO FORM:

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Douglas Sloan, City Attorney

Approved and adopted this 9<sup>th</sup> day of May, 2023.

DocuSigned by:

*Gleam Davis*

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Gleam Davis, Mayor

State of California            )  
County of Los Angeles        ) ss.  
City of Santa Monica         )

I, Denise Anderson-Warren, City Clerk of the City of Santa Monica, do hereby certify that the foregoing Ordinance No. 2746 (CCS) had its introduction on April 25, 2023 and was adopted at the Santa Monica City Council meeting held on May 9, 2023, by the following vote:

AYES:       Councilmembers de la Torre, Brock, Zwick  
              Mayor Pro Tem Negrete, Mayor Davis

NOES:       None

ABSENT:   Councilmembers Torosis, Parra

ATTEST:

DocuSigned by:

*Denise Anderson-Warren*

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Denise Anderson-Warren, City Clerk

5/16/2023

Date

A summary of Ordinance No. 2746 (CCS) was duly published pursuant to California Government Code Section 40806.