

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

WHEREAS, on March 16, 2020, the City Council of the City of San Leandro ("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 Leandro Municipal Code Section 3-4-130(a), 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 16, 2020, the Health Officer of Alameda County issued an Order directing all individuals to shelter in place and requiring essential businesses to implement Social Distancing Protocols; and

WHEREAS, on May 18, 2020, the Health Officer of the County of Alameda issued a further Order continuing the Social Distancing 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 5, 2020, the Health Officer of the County of Alameda issued a further Order effective June 8, 2020, continuing the Social Distancing Protocol but allowing certain additional businesses, recreational, social and cultural activities to resume and requiring that all businesses and organizations allowed to operate develop and comply with a Site Specific Protection Plan; and

WHEREAS, on June 12, 2020, the Health Officer of the County of Alameda issued a press release announcing that on June 19, 2020 Alameda County plans to allow outdoor museums, outdoor restaurant dining, religious services, indoor/outdoor retail, and outdoor fitness classes to reopen, subject to continuance of Social Distancing Protocol and compliance with a Site Specific Protection Plan; and

WHEREAS, provisions in land use permits and planning approvals issued by the City and/or provisions in the San Leandro 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 5 of the San Leandro 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 Leandro Zoning Code and Municipal Code; and

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

NOW, THEREFORE, BE IT RESOLVED, I, Jeff Kay, 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 Leandro Zoning Code or Municipal Code, including, without limitation, those contained in Title 5, 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 Alameda 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 Leandro Fire Code, the San Leandro 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 19, 2020 and remain in effect until December 31, 2020, or the termination of the local state of emergency, whichever occurs first; or as otherwise terminated, modified or extended by the San Leandro City Council; and

BE IT FURTHER RESOLVED, any violation of this regulation shall be subject to enforcement and penalty as provided under San Leandro Municipal Code Chapter 1-12.

June 17, 2020  
Date

  
Jeff Kay  
Director of Emergency Services

## EXHIBIT A

### CONDITIONS AND LIMITATIONS FOR USE OF PRIVATE PROPERTY

Eligible businesses may expand their existing permitted operations outdoors onto privately-owned, paved areas within a reasonable distance of their existing building, including walkways, 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 within a reasonable distance of a business' existing building(s), subject to the following:

- a. An Outdoor Business Area shall not be located within fifteen feet (15') of a fire hydrant in any direction and cannot block any Fire Department connections.
- b. An Outdoor Business Area shall not reduce the amount of existing ADA accessible parking spaces or improvements.
- c. An Outdoor Business Area shall not restrict an emergency vehicle access (EVA) route.
- d. An Outdoor Business 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.

#### 2. ELIGIBLE BUSINESSES

The only businesses eligible to use an Outdoor Business Area under this regulation shall be any of the following land uses, at which time they are allowed to operate under the Health Orders of Alameda County, as amended:

- a. Business Services
- b. Cafes
- c. Brewpub
- d. Convenience Stores
- e. Department Stores
- f. Drugstores
- g. Farmers' Market
- h. Fast Food Establishments, Large Scale
- i. Fast Food Establishments, Small Scale
- j. Furniture, Electronics, and Appliance Sales
- k. Health and Fitness Centers
- l. Home Improvement and Interior Decoration
- m. Instruction and Improvement Services
- n. Neighborhood/Specialty Food Markets
- o. Nurseries
- p. Offices, Business and Professional
- q. Regional Mall
- r. Restaurants, Full-Service
- s. Retail Sales
- t. Retail Sales, Big Box

- u. Retail Services
- v. Secondhand Sales
- w. Supermarkets

### 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. Outdoor Business Areas shall be designed to maintain clear existing legal exits from the building to the public way. A minimum 44-inch wide exit path must be maintained from the building and Outdoor Business Area.
- b. Outdoor Business Areas with an occupancy greater than 50 require two exits.
- c. Outdoor Business Areas shall comply with ADA requirements.
- d. A separate review, approval, and issuance of a fire code operational permit by the Alameda County Fire Department (ACFD) is required for tents open on all sides with a cumulative total floor area of 700 square feet or more and/or tents with one side or more in excess of 400 square feet to ensure compliance with 2019 California Fire Code Requirements as adopted by the City of San Leandro.
- e. 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 located outside of tents or canopies.
- f. Heating units shall have a UL or AGA listing. Heating units shall not be installed over or near exits from the building. Units shall maintain the required clearances from combustible materials. A minimum of 6'8" headroom clearance shall be maintained under heating unit.
- g. Cooking or food preparation shall not be allowed in the Outdoor Business Area.
- h. Generators – gas or diesel – shall not be used in the Outdoor Business Area.
- i. 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 plugged into an outlet with a GFI protected circuit;
  - iii. 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
  - iv. Extension cords shall be disconnected from their electrical sources each day at the conclusion of operations in the Outdoor Business Area.
- j. Only tables, chairs, benches, umbrellas, other moveable furniture and barriers required by ABC may be placed in an Outdoor Business Area and shall be subject to the following:
  - i. Items placed in the Outdoor Business Area shall be set back a minimum of five feet (5') from building corners;

- ii. Items placed in the Outdoor Business Area shall not obstruct doorways, fire equipment/connections or interfere with a building's ingress/egress; and
- iii. Items placed in the Outdoor Business Area shall comply with the City's current Building Code and applicable ADA accessibility standards.
- iv. Adequate waste receptacles shall be provided both within and around the Outdoor Business Area. The business operator shall be responsible for daily pick-up of discarded and wind-blown waste, and debris at the premise and the surrounding areas.
- k. No part of the Outdoor Business Area shall be physically altered pursuant to this regulation, including by attaching any objects to the pavement.
- l. The following are prohibited in the Outdoor Business Area:
  - i. Amplified sound or entertainment in such a manner as to disturb the peace, quiet and comfort of neighboring residents or persons of normal sensitivity;
  - ii. Advertising;
  - iii. Consumption of alcohol except in compliance with ABC rules and regulations;
  - iv. Smoking; and
  - v. Storage of materials or equipment.
- m. Business may be conducted in an Outdoor Business Area daily between the hours of 7 a.m. and 10 p.m.
- n. Notwithstanding anything to the contrary in this regulation, the Community Development Director 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 consent from property owners or others necessary to use an Outdoor Business Area.

5. REGISTRATION PROCESS

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

- a. The business shall register its Outdoor Business Area with the City by submitting a registration form. There shall be no registration fee.
- b. As part of the 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 License Number;

- c. As part of the registration process, businesses must consent to standard terms and conditions.
  - d. Following registration, a business may immediately begin using the Outdoor Business Area.
  - e. If a submittal or the use of the Outdoor Business Area does not comply with the program requirements or this Declaration, the City will contact the business, which shall 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 Community Development Director or his/her designee.

## EXHIBIT B

### CONDITIONS AND LIMITATIONS FOR USE OF ABUTTING PUBLIC SIDEWALKS

Eligible businesses may expand their existing permitted operations outdoors onto 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 unless written permission from the subject business owner and appropriate insurance coverage is obtained; 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 Alameda 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. Other eligible businesses may use an Abutting Sidewalk Area for outdoor displays and/or 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.
  - v. Adequate waste receptacles shall be provided. The business operator shall be responsible for daily pick-up of

discarded and wind-blown waste, and debris at the premise and the surrounding areas.

- 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.
- 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 furnishings 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, unless the existing permit or authorization is less restrictive.

#### 5. REGISTRATION PROCESS

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

- a. The business shall submit a registration form for use of an Abutting Sidewalk Area. There shall be no registration fee.
- b. As part of the registration process, businesses must (a) consent to standard terms and conditions and (b) upload a certificate of insurance meeting the requirements set forth on the registration form.
- c. Following registration, a business shall have the City's conditional approval – allowing the business to immediately begin using the Abutting Sidewalk Area.
- d. If a submittal or the use of the Abutting Sidewalk Area does not comply with the program requirements or this Declaration, the City will contact the business, which shall correct any deficiencies prior to continuing to use the Abutting Sidewalk Area.

#### 6. ADMINISTRATION

The provisions of this Exhibit B shall be under the administration of the Director of Engineering and Transportation or his/her designee.