Office of the City Manager
Monterey, California 93940

ORDER OF THE DIRECTOR OF EMERGENCY SERVICES (MONTEREY CITY MANAGER) TO ALLOW COVID-19 TEMPORARY ENCROACHMENT PERMITS FOR BUSINESSES TO ESTABLISH OR EXPAND OUTDOOR DINING AND RETAIL AREAS

WHEREAS, Section 11-4(b) of the Monterey City Code empowers the Director of Emergency Services to proclaim the existence or threatened existence of a local emergency when the City is affected or likely to be affected by a public calamity and the City Council is not in session;

WHEREAS, MCC 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: (1) on January 30, 2020, the World Health Organization declared the COVID-19 outbreak 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) the State of California proclaimed a state of emergency on March 4, 2020; and (4) the County of Monterey declared a local emergency on March 10, 2020;

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, during the COVID-19 pandemic for the preservation of public health and safety throughout California and to ensure that the healthcare delivery systems 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 was effective upon the posting by the California Department of Public Health 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 modifications and pursuant to COVID-19 Industry Guidance issued by the California Department of Public Health;

WHEREAS, the Director of Emergency Services does hereby find that:

1. Businesses are transforming their operations to comply with the County Health Order and the California Department of Public Health's COVID-19 Industry Guidance. In order to comply with Industry Guidance, various businesses and restauranteurs have requested if they can place additional tables and chairs outside their business to compensate for the lost seating inside a business. Some retail establishments are requesting if they can place merchandise outside their business for sale;

2. The public health, safety, and wellbeing is best served by allowing some flexibility for outdoor seating and retail sales;

3. 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 in adhering to permitted opening and social distancing requirements; and

4. Outdoor seating and retail sales help 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 to others.

WHEREAS, both City and businesses are concerned with the safety, health and welfare of the community, and wish to safeguard people;

NOW, THEREFORE, IT IS HEREBY PROCLAIMED, that:

Section 1. Monterey City Code sections 32-6 (Obstruction of Sidewalks) is temporarily suspended, and a COVID-19 Temporary Encroachment Permit shall be exempt from architectural review pursuant 38-188(b), and sections of the Downtown Specific Plan, Lighthouse Specific Plan and North Fremont Specific Plan relating to architectural review are hereby temporarily suspended for these permits until the City Manager terminates this directive, the City Council terminates the local emergency proclaimed by the City Manager on March 31, 2020 and confirmed by the City Council Resolution 20-033 on March 17, 2020, or the City Council adopts an alternative policy. Any business that seeks to establish or expand to outdoor areas must apply for and receive approval via a COVID-19 Temporary Encroachment Permit from the Community Development Department. The City shall not charge a fee for the permit. The COVID-19 Temporary Encroachment Permit shall comply with conditions determined by the Community Development Department, including but not limited to the following:

a. 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.
b. Permittee may not occupy space on any sidewalk or pedestrian path in such a way that would impede upon the required sidewalk width or path of travel requirement pursuant to the Americans with Disabilities Act of 1990 and other disability access standards.
c. Permittee shall maintain the outdoor seating or vending area in a clean, orderly, and sanitary condition.

Section 2. Businesses that obtain a COVID-19 Temporary Encroachment Permit must either remove the improvement or shall submit architectural plans within 30 days of the City Manager terminating this directive, the City Council terminating the local emergency proclaimed by the City Manager on March 31, 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. Any person, as that term is defined in Monterey City Code section 1-2, who violates this Order, or any terms or conditions of a COVID-19 Temporary Encroachment Permit, is subject to administrative citations under City Code section 1-9 through 1-9.12. The fine amount for the first violation is $100.

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 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.

06/26/2020 at 16:04
Date and Time

Hans Uslar, City Manager and
Director of Emergency Services