



**Date:** July 28, 2020

**To:** Andrew Crabtree, Director of Community Development

**From:** Deanna J. Santana, City Manager / Director of Emergency Services

**Subject:** Direction on rules and regulations related to the current Local Emergency for certain specified land uses

On March 11, 2020, in response to the very serious public health threat posed by the ongoing COVID-19 pandemic, I issued a Proclamation of a Local Emergency in my role as Director of Emergency Services. Pursuant to City Code § 2.140.060(f)(1), I have the authority to issue rules and regulations on matters reasonably related to the protection of life and property under the current declared Local Emergency. Further, City Council Resolution 20-8871 grants the City Manager the authority to consider and approve "administrative matters needed for the on-going operation of the City" during the Council recess currently in effect.

Under the July 13, 2020 Statewide Public Health Officer Order, hair salons, barbershops, gyms and fitness centers cannot operate indoors in counties on the California Department of Public Health (CDPH) County Monitoring List, which includes Santa Clara County. Therefore, gyms or hair salons must operate outdoors in order to conduct business. If and when the State or County relax their restrictions on these uses, they will most likely be subject to capacity limits and social distancing requirements that will significantly curtail indoor operations. Without providing a safer alternative, some businesses and customers may violate the social distancing requirements, putting themselves and others at risk. Allowing outdoor operations for these uses would thus be reasonably related to the protection of life and property, as authorized by § 2.140.060(f)(1).

The City has recently received a request to operate an outdoor COVID-19 testing facility at the Kaiser Permanente Santa Clara Medical Center, a use not expressly allowed by the current Planned Development (PD) Zoning for the property. The City has also received multiple inquiries about the possibility of operating hair salon and recreational uses at outdoor locations within Santa Clara. Hair salons are currently a permitted use in many of the City's zoning districts, but in many cases the Code requires that their business take place within an enclosed building. Gyms are only listed as permitted uses in the CD zoning district, but may be permitted in other zoning districts through a use permit.

#### **Direction on Specific Land Uses**

Acting in accordance with these provisions, the following land uses are to be considered permissible for the duration of the Local Emergency:

##### **1) Drive-through and Outdoor Medical Testing**

Operation of a drive-through and/or outdoor medical testing facility for the purpose of medical testing related to the COVID-19 virus within the Planned Development (PD) Zoning applicable to the Kaiser Permanente Santa Clara Medical Center is hereby permitted as a use necessary to protect public health, directly related to the current Local Emergency.

## **2) Outdoor Salons**

When there is a legally established barber shop or beauty parlor establishment within any of the following Commercial Zoning Districts, that use may be conducted as an outdoor activity. The requirement to operate wholly within an enclosed building as otherwise established by the following Zoning Code sections is hereby suspended:

- CN: § 18.34.030
- CC: § 18.36.030
- CT: § 18.38.030
- CD: § 18.40.030

To the extent other zoning districts authorize the same uses as those listed in Commercial Zones, this direction applies to such other zoning districts as well. By way of example, because the MU zone authorizes the same uses as the CC and CT zones, § 18.22.030(a), barber shops and beauty parlors in the MU zone are now authorized to operate outdoors.

When there is a legally established barber shop or beauty parlor establishment within any of the following Industrial Zoning Districts pursuant to a validly issued conditional use permit, that use may be conducted as an outdoor activity. For barber shops and beauty parlors, the requirement to operate wholly within an enclosed building as otherwise established by the following Zoning Code sections is hereby suspended:

- ML: §§ 18.48.020, 18.48.040
- MH: § 18.50.040
- MP: § 18.46.040

This direction does not limit any Zoning Code provisions that already authorize outdoor commercial activities. For example, City Code §18.42.030(b)(2) authorizes outdoor walk-up service facilities by right within the CP District. For the LSAP District, §18.23.030(i) permits any uses allowed in the CC and CN districts, and §18.23.030(k) authorizes outdoor seating. Similarly for the TN District, §18.25.030(g) permits any uses allowed in CC and CN districts, and §18.25.030(h) authorizes outdoor seating.

## **3) Outdoor Recreational Uses**

Gymnasiums are a permitted use in the CD Zoning District per §18.40.030(b)(2) provided that they operate within an enclosed building. "Studios and instructional facilities, such as dance studios," are a permitted use under §18.34.030(b)(6) for the CN/CC/CT/CD and mixed-use zones, as are uses that "are of a similar nature," but are limited to indoor operations. Recreational enterprises are authorized in the CC/CT/CD zones under § 18.36.040(b), and may occur outdoors, but require the issuance of a conditional use permit.

- When there is a legally established gymnasium within the CD zoning district, that use may be conducted as an outdoor activity. The requirement to operate within an enclosed building established by § 18.40.030 is hereby suspended.
- Recreational uses which include active instruction and/or supervision of participants are hereby determined to fall within the use category of "studios and instructional facilities" authorized by § 18.34.030(b)(6).
- When there is a legally established studio or instructional facility (including a recreational use), that use may be expanded to outdoor areas. The requirement that studios and instructional facilities (including recreational uses) operate within an enclosed building established by § 18.34.030 is hereby suspended.

This direction does not limit any Zoning Code provisions that already authorize outdoor recreational activities in commercial zones. By way of example, outdoor recreational enterprises are authorized with the issuance of a conditional use permit in the CC/CT/CD zones under §§ 18.36.040(b), 18.38.040(a) and 18.40.040(a).

When there is a legally established gymnasium and other recreational use within any of the following industrial zoning districts pursuant to a validly issued conditional use permit, that use may be conducted as an outdoor activity. For gymnasiums and recreational uses, the requirement to operate wholly within an enclosed building as otherwise established by the following Zoning Code sections is hereby suspended:

- ML: §§ 18.48.020, 18.48.040
- MH: § 18.50.040
- MP: § 18.46.040

### **Permit Requirement**

Operation of these three uses shall be subject to issuance of a Permit for Outdoor Commercial Activities as issued by the Community Development Department and conducted in a manner consistent with the requirements established within that Permit, as well as consistent with all other applicable regulations including Orders issued by the State and/or County Health Department, but exclusive of the specific requirements of the City's Zoning Code that have been suspended as set forth above. The Director of Community Development is hereby instructed to prepare a permitting program necessary to implement this direction.

### **Effective Period**

This direction shall take effect immediately, and shall remain in effect until rescinded or until a proclamation has been issued declaring the Local Emergency to be concluded, either by me in my role as Director of Emergency Services or by the City Council.

Approved on July 28, 2020 by



Deanna J. Santana  
City Manager/Director of Emergency Services