

**DECLARATION OF THE DIRECTOR OF
EMERGENCY SERVICES OF THE CITY OF
SAN JOSE SUSPENDING ENFORCEMENT
OF CERTAIN PROVISIONS IN LAND USE
PERMITS AND APPROVALS AND ZONING
AND ENCROACHMENT REQUIREMENTS IN
THE SAN JOSE MUNICIPAL CODE**

WHEREAS, on March 10, 2020, the City Council of the City of San José (“City”) ratified the Director of Emergency Service’s Proclamation of Local Emergency due to the outbreak of a novel coronavirus in the City; and

WHEREAS, pursuant to California Government Code Section 8634 and San José Municipal Code Section 8.08.250, I am empowered upon the proclamation of a local emergency to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; and

WHEREAS, on March 31, 2020, the Health Officer of Santa Clara County issued an Order directing all individuals to continue to shelter in place and requiring essential business to implement Social Distancing Protocols; and

WHEREAS, on May 18, 2020, the Health Officer of the County of Santa Clara issued a further Order continuing the Social Distance Protocol but allowing retailers to open with curbside/outdoor pick up, supply chains for retail establishments to reopen, and certain outdoor activities to resume; and

WHEREAS, on June 1, 2020, the Health Officer of the County of Santa Clara issued a further Order effective June 5, 2020 continuing the Social Distance Protocol but allowing certain additional businesses to resume operations, including outdoor dining at restaurants, in-store shopping at retail and shopping centers and limited services that do not require customer contact, subject to limitations; and

WHEREAS, provisions in land use permits and planning approvals issued by the City and/or provisions in the San José Zoning Code prohibit the use of adjacent outdoor private property for the purposes of conducting business activities without the City’s authorization; and

WHEREAS, Title 13 of the San José Municipal Code prohibits encroachments into the public right-of-way or other public property without first obtaining an encroachment permit from the City through specified application processes; and

WHEREAS, to ensure compliance with the County Social Distancing Protocol, businesses need additional outdoor areas to serve customers and allow customers to queue while waiting to enter the business premises; and

WHEREAS, under conditions of the emergency and in the interest of public health and safety, it is deemed necessary to suspend enforcement of certain provisions in land use permits and planning approvals issued by the City and certain provisions in the San José Municipal Code; and

WHEREAS, life and property are deemed to be in peril and speed is of the essence.

NOW, THEREFORE, BE IT RESOLVED, I, David Sykes, as Director of Emergency Services, declare that the City shall, subject to the conditions and limitations contained in Exhibit A and Exhibit B hereto, which are incorporated herein and shall constitute part of this regulation, suspend enforcement of provisions contained in land use permits or other planning approvals and the provisions of the San José Municipal Code, including, without limitation, those contained in Titles 13 and 20, that are in conflict with the terms of this regulation. This regulation shall apply only to businesses operating from a building within the City; mobile businesses of any type are not covered by this regulation. Except as expressly exempted in Exhibit A or Exhibit B, businesses shall continue to comply with all other requirements in their approved land use permits or other planning approvals and applicable City, County, State and Federal laws, orders and regulations, including, without limitation, Orders from the County of Santa Clara Health Officer, the California Retail Food Code, the California Alcoholic Beverage Control Act and regulations and notices issued by the Department of Alcoholic Beverage Control (ABC), the San José Fire Code, the San José Building Code and the Americans with Disabilities Act (ADA); and

BE IT FURTHER RESOLVED that this regulation shall become effective as of 12:01 a.m. on June 5, 2020 and remain in effect until December 31, 2020, such time as it is terminated or modified by the City Council or the termination of the local state of emergency, whichever occurs first; and

BE IT FURTHER RESOLVED, any violation of this regulation shall be subject to enforcement and penalty as provided under San José Municipal Code Section 8.08.260.

Date

David Sykes
Director of Emergency Services

EXHIBIT A
CONDITIONS AND LIMITATIONS FOR
USE OF ADJACENT PRIVATE PROPERTY

Businesses may expand their existing permitted operations outdoors onto privately-owned, paved areas contiguous to their existing building, including parking lots or vacant lots, subject to the following conditions and limitations.

1. LOCATION OF OUTDOOR OPERATIONS

For purposes of this regulation, an “Outdoor Business Area” is defined as a privately-owned, paved outdoor area that is adjacent to a business’ existing building(s) and that measures up to a maximum of one hundred twenty-five feet (125’) from the face of the building, subject to the following:

- a. An Outdoor Business Area shall not be within fifteen feet (15’) of a fire hydrant in any direction and cannot block any San José Fire Department connections.
- b. An Outdoor Business Area shall not restrict access to or encompass more than fifty percent (50%) of the total available parking spaces of the business’ parking area and shall not restrict existing ADA accessible parking spaces or improvements.
- c. An Outdoor Business Area shall not restrict an emergency vehicle access route.
- d. The boundaries of an Outdoor Business Area shall be a minimum of fifty feet (50’) away from any residential property, except that the residential portion of a mixed use development shall not be considered when determining whether this requirement is satisfied for an Outdoor Business Area that is part of the same mixed use development.

2. ELIGIBLE BUSINESSES

The only businesses eligible to use an Outdoor Business Area under this regulation shall be those (1) allowed to operate under the Health Orders of Santa Clara County, as amended, and (2) with any of the following zoning designations as identified in Table 20-90 of the City’s Zoning Code:

- a. General Retail
- b. Education and Training
- c. Entertainment and Recreation, except Relocated Cardroom
- d. Food Services
- e. General Services
- f. Health and Veterinary Services, except Animal Grooming
- g. Offices and Financial Services
- h. Public, Quasi-Public and Assembly Uses
- i. Sale, Vehicle Parts only within the category of Vehicle Related Uses

3. LIMITATIONS ON PERMITTED OPERATIONS

Businesses may conduct their permitted business operations in an Outdoor Business Area, subject to the limitations in this section.

- a. Canopies shall not exceed seven hundred (700) square feet in area.
- b. Tents shall not exceed four hundred (400) square feet in area.
- c. Flames of any type shall not be used in the Outdoor Business Area, including, without limitation, stoves, burners and candles, with the sole exception of heat lamps.
- d. Cooking or food preparation shall not be allowed in the Outdoor Business Area.
- e. Generators – gas or diesel – shall not be used in the Outdoor Business Area.
- f. Electrical extension cords may be used in the Outdoor Business Area subject to the following:
 - i. Extension cords shall be listed and labeled as outdoor rated in accordance with UL 817;
 - ii. Extension cords shall be secured in a manner that is compliant with ADA accessibility standards, does not impede any person's path of travel and does not constitute a tripping hazard; and
 - iii. All extension cords shall be disconnected from their electrical sources each day at the conclusion of operations in the Outdoor Business Area.
- g. Amplified sound or entertainment shall not be allowed in the Outdoor Business Area.
- h. Business may be conducted in an Outdoor Business Area daily between the hours of 7 a.m. and 10 p.m.
- i. Notwithstanding anything to contrary in this regulation, the Director of Planning, Building and Code Enforcement may adopt additional limitations on uses allowed in an Outdoor Business Area necessary to protect the public health, safety or welfare, including, without limitation, the locations of a business' operations for emergency vehicle access or public safety reasons.

4. OTHER REQUIREMENTS

- a. Nothing in this regulation authorizes an eligible business to operate in an Outdoor Business Area that it does not have the legal right to use. Eligible businesses shall be responsible for obtaining any consent from property owners or others necessary to use an Outdoor Business Area.
- b. The text of this regulation shall be posted in each Outdoor Business Area and a copy of the site diagram submitted as part of a business' registration shall be kept at each respective business premises.

5. REGISTRATION PROCESS

Before an eligible business may begin using an Outdoor Business Area, the business shall register online in accordance with the following:

- a. The business shall register their use of an Outdoor Business Area through the City's web site. There shall be no fee for registering.
- b. As part of the online registration process, businesses must provide the following:
 - i. The business' name and address;
 - ii. The business owner's contact information;
 - iii. The contact information for the business' primary on-site contact person;
 - iv. Business Tax Certificate Number;
 - v. A site diagram showing all of the following:
 1. Dimensions of the proposed Outdoor Business Area;
 2. Distance and physical relationship between a business' existing building, the proposed Outdoor Business Area and vehicle parking and circulation areas, if applicable;
 3. The layout of any furnishings, materials or equipment to be used in the Outdoor Business Area; and
 4. An outline of the boundaries of the proposed area where alcohol will be served, if applicable.
 - vi. Any authorization from ABC for the business to serve alcohol in the Outdoor Business Area.
- c. Following registration, a business may immediately begin using the Outdoor Business Area pending the City's review of the registration submission to determine whether it meets the requirements of this regulation.
- d. If a submittal does not comply with the registration requirements, the City will contact the business, which shall immediately cease use of the Outdoor Business Area and correct any deficiencies prior to continuing to use of the Outdoor Business Area.

6. ADMINISTRATION

The provisions of this Exhibit A shall be under the administration of the Director of Planning, Building and Code Enforcement.

EXHIBIT B

CONDITIONS AND LIMITATIONS FOR USE OF ABUTTING PUBLIC SIDEWALKS

Restaurants and other businesses that provide sit-down food service may provide food and beverage service on public sidewalks abutting their property, and any other type of business may provide seating on public sidewalks abutting their property, subject to the following conditions and limitations.

1. LOCATION OF SIDEWALK USE

For purposes of this regulation, an “Abutting Sidewalk Area” is defined as a public sidewalk abutting a business’ property, subject to the following limitations:

- a. The Abutting Sidewalk Area shall not extend beyond the business frontage; and
- b. The Abutting Sidewalk Area shall include a minimum clear pedestrian through zone (*i.e.*, contains no objects) along its entire length that is at least four feet (4’) wide with seven feet (7’) of vertical clearance above the sidewalk surface.

2. ELIGIBLE BUSINESSES

Only businesses allowed to operate under the Health Orders of Santa Clara County, as amended, are eligible to use an Abutting Sidewalk Area under this regulation.

3. LIMITATIONS ON PERMITTED OPERATIONS

- a. Restaurants and other businesses that provide sit-down food service may use an Abutting Sidewalk Area for food and beverage service, subject to the limitations in this section.
- b. All businesses other than restaurants and other businesses that provide sit-down food service may use an Abutting Sidewalk Area only to provide seating for the public and customers waiting to enter the business establishment. No other business operations shall be conducted on public property under this regulation.
- c. Only tables, chairs, benches, umbrellas, other moveable furniture and barriers required by ABC may be placed in an Abutting Sidewalk Area and shall be subject to the following:
 - i. Items placed in the Abutting Sidewalk Area shall be set back a minimum of five feet (5’) from building corners;
 - ii. Items placed in the Abutting Sidewalk Area shall be set back a minimum of two feet (2’) from the curb;
 - iii. Items placed in the Abutting Sidewalk Area shall not obstruct doorways, fire equipment/connections or interfere with a building’s ingress/egress; and

- iv. Items placed in the Abutting Sidewalk Area shall comply with the City's current Building Code and applicable ADA accessibility standards.
- d. No part of the Abutting Sidewalk Area or any other public property shall be physically altered pursuant to this regulation, including by attaching any objects to the sidewalk.
- e. The following are prohibited in the Abutting Sidewalk Area:
 - i. Flames of any type, including, without limitation, stoves, burners, heat lamps and candles;
 - ii. Amplified sound or entertainment;
 - iii. Advertising;
 - iv. Consumption of alcohol except in compliance with ABC rules and regulations;
 - v. Smoking; and
 - vi. Storage of materials or equipment, including, without limitation, movable furniture.
- f. An Abutting Sidewalk Area may be used in accordance with this regulation daily between the hours of 7 a.m. and 10 p.m.
- g. All items placed in an Abutting Sidewalk Area shall be removed each day at the conclusion of a business' operations in the Abutting Sidewalk Area.
- h. The Abutting Sidewalk Area shall be maintained in good condition and kept free of litter and graffiti.

4. OTHER REQUIREMENTS

Any conflicting provisions contained in an existing permit or authorization from the City allowing sidewalk seating or dining are superseded while this regulation is in effect.

5. REGISTRATION PROCESS

Before an eligible business may begin using an Abutting Sidewalk Area, the business shall register online in accordance with the following:

- a. The business shall register their use of an Abutting Sidewalk Area through the City's web site. There shall be no fee for registering.
- b. As part of the online registration process, businesses must (a) consent to standard terms and conditions on the registration website and (b) upload a certificate of insurance meeting the requirements set forth on the registration website.
- c. Following registration, a business shall have the City's conditional approval – allowing the business to immediately begin using the Abutting Sidewalk Area – pending the City's review of the registration submission to determine whether it meets the requirements of this regulation.
- d. If a submittal does not comply with the registration requirements, the City will contact the business, which shall immediately cease use of the Abutting

Sidewalk Area and correct any deficiencies prior to continuing to use of the Abutting Sidewalk Area.

6. ADMINISTRATION

The provisions of this Exhibit B shall be under the administration of the Director of Public Works.