

RESOLUTION 2020-42

A RESOLUTION AMENDING THE PROCLAMATION OF A LOCAL HEALTH EMERGENCY TO APPROVE A TEMPORARY OUTDOOR DINING AND RETAIL PROGRAM IN THE CITY OF EL CERRITO TO ENHANCE BUSINESS RECOVERY DURING THE COVID-19 PANDEMIC

WHEREAS, Section 8630, Article 14, of the California Emergency Services Act empowers the City Council to proclaim the existence or threatened existence of a local emergency when the City of El Cerrito ("City") is affected or likely to be affected by a public calamity; and

WHEREAS, Chapter 2.28 of the El Cerrito Municipal Code ("ECMC") similarly authorizes the City Manager, serving as the Director of Emergency Services to declare and proclaim, or to request the City Council to declare and proclaim, the existence or threatened existence of a "local emergency"; and

WHEREAS, the City of El Cerrito proclaimed the existence of a Local Emergency related to the Novel Coronavirus (COVID-19) on March 13, 2020 via Resolution No. 2020-12 (the "Emergency Proclamation"); and

WHEREAS, on March 16, 2020, seven health officers within six Bay Area counties, including Contra Costa County ("County"), took a unified step to slow the spread of COVID-19 and preserve critical health care capacity across the region by issuing a legal order directing their respective residents to shelter at home and limiting activity, travel and business functions to only the most essential needs for three weeks, beginning March 17, 2020; and

WHEREAS, on March 19, 2020, Governor Gavin Newsom issued a statewide order ordering all individuals living in the State of California ("State") to stay home or at their place of residence, except as needed to maintain continuity of operation of the federal critical infrastructure sectors; and

WHEREAS, the County has been under a Shelter in Place public health order ("SIP Order") due to COVID-19 since March 17, 2020 and multi-month closure of many of the County's local businesses is putting a huge financial strain on all industries; and

WHEREAS, on June 16, 2020, the County of Contra Costa Health Officer announced revised orders to align with State Health Orders to ease some restrictions to allow additional businesses to resume or begin operating, subject to conditions set forth in applicable industry guidelines issued by the State; and

WHEREAS, in conjunction with the revised County Health Orders, many jurisdictions are considering, or have implemented, an outdoor dining and retail program; and

WHEREAS, the City has an important governmental interest in maintaining a healthy, active, and thriving business community and protecting the health, safety, and economic welfare of its citizens and businesses; and

WHEREAS, to protect the health and safety of the City, while fostering economic wellbeing of the City's citizens and businesses, the City wishes to assist both essential and non-essential businesses in remaining open, or re-opening when lawfully permitted to do so; and

WHEREAS, to achieve this purpose, the City wishes to implement a Temporary Outdoor Dining and Retail Program (the "Program"), which would allow interested restaurants and businesses within the City to, by complying with standards established by the City, County and State and subject to review and approval by the City, utilize public right-of-way spaces, including certain public parking spaces, private outdoor spaces and certain private parking spaces (the "Outdoor Spaces"), for an expanded dining or retail area; and

WHEREAS, existing provisions of State law, the El Cerrito Municipal Code ("ECMC") and the San Pablo Avenue Specific Plan ("SPASP") regulate outdoor dining and retail, temporary uses, parking requirements, and encroachments onto the public streets and sidewalks, signage requirements; and

WHEREAS, for the City's business community to survive the challenge presented by the COVID-19 pandemic and the resulting business closures, the City Council finds that temporary emergency modifications to existing policies and regulations are needed to help implement the Program; and

WHEREAS, under the current emergency circumstances, the City Council finds that it is in the best interest of public health, safety and welfare to permit the temporary use of the Outdoor Spaces by restaurants and businesses, with appropriate conditions to preserve the public safety and necessary public access to those resources, and finds that City staff should be given broad discretion to modify existing City policies, procedures and regulations in order to effectively assist the City's local businesses in their reopening efforts; and

WHEREAS, except as amended herein, the City Council desires to continue to enforce the other provisions of the Emergency Proclamation.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that the above recitals are true and correct and incorporated herein by this reference.

BE IT FURTHER RESOLVED that the Temporary Outdoor Dining and Retail Program is hereby approved and the City Manager is authorized to implement the Program, including the temporary authority to allow the utilization of, or to approve use and occupancy of, the Outdoor Spaces by businesses, eating and drinking

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establishments, and retailers, consistent with the provisions of this Emergency Proclamation. Any authorization granted pursuant to the authority provided herein shall be consistent with the requirements set forth in any applicable SIP Order applicable within Contra Costa County.

BE IT FURTHER RESOLVED that the following temporary changes are made to the El Cerrito Municipal Code ("ECMC") and the San Pablo Avenue Specific Plan ("SPASP") to facilitate the implementation of the Outdoor Dining and Retail Program in the City:

1. Notwithstanding applicable regulations of Title 13, Chapter 13.12 relating to Encroachments, the City's Encroachment Permit application requirements, conditions, and fees may be waived for all applications that further purposes of the Program.
2. The City Manager is temporarily vested with the authority to approve the use of modified Encroachment Permit Applications, and/or other permit applications for all requests submitted to the City pursuant to this resolution. The City Manager is temporarily vested with the authority to: (a) approve applications submitted to the City pursuant to this resolution, and/or (b) require that participating restaurants and businesses adhere to specific standards and conditions for approval of any application submitted pursuant to this resolution, and/or (c) require that any necessary supporting documentation be submitted for approval of any application submitted pursuant to this resolution.
3. Notwithstanding applicable regulations of Title 19, Chapter 19.15, and Sections 19.20.150, and 19.20.160 of the ECMC, and applicable regulations of Section 2.02.03 of the SPASP, the City Council hereby temporarily suspends regulations pertaining to outdoor dining uses in the public right-of-way and outdoor retail sales to the extent necessary to further purposes of the Program.
4. Notwithstanding applicable regulations of Title 11, Chapters 11.40 and Title 19, Chapters 19.15 and 19.24 of the ECMC and applicable regulations of Section 2.05.08 of the SPASP, the City Council hereby temporarily suspends the application of on-site parking requirements, including any parking requirements related to the computation of spaces per ratio of gross floor area or customer seating area, for Eating and Drinking Establishments, Food and Beverage Retail Sales, and Retail Sales in the City, to the extent necessary to further purposes of the Program. The City Manager is hereby authorized to impose conditions of approval upon any proposal to temporarily repurpose or convert existing parking spaces to accommodate outdoor dining, Food and Beverage Retail Sales, and Retail Sales in the City, to the extent necessary to implement the Program.

5. Notwithstanding applicable regulations of Title 19, Chapter 19.15 and Sections 19.26.030, 19.26.050, 19.26.070, 19.26.090, and 19.26.100 of the ECMC, applicable regulations of Sections 2.05.09 and 2.05.10 of the SPASP, and applicable regulations of any adopted master sign programs, the City Council hereby temporarily suspends regulations and permit requirements applicable to temporary signs as applicable to Eating and Drinking Establishments, Food and Beverage Retail Sales, and Retail Sales in the City, to the extent necessary to further purposes of the Program. The City Manager is temporarily vested with the authority to regulate these signs, review and approve signage plans, set installation and display requirements, and approve proposals to erect temporary commercial signs and window signs, consistent with other applicable provisions of the El Cerrito Municipal Code and subject to approval by the Zoning Administrator.

6. Notwithstanding application regulations of Section 10.20.010 of the ECMC, to the extent necessary to effectuate the Program, the City Council hereby temporarily suspends municipal regulations pertaining to alcohol consumption in public places, including but not limited to streets, sidewalks, parking lots, as applicable to Eating and Drinking Establishments, Food and Beverage Retail Sales, and Retail Sales the City, and the City Manager is temporary authorized to permit outdoor consumption of alcohol as part of the Program. Other regulations applicable to alcohol consumption and sales, including regulations administered by the Department of Alcoholic Beverage Control (ABC) still apply.

BE IT FURTHER RESOLVED that in addition to the specific authorizations granted above, the City Manager is temporarily vested with the authority to streamline, suspend, waive or modify all other City of El Cerrito regulations, policies and/or fees to the extent that: (1) such regulations or policies would otherwise prohibit businesses from engaging in their business activities outdoor or curbside; (2) is necessary to further the purpose of the Program; and (3) such suspension, waiver or modification does not result in an increase in general intensity of use beyond what is otherwise allowed, as applicable.

BE IT FURTHER RESOLVED that in exercising the temporary authority pursuant to this resolution to allow the utilization of, or to approve use and occupancy of, the Outdoor Spaces, the City Manager shall also require businesses, eating and drinking establishments and retailers to comply with applicable building code, fire code and American with Disabilities Act standards and the City's insurance and indemnification requirements.

BE IT FURTHER RESOLVED that the authority temporarily vested in the City Manager pursuant to this resolution may be delegated by the City Manager to her designee through written delegation of authority signed by the City Manager.

BE IT FURTHER RESOLVED that nothing in this resolution shall relieve a business from any the following:

1. The requirement to comply with all applicable standards and conditions described herein, including any application or other documentation approved by or required by the City Manager pursuant to this resolution.
2. Any obligations or laws requiring consent of adjacent property owners for use of private property. Businesses seeking to operate outdoors shall obtain consent of any private property owners whose property will be used for outdoor operations.
3. Any obligations or laws requiring consent from or approval by CalTrans for use of any public right-of-way subject to CalTrans' authority.
4. The requirement to provide accessible parking spaces pursuant to the Americans with Disabilities Act.
5. The requirement to obtain a building permit for outdoor activities if a building permit would otherwise be required, and compliance with all provisions of the Building Code, including but not limited to, maximum occupancy requirements.
6. The requirement to undergo design review for exterior alterations if such design review is otherwise required, except that temporary installations, including but not limited to tents, fencing, barriers, enclosures, and platforms and ramps, may be authorized by the City Manager to facilitate proposed outdoor activities consistent with the provisions of this resolution.
7. The requirement to obtain any and all County and State permits regarding the provision of food and dining services, including alcoholic beverages, including but not limited to the COVID-19 Temporary Catering Authorization required by the State Department of Alcoholic Beverage Control.

BE IT FURTHER RESOLVED that all temporary suspension of regulations, policies, and requirements of the El Cerrito Municipal Code and San Pablo Avenue Specific Plan, and all temporary delegations of authority provided for in this resolution shall remain in effect for the duration of the Emergency Proclamation, as adopted by Resolution No. 2020-12, and shall expire upon the termination of the Emergency Proclamation by the City Council.

BE IT FURTHER RESOLVED that except as specifically amended herein, Resolution No. 2020-12, as previously amended and updated, shall remain in full force and effect.

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on July 21, 2020 the City Council of the City of El Cerrito passed this Resolution by the following vote:


AYES: Mayor Lyman; Mayor Pro Tem Fadelli; Councilmembers Abelson, Pardue-Okimoto and Quinto
NOES: None
ABSTAIN: None
ABSENT: None

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on July 31, 2020.



Holly M. Charléty, City Clerk

APPROVED:



Gregory B. Lyman, Mayor