



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

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)

DISCUSSION

On March 12, City Manager Kent Steffens declared a local health emergency pursuant to the authority granted to him as the Director of Emergency Services in Sunnyvale Municipal Code (SMC) Chapter 2.16 and applicable state law. The City Council ratified that proclamation on March 17 (Resolution No. 979-20), and extended the local emergency on April 7, May 26, July 14, and August 25 (Resolution Nos. 981-20, 994-20, 1010-20, and 1016-20). The Santa Clara County Department of Public Health issued its initial “shelter-in-place” order on March 16, with the effect of shuttering many businesses in the County such as hair salons, barbershops, nail salons, massage establishments and gyms.

SMC Section 2.16 040(a)(6)(A) empowers the Director of Emergency Services “[t]o make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations must be confirmed at the earliest practicable time by the city council.”

Conditions have been evolving since the emergency was originally declared. On July 29, the California Department of Public Health provided guidelines by which personal care services may reopen operations outdoors. On August 28, the state of California released a new COVID-19 regulatory framework called the Blueprint for a Safer Economy providing that some indoor operations may resume at a reduced capacity so long as safety guidelines are implemented. However, Sunnyvale businesses have sought solutions from the City to expand operations outdoors in order to increase capacity and preserve health and safety of customers and employees.

In order to expedite such outdoor business options, the Director of Emergency Services issued an emergency order on September 2 (Attachment 1) suspending any portion of the SMC prohibiting or impairing temporary outdoor operations of business activities, including but not limited to Chapters 13.08 and 19.61, and Sections 19.46.110 and 9.41.140(a)(1). The purpose of suspending these sections of the SMC is to allow hair salons, barbershops, nail salons, massage establishments, general retail (except the sale of food), and fitness centers providing group fitness classes in outdoor space on private and public property to serve customers outside. The program also provides that the Director of Community Development or designee and the Public Works Director or designee is authorized to develop operational guidelines in order to effectuate the programs on private and public property respectively. Additionally, the City Manager/Director of Emergency Services’ order states that all fees associated with the programs shall be waived.

The Community Development Department (CDD) and Department of Public Works (DPW) streamlined the approval process for restaurants who wished to participate. CDD created a short checklist for business owners to submit to the City self-certifying property owner approval, compliance with County orders such as social distancing, and health and safety measures to protect customers and employees. Additionally, businesses are required to comply with the Americans with Disabilities Act ("ADA"). For uses on a public sidewalk, DPW modified its process to allow businesses to self-certify compliance and required similar ADA and social distancing requirements.

The program for outdoor uses on the public right of way does not include expanded business operations on public streets. To the extent that a business owner wanted to use a public roadway, including on-street parking stalls, for outdoor business activity, they would still be required to apply for and obtain an encroachment permit (subject to a case-by-case discretionary review), from the Department of Public Works, which includes payment of a fee, insurance, and a traffic control plan.

Staff anticipates that the program will be in place until a subsequent order by the City Manager/Director of Emergency Services or City Council, or until the local emergency is declared over. Staff recommends that Council adopt the attached resolution ratifying the emergency order pursuant to California Government Code Section 8634 and SMC Section 2.16.040(a)(6)(A).

Council's adoption of the Resolution (Attachment 2) confirms and ratifies the actions taken by the Director of Emergency Services.

FISCAL IMPACT

The City Manager/Director of Emergency Services has waived all fees associated with the program approval process. It is anticipated that any costs associated with staff time to review self-certification requests can be absorbed by the departments.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, Sunnyvale Public Library and Department of Public Safety. In addition, the agenda and report are available at the Office of the City Clerk and on the City's website.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15320, 15378, and 15061(b)(3) as it is an organizational structure change and does not have the potential to result in either a direct or reasonable foreseeable indirect physical change in the environment.

RECOMMENDATION

Adopt a Resolution Ratifying the City Manager/Director of Emergency Services' Order Regarding Temporary Outdoor Business Activities on Public and Private Property in the City of Sunnyvale.

Prepared by: Anais Martinez Aquino, Assistant City Attorney

Reviewed by: John A. Nagel, City Attorney

Reviewed by: Jaqui Guzmán, Deputy City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. September 2, 2020 Local Emergency Order by the City of Sunnyvale City Manager/ Director of Emergency Services Regarding Temporary Outdoor Business Activities on Public and Private Property in the City of Sunnyvale.
2. Draft Resolution