



## Staff Report

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**File #:** TMP-1386, **Version:** 1

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**MEETING DATE:**

May 26, 2020

**SUBJECT:**

URGENCY ORDINANCE 2020-1486 OF THE CITY COUNCIL THE CITY OF SAN MARCOS, CALIFORNIA, ENACTING TEMPORARY ZONING AND DEVELOPMENT ENTITLEMENT MODIFICATIONS TO SAFELY EFFECTUATE STATE AND REGIONAL PUBLIC HEALTH ORDERS IN CONJUNCTION WITH RECOVERY AND REOPENING EFFORTS DUE TO THE NOVEL CORONAVIRUS (COVID-19)

**Recommendation**

ADOPT an urgency ordinance enacting temporary zoning and development entitlement modifications to safely effectuate state and regional public health orders in conjunction with recovery and reopening efforts due to the novel coronavirus (COVID-19)

**Board or Commission Action**

Not applicable.

**Relevant Council Strategic Theme**

Quality of Life

Good Governance

Economic Development

**Relevant Department Goal (If not applicable, please state not applicable below)**

**Executive Summary**

In the wake of the novel coronavirus (COVID-19) pandemic, the City of San Marcos is committed to helping local businesses re-open safely while adhering to public health mandates. As restaurants and other businesses are allowed to gradually re-open under State and County public health orders, they will be faced with new safety protocols and associated costs, such as limiting indoor seating and reducing customer occupancy to facilitate social distancing.

Staff have worked closely with local businesses to identify strategies to facilitate safe and sustainable re-opening during the dual public health and economic crisis precipitated by the outbreak of COVID-19. In order to do this, the City will need creative and unconsidered approaches which are currently not permitted as to how various businesses may operate, including dining, retail, fitness and instructional establishments, and other places of assembly such as churches. The proposed urgency ordinance will enact various modifications to the San Marcos Municipal Code (SMMC) to allow for the following activities with specific restrictions; outdoor dining, assembly and personal services (instructional/ fitness) allowed in parking lots and some open space areas, expanded sidewalk or walkway dining in some areas, expanded take-out, drive through and

delivery service accommodations including allowance for alcohol to-go with food, broadened allowances and streamlined process for temporary signage and an increase in the amount of retail activity allowed in buildings zoned for industrial uses. Not all of these uses are currently permitted by state and/or local public health orders, but provision is made for them in the proposed ordinance to enable staff to process applications to accommodate such uses when they are in fact permitted. The applicable provisions of the SMMC will remain modified until the mandates for social distancing and related health and sanitation measures have been dissolved by the appropriate public health authority.

## **Discussion**

Since the known emergence of COVID-19, the Governor of California has declared a state of emergency (March 4, 2020) and State and local public health officials have enacted an array of subsequent orders (i.e., Stay at Home order). Public health officials have also recommended and in some cases mandated precautions to minimize the public health impacts of the novel disease. As of May 20, 2020, the numbers of reported positive cases of COVID-19 and related deaths in San Diego County have increased to 6,140 and 230, respectively, and both numbers are expected to increase.

The response to the public health crisis has precipitated a concurrent economic crisis. Many local businesses and employers in San Marcos have experienced and anticipate to continue to experience sudden, drastic, and unexpected revenue or income loss due to temporary business closures and/or reduced operations as a result of the mandates and guidance put in place to contain the public health emergency.

In balancing these public health and economic factors, on May 10, 2020, the Health Officer of the County of San Diego issued an order, which provides in part that, upon reopening, every business must prepare and post a "Safe Reopening Plan" for each of its facilities in San Diego County. On May 20, 2020, the California Department of Public Health permitted San Diego County to move more quickly through Resilience Roadmap Stage 2, including allowing restaurants and retail to resume dine-in and in-store activity with safe re-opening plans in place. The staged re-opening of these businesses has begun in San Marcos and is poised to expand in coming weeks and months.

With this further re-opening, current restrictions regarding social distancing remain in place and additional health and safety measures must be taken by businesses to reduce the spread of the virus. This will reduce the number of customers that can be served by many businesses and may cause business owners to incur additional costs related to changes in business approach, purchase of new signage, staffing changes, etc. In some cases, the reduced capacity could potentially lead businesses to become financially unsustainable.

In order to safely re-open affected City businesses and effectuate public health officer offers, and to be responsive to the significant needs of the community at this unprecedented time, City staff have engaged in ongoing discussions with local business owners, as well as with regional planning and economic development leaders. Businesses have expressed their need for flexibility as they rapidly adjust to the new health and safety protocols. They have also demonstrated their innovation in providing revamped service delivery methods in keeping with applicable health orders. Businesses are planning to pivot even more significantly as the staged re-opening continues. Staff have listened to their needs, as well as the creative solutions put forward by other cities in the region and across the nation, and recommend enacting the temporary modifications to SMMC provisions generally described below and outlined in greater detail in "Exhibit A Temporary Zoning and Development Entitlement Modifications" (Attachment 1).

- Drive through or Designated Curbside Pick-Up: Temporary Outdoor Business Permit Required.

Businesses will be allowed to designate their customer parking spaces for curbside pick-up. This will be permitted in commercial centers and other locations provided that businesses work with neighbors and property management companies to minimize conflicts. ADA stalls and fire lanes may not be used for this purpose. The City may require operational changes or disallow drive-through or curbside pickup based on complaints and/ or traffic or other health/safety or applicable regulatory compliance issues. The number of spaces used would be decided by the business owner in terms what works for their business provided it does not exceed the number spaces allocated for their suite.

- Signage: No permit required for on-site temporary banner signs of prescribed sizes. No new permanent signage is permitted. Business owners must coordinate with property management regarding site specific sign restrictions.
- Outdoor Dining: Outdoor dining will be permitted in various locations provided that ADA access, ingress/egress requirements and other health and safety requirements can be met.
  - Location Type A: Public right of way or private sidewalks. Special Event Permits and other permits may be required (Right of Way, Encroachment, Traffic Control). This applies only in University District/ North City and along non-arterial roads only. This may include street closures with appropriate plans and permits.
  - Location Type B: Private parking lots. Temporary Outdoor Business Permit Required. Applicable to certain location types with required timeframes to be determined (i.e., sites with shared uses such as breweries in industrial areas may have staggered hours to avoid conflicts). Individual approvals required. Other permits may be required in some cases based on standards and criteria developed by Development Services staff (Special Event Permit, Right of Way, Encroachment, Traffic Control).
  - With respect to either Location Type, it will not be configured to allow uses to exceed their existing occupancy limit.
- To-go and On-Site Outdoor Consumption of Alcohol: Allows for consistency with the Alcohol and Beverage Control (ABC) Notices that provide that bona fide eating places (i.e. restaurants) selling beer, wine and pre-mixed drinks or cocktails for consumption on the premises pursuant to an ABC license, may sell alcohol for off premise consumption in conjunction with meals prepared for pick-up or delivery. These businesses may also allow on-site outdoor alcohol consumption with appropriate permits as outlined above (see “outdoor dining”). This modification is effective only for the duration of the ABC notices.
- Personal Services (Instructional/ Fitness): Temporary Outdoor Business Permit Required. When public health orders permit such uses, would allow for instructional/fitness facilities to deviate from their Conditional Use Permit or Director’s Permit conditions and allow for outdoor activities on site in a parking lot or other open area. Allows for indoor activities indoors provided safe re-opening and any other safety requirements are followed.
- Retail Businesses: Temporary Outdoor Business Permit Required. Allows for all retail sales businesses to open with interior sales under safe re-opening plans. Allow for curbside pick-up if desired by business. Also allows businesses to designate their customer parking spaces for curbside pick-up. The number of spaces would be decided by business owner in terms what works for their business, provided it does not exceed the number spaces allocated for their suite. Allows for outdoor sales in

parking lot if desired by business.

- Home Occupation: Temporary Outdoor Business Permit Required. Allows for on-site customers, employees, and stock in trade on site at home occupations.
- Group Assembly: Temporary Outdoor Business Permit Required. When public health orders permit such uses, would allow for assemblies in and outdoors in various locations provided that ADA access, ingress/egress requirements and other health and safety requirements can be met. Requires individual plan approval. Other permits may be required (Special Event Permit, Right of Way, Encroachment, Traffic Control).
- Retail Expansion in Industrial Buildings: No permit required. Allows for an expansion of retail uses from 10% up to 50% of building square footage within buildings or on sites zoned as Industrial. Retail sales must be for the sale of a product(s) produced on site.

These modifications will apply only when such uses are already permitted to operate based on prior entitlement by the City and when allowed under the applicable public health orders at the time. These provisions also do not allow for intensification of uses beyond pre-pandemic levels; for example, restaurants will not be able to exceed their original seating capacity.

If these modifications are approved, staff will develop more detailed parameters to be incorporated in the Temporary Outdoor Business Permit requirements. Any criteria applied will be designed to protect public health and safety and to minimize any impacts to the community from changes in business operations. Staff will work continue to work closely with businesses to ensure that implementation of these provisions is simple, streamlined and cost effective.

### **Environmental Review**

This is not a project within the meaning of Section 15378 of the California Environmental Quality Act (CEQA) Guidelines pursuant to Public Resources Code ("PRC") section 21080(b)(4) and the exemption in CEQA Guidelines Section 15269(c). CEQA Guidelines Section 15269(c) provides that projects that require specific actions necessary to mitigate an emergency are exempt from CEQA. PRC Section 21060.3 defines emergency as a "sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services." COVID-19 suddenly and rapidly spread throughout California and San Diego County, causing peril to the health, safety, and welfare of the residents of San Marcos. Government efforts to curb the spread of COVID-19, such as required closures and the Stay-at-Home Order, caused sudden significant economic hardship to local businesses and affected the City's operations and delivery of essential public services. Although state and local agencies have authorized economic recovery and reopening efforts in stages, subsequent stages of which are anticipated to be authorized in the coming weeks and months, such authorizations will not full mitigate the COVID-19 pandemic's adverse effects on businesses, the City, and the public, certain businesses and essential City services. Additionally, staged re-opening of businesses is poised

to occur while the battle against COVID-19 continues, necessitating that the City adopt revised rules and regulations to ensure such re-opening is consistent with the State and County Orders which remain in place, as public health orders still require social distancing and various other health and safety measures to reduce the spread of COVID-19 to the extent possible. Thus, the COVID-19 pandemic is an emergency as defined in PRC Section 21060.3, and the recovery plan outlined herein is necessary to mitigate that emergency. For these reasons, this Ordinance is exempt from CEQA pursuant to PRC section 21080(b)(4) and CEQA Guidelines Section 15269(c).

### **Fiscal Impact**

There is no fiscal impact to the City due to the adoption of this ordinance.

Adoption of the proposed urgency ordinance is anticipated to have a positive economic impact to the City of San Marcos by helping to sustain valuable local businesses and support the economic health of the community during this emergency.

### **Attachment(s)**

1. AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA, ENACTING TEMPORARY ZONING AND DEVELOPMENT ENTITLEMENT MODIFICATIONS TO SAFELY EFFECTUATE STATE AND REGIONAL PUBLIC HEALTH ORDERS IN CONJUNCTION WITH RECOVERY AND REOPENING EFFORTS DUE TO THE NOVEL CORONAVIRUS (COVID-19)
2. Exhibit A to Urgency Ordinance: Temporary Zoning and Development Entitlement Modifications
3. ORDER OF THE DIRECTOR OF EMERGENCY SERVICES OF THE CITY OF SAN MARCOS ADOPTING TEMPORARY ZONING AND DEVELOPMENT ENTITLEMENT MODIFICATIONS TO SAFELY EFFECTUATE STATE AND REGIONAL PUBLIC HEALTH ORDERS IN CONJUNCTION WITH RECOVERY AND REOPENING EFFORTS DUE TO THE NOVEL CORONAVIRUS (COVID-19)

Submitted by: Dahvia Lynch, Development Services Director

Approved by: Jack Griffin, City Manager