



DATE: September 8, 2020

CATEGORY: Consent

DEPT.: Community Development

TITLE: **Citywide Outdoor Business Operations Program**

RECOMMENDATION

Adopt a Resolution of the City of Mountain View Temporarily Allowing Activities on Public and Private Property to Facilitate Outdoor Business Operations in Response to the COVID-19 State of Emergency, to be read in title only, further reading waived (Attachment 1 to the Council report).

BACKGROUND

On March 4, 2020, the State of California declared a State of Emergency due to the COVID-19 pandemic, and on March 17, 2020, a Santa Clara County (County) Public Health Order reduced businesses' ability to maintain regular operations, impacting revenue and staff. Businesses had to close, or stay open with reduced staff and customer access. On June 1, 2020, the County began to modify the Public Health Order to allow reopening of restaurants with outdoor dining, beginning June 5, 2020. As a response and to support the recovery of Mountain View's downtown businesses, the City Council approved the Castro Summer StrEATS Pilot Program on June 9, 2020, which included closure of Castro Street to allow on-street dining, consistent with the County Order.

On July 1, 2020, the California Department of Public Health issued guidance for counties identified on the County Monitoring List for three consecutive days, requiring closure of the indoor operations of various business sectors, including restaurants, wineries, and certain entertainment venues, as well as all indoor and outdoor bars. In addition, on July 2, the County issued a new Public Health Order allowing some businesses to reopen with strict rules designed to reduce the risk of COVID-19 transmission. However, on July 13, 2020, the State Health Officer ordered closure of all indoor operations at gyms and fitness centers, personal care services businesses, hair salons, and barbershops in Santa Clara County effective July 15, 2020.

On July 14, 2020, the County of Santa Clara issued a mandatory directive for gyms and fitness facilities, explaining how they may operate outdoors. While gyms and fitness facilities provide important services that help maintain individuals' physical and emotional well-being, they also can pose significant risks to public health in light of the COVID-19 pandemic. Because they often involve heavy respiration and communal use of high-touch equipment in an indoor environment, gyms and fitness facilities must take extra precautions to reduce the risk of COVID-19 transmission for clients and staff. The County encouraged gym and fitness businesses to move activities and equipment outdoors wherever possible, given the current evidence of lower risk of COVID-19 transmission outdoors.

On July 14, 2020, the County also issued a mandatory directive for personal care services. Personal care services involve close, often physical contact between service providers and clients. While these personal care businesses provide important services that help people maintain their appearance and well-being, they can also pose significant risks to public health in light of the COVID-19 pandemic. Accordingly, personal care services businesses must take extra precautions to reduce the risk of COVID-19 transmission for clients and staff. In addition, on July 29, 2020, the California Department of Public Health released guidance for expanded personal care services, hair salons, and barbershops for outdoor operations.

On July 14, 2020, the County also issued a mandatory directive for group gatherings, including those of a social, religious, political, ceremonial, athletic, and other similar nature. While these activities are currently prohibited indoors, the directive provided protocols and requirements for those gatherings that can take place outdoors in a limited capacity (maximum 60 people).

Most recently, on August 28, 2020, the State of California announced a new County monitoring framework. Under this framework, every county in California is assigned to one of four tiers based on its rate of new cases and test positivity rate with the ability to move between tiers depending on the increase or decrease of those factors (e.g., Tier 1 – Widespread, Tier 2 – Substantial, Tier 3 – Moderate, and Tier 4 – Minimal). Santa Clara County, along with the vast majority of counties in the State, was placed in Tier 1, the “widespread transmission” (purple) tier. This tier status became effective on Monday, August 31, 2020, and allows hair salons and barbershops who follow the safety guidelines in place by the County and State to open for indoor operations. Other personal care services, restaurants, fitness uses, and other identified business sectors continue to be restricted to outdoor operations.

ANALYSIS

The directives from the State and County necessary to contain the spread of COVID-19 have drastically affected the local economy and resulted in serious negative impacts to local businesses, including loss of business income, compensable work hours, and wages for individual workers. Some businesses have closed permanently, while others are barely surviving. As a result, the City has a strong interest in taking measures to support the ongoing operations of businesses and to create opportunities to help the community resume some aspects of daily life, in a safe and feasible manner, during this public health emergency. In addition to the COVID-19 small business relief efforts already implemented by the City, temporary measures to reduce regulatory requirements and facilitate business activity in outdoor areas on private property, and authorized public property, can provide critical assistance to businesses to allow them to reopen safely to mitigate potential public health impacts.

To support businesses, City staff across various City departments have developed requirements for temporary outdoor operation of businesses allowed under the COVID-19 State of California and Santa Clara County Public Health Orders in the City of Mountain View. These requirements are structured to provide clear parameters to businesses allowed to have outdoor operations with as minimal City permitting, licensing, or approval as deemed feasible, while still protecting public health and safety. Staff proposes minimal permitting so businesses can set up their operations in an expedited manner, while complying with life and safety requirements. If a business does not operate in compliance with these requirements, they would be required to come into compliance with the Program requirements or cease outdoor operations.

These requirements are proposed as mandatory requirements to facilitate a safe environment for businesses to operate Citywide. Since the pandemic and the associated health orders are evolving, and since this is an innovative response that has not been tested, the temporary Outdoor Business Operations Program is considered a pilot. Staff proposes that the Community Development Director and Public Works Director make adjustments to the requirements as needed to protect the public health, safety, and welfare of the community, including changes in State or County Public Health Orders (see Attachment 1 – Resolution for Temporary Citywide Outdoor Business Operations). NOTE: Downtown businesses participating in the Castro Summer StrEATs Pilot Program have separate outdoor dining operation requirements, and these Outdoor Business Operations Program requirements would only apply to nondining establishments wishing to operate along the Castro Street closure.

It is important to mention that City staff is proposing one set of guidelines for all businesses that can operate outdoors Citywide (outside of the Castro StrEATs Pilot

Program for outdoor dining) since the requirements are universal in nature with minor deviations based on specific activities. Additionally, utilizing one set of City requirements establishes a single resource for businesses, property owners, the general public, and City staff, in addition to any public health orders and directives. This is a different approach than neighboring cities have taken, either requiring permits for these activities, not having published guidance, or establishing industry-specific guidance (e.g., retail, outdoor dining, and personal service) that do not cover all businesses. Ultimately, staff is proposing this approach in an effort to streamline the process, and reduce costs and resource impacts to businesses and the City.

Some of the key components of the requirements include:

- Not requiring a permit or fees if a business operates within the set of requirements on private property. A no-fee simplified license agreement, similar to that used for the Castro StrEATs Pilot Program, would be required to operate within City right-of-way or on City property.
- Requiring approval from the property owner to operate outdoors on private or public property.
- Imposing specific limitations on the size (maximum 100 square feet) and location of tents or canopy structures to comply with requirements of the 2019 California Building and Fire Codes, such that no building or fire permits are required, and emergency life safety requirements are met.
- Allowing use of up to 25 percent of the total on-site parking lot area for temporary outdoor business operations. If it is a multi-tenant site, this space is shared by all businesses allowed to operate outdoors, at the discretion of the property owner/property manager.
- Maintaining all accessibility areas on-site and preventing blocking or impeding access to all vehicle circulation, fire lanes, emergency egress, disposal and service truck access, and protecting below- or aboveground utilities.
- Limiting outdoor operations to 9:00 p.m. on weekdays, and 10:00 p.m. on weekends, to limit disturbance to surrounding residential neighbors.
- Allowing limited use of amplified speakers for group gatherings, such as worship services and recreational/fitness classes, for a duration of no more than 90 continual minutes between the hours of 8:00 a.m. and 6:00 p.m. daily. Live entertainment and amplified music continues to be prohibited.

- Maintaining proper solid waste, debris, and wastewater disposal in accordance with State, County, and City regulations.

Under these requirements, allowed businesses may operate outdoors through December 31, 2020. If the requirements need to be extended based on State and County Public Health Orders and the state of the COVID-19 pandemic, staff will return to the City Council.

For City property, staff will review requests for use by businesses operating outdoors on a case-by-case basis, with considerations including compatibility with other public uses and City operations, the proximity of the business to the City property requested for use, and the ability to meet all Outdoor Business Operations Program requirements, including those related to accessibility, vehicle circulation, and public utility protection.

FISCAL IMPACT

Permits are typically required to conduct temporary uses on private property. Under this program, no permits will be required and, as such, the City would not be collecting various standard City permit fees on these temporary outdoor operations conducted in compliance with the Public Health Orders and City requirements while the resolution is in effect. However, based on the experience with the Castro StrEATs program, staff workload is expected to increase considerably to do outreach and respond to inquiries and complaints.

ALTERNATIVES

1. Approve the resolution with modifications.
2. Do not approve the resolution.
3. Provide other direction to staff.

PUBLIC NOTICING

The City Council's agenda is advertised on Channel 26, and the agenda and this report appear on the City's website. E-mail notification was distributed to the Central Business Association and Mountain View Chamber of Commerce.

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Attachment: 1. Resolution for Temporary Citywide Outdoor Business Operations