

DIRECTOR OF EMERGENCY SERVICES ORDER NO. 4-2020

AN ORDER OF THE DIRECTOR OF EMERGENCY
SERVICES (CITY MANAGER) OF THE CITY OF
CAPITOLA REGARDING OUTDOOR ACTIVITIES AND
ENCROACHMENTS FOR BUSINESSES OPERATING IN
COMPLIANCE WITH SOCIAL DISTANCING
REQUIREMENTS

WHEREAS, on March 26, 2020, the City Council of the City of Capitola declared the existence and anticipated spread of COVID-19 to be an emergency situation, as defined in California Government Code Section 54956.6, because it severely impairs public health and safety;

WHEREAS, on March 26, 2020, the City Council further declared the existence and anticipated spread of COVID-19 to be a local emergency, as defined by the California Emergency Services Act (California Government Code Sections 8634, 8550, *et seq.*);

WHEREAS, Government Code Section 8634 empowers the Director of Emergency Services to promulgate orders and regulations necessary to provide for the protection of life and property;

WHEREAS, Capitola Municipal Code Section 8.08.050A designates the City Manager as the Director of Emergency Services; and

WHEREAS, on March 16, 2020, the County of Santa Cruz Health Department issued a Countywide shelter in place order that required individuals to isolate in their places of residence, except as needed for the performance of essential activities; and

WHEREAS, on March 19, 2020, the Governor of the State of California ("Governor") issued Executive Order N-33-20, which provides that individuals living in the State of California are required to stay at home except as needed to maintain continuity of operations of the critical infrastructure sectors; and

WHEREAS, since that time, many retail establishments and restaurants in the City have been entirely shut down or engaged in limited operations, resulting in a loss of income and economic stability for members of our community; and

WHEREAS, on March 31, 2020, the County of Santa Cruz Health Department extended the March 16 shelter in place order that required individuals to isolate in their places of residence, except as needed for the performance of essential activities including modification to allow a portion of the construction industry to open; and

WHEREAS, on April 30, 2020, the County of Santa Cruz Health Department issued an Order extending the March 31 shelter in place order's requirements for all residents, and provided modifications to the prior order concerning beach, lodging, and business restrictions, and;

WHEREAS, on May 6, 2020, the Santa Cruz County Health Officer issued a Supplemental Order directing all individuals living in the County to continue sheltering at their place of residence, relaxing restrictions on low-risk businesses consistent with direction from the State of California, and aligning the County Orders with applicable State Orders;

WHEREAS, on May 8, 2020, the Governor issued a “Resilience Roadmap” that included guidance, by industry and including social distancing requirements, for reopening certain segments of the economy. The Roadmap indicated that “curbside retail,” which includes but is not limited to bookstores, jewelry stores, toy stores, clothing stores, shoe stores, home and furnishing stores, sporting goods stores, antique stores, music stores, and florists, may open with curbside pickup and delivery only, until further notice. The guidance for the “Retail” segment further includes detailed guidelines for maintaining a safe environment for workers and customers;

WHEREAS, on May 26, 2020, the County of Santa Cruz Health Department issued an Order extending the May 31, 2020, April 29, 2020, and May 6, 2020 Orders to allow certain businesses to re-open and allow expanded recreational activities;

WHEREAS, on May 29, 2020, the County of Santa Cruz issued an Order authorizing all business operations as consistent with Stage 2 in the “Resilience Roadmap”;

WHEREAS, Capitola Municipal Code Section 12.56.090 prohibits the installation of private improvements or obstructions within the public right of way;

WHEREAS, Capitola Municipal Code Section 17.21.060.A requires an applicant to obtain a conditional use permit from the Planning Commission for adding a take-out window to an existing restaurant use located in the Central Village zoning district;

WHEREAS, Capitola Municipal Code Section 17.21.060.L requires an applicant to obtain a conditional use permit from the Planning Commission for outdoor activity such as outdoor seating for restaurant or other food establishment located in the Central Village zoning district

WHEREAS, Capitola Municipal Code Section 17.24.040 (inside coastal zone) requires personal service establishments, limited repair services, and small retail businesses to conduct business entirely within enclosed buildings and Section 17.24.060 requires an applicant to obtain a conditional use permit from the Planning Commission for a restaurant, including expansion of the restaurant to include outdoor seating, for properties located in the Neighborhood Commercial zoning district;

WHEREAS, Capitola Municipal Code Section 17.27.040 (inside coastal zone) requires all retail and personal services establishment uses to be conducted entirely within an enclosed building within the Community Commercial zoning district;

WHEREAS, Capitola Municipal Code Sections 17.21.060, 17.22.050, 17.24.060, 17.24.060, and 17.36.060 (inside coastal zone) require a conditional use permit for restaurant including food services in conjunction with tasting rooms;

WHEREAS, Capitola Municipal Code Sections 17.20.020 and 17.24.020 require a minor use permit for take-out food and beverage pursuant to Section 17.96.180 within Commercial and Mixed-Use zoning district outside the Coastal Zone,

WHEREAS, Capitola Municipal Code Section 17.51.015.F (outside Coastal Zone) and Section 17.76.010.A. (outside Coastal Zone) specifies that no parking or loading facility may be reduced in capacity unless sufficient replacement capacity is provided.

WHEREAS, Capitola Municipal Code Section 17.96.170 requires an administrative permit and encroachment permit for temporary outdoor dining areas located on a public sidewalk or other area within the public right-of-way within the Community Commercial, Regional Commercial, and Mixed-Use Neighborhoods located outside the Coastal Zone;

WHEREAS, these requirements may prevent retailers, restaurants, and personal service establishments from being able to immediately and effectively provide customers alternatives to inside shopping and dining;

WHEREAS, as non-essential businesses are permitted to re-open pursuant to State and County orders, laws, and/or guidance, the City wishes to suspend certain permit and license requirements in order to facilitate business operations in a manner that is consistent with social distancing requirements, and protects the health and safety of the citizens of Capitola;

WHEREAS, the City of Capitola recognizes that the safety and security of our community is inextricably linked to the safety and security of our economy, and wishes to allow businesses to re-open and recover as soon as possible, while remaining compliant with applicable State and County Orders, and mindful of public health and safety concerns; and

WHEREAS, the City has an important governmental interest in maintaining a thriving business community and protecting the health, safety, and economic welfare of its citizens and businesses; and

WHEREAS, a safe and controlled re-opening of the Capitola economy, consistent with the State and County Orders, is necessary to provide for the protection of life and property.

NOW, THEREFORE, IT IS HEREBY PROCLAIMED AND ORDERED by the Director of Emergency Services of the City of Capitola that, effective June 1, 2020:

SECTION 1. Outdoor Activities Permitted. To facilitate the reopening of businesses in a manner that is consistent with State and local social distancing requirements, all City of Capitola laws, regulations and/or policies that would otherwise

prohibit businesses from engaging in their business activities outside, including those specifically referenced in this Order, are hereby suspended.

SECTION 2. Eligible Businesses and Compliance with State and County Orders. This Order only applies to those businesses that require outdoor space in order to effectively operate while complying with State and local social distancing requirements. Nothing in this Order shall authorize a particular business, that is not otherwise authorized to do so, to operate outside unless and until that business is authorized to operate pursuant to State and County Orders. All businesses must be in full compliance with all State and County Orders regarding reopening and operation in order to comply with this Order.

SECTION 3. Temporary COVID-19 Allowance for Tasting Rooms to contract with food vendor to sell dine-in meals. To be eligible to engage in wine or beer tasting activities pursuant to this Order, businesses that serve alcohol shall be required to offer sit-down, dine-in meals. Alcohol can only be sold in the same transaction as a meal.

Tasting rooms that do not provide sit-down meals themselves, but can contract with another vendor to do so, can serve dine-in meals provided both businesses follow the California Department of Public Health and CAL/OSHA COVID-19 Industry Guidance for Dine-In Restaurants and alcohol is only sold in the same transaction as a meal.

To facilitate the reopening of tasting rooms in a manner that is consistent with State and local social distancing requirements and industry guidance, all City of Capitola laws, regulations and/or policies that would otherwise prohibit tasting rooms from providing dine meals are hereby suspended.

SECTION 4. Temporary COVID-19 Outdoor Activities and Encroachment Agreement. To be eligible to engage in outdoor activities pursuant to this Order, businesses shall be required to enter into a Temporary COVID-19 Outdoor Activities and Encroachment Agreement (hereinafter the "Outdoor Activities Agreement") attached hereto and incorporated herein by reference.

The Director of Emergency Operations (hereinafter the "Director") or his designee shall be authorized to enter into an Outdoor Activities Agreement with the applicant and shall be entitled to seek the review of any City staff regarding any and all site-specific considerations related to the proposed outdoor activities. The Director may choose to enter into an Outdoor Activities Agreement on any terms he deems necessary, including but not limited to modifications to the proposed location of outdoor activities, to ensure ongoing protection of the public health and safety of the City.

The City shall only enter into an Outdoor Activities Agreement that authorizes activities that are consistent with State and County orders regarding essential businesses.

SECTION 5. Encroachment Into Public Right-of-Way. To streamline the issuance of temporary rights of encroachment into the public right-of-way, the City hereby amends its encroachment permit and agreement process as follows:

1. The following requirements set forth in the Capitola Municipal Code Chapter 12.56 regarding encroachment permits and encroachment agreements shall not apply to businesses seeking to encroach into the public right of way for purposes of conducting business in compliance with State and local social distancing requirements: CMC § 12.56.0050; 12.56.060; 12.56.070; 12.56.090.

2. Businesses seeking to encroach into the public right way for purposes of conducting business in compliance with State and local social distancing requirements, shall execute an Outdoor Activities Permit in lieu of obtaining (1) encroachment permits and encroachment agreements required by CMC Chapter 12.56.060.

SECTION 6 Expansion of Use on Private Property Owned or Leased by Applicant. To streamline the issuance of temporary rights of restaurant take-out windows and outdoor dining areas within private property owned or leased by applicant, the City hereby amends its administrative and conditional use permit processes as follows:

1. The following requirements set forth in the Capitola Municipal Code Chapters 17.21; 17.24, and 17.27 for businesses located inside Coastal Zone, and Chapters 17.20.020 and 17.24.020 requiring use permits shall not apply to businesses seeking to expand into private property adjacent to the primary use for purposes of conducting business in compliance with State and local social distancing requirements: CMC § 17.21.060.A; 17.21.060.L; 17.24.040; and 17.27.040 inside Coastal Zone and CMC § 17.20.020; 17.24.020; 17.96.170; and 17.96.180 outside the Coastal Zone,

2. Businesses seeking to expand in to private property adjacent to the primary use for purposes of conducting business in compliance with State and local social distancing requirements, shall execute an Outdoor Activities Agreement in lieu of obtaining (1) temporary sidewalk dining administrative use permits by CMC Chapter 17.96.170 (outside coastal zone); (2) temporary use and structure administrative permits by CMC Chapter 17.96.180 (outside coastal zone); and/or (3) conditional use permit by CMC Chapter 17.60 (inside coastal zone) and Chapter 17.124 (outside coastal zone).

3. To enter into this Agreement, an applicant must comply with the applicable City of Capitola COVID-19 Temporary Outdoor Activities and Encroachment Agreement Guidance, available at www.cityofcapitola.org..

SECTION 7. Reduction in Parking Allowed. To conducting business in compliance with State and local social distancing requirements, parking areas may be reduced in capacity.

1. The following requiremets set forth in the Capitola Municipal Code Chapter 17.51 and 17.76 requiring sufficient replacement parking when parking is reduced shall not apply to businesses seaking to expand into private property adjacent to the primary use for purposes of conducting business in compliance with State and local social distancing requirements. CMC § 17.51.015.F (inside Coastal Zone) and 17.76.010.A. (outside Coastal Zone)

SECTION 7. No Interference with Private Property. Nothing in this Order relieves a business from any obligations or laws requiring consent of adjacent property owners for use of private property. Businesses seeking to operate outdoors shall obtain consent of any private property owners whose property will be used for outdoor operations.

SECTION 8. Building Permit and Design Review Required. Nothing in this Order relieves a business from the requirement to obtain a building permit for outdoor activities if a building permit would otherwise be required, nor does this order relieve a business from complying with all provisions of the Building Code, including but not limited to, maximum occupancy requirements. Nothing in this Order relieves a business from the requirement to obtain a conditional use permit and undergo design review for permanent exterior alterations if such design review is required pursuant to the City of Capitola CMC § 17.87 Historic Features Ordinance (inside Coastal Zone) or §17.84 Historic Preservation ordinance (outside Coastal Zone), except that temporary installments, including but not limited to, tents, fencing, barriers, windows, and enclosures, may be authorized to facilitate proposed outdoor activities and removed to the original state after the Shelter in Place order is lifted.

SECTION 9. County Permits. Nothing in this Order relieves a business from the requirement to obtain any and all County permits regarding the provision of food and dining services.

SECTION 10. State Permits. Nothing in the Order relieves a business from the requirement to obtain any and all State permits regarding the provisions of serving and/or selling alcoholic beverages.

SECTION 11. Parking in the Village. Parking in the Capitola Village shall be modified as follows:

- Both the Upper and Lower Beach and Village parking lots shall be re- opened to the public on June 4, 2020 in conjunction with dining in the right-of-way.
- Public parking on Cliff Drive west of the Village shall be re-opened immediately upon issuance of this Order.
- The maximum allowed time to park in Capitola Village will be restored to 3 hours on June 4, 2020.
- Designated curbside pickup parking spaces will be limited to 15 minutes maximum.

SECTION 11. Violations of Order. Any violation of this Order or any other local, State, or Federal law shall constitute an imminent threat to the public health and is hereby declared to be a public nuisance and shall be subject to enforcement as such; violations of this order may result in the immediate termination of an Outdoor Activities Agreement and the cessation of any activities authorized by said Agreement and this Order.

SECTION 12. Effective Date of Order. This Order shall become effective on the date signed by the Director of Emergency Operations for the City of Capitola and shall expire when repealed or upon a declared termination of the state of emergency regarding COVID-19 by the Capitola City Council. This Order shall only apply to the extent

businesses are authorized to operate pursuant to State and County orders regarding essential businesses.

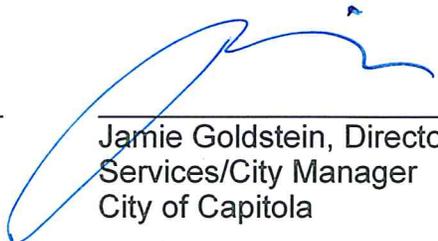
SECTION 13. The City Clerk shall certify the adoption of this Order and shall cause a certified Order to be filed in the Office of the City Clerk.

PASSED and ADOPTED this 2nd day of June 2020.

Attest:



Chloe Woodmansee, Interim City Clerk



Jamie Goldstein, Director of Emergency
Services/City Manager
City of Capitola

TEMPORARY COVID-19 OUTDOOR ACTIVITIES AND ENCROACHMENT AGREEMENT

1. Business Identification

Business Name (Permittee): _____
Mailing Address: _____
Business Address: _____
Business Phone: _____
Business Email: _____

2. Type of Business [Check one]

Restaurant
Retail
Other Please Describe _____

3. Proposed Outdoor Activity and/or Encroachment [Check one or more if Business Proposes to Use Public Right-of-Way for Outdoor Activities]

Outdoor Dining
Take-Out Window for Restaurant Use
Other Please Describe _____

Note: To enter into this Agreement, an applicant must comply with City of Capitola COVID-19 Temporary Outdoor Activities and Encroachment Agreement Guidance, available at www.cityofcapitola.org, for each activity listed above.

4. Will proposed outdoor activity require the use of private property not owned or leased by Permittee? Yes No

If response to above question is yes, has Permittee obtained all required authorizations (including but not limited to written agreements, licenses, and/or leases) to use said private property? Yes No

5. Proposed Activities. All proposed activities shall comply with the COVID-19 Temporary Use Permit Guidance published by the City of Capitola. To show compliance, please provide the following information on separate attachment: (1) a description of the business, (2) proposed outdoor activities, (3) a description of all improvements, structures and/or materials to be used to facilitate outdoor activities, (4) description of area in which proposed outdoor activities will take place along with a drawing, map or other visual depiction showing said area, improvements, structures and/or materials to be placed in said area.

6. Requested Start Date of Outdoor Activities: _____

7. Duration of Outdoor Activities. Initial agreement will be in place through September 30, 2020, with automatic monthly extensions through the life of the State or County mandated social distancing requirements.

8. Amendments to Proposal by City and/or Additional Terms of Agreement [To be Completed by City]:

9. Terms of Agreement:

A. Permittee agrees to accept all responsibility for loss or damage to any person or entity and to indemnify, hold harmless, and defend and release the City of Capitola, its agents, and employees from and against any and all liability actions, claims, damages, costs, or expenses which may be asserted by any person or entity, including Permittee, arising out of or in connection with the willful act or negligence of Permittee engaging in the activities associated with this Agreement, whether or not there is concurrent negligence on the part of the City, but excluding liability due to the sole active negligence or sole willful misconduct of the City.

B. The City reserves the right to order the removal or relocation of the improvements listed in paragraphs 3-6, above, at Permittee's cost in the event same is required by the City and/or a Utility. Whether or not said removal or relocation is required shall be left to the unfettered discretion of the City and/or a Utility. Permittee hereby grants to the City the right to remove or relocate said improvements and to come upon Permittee's land to effect said removal or relocation if deemed necessary by the City and/or a Utility. Permittee waives any claim or right he/she/it may have for inverse condemnation, damages, or loss of income or business resulting from said removal. However, the City will be responsible for repairing any physical damage caused to Permittee's structure(s) or property by the City's but not a Utility's removal or relocation of said improvements. Upon removal or relocation of said improvements, all rights of Permittee under this agreement and the permit itself shall terminate.

C. Permittee shall comply with all applicable local, State, and Federal laws and regulations at all times during the effective period of this agreement, including but not limited to laws regarding the obstruction of vehicular traffic, the Americans with Disabilities Act and County health laws regarding provision of food services.

D. If Permittee's proposed activities encroach into public right-of-way and/or a public easement, Permittee shall procure and maintain for the duration of this Agreement, and furnish, along with this Agreement, proof of insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Agreement, as set forth in this section. The cost of such insurance shall be borne by Permittee. Permittee's whose activities do not encroach into public right-of-way and/or a public easement, shall not be required to obtain said insurance.

Minimum Scope of Insurance. Permittee shall obtain and all times during duration of this Outdoor Activities Agreement maintain coverage at least as broad as:

(a) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

(b) Workers' Compensation insurance as required by the State of California and Employer's Liability insurance (for Permittees with employees).

(c) Property insurance against all risks of loss to any tenant improvements or betterments.

Permittee shall maintain limits no less than:

(a) General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(b) Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.

(c) Property Insurance: Full replacement cost with no coinsurance penalty provision.

Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Permittee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions.

The general liability policy is to contain, or be endorsed to contain, the following provisions:

(a) The City, its officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of the premises/property owned by or leased to the Permittee.

(b) The Permittee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Permittee's insurance and shall not contribute with it.

(c) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII unless prior approval is received from the City Attorney.

E. If Permittee proposes to sell or serve alcohol as a part of a its outdoor activities, Permittee shall furnish, along with this Agreement, proof of a liquor liability coverage endorsement or policy.

F. Violation of Agreement. Any violation of this Agreement or any other local, State, or Federal law shall constitute an imminent threat to the public health and is hereby declared to be a public nuisance and shall be subject to enforcement as such; violations of this Agreement and/or Emergency Order No. _____ may result in the immediate termination of this Agreement and the cessation of any activities authorized by this Agreement and Emergency Order No. _____.

G. No Vested or Ongoing Rights Conferred. Permittee understands and agrees that this Agreement and Order No. _____ confer no vested rights to any ongoing or continued activities, and any and all activities authorized by this Agreement and Order are temporary in nature and granted solely to enable businesses to operate in compliance with State and local orders regarding social distancing and COVID-19. All improvements, structures and installments approved pursuant to this Agreement shall be removed in their entirety upon expiration of this Agreement.

H. Non-Transferable. This Agreement is non-transferable. Only the permittee with whom this Agreement was entered shall be permitted to engage in the activities authorized herein.

I. Entire Agreement. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations of modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing, signed by the party to be charged and duly recorded.

THE UNDERSIGNED AGREES THAT THE PROPOSED ACTIVITIES DESCRIBED ABOVE SHALL BE IN ACCORDANCE WITH AND SUBJECT TO THIS AGREEMENT'S TERMS AND CONDITIONS, CITY OF CAPITOLA EMERGENCY ORDER NO. _____, AND ALL OTHER APPLICABLE LOCAL, STATE AND FEDERAL LAWS, INCLUDING BUT NOT LIMITED TO STATE AND COUNTY EMERGENCY ORDERS REGARDING THE COVID-19 PANDEMIC.

Permittee

Date

Steve Jesberg
Public Works Director
City of Capitola

Date

Katie Herlihy
Communtiy Development Director
City of Capitola

Date

**CONSENT TO USE PRIVATE PROPERTY
FOR TEMPORARY OUTDOOR ACTIVITIES**

[This form must be completed if proposed outdoor activity requires the use of private property which is neither owned nor leased by Permittee]

I, _____, declare that:

1. I am the record title owner of the property located at:

_____, Capitola, California,
(Physical Address)

2. I am aware that the Permittee _____ (Business name) is in the process of entering into a Temporary COVID-19 Outdoor Activities and Encroachment Agreement with the City of Capitola to use my property, described in paragraph 1, for certain outdoor activities described in the Agreement.

3. I consent and agree to use of my property for the outdoor activities described in the Agreement.

Signed this _____ day of _____, 20

(Landowner Signature)