

DES ORDER NO. 3
JULY 23, 2020

AN ORDER OF THE DIRECTOR OF EMERGENCY SERVICES (CITY MANAGER) OF THE CITY OF SIMI VALLEY PERMITTING BUSINESSES TO USE OUTSIDE AREAS 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 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 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 21, 2020, the DES issued DES No. 2, which allowed restaurants in the City of Simi Valley to expand operations into public spaces and other outdoor areas with a temporary use permit; and

WHEREAS, on July 13, 2020, the California Department of Public Health (CDPH), through a state public health officer order, restricted certain businesses from operating indoors and did not prohibit such businesses from moving their operations outdoors; 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 business 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 7 (encroachments), and all other sections of the SVMC that would impair the Business Outdoor Expansion Area Regulations attached as Exhibit A (“Temporary Business Outdoor Expansion Area Regulations”) to this Order.

SECTION 2. The DES hereby adopts the Temporary Business Outdoor Expansion 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 business 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 23rd day of July 2020.

Attest:

DocuSigned by:

Lucy Blanco

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Lucy Blanco, City Clerk

DocuSigned by:

Brian Paul Gabler

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

Approved as to Form:

DocuSigned by:

Lonnie J. Eldridge

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Lonnie J. Eldridge, City Attorney

Attachment A

Temporary Business Outdoor Expansion Area Regulations

Introduction

On July 13, 2020, the California Department of Public Health issued a Public Health Officer Order (Order) to close all indoor operations for various businesses. Compliance with the Order could result in the closure of a business or modifications to the business operations that would make it no longer cost effective to operate. By issuing a *Temporary Use Permit – COVID-19B*, the City is allowing businesses to temporarily expand their footprint into public spaces and other areas to accommodate business operations at pre-COVID-19 levels. The below provides a roadmap for businesses to follow. The TUP-COVID-19 permit issued under this Order is for any business which is not otherwise prohibited from outside operations by County or State law or regulation, and which is not a restaurant, for which TUP-COVID-19 permits would be issued under the authority of DES No. 2.

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

To be issued a TUP-COVID-19B, businesses must:

- Remain in compliance with the COVID-19 Industry Guidance for the applicable Industry Sector;
- 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.

Business-Specific Recommendations

General Requirements

- A TUP-COVID-19B will be authorized while indoor business operations are no longer allowed by State or County directive or Order.
- ADA accessibility is required for expanded business areas.
- Where applicable and possible, all the businesses in the shopping center should cooperate in preparing a centralized areas utilizing outdoor areas.
- A letter of permission from the property owner must be submitted if the applicant does not own the property where the outdoor business is to be located.
- Social distancing must also be maintained to individuals in a public sidewalk or from anyone that may be utilizing the business that has located outdoors.
- The layout cannot block egress.
- Bars, wineries, brewpubs, and breweries that have a previously approved alcoholic beverage license may continue to sell alcoholic beverages in accordance with the ABC Fourth Notice of Regulatory Relief within the expanded outdoor area and in accordance with County and State guidance.

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- All business areas must be maintained and clean of litter.
- No bar seating or temporary outdoor bars will be permitted on the expanded footprint area.
- The use of the outdoor area shall be only between the hours of 7:00 a.m. and 10:00 p.m.
- Amplified music or amplification systems will be reviewed on a case by case basis.

Outdoor Business Areas

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

- Outdoor areas may include sidewalks, parking lots, and unused patio areas.
- The allowable number of parking spaces to be utilized for outdoor areas will be 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.
- If possible, expanded outdoor areas shall not block or restrict access to handicapped parking spaces (to be reviewed on a case by case basis).
- Outdoor areas cannot interfere with deliveries. If space is limited, the business can provide alternative hours for deliveries that are outside of normal operating hours.
- If tents, canopies, or other shelters are used, only one side may be closed to allow for sufficient outdoor air movement in accordance with State, County, and CDC guidelines.
- Business services may be provided so long as the customer is not required to enter the business establishment.
- For outdoor 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 business area;
 - ✎ If using parking spaces, indicate number to be used;
 - ✎ Path of pedestrian travel from the business(s) to business area. If this path crosses drive aisles, signage may be required to warn drivers of frequent pedestrian crossings;
 - ✎ Temporary or fixed barriers or delineations to be utilized that will enable the business 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 business area;
 - ✎ Any railings, canopies, cooking appliances, heaters, temporary electrical cords, and other relevant information;

Additional safety considerations

- If the business 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 on-building sign (50 square foot maximum) and one free-standing (12 square foot maximum) sign advertising the outdoor business area.
- The free-standing sign can be placed within the outdoor business area facing the path of travel.
- Directional and safety signs are exempt from this requirement.

TUP-COVID-19B Application

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

- Letter of permission from property owner, if necessary.
- Scaled diagram as noted above
- Text and square footages of promotional signs if any are to be used
- Indicate originally approved square footage and the square footage of the outdoor area to be used.
- 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-19B are waived

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

- Upon the termination of the local emergency by the City Council.
- Failure to comply with the applicable COVID-19 Industry Guidance.
- Failure to remain in compliance with the 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;
- For disturbance of the quiet enjoyment of nearby residents and businesses;