

CITY OF LOS BANOS

EMERGENCY SERVICES DIRECTOR ORDER 2020-03

DECLARATION OF THE DIRECTOR OF EMERGENCY SERVICES OF THE CITY OF LOS BANOS ASSISTING RETAIL AND SERVICE ESTABLISHMENTS SEVERELY IMPACTED BY THE COVID-19 CRISIS BY ALLOWING THOSE BUSINESSES THE OPTION TO TEMPORARILY EXPAND CAPACITY INTO PUBLIC AND PRIVATE COMMON AREAS UNDER SPECIFIED CIRCUMSTANCES

WHEREAS, on March 16, 2020, the California Department of Public Health established guidelines for social distancing, elimination of non-essential gatherings, and isolation for specific individuals, in order to prevent the transmission of COVID-19 ("DPH Guidance"); and

WHEREAS, there exists a local emergency in the City of Los Banos pursuant to Resolution 6190, approved by the City Council on March 18, 2020, whereby the City Council ratified and confirmed the declaration of a local emergency by the City Manager as the Director of Emergency Services as a result of the threatened spread of COVID-19 in the City, surrounding areas, and the state; and

WHEREAS, on March 19, 2020, with the adoption of Executive Order N-33 -20, the Governor ordered a Statewide stay at home/stay in place order to address the spread of COVID-19, allowing only essential businesses to remain open; and

WHEREAS, the City is operating under the Governor's Stay at Home Order as supplemented by Merced County; and

WHEREAS, the State and Merced County have begun the process for allowing restaurants, retail establishments, and other businesses to reopen in the State; and

WHEREAS, the City has determined that there is a need, when feasible and safe, to assist local businesses most severely impacted by the restrictions on reopening; and

WHEREAS, under the most recent State and County orders, many businesses that were allowed to open in accordance with State and County guidance that required physical separation (social distancing) and other actions, are now required to close indoor operations; and

WHEREAS, restaurants, retail establishments, fitness centers, hair salons, personal care services, and other local businesses (collectively "Business Establishment"), that are now prohibited from operating indoors, play a vital role in the City of Los Banos. They not only provide important tax revenue, but jobs and income to employees and owners. They are the anchors of communities and support tourism and the neighborhoods they are in; and

WHEREAS, the list of Business Establishments currently prohibited from operating indoors can be expanded at any time and this Order is intended to cover those Business Establishments as well; and

WHEREAS, Business Establishments will be challenged to remain profitable with only an on-line presence and store pickup, and many will no doubt fail, and therefore it is in the City's best interest to assist Business Establishments in expanding capacity where feasible and safe so as to lessen the chance of a Business Establishment failing; and

WHEREAS, one way the City can assist with Business Establishment capacity is to temporarily make available to Business Establishments the option of using outdoor public and private areas for their activities and services, and to otherwise temporarily waive regulations that prohibit Business Establishments in public and private common areas; and

WHEREAS, under the authority of Government Code sections 8610 and 8634, and Los Banos Municipal Code section 4-2.06, the City's Director of Emergency Services and the City Council are empowered, upon declaration of a local emergency, to make and issue regulations on matters reasonably related to the protection of life and property as affected by such emergency.

NOW, THEREFORE, I, Alex Terrazas, as Director of Emergency Services, declare effective immediately, as follows:

1. Notwithstanding anything to the contrary in the City's zoning ordinances, development code, approved land use entitlements, site plan review approvals, all Business Establishments in the City are eligible during the City's declared local emergency to apply for a temporary waiver allowing them to use public and private common areas for their operations.

a. Public common areas include sidewalks, streets, parking lots, recreation space, and other public space that might be conducive to the outdoor Business Establishment activities and services.

b. Private common areas include sidewalks, parking lots, recreation space, and other private space, generally within a private shopping center, that might be conducive to outdoor Business Establishment activities and services.

2. Eligible public and private common areas for outdoor Business Establishment activities and services shall be known as the "Expansion Area". If the Expansion Area is approved, the approval shall be considered a temporary permit to operate outdoor Business Establishment activities and services in the Expansion Area and shall be officially termed a "Waiver". A business owner wishing to apply for a Waiver shall meet the minimum requirements set forth in **Exhibit A**. The approval of a Waiver shall not be deemed to convey a property or vested right to operate contrary to City codes, standards, and permit requirements.

3. Waivers shall be approved in the discretion of, and may be revoked by, the Community and Economic Development Director ("Director") in accordance with the criteria and procedures set forth in **Exhibit A**. The Director may impose any conditions deemed reasonably necessary to ensure the safe and lawful operation of outdoor Business Establishment activities and services in the Expansion Area. All Waivers shall automatically expire upon the lifting or expiration of the

City's declared local emergency, or upon earlier modification of this Order eliminating the Waiver.

4. The denial or revocation of a Waiver may be appealed to the City Manager, where the decision shall be final. Any appeal to the City Manager shall be an informal proceeding without the technical rules of evidence.

5. The Director is directed to develop supplemental guidelines for implementation of the Waiver program consistent with Exhibit A, which may be amended as often as needed as determined by the City Manager.

BE IT FURTHER ORDERED that this order shall remain in effect until such time as it is terminated, repealed, amended, or modified by the Director of Emergency Services or the City Council of the City of Los Banos.

Copies of this Order shall promptly be: (1) posted at the City of Los Banos City Hall located at 520 J Street, Los Banos, CA 93635; (2) posted on the City of Los Banos' website (www.losbanos.org); and (3) provided to any member of the public requesting a copy of this Order.

ADOPTED this 24th day of July 2020.

By: 
ALEX TERRAZAS
City Manager and Director of Emergency Services

ATTEST


LUCILLE MALLONEE
City Clerk

APPROVED AS TO FORM:


WILLIAM A. VAUGHN
City Attorney

EMERGENCY ORDER 2020-03

EXHIBIT A

MINIMUM REQUIREMENTS AND PROCEDURES FOR BUSINESS ESTABLISHMENTS SEEKING A WAIVER TO EXPAND CAPACITY BY USING COMMON AREAS FOR OUTDOOR BUSINESS ESTABLISHMENT ACTIVITIES AND SERVICES

The following requirements and procedures shall apply for any Business Establishment wishing to seek a Waiver to allow outdoor Business Establishment activities and services in public and private common areas, as defined in this Order.

1. The business owner shall complete an application on a form prescribed by the Director. No fee will be required for the application. The applicant is encouraged to consult with the Director prior to completing the application. The application shall include the following:

a. For private shopping centers, a letter of consent, or other evidence satisfactory to the Director, that the shopping center owner has consented to use of the Expansion Area for outdoor Business Establishment activities and services .

b. A diagram showing the proposed foot print of the Expansion Area. The diagram shall include the proposed location of tables, furniture, other Business Establishment features, fencing (ornamental or safety), awnings (or other shade structures), misters, heaters, ground cover (if desired), entry and exiting, and Americans with Disabilities Act ("ADA") paths of travel.

c. For public areas, liability waivers and certificates of insurance as required by the City's Risk Manager and City Attorney. When appropriate, the Director may require an Encroachment Permit. There shall be no fee for an Encroachment Permit issued under this Order.

d. Where parking spaces are proposed to be removed, a parking plan showing where employees and customers will park and how impacts to other businesses, if any, will be addressed.

e. Where parking lots or public streets are proposed to be used, a safety and traffic control plan showing how employees and customers will be protected from vehicle traffic, including the use of barricades.

f. Any other matter determined necessary by the Director to make a decision.

2. The Expansion Area shall be limited to area(s) adjacent to the existing business, and in no event shall allow Business Establishment capacity, with the implementation of required social distancing measures, to exceed 100% of normal capacity.

3. All structures, entry and existing paths of travel, and safety features shall be approved by the City's Building and Fire Departments. For public common areas, approval shall also be obtained from the Public Works Department.

4. The Business Establishment owner, Business Establishment manager, and any other responsible person, shall keep the Expansion Area free of litter and debris. This cleaning shall consist of, at a minimum, regularly sweeping and washing the Expansion Area. In addition, the Business Establishment owner shall be responsible for regularly removing any trash generated by the business within 100 feet of the business.

5. Waivers may be revoked by the Director for: (a) violations of this Order, Supplemental Guidelines issued by the City Manager, or any conditions of approval; or (2) if operation in the Expansion Area creates a nuisance. Prior to revocation, the Director shall provide written notice of the basis for revocation.

6. The City shall have the right to immediately suspend the operation of an outdoor Business Establishment area operating under a Waiver at any time because of anticipated or actual problems or conflicts with ADA paths of travel or to protect the safety of employees and customers. The City shall attempt to work with the Business Establishment to solve any problems or conflicts.

7. Upon expiration or revocation of a Waiver, the Business Establishment shall remove all Business Establishment owned property and restore the Expansion Area to its prior condition, satisfactory to the City and/or private shopping center owner.

8. The City shall not be responsible for any liability or damages associated with issuance or revocation of a Waiver, or with the immediate suspension of outdoor Business Establishment activities as provided for under this Order, and the Business Establishment, affiliates, successors, and assigns, in accepting a Waiver agree to release, hold harmless, and defend the City from any such liability.