

CITY OF MOUNTAIN VIEW
RESOLUTION NO.
SERIES 2020

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

WHEREAS, on March 17, 2020, the Mountain View City Council proclaimed a State of Emergency in response to COVID-19 following the World Health Organization's escalation of COVID-19 to a pandemic, and declarations of states of emergency have been made at the County, State, and Federal levels to slow the spread of the COVID-19 virus; and

WHEREAS, on March 16, 2020, March 31, 2020, April 29, 2020, and May 22, 2020, the Health Officer of the County of Santa Clara issued subsequent orders directing all individuals living in the County to continue to shelter in their place of residence, subject to certain exceptions, and issued a Risk Reduction Order on July 2, 2020 that imposed strict risk reduction measures on activities and businesses to require all individuals to follow social distancing requirements outside of their place of residence and prohibit activities that do not allow for social distancing; and

WHEREAS, on July 13, 2020, the State of California announced that a number of indoor activities and industries will be closed Statewide, and additional indoor activities and industries will be closed in counties that appear on the State's "monitoring list" for three days or longer, which included Santa Clara County and, on July 14, 2020, the Health Officer of the County of Santa Clara ordered businesses and individuals subject to this Statewide order to close effective July 15, 2020; and

WHEREAS, the Health Officer of the County of Santa Clara has issued mandatory directives for specific business sectors and activities, including Personal Care Services, Outdoor Dining, Food Facilities, Gatherings, Public Transit, Lodging Facilities, Agriculture, Food Packing and Processing, Outdoor Pools, Recreation and Athletics, Programs Serving Children or Youth, Gyms and Fitness Centers, Movie Theaters, Offices for nonessential sectors, Malls, Zoos, and Museums; all of which prioritize the health and safety of employees, minimize the cross-flow of customers in enclosed environments, and encourage outdoor operations to the extent feasible; and

WHEREAS, on August 28, 2020, the State of California issued a new Statewide Health Order that established a four-tier system for counties to reopen specific business

sectors, referred to as the Blueprint for a Safer Economy, for which Santa Clara County is designated Tier 1, which allows hair salons and barbershops to conduct indoor operations but restricts other personal care services to continue outdoor operations and allows shopping malls and centers to conduct limited indoor operations Statewide effective August 31, 2020; and

WHEREAS, the directives from the State and County are necessary to contain the spread of COVID-19, which have drastically affected the local economy and resulted in serious negative impacts to local businesses, including substantial loss of business income and compensable work hours and wages for individual workers; and

WHEREAS, many businesses have already closed permanently and others are barely surviving. Vibrant commercial centers, corridors, and neighborhood-serving businesses are essential to a sustainable Mountain View community as they provide jobs for workers, goods, and services to residents and visitors, and they contribute as unique fixtures in the City. It is vital to create opportunities to help the community resume some aspects of daily life, to the extent feasible and consistent with health and safety, during this continuing public health emergency. Temporary measures to reduce regulatory requirements and facilitate business activities in outdoor areas will provide critical assistance to businesses to allow them to reopen and help mitigate the potential public health impacts of reopening; and

WHEREAS, in an effort to support businesses Citywide in Mountain View in response to the COVID-19 pandemic and to mitigate the spread of COVID-19 in Mountain View and the broader community, the City is allowing businesses to operate on private property and authorized public property on a temporary basis seven days a week in accordance with the City's requirements for temporary outdoor business operations (referred to as "Citywide Outdoor Business Operations Program" or "Program") set forth in Exhibit A, which are designed to help ensure public health and safety are protected;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mountain View that for the protection of life and property affected by the COVID-19 emergency, and to assist recovery of businesses in a safe and responsible manner, it is hereby authorized that, in accordance with State and local public health orders, businesses may operate outdoors in conformance with the Citywide Outdoor Business Operations Program, attached hereto as Exhibit A, which may be modified as needed by the Public Works Director and Community Development Director consistent with the intent of the requirements and to preserve the public health, safety, or general welfare, including, but not limited to, addressing required changes pursuant to a public health order, and notwithstanding any City of Mountain View requirements or regulations that conflict with these requirements. Any conflicting City requirements or regulations shall be waived for the limited purposes of participation under the Citywide Outdoor Business

Operations Program for businesses in full compliance with the requirements set forth in Exhibit A; however, Program compliance does not excuse or waive compliance with any other requirement or regulation applicable to the business, which shall still be required. All outdoor business operations are temporary, and nothing in this Resolution shall establish a vested right.

BE IT FURTHER RESOLVED that City-owned or controlled property, as set forth in Exhibit A and in conformance therewith, may also be used for the program, pursuant to approval by the Public Works Director. The Public Works Director is hereby authorized to include additional requirements as needed to address operation of the Program on City property. An agreement or permit, as determined by the Public Works Director, shall be entered into between the participating business and the City should the use of public property be authorized for use under this Program.

BE IT FURTHER RESOLVED that the outdoor uses of public and private property allowed pursuant to this Resolution shall be conducted in compliance with the Order of the Health Officer of the County of Santa Clara in effect, this Resolution, and all other local and State regulations, orders, and approvals, as applicable (collectively "Applicable Law"). Any approval, allowance, permit, or agreement to conduct such temporary outdoor business operations pursuant to the Program shall be subject to revocation by the issuing City official if the use is conducted in violation of Applicable Law, or poses a threat to public health, safety, or welfare. Failure to comply with the Program requirements shall result in the business ceasing outdoor operations and being ineligible to participate in outdoor operations under the Program.

BE IT FURTHER RESOLVED that the City Council finds this Resolution is statutorily exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 20180(b)(4) as the specific action is necessary to mitigate an emergency and is categorically exempt under the CEQA Guidelines, Section 15301 ("Existing Facilities") due to the temporary use of existing improved land for existing businesses on-site with negligible temporary expansion, and Section 15304 ("Minor Alterations to Land") due to minor temporary use of land having negligible or no permanent effect on the environment.

This Resolution shall become effective immediately and will remain in effect until December 31, 2020, unless extended by the City Council.

LH/1/RESO/823-09-08-20r

Exhibit: A. Citywide Outdoor Business Operations Program



CITYWIDE OUTDOOR BUSINESS OPERATIONS PROGRAM
Requirements for Temporary Outdoor Business Operations
During COVID-19

Purpose: These requirements support businesses allowed to temporarily operate outside on private property, or authorized public property, under the COVID-19 State of California and Santa Clara County Department of Public Health Orders (“*Health Orders*”), and under the Declaration of Emergency by the City of Mountain View (“*City Declaration*”). The Citywide program authorizing outdoor business operations shall be referred to as the Citywide Outdoor Business Operations Program (“*Program*”). These Program requirements are subject to change based on modifications to the Health Orders or to maintain the public health, safety, and general welfare of the City. *These requirements do not apply to businesses participating in outdoor dining in the Castro Summer StrEATs Pilot Program in downtown Mountain View.*

For information on the current Health Orders and businesses that are allowed to operate outdoors (including industry-specific information, requirements, and protocols), visit the following websites:

- **State of California COVID 19:** <https://covid19.ca.gov>
- **County of Santa Clara Emergency Operations Center COVID-19:** <https://www.sccgov.org/SITES/COVID19/Pages/public-health-orders.aspx>

The following are existing programs that allow outdoor business operations in the City of Mountain View which function outside of the Program requirements listed herein:

- **Castro Summer StrEATs Pilot Program**—For outdoor dining businesses in downtown Mountain View, visit: <https://www.mountainview.gov/depts/manager/communityinfo/covid19communityresources/castrostreetclosure.asp>. *All other businesses operating within the 100, 200, 300, and 400 blocks of Castro Street in accordance with State and County Health Orders may participate in this Program with City approval for use of public property.*
- **Commercial Use of City Parks Permit**—Businesses focused on recreational uses may consider use of City parks for temporary outdoor operation under a Commercial Use Permit application available online: <https://www.mountainview.gov/civicax/filebank/blobdload.aspx?BlobID=14379>.

Please submit the application form, insurance and business license information to the City's Recreation Division at recreation@mountainview.gov.

- **Mobile Vending:** Mobile vendors can operate in the City with an approved Mobile Vending Application available online at <https://www.mountainview.gov/civcax/filebank/blobdload.aspx?BlobID=15481>, with accompanying Frequently Asked Questions: <https://www.mountainview.gov/civcax/filebank/blobdload.aspx?BlobID=15480>.

PROGRAM OPERATING REQUIREMENTS

For questions or permit information, please contact the City of Mountain View:

City Department	Phone No.	E-mail
Public Works Department	650-903-6311	public.works@mountainview.gov
Community Development Department – Building Division	650-903-6313	building@mountainview.gov
Community Services Department – Recreation Division	650-962-1069	recreation@mountainview.gov
Finance and Administrative Services Department – Business License	650-903-6317	businesslicense@mountainview.gov
Fire Department – Fire and Environmental Protection	650-903-6378	FEPDinspections@mountainview.gov

All businesses temporarily operating outdoors Citywide on private property, or authorized public property, in response to the Health Orders and the City Declaration, and in conformance with all of the requirements set forth below, *may operate without obtaining permits from the City of Mountain View, unless otherwise noted.*

State and Santa Clara County Health Orders shall be complied with at all times. In the event of a conflict between these Program requirements and a Health Order, the Public Health Order requirements shall apply. Only those businesses authorized by the Health Orders to operate outdoors can do so. The following operating requirements shall apply to all businesses operating under the Citywide Outdoor Business Operations Program.

- **Duration of Outdoor Operations:** Businesses allowed to temporarily operate outdoors may do so until December 31, 2020, unless extended by the City Council.

- **Approval of Property Owner:** All businesses who operate outdoors on private property must obtain written property owner approval.

Use of public sidewalks, public parking lots, public street, and City property is subject to City approval with a license agreement from the Public Works Department. Please contact the Public Works Department by email at public.works@mountainview.gov or by phone at 650-903-6311 for more information. (***City Approval Required*)

- **Active Business License:** All businesses who operate outdoors must have a current business license to operate in the City. License Applications are available online at <https://www.mountainview.gov/depts/fasd/revenue/business/default.asp>.
- **Required Clearances for All Outdoor Operations:** The following areas must remain unobstructed and accessible at all times on private property and authorized public properties throughout the duration of outdoor business operations:
 - All accessible paths of travel, accessible parking spaces, and vehicle and pedestrian ramps must remain unobstructed at all times. Outdoor businesses must comply with the 2019 California Building Code 11B and ADA access requirements, including maintaining a minimum 4' wide path of travel on all sidewalks, ramps, and pathways.
 - No temporary business operations can block, impede, or prevent access to:
 - o Vehicular drive aisles for site circulation;
 - o Fire or emergency ingress or egress from any building or fire lane;
 - o Trash or recycling enclosures or service pickup;
 - o Above- or belowground utility equipment, including fire protection equipment; or
 - o Areas utilized for delivery or service trucks.
- **Use of Private Property:** Businesses shall only operate outdoors on the same site of their building lease tenancy and where the following conditions are met on private property:
 - **Parking Lot:** No more than 25 percent of the total parking lot area can be utilized by businesses on-site for temporary outdoor operations, in accordance with *Required Clearances for All Outdoor Operations*. All areas used for outdoor business operations, located in a parking lot, must have physical barriers, clearly

separating the vehicle circulation and/or parking stall from the business operation area, such as, but not limited to, cones with yellow hazard tape, temporary moveable bollards, portable safety barrier, tables, etc.

If located in a multi-tenant commercial site, the parking lot area used for outdoor operations must be shared by participating businesses; and it is at the discretion of the property owner or property manager to determine use of that space. The City encourages all business and property owners to find mutually agreeable solutions for the placement of outdoor business operations to support the success of all businesses.

Worship services may also occupy the entire parking lot on-site if patrons/visitors remain in vehicles at all times during the service.

- **Patios, Walkways, and Other Paved Areas:** Businesses operating outdoors can utilize existing pathways, patios, or other paved areas on private property in accordance with *Required Clearances for All Outdoor Operations*.
- **Use of Public Property:** Use of any public right-of-way for any temporary outdoor business operations, including, but not limited to, public sidewalks, public parking lots, streets, or alleys requires City approval, including a license agreement, and must abide by *Required Clearances for All Outdoor Operations*. Use of on-street parking for outdoor business operations is not permitted at any time, excluding City street closures designated for use by authorized businesses. (**City Approval Required)
- **Hours of Operation:** Businesses shall abide by regular operating hours; however, no businesses shall operate outdoors past 9:00 p.m. on weekdays and 10:00 p.m. on weekends, to limit disturbances to surrounding residential neighbors.
- **Temporary Tents, Canopies, and Sunshades:** No temporary canopy, tent, or sunshade structure can exceed 100 square feet in size (e.g., 10'x10'). All temporary canopy, tent, or sunshade structures must be a minimum of 6' apart and must be open on three sides, unless required to be open on all four sides per Health Orders. Canopies, tents, or sunshade structures cannot be attached to any other structure, apparatus, or landscape feature, including no connection to another canopy, tent, or sunshade, and must maintain 10' of separation from any building to prevent obstruction of any emergency exit area. All structures must be removable and cannot be permanently affixed outdoors.
- **Lighting:** Battery- or solar-powered lighting contained entirely within the temporary business operation area is permitted so long as it does not extend over any pedestrian path of travel. No other exterior lighting is permitted.

- **Electrical Power:** Any electrical power source used outdoors for business operations must be rated for outdoor use and secured to the ground to prevent tripping in accordance with the 2019 California Building Code series. The power source cannot extend across a pedestrian path of travel used by patrons, employees, visitors, or other service workers. No generators are allowed.
- **Alcohol Sales/Consumption:** All alcohol sales and consumption from an ABC-licensed business must be in compliance with requirements from the California Department of Alcoholic Beverage Control (ABC) and County Health Orders:
 - **California Department of ABC:** <https://www.abc.ca.gov/law-and-policy/coronavirus19/>
 - **Santa Clara County Mandatory Directive for Outdoor Dining, Wineries, and Outdoor Tasking Rooms:** <https://www.sccgov.org/sites/covid19/Pages/mandatory-directives-outdoor-dining.aspx>
- **Outdoor Equipment:** Any outdoor equipment used in business operations is the responsibility of the operator to secure, relocate, and/or remove during nonbusiness hours such that there is no potential public safety concern or hazard.
- **Outdoor Portable Heaters:** Portable outdoor heaters are permitted in accordance with:
 - The Mountain View Fire Departments *Guidelines for Storage and Use of Portable Propane/Liquefied Petroleum Gas (LPG) For Outdoor Heaters*;
 - Placement of any portable heater a minimum of 10' from any tent, canopy, sunshade, or structure; heaters are prohibited at all times under any permanent or temporary overhead covering; and
 - Storage and use of any propane must occur a minimum of 20' from any building exit.
- **Amplified Speakers:** Amplified speakers are permitted on a limited basis for businesses performing outdoor worship services, outdoor recreational/fitness classes, or other allowed outdoor gathering activities in accordance with City noise regulations. The use of amplified speakers cannot exceed a maximum of 90 minutes in continual duration between the hours of 8:00 a.m. and 6:00 p.m. daily; no amplified speakers can be used outside of the listed hours.

- **Solid Waste/Debris (including Trash, Recycling, and Composting) and Stormwater Protection:** Businesses shall provide and dispose of their own solid waste receptacles within their outdoor operations area. All solid waste and debris are required to be captured and discarded in accordance with the County’s Public Health Department and City requirements, including use of designated disposal containers/trash enclosures, or required disposal methods per State, County, or City regulations. Businesses that generate loose debris must ensure it is captured and disposed of in covered waste receptacles.

Power washing/hosing/rinsing of the outdoor business area(s) is prohibited. No discharge is permitted to the City’s storm drain system. Any businesses found to violate proper disposal or containment may be required to cease their outdoor operation and/or be fined for public health and/or environmental violations.

All personal service businesses (including employees) licensed by the California Board of Barbering and Cosmetology who choose to operate outdoors must operate in accordance with the following guidance:

- **State Department of Consumer Services and Housing Agency – Guidance on Performing Personal Care Services Outdoors:**
https://www.dca.ca.gov/licensees/personal_care_services_outdoors_guidance.pdf
- **State Board of Barbering and Cosmetology – Outside Services Checklist for Establishments:**
https://www.barbercosmo.ca.gov/licensees/salon_reopen.shtml

- **Serving Multiple Customers:** Any business serving or assisting more than one customer at a time must maintain all social distancing requirements, sanitizing protocols, signage, density limitations, personal protection equipment, and all other protocols, in accordance with the Health Orders and Cal/OSHA requirements.
- **Conclusion/Termination of Outdoor Operations:** At termination of the Program, all areas temporarily set up for outdoor operations must be removed and restored to previous conditions.

Prohibited Activities/Operations

- **Amplified Music, Live Performances:** No live entertainment or amplified music is permitted per the Health Order of the County of Santa Clara.

- **Ground Covering:** Ground covering of any type is not permitted, including, but not limited to, artificial grass, wood decking, tarps, and outdoor rugs. Such ground coverings can create accessibility and public safety concerns.
- **Outdoor Cooking:** No outdoor cooking is permitted.
- **Chemical Use:** Outdoor use of chemicals that may result in liquid discharge or runoff are prohibited, such as, but not limited to, all items identified for *personal service businesses in the Solid Waste/Debris and Stormwater Protection*.

Enforcement

All temporary outdoor business operations may be inspected by a City Inspector or Officer at any time. Should any violation be identified by the City Inspector or Officer upon inspection, the business shall be required to make adjustments to bring the operation into compliance. Failure to comply with the Program requirements shall result in a business ceasing operation and being ineligible to participate in outdoor operations under this Program.

The City reserves the right to require removal of any outdoor business operation that: (a) creates an obstruction to, or causes congestion of, pedestrian or vehicular traffic due to existing conditions on the property or surrounding public right-of-way; (b) represents a danger to the health, safety, and general welfare of the public; (c) violates the requirements in this document; and/or (d) violates any applicable State or County Health Orders, or City code requirements, including violations of the 2019 California Building Code series.

The City of Mountain View, by enacting these requirements authorizing temporary outdoor business operations, shall not impose any liability upon the City, its officers, or employees as it may relate to the Citywide Outdoor Business Operations Program. Businesses participating in the Citywide Outdoor Business Operations Program pursuant to these Program requirements expressly acknowledge, and consent by their participation, that they waive and release the City and its agents, officers, elected officials, and employees from any and all injuries, damages, or liabilities of any kind, or claims for same, arising from their participation in the Program, and shall indemnify and hold harmless the City of Mountain View and its agents, officers, elected officials, and employees for any claims, damages, or liabilities arising from claims filed by third parties arising from the participating participation by the business in the Citywide Outdoor Business Operations Program, including, but not limited to, the participating business owners, members, employees, agents, invitees, and contractors.

EXAMPLE LAYOUTS OF TEMPORARY OUTDOOR BUSINESS OPERATIONS

