



Sunnyvale

SUPPLEMENTAL STAFF REPORT

Date: September 15, 2020
To: Mayor and City Council Members
From: Kent Steffens
City Manager

Subject: AGENDA ITEM # 1.G
Adopt a Resolution Confirming a Local Emergency Order of the Director of Emergency Services Regarding Allowing Temporary Outdoor Business Activities on Private and Public Property in the City of Sunnyvale in Response to Public Health Concerns Because of the Novel Coronavirus (COVID-19)

In response to questions received from Council and upon further review, staff made changes to the proposed program description to allow additional furniture items upon City approval as shown in redline strike-through format.

SEPTEMBER 2, 2020

**LOCAL EMERGENCY ORDER
BY THE CITY OF SUNNYVALE CITY MANAGER/DIRECTOR OF EMERGENCY SERVICES
REGARDING TEMPORARY USE OF OUTDOOR AREAS BY BUSINESSES
IN THE CITY OF SUNNYVALE**

WHEREAS, Government Code Section 8634 empowers the City of Sunnyvale ("City") and the Director of Emergency Services/City Manager to promulgate orders and regulations necessary for the preservation of life and property during the local emergency; and

WHEREAS, on March 12, pursuant to Chapter 2.16 of the Sunnyvale Municipal Code ("SMC"), the Director of Emergency Services declared the existence of a local emergency and the City Council ratified the same on March 17, 2020, and extended the Director of Emergency Services' proclamation on April 7, 2020 by Resolution No. 981-20, on May 26, 2020 by Resolution No. 994-20, on July 14, 2020 by Resolution No. 1010-20, and on August 25, 2020 by Resolution No. 1016-20; and

WHEREAS, the Santa Clara County Department of Public Health ("County") issued an order on March 16, 2020, followed by Executive Order N-33-20 on March 19, 2020 issued by the Governor of the State of California ("Governor"), requiring residents to Shelter in Place and which prohibited, among other things, indoor dining in restaurants, indoor personal care services such as hair salon and barbershop services, nail salons, and massage establishments, and indoor fitness centers; and

WHEREAS, on or about June 5, 2020, the County issued an updated order providing that restaurants may resume dine-in options outdoors; and

WHEREAS, on or about June 10, 2020, the Director of Emergency Services issued a local emergency order regarding temporary outdoor dining areas on private property in the City, suspending certain provisions of the SMC including permit requirements, parking, and consumption of alcohol viewable from the public right of way, as well as waiving all associated permit fees in order to allow for the expanded use of private property areas by restaurants in order to accommodate patrons who wish to dine outdoors; and

WHEREAS, on or about June 23, 2020, the Sunnyvale City Council confirmed the local emergency order by the Director of Emergency Services regarding temporary outdoor dining areas on private property by Resolution No. 1001-20; and

WHEREAS, on or about July 29, 2020, the California Department of Public Health provided updated guidance for outdoor personal care services, "COVID-19 Industry Guidance: Expanded Personal Care Services Provided Outdoors" providing that such operations are authorized to operate outdoors; and

WHEREAS, on August 28, 2020, the State of California released new COVID-19 regulatory framework called the Blueprint for a Safer Economy providing that hair salons, barbershops and

shopping malls that follow safety guidelines implemented by the County and State will be allowed to reopen indoors in a modified capacity beginning August 31, 2020; and

WHEREAS, indoor activities such as fitness centers, hair and nail salons, and restaurant dining have a direct effect on the safety of employees and members of the public, while economic viability of such establishments is increased by allowing additional service areas outdoors; and

WHEREAS, the health, safety, and welfare of Sunnyvale residents, businesses, visitors and staff is of utmost importance to the City and additional future measure may be needed to protect the community.

NOW, THEREFORE, THE DIRECTOR OF EMERGENCY SERVICES FOR THE CITY OF SUNNYVALE DOES HEREBY ORDER AS FOLLOWS:

SECTION 1. The Director of Emergency Services hereby suspends, to the extent necessary, any portion of the SMC prohibiting or impairing Temporary Use of Outdoor Areas by Businesses as further described in Exhibit A and Exhibit B to this Order, including but not limited to SMC Chapter 13.08 pertaining to business operations and encroachments on public sidewalks; SMC Chapter 19.61 pertaining to additional permit requirements for temporary unenclosed uses; SMC Section 19.46.110 pertaining to additional parking requirements for specified business uses; and SMC Section 9.41.140(a)(1) pertaining to the hours of operation for massage establishments.

SECTION 2. The Director of Emergency Services hereby adopts the Regulations Relating to Temporary Use of Outdoor Areas on Private Property and Regulations Relating to Temporary Use of Outdoor Areas on Public Property, attached as hereto Exhibit A and Exhibit B respectively. All establishments utilizing additional activities permitted in Exhibit A and Exhibit B must follow all provisions therein, as well as any and all applicable laws, orders, regulations, orders by the Governor, California Department of Public Health, Cal/OSHA, California Massage Therapy Council, California Board of Barbering and Cosmetology, and County ("orders"). In the event of a conflict in orders, the most restrictive order shall apply.

SECTION 3. This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the City of Sunnyvale, or any of its officials, employees, contractors, agents, or volunteers.

SECTION 4. This Order shall be in force and effect unless and until superseded by Ordinance or Resolution of the Sunnyvale City Council or by subsequent order of the Director of Emergency Services during the COVID-19 local emergency where the subsequent order expressly supersedes this order, or until such a date where the Director of Emergency Services or Sunnyvale City Council declare the local emergency has ended, whichever is sooner.

SECTION 5. Severability. If any section, clause, or other portion of this Order is for any reason to be held invalid or unconstitutional by any final, unappealable decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Order. Should the

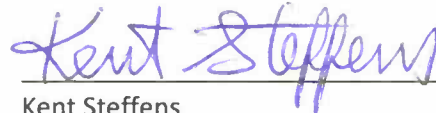
20-0807 Updated Attachment 1 (posted 20200915)

State of California, Governor, County or Director of Emergency Services issue or modify any of the orders addressing business regulations or other matters covered by this Order, this Order shall be interpreted to the extent feasible in a manner consistent with such orders.

SECTION 6. Notice. This Order shall be noticed as required by California Government Code section 8634.

SECTION 7. The City Clerk shall certify to the adoption of this Order and shall cause a certified Order to be filed in the Office of the City Clerk.

Date: September 2, 2020



Kent Steffens

Director of Emergency Services/City Manager

Exhibit A

Regulations Relating to Temporary Use of Outdoor Areas On Private Property

Introduction – Program in Brief

On July 29, 2020, the California Department of Public Health provided new guidance for certain business sectors previously ordered closed due to the COVID-19 pandemic. Specifically, the new industry guidance provided that barbershops, hair salons, nail salons, and massage businesses (collectively “personal care services”) may reopen outdoors so long as certain health and safety criteria were met. On August 28, 2020, the State of California provided a new regulatory framework called the Blueprint for a Safer Economy providing that hair salons and shopping malls may reopen indoors in a modified capacity beginning August 31, 2020.

In order to effectuate the successful reopening of personal care services, as well as retail businesses, gyms and fitness centers providing group fitness classes, the City of Sunnyvale is providing regulations and guidelines (“Program”) to simplify a process by which space on private property immediately adjacent to the business may be used to expand outdoor business areas. The requirements for businesses opting to participate in this Program are as follows.

Self-Certification Checklist

Under this Program, a business must self-certify compliance with all the following:

- Compliance with all orders, including orders from the Governor, State of California, California Department of Public Health, California Department of Consumer Affairs, Cal/OSHA, California Board of Barbering and Cosmetology, and Santa Clara County, as well as compliance with the Sunnyvale Municipal Code;
- Approval from the property owner indicating that the owner has approved an expansion into the private property for the business’ use; and
- Compliance with the Americans with Disabilities Act (or “ADA”).

The Community Development Director or designee is authorized to develop an operational self-certification form for business owners to effectuate the program pursuant to the emergency order.

General Requirements

- The business owner must indemnify and hold the city harmless for all personal injury and/or property damage caused by the expansion of outdoor business area.
- The program is limited to an expansion of an existing, permitted business onto private property, such as a paved area or parking lot; however, may not expand into previously designated disabled parking stalls.
- Patron queuing must display tape or markings in intervals designed to ensure adequate social distancing, as outlined by the Santa Clara County Public Health Officer.
- Debris, litter, and waste from outdoor dining must be adequately disposed of. Outdoor business areas must remain clear of litter.

20-0807 Updated Attachment 1 (posted 20200915)

- Hours of operation for the outside business area are limited to the hours of operation for the associated business.
- The outdoor business area must provide sufficient ingress and egress for patrons and employees and in case of emergency.
- The operation must ensure minimal impact on storm drains.
- To the extent that the business opts to utilize outdoor heaters, certain health and safety requirements apply.
- There is no fee for review and approval of the self-certification for temporary outdoor uses on private property.

Outdoor Business Areas

- Expanded outdoor areas are limited to private property immediately adjacent to the previously approved restaurant use.
- Furnishings are limited to temporary and movable tables, chairs, benches, mirrors, umbrellas, temporary shade structures, merchandise display areas, cordless lighting, and LPG heaters.
- [A business may obtain approval for furnishings not listed above by contacting the City.](#)
- A business may not build a permanent structure as part of the outdoor business area under this program.
- Where the business is a stand-alone business without a shared parking lot, no more than fifty percent of parking spaces may be used for the outdoor business use, with parking spaces reserved for staff, customers, and curbside pickup.
- Where the business shares a parking lot in a shopping center, a maximum of fifty percent of the existing parking spaces serving the shopping center may be used for the outdoor business area collectively to be used by all tenants in the shopping center.
- Additional review by the Community Development Department may be required if the proposed outdoor operation constitutes a "large scale operation." A large scale operation arises where the tenants comprising more than half of the floor area of the existing commercial buildings propose outdoor uses on private property.
- The layout of furnishings must provide a clear passageway and provide for an emergency exit.

Businesses interested in Temporary Outdoor ~~Dining Areas~~Business Operations on Private Property may contact the Planning Division at planning@sunnyvale.ca.gov.

Exhibit B

Regulations Relating to Temporary Use of Outdoor Areas On Public Property

Introduction – Program in Brief

On July 29, 2020, the California Department of Public Health provided new guidance for certain business sectors previously ordered closed due to the COVID-19 pandemic. Specifically, the new industry guidance provided that barbershops, hair salons, nail salons, and massage businesses (collectively “personal care services”) may reopen outdoors so long as certain health and safety criteria were met. On August 28, 2020, the State of California provided a new regulatory framework called the Blueprint for a Safer Economy providing that hair salons and shopping malls may reopen indoors in a modified capacity beginning August 31, 2020.

In order to effectuate the successful reopening of personal care services, as well as retail businesses, gyms and fitness centers providing group fitness classes, the City of Sunnyvale is providing regulations and guidelines (“Program”) to simplify a process by which space on public sidewalks may be used to expand outdoor business areas. The requirements for businesses opting to participate in this Program are as follows.

Self-Certification Checklist

Under this Program, a business must self-certify compliance with all of the following:

- Compliance with all orders, including orders from the Governor, State of California, California Department of Public Health, California Department of Consumer Affairs, Cal/OSHA, California Board of Barbering and Cosmetology, and Santa Clara County, as well as compliance with the Sunnyvale Municipal Code; and
- Compliance with the Americans with Disabilities Act (or “ADA”).

The Public Works Director or designee is authorized to develop an operational self-certification form for business owners to effectuate the program pursuant to the emergency order.

General Requirements

- The business owner must indemnify and hold the city harmless for all personal injury and/or property damage caused by the expansion of outdoor business area.
- The program is limited to an expansion of an existing, permitted business onto the public right of way, such as a paved sidewalk. Businesses opting to expand outdoors onto a public street may not use this program to do so. Businesses proposing expansion onto a public street must apply for and receive approval for an encroachment permit.
- Patron queuing must display tape or markings in intervals designed to ensure adequate social distancing, as outlined by the Santa Clara County Public Health Officer.
- Debris, litter, and waste from outdoor dining must be adequately disposed of. Outdoor business areas must remain clear of litter.
- Hours of operation for the outside business area are limited to the hours of operation for the associated business.

20-0807 Updated Attachment 1 (posted 20200915)

- There is no fee for review and approval of the self-certification for temporary outdoor business operations in the public right of way.

Outdoor Business Areas

- Business owners must conform to limitations on the furniture used for expanded outdoor operations on a public sidewalk. For instance, furniture must be located as close to the business front as possible. Furniture must be movable and properly secured to prevent danger to the public (e.g. locking casters). Any furniture placed on corners of the public sidewalk must conform to the City's vision triangle requirements.
- [A business may obtain approval for additional furnishings on the public sidewalk by contacting the City.](#)
- This Program does not include any proposed use on a public street. Any proposed use of a public roadway, including on-street parking stalls, is subject to a case-by-case discretionary review under an encroachment permit process, including the submission of a permit application, a traffic control plan, insurance requirements and application fee.

Businesses interested in Temporary Outdoor Business Operations in the Public Right of Way may contact Department of Public Works, Engineering Services at pubworks@sunnyvale.ca.gov.