

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING THE DECLARATION ISSUED BY THE DIRECTOR OF EMERGENCY SERVICES ON JUNE 4, 2020**

**WHEREAS**, on March 10, 2020, the City Council of the City of San José (“City”) ratified the Director of Emergency Service’s Proclamation of Local Emergency due to the outbreak of a novel coronavirus in the City; and

**WHEREAS**, Government Code Section 8634 and Section 8.08.250 of Chapter 8.08 of Title 8 of the San José Municipal Code empower the Director of Emergency Services (City Manager or Designee) to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; and

**WHEREAS**, Section 8.08.250 of the San José Municipal Code requires such rules and regulations made and issued by the Director of Emergency Services to be confirmed by the City Council at the earliest practicable time; and

**WHEREAS**, on March 31, 2020, the Health Officer of the County of Santa Clara (“County Health Officer”) issued an Order directing all individuals to continue to shelter in place and requiring essential businesses to implement a Social Distancing Protocol; and

**WHEREAS**, on May 18, 2020, the County Health Officer issued a further Order continuing the Social Distance Protocol but allowing retailers to open with curbside/outdoor pick up, supply chains for retail establishments to reopen and certain outdoor activities to resume; and

**WHEREAS**, on June 1, 2020, the County Health Officer issued a further Order effective June 5, 2020 continuing the Social Distance Protocol but allowing certain additional businesses to resume operations, including outdoor dining at restaurants, in-store shopping at retail and shopping centers and limited services that do not require customer contact, subject to limitations; and

**WHEREAS**, on July 2, 2020, the Health Officer of the County of Santa Clara issued a further Order effective on the later of (1) 12:01 a.m. on July 13, 2020 or (2) 12:01 am two days following approval by the State Department of Public Health of a “variance” under the State’s “Resilience Roadmap” as described at covid19.ca.gov, which updated the Social Distance Protocol and allowed certain additional businesses to resume operations, subject to limitations; and

**WHEREAS**, on July 13, 2020, the California State Public Health Officer issued an order that, amongst other things: (1) required a number of businesses statewide to immediately cease indoor operations, (2) required certain additional businesses in Santa Clara County to cease indoor operations effective July 15, 2020, and (3) allowed businesses to modify operations to provide outdoor services; and

**WHEREAS**, provisions in land use permits and planning approvals issued by the City and/or provisions in the San José Zoning Code prohibit the use of adjacent outdoor areas for the purposes of conducting business activities without first obtaining the City’s authorization through specified application processes; and

**WHEREAS**, Title 13 of the San José Municipal Code prohibits encroachments into the public right-of-way or other public property without first obtaining an encroachment permit from the City through specified application processes; and

**WHEREAS**, to ensure compliance with the Social Distancing Protocol, businesses need additional outdoor areas to serve customers and allow customers to queue while waiting to enter the business premises; and

**WHEREAS**, on June 4, 2020, the Director of Emergency Services issued a declaration (“Declaration”) suspending enforcement of certain provisions in land use permits and approvals and zoning and encroachment requirements in the San José Municipal Code in order to allow many businesses without existing permits for outdoor operations or seating to expand their operations outside in privately-owned outdoor areas, such as parking lots, and use public sidewalks for temporary seating in order to facilitate compliance with the Social Distancing Protocol; and

**WHEREAS**, on June 9, 2020, the City Council ratified and confirmed the Declaration; and

**WHEREAS**, the City has subsequently received requests to allow businesses to utilize sidewalk areas located in front of neighboring businesses, which the Declaration currently does not allow;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

1. The Declaration is hereby amended by replacing Exhibit B to the Declaration in its entirety with Attachment A to this Resolution.
2. The remainder of the Declaration is not modified by this Resolution and shall remain in full force and effect.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

---

SAM LICCARDO  
Mayor

ATTEST:

---

TONI J. TABER, CMC  
City Clerk

RD:EEH:KML  
6/26/2020

## **ATTACHMENT A**

T-39211\1735318  
Council Agenda: 8/4/2020  
Item No.: 3.6(b)

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.**

**EXHIBIT B**  
**CONDITIONS AND LIMITATIONS FOR**  
**USE OF ABUTTING PUBLIC SIDEWALKS**

Restaurants and other businesses that provide sit-down food service may provide food and beverage service on public sidewalks abutting their property, and any other type of business may provide seating on public sidewalks abutting their property, subject to the following conditions and limitations.

**1. LOCATION OF SIDEWALK USE**

For purposes of this regulation, an "Abutting Sidewalk Area" is defined as a public sidewalk abutting a business' property, subject to the following:

- a. The Abutting Sidewalk Area may extend to public sidewalks in front of a neighboring property only with the written consent of the neighboring property, which written consent shall be provided to the City prior to the business' use of such additional area(s).
- b. The Abutting Sidewalk Area shall include a minimum clear pedestrian through zone (*i.e.*, contains no objects) along its entire length that is at least four feet (4') wide with seven feet (7') of vertical clearance above the sidewalk surface.

**2. ELIGIBLE BUSINESSES**

Only businesses allowed to operate under the Health Orders of Santa Clara County, as amended, are eligible to use an Abutting Sidewalk Area under this regulation.

**3. LIMITATIONS ON PERMITTED OPERATIONS**

- a. Restaurants and other businesses that provide sit-down food service may use an Abutting Sidewalk Area for food and beverage service, subject to the limitations in this section.
- b. All businesses other than restaurants and other businesses that provide sit-down food service may use an Abutting Sidewalk Area only to provide seating for the public and customers waiting to enter the business establishment. No other business operations shall be conducted on public property under this regulation.
- c. Only tables, chairs, benches, umbrellas, other moveable furniture and barriers required by ABC may be placed in an Abutting Sidewalk Area and shall be subject to the following:
  - i. Items placed in the Abutting Sidewalk Area shall be set back a minimum of five feet (5') from building corners;
  - ii. Items placed in the Abutting Sidewalk Area shall be set back a minimum of two feet (2') from the curb;

- iii. Items placed in the Abutting Sidewalk Area shall not obstruct doorways, fire equipment/connections or interfere with a building's ingress/egress; and
- iv. Items placed in the Abutting Sidewalk Area shall comply with the City's current Building Code and applicable ADA accessibility standards.
- d. No part of the Abutting Sidewalk Area or any other public property shall be physically altered pursuant to this regulation, including by attaching any objects to the sidewalk.
- e. The following are prohibited in the Abutting Sidewalk Area:
  - i. Flames of any type, including, without limitation, stoves, burners, heat lamps and candles;
  - ii. Amplified sound or entertainment;
  - iii. Advertising;
  - iv. Consumption of alcohol except in compliance with ABC rules and regulations;
  - v. Smoking; and
  - vi. Storage of materials or equipment, including, without limitation, movable furniture.
- f. An Abutting Sidewalk Area may be used in accordance with this regulation daily between the hours of 7 a.m. and 10 p.m.
- g. All items placed in an Abutting Sidewalk Area shall be removed each day at the conclusion of a business' operations in the Abutting Sidewalk Area.
- h. The Abutting Sidewalk Area shall be maintained in good condition and kept free of litter and graffiti.

#### 4. OTHER REQUIREMENTS

Any conflicting provisions contained in an existing permit or authorization from the City allowing sidewalk seating or dining are superseded while this regulation is in effect.

#### 5. REGISTRATION PROCESS

Before an eligible business may begin using an Abutting Sidewalk Area, the business shall register online in accordance with the following:

- a. The business shall register their use of an Abutting Sidewalk Area through the City's web site. There shall be no fee for registering.
- b. As part of the online registration process, businesses must (a) consent to standard terms and conditions on the registration website and (b) upload a certificate of insurance meeting the requirements set forth on the registration website.

- c. Following registration, a business shall have the City's conditional approval – allowing the business to immediately begin using the Abutting Sidewalk Area – pending the City's review of the registration submission to determine whether it meets the requirements of this regulation.
- d. If a submittal does not comply with the registration requirements, the City will contact the business, which shall immediately cease use of the Abutting Sidewalk Area and correct any deficiencies prior to continuing to use of the Abutting Sidewalk Area.

6. ADMINISTRATION

The provisions of this Exhibit B shall be under the administration of the Director of Public Works.