



# City of San Leandro

Meeting Date: July 6, 2020

## Staff Report

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**File Number:** 20-298

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:** 8.N.

**TO:** City Council

**FROM:** Jeff Kay  
City Manager

**BY:** Tom Liao  
Community Development Director

**FINANCE REVIEW:** Liz Warmerdam

**TITLE:** 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)

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### 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-protection-plan-guidance-and-template-english.pdf&data=02%7C01%7CLHalle%40sanleandro.org%7C39ae21b5cae94c81e1d808d813e57ff4%7C8dee958fbb9f4c46abd435d0637e0ad1%7C0%7C0%7C637281223702676464&sdata=MdKOzdo4T2h6YGu88RJBXnSVI0uUceWMU8dSfbla3v8%3D&reserved=0>](https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.acphd.org%2Fmedia%2F587169%2Fhealth-officer-order-20-14-a-appendix-a-protection-plan-guidance-and-template-english.pdf&data=02%7C01%7CLHalle%40sanleandro.org%7C39ae21b5cae94c81e1d808d813e57ff4%7C8dee958fbb9f4c46abd435d0637e0ad1%7C0%7C0%7C637281223702676464&sdata=MdKOzdo4T2h6YGu88RJBXnSVI0uUceWMU8dSfbla3v8%3D&reserved=0) 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



# COVID-19 RELIEF Temporary Outdoor Facilities Registration Program Guidelines

The City of San Leandro has established a registration process for restaurants and other commercial businesses seeking to utilize outdoor areas on public and private property (including private property, private parking lots, and public sidewalks) in compliance with the current health order. Filing a registration grants businesses the ability to use outdoor areas on a temporary basis.

The intent of the registration program is to encourage safe operations and promote social distancing for restaurant patrons, business customers, and employees in locations that would otherwise require an Outdoor Facilities Permit or an Encroachment Permit. Registration is free and no inspections are required. By registering and following the guidelines, the City will waive the usual requirement for businesses to obtain a permit.

In conformance with the [Alameda County Shelter-in-Place Order](#), businesses permitted to operate, whether indoors or outdoors, need to develop and comply with a [Site-Specific Protection Plan](#) (template provided through this link) and implement risk assessment and individual control measures, physical distancing, disinfecting and cleaning protocols, and employee training to prevent the spread of COVID-19. For more information, visit <http://www.acphd.org/2019-ncov/shelter-in-place.aspx>.

Additional guidance for operating procedures for businesses by type may be found in the [California Statewide Industry Guidance](#). Guidance for a number of industries is provided, including for [restaurants](#), [retail](#), [shopping centers](#), [fitness](#), and [places of worship](#). For more information, visit <https://covid19.ca.gov/industry-guidance/>.

## General Program Information

### Is my restaurant or business eligible for this program?

Businesses eligible to use an Outdoor Business Area under this program include the following, at which time they are allowed to operate under the Health Orders of Alameda County, as amended:

- Business Services
- Cafes
- Brewpub
- Convenience Stores
- Department Stores
- Drugstores
- Farmers' Market
- Fast Food Establishments, Large Scale
- Fast Food Establishments, Small Scale
- Furniture, Electronics, and Appliance Sales
- Health and Fitness Centers
- Home Improvement/Interior Decoration
- Instruction and Improvement Services
- Neighborhood/Specialty Food Markets
- Nurseries
- Offices, Business and Professional
- Regional Mall

- Restaurants, Full-Service
- Retail Sales
- Retail Sales, Big Box
- Retail Services
- Secondhand Sales
- Supermarkets

Any of the above types of business that register and adhere to the guidelines below may open and expand outdoors in conformance with the guidelines/requirements of the program in order to provide additional seating or retail opportunities in areas that might otherwise require a permit.

### Are there zoning districts where this is restricted?

There are no location restrictions.

### When does my approval expire? How long does this program last?

Permission to operate in temporary outdoor areas is revocable at any time at the City’s sole discretion, and will remain in effect until December 31, 2020 or upon the expiration of the City’s emergency declaration, whichever occurs first; or as otherwise terminated, modified or extended by the San Leandro City Council. Businesses will have one week after the expiration date of the City’s emergency declaration order to remove all temporary outdoor elements associated with their registration.

Temporary seating areas or outdoor furniture may need to be removed or relocated in the event the city or other utility provider needs access to maintain or repair utilities or other public infrastructure.

## Operational and Design Requirements

### Can I use the public sidewalk?

Registration will allow restaurants and other businesses that provide sit-down food service to use an abutting sidewalk area for food and beverage service. Other commercial businesses may use an abutting sidewalk area to provide displays and/or seating for the public and customers waiting to enter the business establishment.

Use of the public sidewalk must not extend beyond your business frontage, unless written permission from the subject business owner and appropriate insurance coverage is obtained, and must maintain 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.

### Where on private property can I establish a temporary outdoor area?

Hardscaped areas on private property, including parking lots, can be accessed for temporary outdoor uses. In order to preserve established landscaping, planted areas cannot be used or removed. Areas designated for stormwater retention and conveyance, such as bioswales, drainage basins, gutters and culverts, may not be used.

### Can I use a private parking lot?

Yes, the City's off-street parking requirements on private property are waived to accommodate temporary outdoor uses. Private parking areas adjacent to your business may be used subject to compliance with applicable requirements. Consent from the property owner or property owner's authorized agent is required prior to use of private parking areas. Emergency vehicle access routes and fire lanes may not be obstructed. ADA accessible parking spaces and paths of travel must be maintained.

### Do I need to provide additional parking?

No, the City's off-street parking requirements on private property are being waived under this program to accommodate temporary outdoor uses.

### Can I use parking spaces on private property exclusively for temporary pick-up and delivery parking?

Yes, with approval from the property owner or property owner's authorized agent. Fire lanes may not be obstructed.

### What are the allowed hours of operation for the temporary outdoor uses?

Temporary outdoor uses may operate between the hours of 7:00 a.m. and 10:00 p.m. daily.

*Note: These hours apply to the new, temporary outdoor patio space only. Existing permanent patios that have been approved may follow the previously permitted hours.*

### What types of safety equipment and barriers are required?

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 pedestrian or vehicular access.

Heavy planters and precast bollards are recommended. Water-filled Jersey Barriers are allowed (white is preferred). If used, make a 3-foot gap in the barrier every 20 feet for emergency access.

### What type of outdoor furniture/design elements are allowed on the public sidewalk?

The following will be allowed on public sidewalks and movable items must be brought in nightly:

- Removable tables, benches, and chairs
- Umbrellas - must be secured and maintain a minimum clearance of 84"
- Barriers as required by Alcoholic Beverage Control (ABC)

Items placed in the Abutting Sidewalk Area shall be set back a minimum of two feet (2') from the curb and must maintain a four foot (4') clear pedestrian path of travel.



The sidewalk or other public property cannot be physically altered, including by attaching any objects to the sidewalk. Tables, chairs, and barriers may not obstruct access to business entrances, manholes, valve boxes, fire hydrants (15' clearance), fire department connections, or stormwater inlets.

All movable items must be removed or secured daily at closing.

The following are prohibited in the sidewalk area:

- Flames of any type, including, stoves, burners, heat lamps and candles;
- Amplified sound or entertainment;
- Advertising;
- Consumption of alcohol except in compliance with ABC rules and regulations;
- Smoking; and
- Storage of materials or equipment.

## What type of outdoor furniture/design elements are allowed on private property?

The following features will be allowed in temporary outdoor areas on private property:

- Removable tables, benches, and chairs
- Umbrellas - must be secured and maintain a minimum clearance of 84"
- Barriers to delineate seating areas and protect from traffic, and/or as required by ABC
- Heating units with a UL or AGA listing may be used outside of any tent or canopy area. 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.
- Extension cords shall be:
  - Listed and labeled as outdoor rated in accordance with UL 817;
  - Plugged into an outlet with a GFI protected circuit;
  - 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
  - Disconnected from their electrical sources each day at the conclusion of operations in the Outdoor Business Area.

All movable items must be removed or secured daily at closing.

No part of the temporary outdoor area may be physically altered, including by attaching any objects to the pavement. Tables, chairs, and barriers may not obstruct access to business entrances, manholes, valve boxes, fire hydrants (15' clearance), fire department connections, or stormwater inlets.

The following are prohibited in temporary outdoor areas:

- Amplified sound or entertainment in such a manner as to disturb the peace, quiet and comfort of neighboring residents or persons of normal sensitivity;
- Flames other than heating units located outside of tents, including stoves, burners and candles;
- Storage, including food service equipment or service staging areas;
- Advertising;
- Consumption of alcohol except in compliance with ABC rules and regulations;

- Generators; and
- Overhead elements without a minimum clearance of 84”.

## How should trash be handled?

Businesses must provide their own garbage receptacles within the temporary outdoor area and shall regularly empty containers into the business’s trash enclosure area. The business operator will be responsible for daily pick-up of discarded and wind-blown waste, and debris at the premise and the surrounding areas. Trash capture devices and storm drain inlets must always be kept clean of trash and debris (i.e., no paper napkins or menus in the inlets).

## Are tents allowed in temporary outdoor seating areas?

Temporary tents and canopies are only allowed on private property. 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.

Tents and canopies must be at grade and properly secured to prevent the tent from becoming a wind-blown projectile. Ensure that any stakes and guy lines on private property do not pose a tripping hazard.

## Are fences allowed in temporary outdoor seating areas?

Fences and other temporary barriers not exceeding 42 inches in height are allowed if required by ABC for alcohol service but must be properly secured to prevent the barrier from becoming a wind-blown projectile or overturning. Ensure that ballasts and fencing do not have any sharp edges that could cause injury.

## Is additional signage allowed?

No additional temporary signage will be permitted, except as required to implement proper observation of public health and safety guidelines and ABC regulations. An incidental sign displaying a daily menu or specials visible to patrons on the premises may be provided so long as it complies with these guidelines.

## What clearances need to be maintained around outdoor areas?

Restaurants and retailers may expand activity on public sidewalks or private property when 4 feet of pedestrian clearance is available and must not obstruct access to business entrances, manholes, valve boxes, fire hydrants (15’ clearance), fire department connections, or stormwater inlets.

Temporary outdoor facilities must 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 temporary outdoor areas. Outdoor Business Areas with an occupancy greater than 50 require two exits.

## Is wheelchair accessible seating required?

Yes, local and federal accessibility codes require accessible restaurant seating. Five percent (5%) of seating whether indoors or outdoors must be accessible to wheelchair use (or at least 1 if less than 20 tables in entire facility). Maintain a path of travel measuring at least 36 inches wide adjoining a wheelchair location. Food service aisles must also be a minimum of 36 inches wide.

For each 20 seats, you must have at least one (1) accessible table available that must:

- Be between 28 to 34 inches high
- Have at least 27 inches of space from the floor to the bottom of the table
- Provide knee clearance that extends at least 19 inches under the table
- Have a total clear floor space of 33" x 48" per seat or 33" x 60" for side access
- Be located a minimum distance of 4 feet to the nearest obstruction
- Have a label displaying the International Symbol of Accessibility

## Can I provide alcohol service in the temporary outdoor seating area?

Businesses that wish to provide alcoholic beverage service in the temporary outdoor area must provide exterior edge/railings forty-two (42") inches tall and obtain an approved [COVID-19 Temporary Catering Authorization Application](#) from the California Department of Alcoholic Beverage Control. Signs stating "No Alcohol Beyond this Point" are required at all ingress and egress points to the contained alcohol service areas. For more information, visit <https://www.abc.ca.gov/law-and-policy/coronavirus19/>.

## What do I do if I have multiple locations?

If your business has more than one location, you must apply for each location individually.

## Health Requirements

What are the public health requirements for restaurants (e.g., how many tables allowed, minimum spacing, number of occupants, face coverings while eating)?

Restaurant operations and temporary outdoor seating must be consistent with the [Alameda County Order to Shelter-in-Place](#), as amended, which generally follows the [California State Guidance for Dine-In Restaurants](#) (including table spacing, max number of patrons per table, reservation guidelines, and cleaning protocols). For more information on State guidance, visit <https://covid19.ca.gov/pdf/guidance-dine-in-restaurants.pdf>.

Full Alameda County restaurant requirements are being developed and will include, but are not be limited to the following:

- Alameda County guidance for Social Distancing and the wearing of masks shall be followed.
- Tables to be placed at least 6 feet apart. If tables cannot be moved and placed 6 feet apart, a 6 foot high separation (such as plastic barrier) shall be provided, or customers shall not be placed at adjacent tables.
- Hand sanitizer or a hand washing station shall be provided at the point of entry.
- Tables shall be fully cleaned and sanitized between customers and all items shall be removed and sanitized.

- Reusable tableware (plates, silverware, cups, etc) may be used, however they shall be removed and fully cleaned and sanitized between customers. Reusable menus may be used if laminated and removed and fully cleaned between customers.
- Employees must wear masks and practice social distancing.

Restaurants must review and comply with the full Alameda County guidelines for restaurants once complete. For the latest updates, visit <http://www.acphd.org/2019-ncov/shelter-in-place.aspx>.

## Am I required to get approval from the Alameda County Environmental Health Department if I serve food?

Yes, the [Alameda County Department of Environmental Health](https://deh.acgov.org/covid-19.page?) has indicated that they will require review and approval of outdoor dining areas. The Department of Environmental Health is developing their full requirements and application process, which may be applied for concurrently with the City's process. For the latest updates, visit <https://deh.acgov.org/covid-19.page?>

## Required Insurance

You must maintain at least \$1,000,000 in General Commercial Liability insurance coverage (\$2,000,000 aggregate) as well as Statutory Workers' Compensation insurance coverage identified with your registration in order to operate a temporary outdoor facility.

If you wish to use a public sidewalk or any portion of a public right-of-way adjacent to your business, you must also name the City of San Leandro as additional insured and provide the City with the following insurance documents within five (5) business days of filing your registration:

1. A certificate of insurance (COI) with your coverage information including at least \$1 million in General Commercial Liability, \$2 million aggregate, Statutory Workers' Compensation insurance; and
2. An Additional Insured endorsement naming the City of San Leandro as additional insured.

Please ask your insurance provider for these documents. Please contact us with questions at [covid19biz@sanleandro.org](mailto:covid19biz@sanleandro.org).

## Application Process

To register for a Temporary Outdoor Facility on private property, simply:

1. Complete the FREE Temporary Outdoor Facilities Registration form [https://www.sanleandro.org/c19/covid19\\_resources/outdoorbusiness.asp](https://www.sanleandro.org/c19/covid19_resources/outdoorbusiness.asp)
2. Email a copy of the completed form to [covid19biz@sanleandro.org](mailto:covid19biz@sanleandro.org)

To register for a Temporary Outdoor Facility on an abutting public sidewalk, simply:

1. Complete the FREE Temporary Outdoor Facilities Registration form [https://www.sanleandro.org/c19/covid19\\_resources/outdoorbusiness.asp](https://www.sanleandro.org/c19/covid19_resources/outdoorbusiness.asp)

2. Email a copy of the completed form to [covid19biz@sanleandro.org](mailto:covid19biz@sanleandro.org)
3. Email a copy of your Certificate of Commercial General Liability and Worker's Compensation Insurance naming City of San Leandro as additional insured (\$1,000,000 General Liability / \$2,000,000 Aggregate) and photos of your outdoor facilities to [covid19biz@sanleandro.org](mailto:covid19biz@sanleandro.org) within five (5) business days. Please contact us with questions.

Staff will contact you if there are any issues with your registration form or insurance documents. You may start using the designated outdoor space upon submitting your registration in accord with the current Alameda County Public Health Order.



# City of San Leandro

Meeting Date: July 6, 2020

## Resolution - Council

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**File Number:** 20-299 **Agenda Section:** CONSENT CALENDAR

**Agenda Number:**

**TO:** City Council

**FROM:** Jeff Kay  
City Manager

**BY:** Tom Liao  
Community Development Director

**FINANCE REVIEW:** Liz Warmerdam

**TITLE:** RESOLUTION of the City of San Leandro City Council Confirming the Declaration of the City of San Leandro Director of Emergency Services Suspending Enforcement of Certain Provisions in Land Use Permits and Approvals and Zoning and Encroachment Requirements in the San Leandro Municipal and Zoning Codes

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**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), 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; 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 June 5, 2020, the Health Officer of Alameda County 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 18, 2020 the Health Officer of Alameda County 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; 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 Alameda County Department of Public Health 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 THE CITY OF SAN LEANDRO CITY COUNCIL RESOLVES** that the above recitals are true and correct and made a part of this resolution.

**BE IT FURTHER RESOLVED** by the City Council that it is hereby proclaimed and ordered that 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 San Leandro Municipal Code, issued by the Director of Emergency Services including all Exhibits, is hereby confirmed.

**BE IT FURTHER RESOLVED by the City Council that:**

1. The Declaration of the Director of Emergency Services of the City of San Leandro establishes appropriate regulations to address the suspension of enforcement of certain provisions in land use permits, approvals and zoning requirements, and encroachment requirements while balancing public safety.

2. The Declaration of the Director of Emergency Services of the City of San Leandro will not be detrimental to the public interest, health, safety, or welfare of the City.

3. The Declaration of the Director of Emergency Services of the City of San Leandro conforms with the relevant and applicable provisions of the California Government Code and the San Leandro Municipal Code authorizing the Director of Emergency Services to make and issue rules and regulations on matters reasonably related to the protection of life and property.

4. Following adoption of the Declaration of the Director of Emergency Services of the City of San Leandro, Exhibits A and B shall be combined into a single "final" Declaration of the Director of Emergency Services of the City of San Leandro document.

5. During the existence of the declared local emergency, the powers, functions, and duties

of the City Manager, acting as Director of Emergency Services, and the emergency organization of this City shall be those prescribed by State law and by ordinances and resolutions of the City of San Leandro.



**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

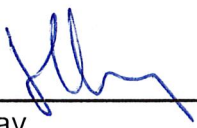
WHEREAS, life and property are deemed to be in peril and speed of implementation is of the essence.

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.