

RESOLUTION NO. 35-2020

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA RATIFYING
ORDER NO. 2020-02 OF THE DIRECTOR OF EMERGENCY SERVICES
RELATING TO OPERATION OF OUTDOOR COMMERCIAL ACTIVITY IN THE
PUBLIC RIGHT OF WAY AND ON PRIVATE PROPERTY DURING PERIOD OF
LOCAL EMERGENCY DUE TO COVID-19**

WHEREAS, Government Code section 8630 and section 4-2.01 *et seq.* of the Pacifica Municipal Code (“PMC”) empower the Director of Emergency Services to proclaim the existence or threatened existence of a local emergency when the City Council is not in session, subject to confirmation by the City Council at the earliest possible time; and

WHEREAS, on March 16, 2020, the City Manager in his capacity as Director of Emergency Services, issued a Proclamation of Local Emergency due to the global pandemic resulting from the novel coronavirus (“COVID-19”); and

WHEREAS, on March 18, 2020, the Proclamation of Local Emergency was ratified by the City Council through Resolution No. 18-2020; and

WHEREAS, on March 16, 2020, as a result of the widespread community transmission of COVID-19, the Health Officer of the County of San Mateo (“Health Officer”) issued an Order for all County residents to shelter in place except for certain essential activities. This mandate to shelter in place was extended and superseded by Order No. c19-5b dated March 31, 2020, Order No. c19-5c dated April 29, 2020, Order No. c19-5d on May 15, 2020 and Order No. c19-5e on May 28, 2020 and Order No. c19-5f on June 4, 2020 and all referenced appendices (collectively, the “County Health Requirements”); and

WHEREAS, on May 4, 2020, by Executive Order N-60-20, the Governor of the State of California directed the public to continue to follow the directives of the State Public Health Officer and county health officers when more restrictive and noting the continued threat of the global COVID-19 pandemic, but allowing reopening of lower risk businesses to reopen pursuant to a framework developed by the State Public Health Officer; and

WHEREAS, pursuant to section 15(f)(xvi) of County Health Order No. c19-5f, “Essential Business” is defined in part to include, “...restaurants and other facilities that prepare and serve food, but only for delivery or carry out, except to the extent as modified by Appendix C-1 ...;” and

WHEREAS, Appendix C1 of County Order No. c19-5f issued on June 4, 2020, allows “outdoor dining”, effective June 6, 2020, subject to certain restrictions and provides that outdoor dining provides access to freshly prepared meals at a relatively low risk of transmission; because food service will be limited to outdoor areas, the

overall volume of increased activity will be modest; interactions and activities that occur outdoors carry a lower risk of transmission than most indoor interactions and activities; and risks associated with these operations can be substantially mitigated with conditions to ensure adequate social distancing and limit intermixing between households; and

WHEREAS, pursuant to PMC section 9-4.2308, the City of Pacifica requires that all commercial and industrial uses conducted in any Commercial (“C”) or Manufacturing (“M”) District be conducted entirely within an enclosed structure unless a use permit is obtained, except for certain specified temporary outdoor commercial activity; and

WHEREAS, pursuant to Chapter 2, of Title 7 of the PMC any activity in the public right-of-way, requires an encroachment permit from the City; and

WHEREAS, the City must consider making alterations to normal permitting requirements for certain outdoor commercial activity to allow businesses to extend their operations outdoors in a timely and safe manner, so as to provide a safe environment for customers; and

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

WHEREAS, in order to protect the health and safety of the City, while fostering economic well-being of the City's citizens and businesses, the City wishes to assist businesses in remaining open, or re-opening when lawfully permitted to do so; and

WHEREAS, when non-essential businesses are permitted to re-open pursuant to State and County orders, laws, and/or guidance, the City will suspend certain permit and license requirements in order to facilitate business operations in a manner that is consistent with County Health Requirements including all social distancing requirements, and protects the health and safety of the citizens of Pacifica; and

WHEREAS, under authority contained in Sections 8610 and 8634 of the Government Code and PMC section 4-2.06(a) the City Manager is empowered, as the Director of Emergency Services, to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by the emergency; however, such rules and regulations must be confirmed by the City Council at the earliest practicable time; and

WHEREAS, the City Manager is also empowered, as the Director of Emergency Services to execute all ordinary powers as City Manager, all the special powers conferred upon him by any statute or agreement approved by the City Council or by any other lawful authority, and, in conformity with the provisions of Section 38791 of the Government Code of the State, to exercise complete authority over the City and all police powers vested in the City by Constitution and general laws of the State; and

WHEREAS, on June 5, 2020 at 6:30 p.m., the City Manager, in his capacity as Director of Emergency Services, issued Order No. 2020-02, pursuant to PMC section 4-2.06, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19; and

WHEREAS, on June 8, 2020, in accordance with Government Code section 54954.2(b)(2), the City Council determined that there was a need to take immediate action to ratify Order No. 2020-02 and that the need for action came to the attention of the City after the agenda for the June 8, 2020 City Council meeting was posted.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Pacifica hereby finds that the City must take immediate action to permit certain outdoor commercial activity to allow businesses to extend their operations outdoors to prevent exposure to COVID-19 and to provide a safe environment for customers in compliance with State Executive Orders and Guidelines and County Health Orders.

BE IT FURTHER RESOLVED, that the City Council hereby ratifies and confirms Order No. 2020-02 of the Director of Emergency Services Relating to Operation of Outdoor Commercial Activity in the Public Right of Way and on Private Property During the Period of Local Emergency Due to COVID-19 and Exhibit A, attached thereto, which are attached hereto.

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica, California, held on the 8th day of June, 2020, by the following vote:

AYES, Councilmembers: Martin, Beckmeyer, Vaterlaus, Bier, O'Neill.

NOES, Councilmembers: None.


ABSENT, Councilmembers: None.

ABSTAIN, Councilmembers: None.


Deirdre Martin (Jun 11, 2020 18:08 PDT)

Deirdre Martin, Mayor

APPROVED AS TO FORM:


Michelle Marchetta Kenyon, City Attorney

ATTEST:



Sarah Coffey, City Clerk

Exhibit A

**ORDER OF THE DIRECTOR OF EMERGENCY SERVICES RELATING TO
OPERATION OF OUTDOOR COMMERCIAL ACTIVITY IN THE PUBLIC RIGHT OF
WAY AND ON PRIVATE PROPERTY DURING PERIOD OF LOCAL EMERGENCY
DUE TO COVID-19 (ORDER NO. 2020-02)**

WHEREAS, Government Code section 8630 and section 4-2.01 *et seq.* of the Pacifica Municipal Code (“PMC”) empower the Director of Emergency Services to proclaim the existence or threatened existence of a local emergency when the City Council is not in session, subject to confirmation by the City Council at the earliest possible time; and

WHEREAS, on March 16, 2020, the City Manager in his capacity as Director of Emergency Services, issued a Proclamation of Local Emergency due to the global pandemic resulting from the novel coronavirus (“COVID-19”); and

WHEREAS, on March 18, 2020, the Proclamation of Local Emergency was ratified by the City Council through Resolution No. 18-2020; and

WHEREAS, on March 16, 2020, as a result of the widespread community transmission of COVID-19, the Health Officer of the County of San Mateo (“Health Officer”) issued an Order for all County residents to shelter in place except for certain essential activities. This mandate to shelter in place was extended and superseded by Order No. c19-5b dated March 31, 2020, Order No. c19-5c dated April 29, 2020, Order No. c19-5d on May 15, 2020 and Order No. c19-5e on May 28, 2020 and Order No. c19-5f on June 4, 2020 and all referenced appendices (collectively, the “County Health Requirements”); and

WHEREAS, on May 4, 2020, by Executive Order N-60-20, the Governor of the State of California directed the public to continue to follow the directives of the State Public Health Officer and county health officers when more restrictive and noting the continued threat of the global COVID-19 pandemic, but allowing reopening of lower risk businesses to reopen pursuant to a framework developed by the State Public Health Officer; and

WHEREAS, pursuant to section 15(f)(xvi) of County Health Order No. c19-5f, “Essential Business” is defined in part to include, “...restaurants and other facilities that prepare and serve food, but only for delivery or carry out, except to the extent as modified by Appendix C-1 ...;” and

WHEREAS, Appendix C1 of County Order No. c19-5f, allows “outdoor dining,” subject to certain restrictions and provides that outdoor dining provides access to freshly prepared meals at a relatively low risk of transmission; because food service will be limited to outdoor areas, the overall volume of increased activity will be modest; interactions and activities that occur outdoors carry a lower risk of transmission than most indoor interactions and activities; and risks associated with these operations can be substantially mitigated with conditions to ensure adequate social distancing and limit intermixing between households; and

WHEREAS, pursuant to PMC section 9-4.2308, the City of Pacifica requires that all commercial and industrial uses conducted in any Commercial (“C”) or Manufacturing (“M”) District be conducted entirely within an enclosed structure unless a use permit is obtained, except for certain specified temporary outdoor commercial activity; and

WHEREAS, pursuant to Chapter 2, of Title 7 of the PMC any activity in the public right-of-way, requires an encroachment permit from the City; and

WHEREAS, the City must consider making alterations to normal permitting requirements for certain outdoor commercial activity to allow businesses to extend their operations outdoors in a timely and safe manner, so as to provide a safe environment for customers; and

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

WHEREAS, in order to protect the health and safety of the City, while fostering economic well-being of the City's citizens and businesses, the City wishes to assist businesses in remaining open, or re-opening when lawfully permitted to do so; and

WHEREAS, when non-essential businesses are permitted to re-open pursuant to State and County orders, laws, and/or guidance, the City will suspend certain permit and license requirements in order to facilitate business operations in a manner that is consistent with County Health Requirements including all social distancing requirements, and protects the health and safety of the citizens of Pacifica; and

WHEREAS, under authority contained in Sections 8610 and 8634 of the Government Code and PMC section 4-2.06(a) the City Manager is empowered, as the Director of Emergency Services, to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by the emergency; however, such rules and regulations must be confirmed by the City Council at the earliest practicable time; and

WHEREAS, the City Manager is also empowered, as the Director of Emergency Services to execute all ordinary powers as City Manager, all the special powers conferred upon him by any statute or agreement approved by the City Council or by any other lawful authority, and, in conformity with the provisions of Section 38791 of the Government Code of the State, to exercise complete authority over the City and all police powers vested in the City by Constitution and general laws of the State; and

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary to issue and implement this Order to protect life, property and civil order.

NOW, THEREFORE, BE IT RESOLVED, that I, Kevin Woodhouse, as the Director of Emergency Services of the City of Pacifica do hereby declare that the following rules and regulations are necessary and order the following:

SECTION 1. Suspension of Use Permit and Special Use Permit Procedures. To facilitate the reopening of certain businesses to engage in outside activities in a manner that is consistent with State Guidelines, Executive Orders and County Health Requirements (“State and County Orders”) related to COVID-19, the requirement to obtain a use permit for outdoor and temporary special use permit pursuant to Sections 9-4.2308 and 9-4.2305 of the Pacifica Municipal Code and any other regulations and/or policies that would otherwise prohibit businesses from engaging in their business activities outside are hereby suspended in accordance with the provisions of this Order.

SECTION 2. Application of this Order. Only those businesses that are authorized to operate pursuant to the County Health Requirements and require outdoor space in order to effectively run their business while complying with State and County Orders, are eligible to operate outdoors pursuant to the provisions of this Order. Nothing in this Order shall authorize a particular business to operate outside unless and until that business is authorized to operate pursuant to State and County Orders. All businesses must be in full compliance with all State and County Orders regarding business reopening and operation in order to comply with this Order.

SECTION 3. Temporary COVID-19 Outdoor Activities and Encroachment Agreement. Existing businesses that do not currently have a use permit or temporary special use permit to operate their business outside of an enclosed structure in any C or M district (“Outdoor Activities”) shall be required to enter into a Temporary COVID-19 Outdoor Activities and Encroachment Agreement (hereinafter the "Outdoor Activities Agreement"), in the form provided by the City to be eligible to engage in Outdoor Activities. However, in order to allow certain businesses to begin operations as quickly as possible, Outdoor Activities that will occur completely within or on private property may commence, with property owner permission, on the effective date of County Health Order No. c19-5f, June 6, 2020, provided that an application for an Outdoor Activities Agreement is submitted to the City within ten business days of the date of this Order. Upon commencement of Outdoor Activities until the Outdoor Activities Agreement is executed, the minimum operational standards identified in Exhibit A, attached hereto, shall be observed. The Outdoor Activities Agreement may provide additional requirements and standards than those set forth in the minimum operational standards, if appropriate.

An Outdoor Activities Agreement on private property shall be available only to those current tenants of an existing shopping center or commercial structure and shall not be available to mobile businesses or vacant property or on property without commercial tenants.

The Director of Emergency Operations or his designee shall be authorized to enter into an Outdoor Activities Agreement with the applicant and shall be entitled to seek the review of any City staff regarding any and all site-specific considerations related to the proposed Outdoor Activities, and make any necessary changes to the Outdoor Activities Agreement based on those site-specific considerations, to ensure ongoing protection of the public health and safety of the City.

Outdoor Activities in the public right-of-way are also subject to the requirements of this Order including obtaining an Outdoor Activities Agreement prior to commencing any Outdoor Activities in the public right-of-way.

SECTION 4. Encroachment Into Public Right-of-Way. To streamline the issuance of temporary rights of encroachment into the public right-of-way, the City hereby amends its encroachment permit process as follows:

1. Pacifica Municipal Code §§ 7-2.101; 7-2.102, 7-2.105, 7-2.108, 7-2.109, 7-2.110, 7-2.111, 7-2.112 regarding encroachment permits shall not apply to businesses who enter into an Outdoor Activities Agreement for purposes of conducting Outdoor Activities in compliance with State and County Orders subject to the provisions of this Order.

2. Businesses seeking to encroach into the public right way for purposes of conducting Outdoor Activities in compliance with State and County Orders shall execute an Outdoor Activities Agreement in lieu of obtaining encroachment permits.

SECTION 5. No Interference with Private Property. Nothing in this Order relieves a business from any obligations or laws requiring consent of adjacent property owners for use of private property. Businesses seeking to operate outdoors shall obtain consent of any private property owners whose property will be used for outdoor operations. Nothing in this Order is intended to circumvent private property agreements or leases and conveys no rights to operate a use or conduct commercial activities outdoors.

SECTION 6. Building Permit and Design Review Required. Nothing in this Order relieves a business from the requirement to obtain a building permit for Outdoor Activities if a building permit would otherwise be required, nor does this order relieve a business from complying with all provisions of the Building Code, including but not limited to, maximum occupancy requirements. Nothing in this Order relieves a business from the requirement to undergo design review for exterior alterations if such design review is required pursuant to applicable provisions of the Pacifica Municipal Code, except that temporary installments, including but not limited to, tents, fencing, barriers and enclosures, may be authorized in the Outdoor Activity Agreement to facilitate proposed Outdoor Activities.

SECTION 7. County Permits. Nothing in this Order relieves a business from the requirement to obtain any and all County permits regarding the provision of food and dining services.

SECTION 8. Violations of Order. Any violation of this Order or any other local, State, or Federal law shall constitute an imminent threat to the public health and is hereby declared to be a public nuisance and shall be subject to enforcement as such; violations of this order may result in the immediate termination of an Outdoor Activities Agreement and the cessation of any activities authorized by said Agreement and this Order.

SECTION 9. Effective Date of Order. This Order shall become effective on the date signed by the Director of Emergency Operations for the City of Pacifica and shall expire when repealed or upon a declared termination of the state of emergency regarding COVID-19 by the Pacifica City Council. This Order shall only apply to the extent businesses are authorized to operate pursuant to State and County orders regarding essential businesses.

Date and time: 6:30pm June 5, 2020


By: _____
Kevin Woodhouse, Director of Emergency Services

ATTEST:



Sarah Coffey, City Clerk

Exhibit A

Eligibility

1. Outdoor Activities (as defined in Order 2020-02) operations on private property shall be available only for those current tenants of the shopping center or commercial building and shall not be available to mobile businesses, or on vacant property, or on property without commercial tenants.
2. All Outdoor Activities conducted on private property must be done with consent of property owner.

Safety, Location, Accessibility

3. All Outdoor Activities shall be consistent with State Guidelines, Executive Orders and County Health Requirements issued by the State and County in response to COVID-19 ("State and County Orders"). Outdoor Activities must, at all times, be operated in accordance with State, and County Orders, including but not limited to, health guidelines regarding number of patrons, disinfectants, table spacing, use of shared materials, staff hygiene, and social distancing.
4. No permanent item or structures shall be installed on City of Pacifica property. No permanent or temporary signage shall be affixed to any publicly owned structure, including but not limited to streetlights, benches, bus shelters, or similar appurtenances.
5. The Outdoor Activity use area shall be contiguous to commercial structures or walkways immediately adjacent to structures. Businesses on private property shall utilize outdoor space contiguous to their tenant space unless authorized by the landlord to use other space contiguous to commercial structures or walkways immediately adjacent to structures. Notwithstanding the foregoing, a landlord may designate an alternative location for consolidated outdoor dining of take-away meals provided all other provisions of this Order and County Health Orders are followed.
6. Temporary barriers not exceeding three (3) feet in height shall be placed in a safe manner around the Outdoor Activity area.
7. The Outdoor Activity area must remain clear of drive aisles and fire lanes necessary to provide adequate vehicular circulation and access by public safety vehicles in the event of a fire, medical, or other emergency.
8. A temporary accessible ramp from curb to Outdoor Activity area is required if a permanent ramp is not already available.
9. Accessible parking stalls, accessible van loading areas, and associated paths of travel shall not be impeded by Outdoor Activity areas.

10. Restaurants shall not be permitted to expand beyond pre-Covid-19 seating capacity.
11. No permanent item or structures shall be installed on the outdoor use area.
12. All walkways and sidewalks shall maintain a four-foot clear path of travel.

Operations

13. Temporary canopies or tents must comply with fire requirements. Permits from the North County Fire Department are required for canopies or tents over 400 Sq Ft.
14. Hours of operation for Outdoor Activity uses shall not exceed the normal hours of operation for the corresponding business with which the outdoor use is associated.
15. Outdoor Activity use areas shall be maintained free of trash and debris.
16. Any outdoor alcohol consumption shall be in compliance with the rules and regulations of the Department of Alcoholic Beverage Control and County Health Orders.
17. No outdoor music or entertainment is permitted.
18. Outdoor cooking or grilling is not permitted.