



## Legislation Text

---

**File #:** 20-298, **Version:** 1

---

Staff Report for a City of San Leandro City Council Resolution Confirming the 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 City of San Leandro Zoning Code and Municipal Code (Allows the Use of Adjacent Outdoor Public and Private Property for the Purposes of Conducting Business Activities)

### **SUMMARY AND RECOMMENDATIONS**

Staff recommends that the City Council confirm a 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 Zoning Code and Municipal Code. This would allow the use of adjacent outdoor public and private property for the purposes of conducting business activities. The Declaration will 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.

### **BACKGROUND**

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. Pursuant to California Government Code Section 8634 and San Leandro Municipal Code Section 3-4-130(a), the Director of Emergency Services is 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.

On March 16, 2020, the Health Officer of Alameda County ("Health Officer") issued an Order directing all individuals to shelter in place and requiring essential businesses to implement Social Distancing Protocols. On May 18, 2020, the Health Officer 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.

On June 5, 2020, the Health Officer 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 shall develop and comply with a Site Specific Protection Plan.

On June 18, 2020, the Health Officer revised the June 5, 2020 Order, effective June 19, 2020, 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.

On June 17, 2020, the City Manager, acting as the City's Director of Emergency Services, issued a Declaration suspending enforcement of certain provisions in land use permits and approval and zoning and encroachment requirements in the San Leandro Zoning Code and Municipal Code. Such Declaration was made pursuant to California Government Code Section 8634 and San Leandro Municipal Code Section 3-4-130(a), which empowers upon the proclamation of a local emergency 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 such emergency.

### **Analysis**

In order 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. However, provisions in the San Leandro Zoning and Municipal Codes prohibit the use of adjacent outdoor public and private property for the purposes of conducting business activities without the City's authorization through an Outdoor Facilities Permit and/or Encroachment Permit.

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 in order to encourage safe operations and promote social distancing for restaurant patrons, business customers, and employees.

Following the Declaration by the Director of Emergency Services suspending certain provisions of the Zoning and Municipal Codes, staff established the COVID-19 Relief Temporary Outdoor Facilities Program (Program). The Program is a streamlined, no-cost registration process to assist impacted businesses reopen quickly and in conformance with Alameda County Shelter-in-Place orders. The Program is for restaurants and other commercial businesses seeking to utilize outdoor areas on private property (including private parking lots) and public sidewalks in compliance with the current Alameda County Shelter-in-Place Orders.

Registration for the program allows businesses the ability to use outdoor areas on a temporary basis. Registration is free and no inspections are required. Upon registration and following the guidelines, the City will waive the usual requirement for businesses to obtain a permit. Recognizing the needs and limitations of businesses and the temporary nature of the outdoor activities, efforts were made to keep the program as simple, expeditious and low-cost as possible.

In order to participate in the program and provide outdoor facilities, businesses need to complete and submit the registration form, which certifies that they will comply with applicable City, county and state health and safety requirements, and provide business insurance information and photos, as applicable. Submittal of detailed site plans and materials details will not be required. Once a business submits the registration form and insurance forms and photos (if operating on public sidewalks), they may begin outdoor operations without further City approval. City staff will review the registration form and insurance and if there are problems with the application or operations, the staff will reach out and work with the business to correct.

Key Program components include:

- Per the Alameda County Department of Public Health, all businesses operating during the shelter-in-place, whether indoors or outdoors, need to develop and comply with a [Site-Specific](#)

[Protection Plan <https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.acphd.org%2Fmedia%2F587169%2Fhealth-officer-order-20-14-a-appendix-a-](https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.acphd.org%2Fmedia%2F587169%2Fhealth-officer-order-20-14-a-appendix-a-) and implement risk assessment and individual control measures, physical distancing, disinfecting and cleaning protocols, and employee training to prevent the spread of COVID-19.

- Businesses that provide sit-down food service may use an abutting public sidewalk area or outdoor area on private property for food and beverage service. Other commercial businesses may use an abutting sidewalk area or outdoor area on private property to provide displays and/or seating for the public and customers waiting to enter the business establishment.
- The City's off-street parking requirements on private property are waived to accommodate temporary outdoor uses and private parking areas may be used for outdoor facilities with property owner permission, subject to compliance with applicable requirements. Emergency vehicle access routes, fire lanes, ADA accessible parking spaces, and ADA paths of travel may not be impacted.
- Temporary outdoor uses within areas accessible by vehicles must be clearly identified and delineated with traffic control measures (i.e. barricades, signs, precast concrete bollards, heavy planter pots, etc.) to ensure separation of pedestrians and vehicles without blocking access.
- Temporary outdoor uses may operate between the hours of 7:00 AM and 10:00 PM daily. Existing, permanent patios that have been previously approved may follow the previously permitted hours.
- All temporary outdoor uses must keep exits free and clear, comply with ADA requirements, including accessible seating and clear paths of travel.
- Temporary outdoor facilities cannot be physically and permanently altered, including attaching any objects to the sidewalk or pavement. Only removable tables, benches and chairs, umbrellas, and barriers required by Alcoholic Beverage Control (ABC) may be located outside.
- Amplified sound or entertainment is only permitted on private property and may not disturb the peace, quiet and comfort of neighboring residents.
- Businesses that wish to provide alcoholic beverage service must obtain an approved [COVID-19 Temporary Catering Authorization Application <https://www.abc.ca.gov/wp-content/uploads/forms/ABC218CV19.pdf>](https://www.abc.ca.gov/wp-content/uploads/forms/ABC218CV19.pdf) from the State Department of Alcoholic Beverage Control and comply with applicable design and operational standards.
- Restaurant operations must be consistent with the Alameda County Guidance for Dine-In Restaurants including the table layout, customer and employee sanitation protocols, and regular cleaning, sanitation, and maintenance of seating areas. Any establishment serving food or beverage must also obtain approval from the [Alameda County Department of Environmental Health <https://deh.acgov.org/deh-assets/docs/AlcoRestaurantOperatingProcedures.pdf>](https://deh.acgov.org/deh-assets/docs/AlcoRestaurantOperatingProcedures.pdf).

- Businesses must maintain Commercial General Liability insurance at least as broad as \$1,000,000 per occurrence (\$2,000,000 aggregate), with the City of San Leandro added as an Additional Insured. Additionally, businesses must also maintain Statutory Workers' Compensation insurance for all employees, direct and indirect. Businesses utilizing the public sidewalk or right-of-way must provide these documents upon registration.

The COVID-19 Relief Temporary Outdoor Facilities Program was designed as a collaborative effort by the Economic Development Division, Planning Division, Building Division, Engineering and Transportation Department, Finance Department, City Attorney, and Alameda County Fire Department. Staff will continue to look for opportunities to assist local businesses in navigating these unprecedented times.

### **Fiscal Impacts**

Program setup and administration is free of charge to businesses as part of the City's COVID-19 relief efforts and will not generate revenue. The cost of administering the program will be absorbed by existing departmental budgets.

### **ATTACHMENT(S)**

#### **Attachment to Staff Report**

- COVID-19 Relief Temporary Outdoor Facilities Program Guidelines

#### **Attachment to Resolution**

- Declaration
  - Exhibit A - Conditions and Limitations for Use of Private Property
  - Exhibit B - Conditions and Limitations for Use of Abutting Public Sidewalks

**PREPARED BY:** Lars Halle, Community Development