

Office of the City Manager

Monterey, California 93940



ORDER OF THE DIRECTOR OF EMERGENCY SERVICES (MONTEREY CITY MANAGER) TO ALLOW COVID-19 TEMPORARY OUTDOOR BUSINESS PERMITS

WHEREAS, pursuant to Government Code section 38791, the City Council may provide for a chief executive who, during period of great public calamity such as an epidemic, has complete authority over the City and the right to exercise all police power vested in the city by the Constitution and general laws;

WHEREAS, Monterey City Code section 11-4(b)(9) states that the Director of Emergency Services shall have the power during a proclaimed emergency to make and issue rules and regulations on matters reasonably related to the protection of life and property which are or may be affected by the emergency, including the temporary suspension of local ordinances and regulations, provided that such actions shall be confirmed at the earliest practical time by the City Council;

WHEREAS, on March 13, 2020, the City Manager as the Director of Emergency Services of the City of Monterey, proclaimed the existence of a local emergency based on the following related to the COVID-19 pandemic: (1) on January 30, 2020, the World Health Organization declared a public health emergency of international concern; (2) on January 31, 2020, the U.S. Department of Health and Human Services declared a Public Health Emergency in the United States; (3) on March 4, 2020, the State of California proclaimed a state of emergency ; and (4) on March 10, 2020, the County of Monterey declared a local emergency;

WHEREAS, on March 17, 2020, the City Council adopted Resolution No. 20-033 and ratified said Proclamation;

WHEREAS, on March 19, 2020, the Governor of the State of California issued Executive Order N-33-20, ordering all individuals in the State of California to stay home or at their place of residence, except as outlined by the California Department of Public Health (CDPH), during the COVID-19 pandemic for the preservation of public health and safety throughout California and to ensure that the healthcare delivery system is capable of serving all, including those at higher risk and the most vulnerable;

WHEREAS, the County of Monterey Health Officer, on March 17, 2020, ordered a shelter in place order that was amended on April 3, 2020, April 28, 2020, May 1, 2020, and May 8, 2020;

WHEREAS, the County of Monterey Health Officer on May 26, 2020 issued an amended order that would become effective upon the posting by the CDPH on its website the County

Health Officer's Attestation for a Variance through Stage 2 of the State's Roadmap to Pandemic Resilience;

WHEREAS, the County Health Officer's attestation for a variance was posted on May 30, 2020 and the County Health Officer's order dated May 26, 2020 became effective on May 30, 2020;

WHEREAS, a supplement to the May 26, 2020 order was issued on June 11, 2020;

WHEREAS, the County and the State have issued orders relaxing restrictions and allowing restaurants, retail and other businesses to reopen, with modification and pursuant to COVID-19 Industry Guidance issued by the CDPH; WHEREAS, on July 2, 2020, CDPH placed Monterey County on the COVID-19 watch list due to increasing COVID-19 positive cases;

WHEREAS, on July 13, 2020, the CDPH issued an order closing indoor sectors in Monterey County. The July 13, 2020 CDPH order allows certain business activities to occur outdoors, including but not limited to outdoor dining and outdoor hair and nail salons. The CDPH's order is available at this link:

<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf>;

WHEREAS, the Director of Emergency Services issued an emergency order on June 26, 2020- and this order supersedes that order to address additional outdoor businesses finding that:

1. Businesses seek to transform their operations to comply with the County Health Order and the CDPH's COVID-19 Industry Guidance. In order to comply with Industry Guidance, various businesses and restauranteurs have requested to place tables and chairs, merchandise, displays, etc., outside their businesses, whether on private or public property, to operate in compliance with the CDPH orders and to compensate for lost seating or activities inside a business;
2. Businesses have requested to conduct operations outdoors on existing sidewalks, on private parking lots, and in on-street parking spaces;
3. The public health, safety and welfare are best served by allowing some flexibility for outdoor seating, retail sales, and other business activities that are allowed by the CDPH to operate outside;
4. Due to the severe economic impacts of COVID-19 on the community and the City, it is necessary to take this action to support the economic viability of businesses while adhering to permitted opening and social distancing requirements; and
5. Having outdoor seating, retail sales, and other business activities helps to ensure that the businesses adhere to social distancing directives and shelter in place orders, which in turn, will help mitigate the transmission of the COVID-19 virus.

WHEREAS, both the City and businesses in the City are concerned with the safety, health and welfare of the community and wish to safeguard people while safely generating economic activity;

NOW, THEREFORE, IT IS HEREBY PROCLAIMED, that:

Section 1. Except as specified under Section 3, below, Monterey City Code sections 32-6 (Obstruction of Sidewalks), 38-114 (Basic Requirements for Off-Street Parking), 38-115 (Off-

Street Parking Spaces Required), 32-4 (Special events – permit required), 38-188 (Architectural Review), and sections of the Downtown Specific Plan, Lighthouse Specific Plan and North Fremont Specific Plan relating to architectural review, are hereby temporarily suspended until the City Manager or City Council terminates this order, the City Council terminates the local emergency proclaimed by the City Manager on March 13, 2020 and ratified by City Council Resolution No. 20-033 on March 17, 2020, or the City Council adopts an alternative policy. Any business that seeks to establish or expand to otherwise impermissible outdoor areas must apply for and receive approval to do so via a COVID-19 Temporary Outdoor Business Permit issued by the Community Development Department. The City shall not charge a fee for the permit, but may recover lost parking revenue as provided herein. A special event permit will not be required. The COVID-19 Temporary Outdoor Business Permit shall contain conditions determined by the Community Development Department, including but not limited to the following:

- a. Outdoor business activities shall comply with the Governor's Executive Orders, the CDPH's orders, "COVID-19 Industry Guidance" and Monterey County Public Health Department orders;
- b. Permittee must ensure that no obstruction is placed in the sidewalk or pedestrian path that would reduce the width of the sidewalk or pedestrian path to less than 48 inches, exclusive of the top of the curb.
- c. Permittee shall not obstruct any Americans with Disabilities Act required paths of travel, including sidewalks, walkways, and/or parking stalls.
- d. Permittee shall comply with City of Monterey Fire Marshal requirements;
- e. Permittee shall comply with City of Monterey Traffic Engineer requirements;
- f. Permittee shall comply with City of Monterey Building Official requirements;
- g. Permittee shall obtain a temporary ABC outdoor permit if serving alcohol outdoors.
- h. Permittee business shall not obstruct the line of sight of any pedestrian, bicycle, or vehicle entering or exiting a property, and shall be established in a manner that maintains safe pedestrian and vehicular movement which may include the placement of physical barriers to protect customers from vehicle traffic.
- i. Permittee shall maintain all permitted outdoor seating, vending, or other outdoor business fixtures in a safe, clean, orderly, and sanitary condition.
- j. Permittee shall pay the fee established in Resolution No. 20-060 to compensate the City for lost parking revenue if the outdoor business eliminates parking revenue from a metered parking space.
- k. Permittee shall acknowledge that no vested right as to the permitted use of the subject property shall accrue as a result of this limited and temporary approval, and that any permit may be denied, suspended, rescinded, or revoked by the City.

Section 2. Businesses that obtain a COVID-19 Temporary Outdoor Business Permit must either remove the improvement and restore the property to its original condition or shall submit to the Community Development Department the appropriate applications, including architectural plans, to maintain the improvement within 30 days of the City Manager or the City Council terminating this order, the City Council terminating the local emergency proclaimed by the City Manager on March 13, 2020 and confirmed by the City Council Resolution 20-033 on March 17, 2020, or the City Council adopts an alternative policy.

Section 3. Enforcement. The City reserves the right to enforce any violations of the COVID-19 Temporary Outdoor Business Permit under the City Code provisions that are otherwise suspended in Section 1.

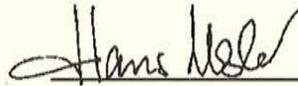
Section 4. Severability. If any section, subsection, clause or phrase of this order is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the order.

Section 5. This order takes precedence over ordinances and resolutions in conflict herewith for the limited purposes and duration stated herein.

IT IS FURTHER ORDERED that this order shall take effect immediately and the Director of Emergency Services shall request that the City Council confirm this Order at the earliest practical time.

July 23, 2020 @ 13:31

Date and Time



Hans Uslar, City Manager and
Director of Emergency Services