

JUNE 10, 2020

**LOCAL EMERGENCY ORDER
BY THE CITY OF SUNNYVALE CITY MANAGER/DIRECTOR OF EMERGENCY SERVICES
REGARDING TEMPORARY OUTDOOR DINING AREAS ON PRIVATE PROPERTY
IN THE CITY OF SUNNYVALE**

WHEREAS, Government Code Section 8634 empowers the 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, 2020, pursuant to Chapter 2.16 of the Sunnyvale Municipal Code (“SMC”), the Director of Emergency Services declared the existence 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, and on May 26, 2020 by Resolution No. 994-20; 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)(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 restaurant establishments; and

WHEREAS, beginning on or about March 19, 2020, the State Department of Alcoholic Beverage Control (“ABC”) began issuing a series of Notices of Regulatory Relief providing modifications to several provisions of state law and regulations relating to service of alcoholic beverages in California; and

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

WHEREAS, in the case of restaurants, indoor dining has a direct effect on the safety of restaurant employees and members of the public, while economic viability of such establishments is increased by 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 measures 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 Sunnyvale Municipal Code (“SMC”) prohibiting or impairing Temporary Outdoor Dining Areas on Private Property as further described in Exhibit A to this

order, including but not limited to SMC Chapters 19.61, which provides additional permit requirements for outdoor dining, including but not limited to the provisions relating to miscellaneous plan permits; SMC Chapter 19.46.110, which provides regulations related to parking requirements for restaurants with outdoor seating; and SMC Chapter 9.66.010 which relates to consumption of alcohol from private property viewable from the public right of way.

SECTION 2. The Director of Emergency Services hereby adopts the Regulations for Temporary Outdoor Dining Area on Private Property attached as Exhibit A. All establishments utilizing additional activities permitted in Exhibit A must follow all provisions therein, as well as any and all applicable state laws, orders, regulations, orders by the Governor, ABC, and County ("orders"). In the event of a conflict in orders, the most restrictive order shall apply. There shall be no fee imposed for approval of the Operational Certification for Temporary Outdoor Dining Areas on Private Property.

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.

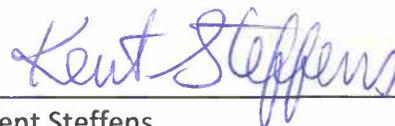
SECTION 4. This order shall be in force and effect unless and until superseded by Ordinance or Resolution of the Sunnyvale City Council or by subsequent order of the Director of Emergency Services during the COVID-19 local emergency where the subsequent order expressly supersedes this order, or until 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 Governor, ABC, County, or Director of Emergency Services issue or modify any of the orders addressing the restaurant 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: June 10, 2020



Kent Steffens
Director of Emergency Services/City Manager

Exhibit A

Regulations Relating to Temporary Outdoor Dining Areas On Private Property

Introduction – Program in Brief

On June 1, 2020, the Santa Clara County Department of Public Health provided new guidance to restaurants previously ordered closed due to the COVID-19 pandemic. Specifically, the new order provided that restaurants may re-open for dine-in options beginning June 5, 2020 so long as certain health and safety criteria were met. In order to effectuate the successful reopening of such operations, the City of Sunnyvale is providing regulations and guidelines to simplify a process by which space on private property immediately adjacent to the restaurant operation may be used to expand outdoor dining areas. The requirements for restaurants opting to participate in this program are as follows.

Self-Certification Checklist

Under this program, a restaurant must self-certify compliance with all of the following:

- Compliance with all orders, including orders from the Governor, Alcoholic Beverage Control (“ABC”), 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 restaurant’s 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 restaurant 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 dining area.
- The program is limited to an expansion of an existing, permitted restaurant onto private property, such as a paved area or parking lot, however outdoor dining may not expand into previously designated disabled parking stalls.
- Patron queuing for outdoor dine-in service and/or take out 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 dining areas must remain clear of litter.
- Hours of operation for the outside dining area are limited to the hours of operation for the associated restaurant.
- The outdoor dining area must provide sufficient ingress and egress for patrons and employees and in case of emergency.
- To the extent that the restaurant opts to utilize outdoor heaters, certain health and safety requirements apply.
- Service of alcoholic beverages in the outdoor dining area may be permitted following application and approval from ABC.

- Where the restaurant is a stand-alone business without a shared parking lot, no less than three parking spaces must be reserved for take-out patrons. Where the restaurant shares a parking lot in a shopping center, a maximum of 25% of the existing parking spaces serving the shopping center may be used for the outdoor dining area.
- There is no fee for review and approval of the outdoor dining self-certification.

Outdoor Seating Areas

- Expanded outdoor seating areas are limited to private property immediately adjacent to the previously approved restaurant use.
- Furnishings are limited to movable tables, chairs, umbrellas or temporary shade structures.
- A restaurant may not build a permanent structure as part of the outdoor dining area under this program.
- Tables may provide seating for no more than six (6) people.
- At least five (5) percent of the outdoor tables must be wheelchair accessible.
- The layout of tables, chairs and furnishings must provide a clear passageway and provide for an emergency exit.

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