

DES ORDER NO. 2
MAY 21, 2020

AN ORDER OF THE DIRECTOR OF EMERGENCY SERVICES (CITY MANAGER) OF THE CITY OF SIMI VALLEY PERMITTING ADDITIONAL OUTSIDE DINING IN THE CITY OF SIMI VALLEY

WHEREAS, Pursuant to California Government Code a Special Meeting of the City Council of the City of Simi Valley was properly noticed and convened on March 16, 2020; and,

WHEREAS, California Government Code Section 8630 empowers the City Council to proclaim the existence or threatened existence of a Local Emergency when City is affected or likely to be affected by a public calamity; and,

WHEREAS, Government Code Section 8634 empowers the City Council to promulgate orders and regulations to provide for the protection of life and property; and,

WHEREAS, pursuant to Section 4-5.01 *et seq.* of the Simi Valley's Municipal Code ("SVMC"), the Director of Emergency Services ("DES") has declared the existence of a Local Emergency, and the City ratified and proclaimed the same; and,

WHEREAS, the DES does hereby find that conditions of extreme peril and a crippling disaster which severely impairs the safety of persons or property have arisen within the City caused by the virus, COVID-19, and its rapid transmission as reported by various local, state and national health organizations; and,

WHEREAS, the aforesaid conditions of extreme peril warranted and necessitated the proclamation of the existence of a Local Emergency; and

WHEREAS, the Governor of the State of California ("Governor") issued an Executive Order (N-33-20) (March 19, 2020), requiring all Californians to "Shelter in Place,"; and the Health Officer of the County of Ventura issued an Order requiring the residents of Ventura County to "Stay Well at Home" (March 20, 2020), which prohibited, among other matters, indoor dining in restaurant establishments; and

WHEREAS, on or about the period beginning March 19, 2020 until on or about May 20, 2020, the State Department of Alcoholic Beverage Control ("ABC") issued a series of five "Notices of Regulatory Relief" which modified various provisions of state laws and regulations relating to the service and provision of alcoholic beverages in California; and

WHEREAS, on May 5, 2020, the City Council confirmed and renewed the proclamation of the existence of a Local Emergency, and further ratified DES Order No. 1 (issued March 18, 2020) ; and

WHEREAS, on May 12, 2020, the Governor issued guidance for the reopening of restaurants in counties certified as meeting state benchmarks for addressing the COVID-19 pandemic; and

WHEREAS, on May 20, 2020, the County of Ventura received approval from the California Department of Public Health (CDPH) to move forward on a Stage 2 reopening, which allows Ventura County restaurants to offer dine-in options; and

WHEREAS, Government Code Section 8634 empowers the City and the DES to promulgate orders and regulations necessary for the preservation of life and property during the Local Emergency, and in the case of certain dining establishments, the density of patrons has a direct effect on the safety of establishment personnel, while the economic viability of such establishments is increased by additional service areas such as the outdoors; and

WHEREAS, in the interest of public health and safety, as well as economic viability of businesses that employ and serve the public, as affected by the emergency caused by the spread of COVID-19, it is necessary to issue and implement this Order to protect life, property and civil order.

NOW, THEREFORE, THE DIRECTOR OF EMERGENCY SERVICES OF THE CITY OF SIMI VALLEY DOES HEREBY ORDER AS FOLLOWS:

SECTION 1. The DES hereby suspends, to the extent necessary, any portion of the SVMC, including but not limited to any section of Title IX (development standards), Title V (interior alcohol consumption), Title VII (encroachments), and all other sections of the SVMC that would impair the Restaurant Expansion Seating Area Regulations attached as Exhibit A to this Order.

SECTION 2. The DES hereby adopts the Restaurant Expansion Seating Area Regulations attached as Exhibit A. All establishments availing themselves of the activities permitted in Exhibit A must follow all of the provisions therein. Establishments must continue to follow all applicable state laws, orders and regulations, including but not limited to orders and regulations of the Governor of the State of California, the Department of Alcoholic Beverage Control (ABC), and the County of Ventura, which are not modified or altered by this Order.

SECTION 3. This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the City of Simi Valley, or any of its officials, employees, contractors, agents or volunteers.

SECTION 4. This Order shall be in force and effect until and unless superseded by a duly enacted Ordinance or Resolution of the City Council of the City of Simi Valley or a further Order by the Director of Emergency Services adopted during the Local Emergency that expressly supersedes this Order, or until the date that the DES or the City Council declare the Local Emergency to be ended, whichever is sooner.

SECTION 5. Severability. If any section, clause or other portion of this Order is for any reason to be held invalid or unconstitutional by any final, unappealable decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Order. Should the Governor, the County or ABC issue further orders, rules or regulations addressing the restaurant matters covered by this Order, this Order shall be interpreted to the extent feasible in a manner consistent with such orders rules or regulations.

SECTION 6. This order shall be given publicity and notice as required by California Government Code Section 8634.

SECTION 7. The City Clerk shall certify to the adoption of this Order and shall cause a certified Order to be filed in the Office of the City Clerk.

PASSED and ADOPTED this 21st day of May 2020.

Attest:

Lucy Blanco

Lucy Blanco, City Clerk

Brian Gabler

Brian P. Gabler, Director of Emergency Services/City Manager

Approved as to Form:

Lonnie J. Eldridge

Lonnie J. Eldridge, City Attorney

Exhibit A

COVID-19 Restaurant Expansion Seating Area Regulations

Introduction

California's COVID-19 Industry Guidance: Dine-in Restaurants (Guidance) provides information to support a safe and clean environment for workers and customers. Compliance with the Guidance could result in a reduction of tables that would financially impact a restaurant in which it is not cost effective to operate. By issuing a *Temporary Use Permit – COVID-19*, the City is allowing restaurants to temporarily expand their footprint into public spaces and other areas to accommodate dine-in service at pre-COVID-19 levels. The City is also providing an opportunity for additional social distancing to increase safety of restaurant personnel and patrons. The below provides a roadmap for restaurants to follow.

Requirements for a Temporary Use Permit – COVID-19 (TUP-COVID-19)

To be issued a TUP-COVID-19, restaurants must:

- Remain in compliance with the COVID-19 Industry Guidance: Dine-in Restaurants document;
- Be registered at www.vcreopens.com.
- Remain in compliance with the County of Ventura Health Officer's Orders.
- Remain in compliance with the County of Ventura Environmental Health regulations.
- Remain in compliance with California Alcohol Beverage Control (ABC) regulations.
- Remain in compliance with the Simi Valley Municipal Code.

General Requirements

- A TUP-COVID-19 will be authorized while dine-in restaurant services are allowed at reduced seating capacities.
- ADA accessibility is required to be maintained at all times for expanded seating areas.
- Where applicable and possible, all the restaurants in the shopping center should cooperate in preparing a centralized seating area utilizing vacant tenant spaces or outdoor seating areas.
- The temporary seating capacity combined with the originally approved seating area shall not exceed the originally approved occupancy for the restaurant(s).
- A letter of permission from the property owner must be submitted if the applicant does not own the property where the dining is to be located.
- Social distancing must also be maintained to individuals in a public sidewalk or from anyone that may be standing in line for seating or take out.
- The layout cannot block egress.
- Restaurants that have a previously approved alcoholic beverage license may continue to sell alcoholic beverages in accordance with the ABC Fourth Notice of Regulatory Relief (or any successor Notice) within the expanded outdoor dining area.
- All dining areas must be maintained and kept clean of litter.

Exhibit A

COVID-19 Restaurant Expansion Seating Area Regulations

- No bar seating or temporary outdoor bars will be permitted on the expanded footprint area.
- No food and beverages of any kind may be stored or displayed outside.
- Areas subject to TUP-COVID-19 are for dine-in serving of food only and shall not be used for live entertainment or any other purposes.

Use of Vacant Tenant Spaces

Vacant storefront spaces may be used by restaurants to expand their footprint under the following guidelines:

- Vacant spaces must be in the same shopping center as the subject restaurants.
- Tenant spaces must meet all Ventura County Fire Department and Simi Valley Building & Safety requirements for the proposed occupancy and ADA accessibility.
- Provide a scaled diagram of the currently licensed premises and the proposed temporary area, clearly delineating the respective spaces.
- If multiple access points are available for the spaces, there should be separately designated entry and exit points.

Outdoor Seating Areas

Outdoor areas adjacent to a restaurant may be used to expand the footprint of the restaurant under the following guidelines:

- Outdoor seating areas may include sidewalks, parking lots, and unused patio areas.
- The allowable number of parking spaces to be utilized for outdoor seating will be the minimum necessary but determined on a case-by-case basis.
- If use of public sidewalks are being proposed, City authorization must be obtained via issuance of an encroachment permit. Proof of insurance may be required naming the City as additional insured in addition to all encroachment permit requirements.
- If possible, expanded outdoor seating shall not block or restrict access to handicapped parking spaces (to be reviewed on a case-by-case basis).
- Outdoor seating areas cannot interfere with deliveries. If space is limited, the restaurant can provide alternative hours for deliveries that are outside of normal operating hours.
- For outdoor seating areas, provide a scaled diagram of the currently licensed premises and the proposed temporary area, clearly delineating the respective spaces, and include the following:
 - Size and placement of the proposed seating area;
 - If using parking spaces, indicate number to be used;
 - Path of pedestrian travel from restaurant(s) to seating area. If this path crosses drive aisles, signage may be required to warn drivers of frequent pedestrian crossings;

Exhibit A

COVID-19 Restaurant Expansion Seating Area Regulations

- Temporary or fixed barriers or delineations to be utilized that will enable the restaurant to control the temporary area;
- Traffic management devices to be used to prevent entry of vehicles into seating area if using parking spaces;
- If required, a 20-foot wide path will need to be maintained for Fire Department access and any required fire access must be maintained.
- Entrance and exit from the seating area;
- Any railings, canopies, cooking appliances, heaters, temporary electrical cords, and other relevant information;

Additional safety considerations

- Tents and canopies are allowed subject to compliance with all required Fire and Building codes. If the seating area will include any tents or canopies, obtain copies of the flame resistance certificate(s) from the tent manufacturer or rental company.
- Seating cannot be expanded into unimproved properties or areas identified as open space, preserve, drainage or detention areas.

Signage

- Each business can have one free-standing (12 square foot maximum) sign advertising the outdoor seating area. The free-standing sign can be placed within the outdoor seating area facing the path of travel.
- Directional and safety signs are exempt from this requirement.

TUP-COVID-19 Application

A Temporary Use Permit-COVID-19 application including the following elements:

- Letter of permission from property owner acknowledging authorization of the restaurant expansion.
- Scaled diagram as noted above
- Text and square footages of promotional signs if any are to be used
- Indicate originally approved occupancy and occupancy with expanded seating areas
- An affidavit confirming that deliveries will not be impacted and the required Fire Department, Ventura County Environmental Health Department and Department of Alcohol Beverage Control regulations will be complied with
- All fees related to a TUP-COVID-19 are waived

A TUP-COVID-19 may be cancelled as follows:

- Upon the termination of the local emergency by the City Council.
- Failure to comply with the COVID-19 Industry Guidance: Dine-in Restaurants.

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COVID-19 Restaurant Expansion Seating Area Regulations

- Failure to remain in compliance with ABC regulations, regulations of the County of Ventura Environmental Health, violation of the Orders of the County of Ventura Health Officer, or for violation of applicable laws, rules, ordinances, and other directives pertaining to business activities conducted on the premises and expanded area;
- Failure to comply with the TUP-COVID-19 permit.
- For disturbance of the quiet enjoyment of nearby residents and businesses.

Interested restaurants should contact the Planning Division at 805-583-6769 or enviroservices@simivalley.org to obtain a TUP-COVID-19 application.