

**AN ORDER OF THE DIRECTOR OF EMERGENCY SERVICES
FOR THE CITY OF SOLANA BEACH RELAXING CERTAIN
REGULATIONS RELATED TO OUTDOOR USE BY GYM AND
FITNESS CENTERS, PERSONAL CARE SERVICES PROVIDERS,
SALONS AND BARBER SHOPS DUE TO THE COVID-19
PANDEMIC**

The Director of Emergency Services does hereby find and order as follows:

1. Findings.

A. Section 2.28.060(A)(1) of the Solana Beach Municipal Code empowers the Director of Emergency Services/City Manager to proclaim the existence or threatened existence of a local emergency when said City is affected or likely to be affected by a public calamity and the City Council is not in session; and

B. Such proclamation entitles the Director of Emergency Services, and the emergency organization of this City, to all the powers, functions, and duties prescribed by state law, ordinances, and resolutions of this jurisdiction and by the Operational Area Emergency Plan during the existence of said Local Emergency; and

C. On February 14, 2020, the County of San Diego declared the existence of a county-wide local emergency within the unincorporated and incorporated areas of San Diego County; and

D. On March 4, 2020, Governor Newsom proclaimed a State of Emergency to exist in the State of California as a direct result of the threat presented by COVID-19; and

E. On March 16, 2020 the City of Solana Beach ("City") Director of Emergency Services declared a local emergency as a result of the continued spread of COVID-19. The City Council ratified the declaration of local emergency on March 19, 2020.

F. On March 19, 2020, Governor Newsom issued Executive Order N-33-20. This order required all individuals living in the State of California to stay home or at their place of residence except as needed to maintain the continuity of operations of the federal critical infrastructure sections.

G. On May 4, 2020, Governor Newsom issued Executive Order N-60-20 which allowed non-essential businesses to reopen in phases and in compliance with criteria set by the California Public Health Officer, and based on certain public health criteria being met on a county-by-county basis.

H. On May 27, 2020, salons and barber shops in the City of Solana Beach were allowed to reopen for business.

I. On June 12, 2020, fitness centers in the City of Solana Beach were allowed to reopen for business.

J. On June 19, 2020, spas, nail salons, massage and tattoo parlors were allowed to reopen for business.

K. On July 13, 2020, the State of California issued a Public Health Order and on July 14, 2020, the County of San Diego County issued a Public Health Order (collectively, "Public Health Orders") which required businesses engaged in personal care services, including nail salons, massage parlors, and tattoo parlors, and hair salons and barber shop services, and gym and fitness services (hereinafter collectively referred to as "personal care services businesses") to cease all indoor operations.

L. As a result of the Public Health Orders, as of July 15, 2020, a vast majority of personal care service businesses in the City of Solana Beach will be forced to cease all indoor operations for a potentially prolonged period of time. These businesses are important to the physical and mental wellbeing of the residents of Solana Beach and surrounding communities, and these closures will result in a significant loss of business for personal care service businesses located in the City of Solana Beach.

M. It is in the public interest to take steps to ensure local businesses survive during this public health emergency, and this Order temporarily relaxes certain regulations to provide important services to local residents, support local businesses, promote economic stability, and to promote a stable business and job market for employers and employees to return to once the local emergency is abated.

N. Adopting this Order is necessary and appropriate to address the immediate threats to the public health, safety, and welfare of residents and local businesses related to the significant economic impacts of the COVID-19 pandemic, to support businesses to be successful in their reopening in compliance with public health criteria, and to support compliance with the Public Health Orders and criteria related to COVID-19 to continue to mitigate the spread of COVID-19 in the City.

2. Order Text

Pursuant to the powers granted to the Director of Emergency Services pursuant to Solana Beach Municipal Code section 2.28.060(A)(6), I hereby order as follows:

SECTION 1. Notwithstanding the requirements of Solana Beach Municipal Code Title 17 and space permitting, personal care services businesses may temporarily relocate some or all of their existing business operations to an adjacent outdoor area with a valid Temporary Use Permit (TUP) and the following conditions:

A. Outdoor Layout Review and Site Inspection. An Outdoor Layout Review and Site Inspection is required to relocate some or all of a personal care services business to an adjacent privately-owned outdoor area that was not originally permitted for said outdoor use, such as landscaped areas and parking lots, and in adjacent public or private areas such as sidewalks and on-street parking spaces within the public right-of-way. The Outdoor Layout Review and Site Inspection shall be conducted by the City of Solana Beach's Community Development Department, Public Works Department, and/or Fire Department who will review and either approve or require modifications to the proposed outdoor layout based on the following criteria:

- i. Outdoor use layout does not create a safety risk and adequate pedestrian and vehicular separation is maintained, including with movable barriers as appropriate.
- ii. The outdoor layout must accompany appropriate vehicle and pedestrian circulation and maintain adequate paths of travel and compliance with accessibility requirements of the Americans with Disabilities Act.
- iii. Any canopies, pop-ups, overhead shelters (collectively, "canopies") and the like must comply with fire codes, the Public Health Orders and safety standards set forth by the National Fire Protection Association and must include an affixed manufacturer's label stating the canopies meets NFPA requirements. A State Fire Marshal seal on the canopies or a certificate is needed to prove treatment.
- iv. Any placement or installation of temporary improvements, including but not limited to chairs and tables; pedestrian safety lights; heat lamps, fans, or other temperature control devices; canopies or other overhead shelter; posted signage; and other items that support table service or outdoor dining are subject to all applicable provisions of the California Building Code.
- v. No discharge of any types of solids or liquids, including water, can be made or caused to be made into any storm water drain.

B. No Fee. No fee will be charged for conducting an Outdoor Layout Review and Site Inspection and/or issuance of a TUP for these purposes.

C. Occupancy. Total occupancy of any outdoor space by a personal care services business shall not exceed that business's existing allowed indoor customer/patron capacity and/or occupancy.

D. Trash and Debris Removal. Temporary outdoor use areas, including any adjacent landscaped areas, sidewalks, and parking areas, shall be kept free of trash and debris at all times. Each personal care services business shall ensure the cleanup and removal of any trash and debris at the conclusion of its operation on each and every day of operation.

E. Indemnification and Hold Harmless. As a condition of approving an outdoor use on City-owned property, including on-street parking spaces and sidewalks within the public right-of-way, the personal care services business owner is required to indemnify, defend, and hold harmless the City, its officers, officials, employees, agents, and volunteers from any liability for any and all claims, demands, actions, losses, damages, and injuries, direct or indirect (including any and all costs in connection therein), which may arise from a personal care services business operations on City-owned property, except for any such claims arising out of the active negligence or willful misconduct of the City.

F. Insurance Required. At the time of the Outdoor Layout Review and Site Inspection that includes a request to use City-owned property including on-street parking spaces and sidewalks within the public right-of-way, the applicant shall submit proof of insurance including certificates of insurance with original endorsements as follows:

- i. Commercial General Liability Coverage to be maintained no less broad than ISO form GC 00 01 in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal and advertising injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to the personal care services business's use of outdoor space or the general aggregate limit shall be twice the required occurrence limit. If the personal care services business maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the personal care services business. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- ii. Any deductibles and self-insured retentions must be declared approved by the City. At the option of the City, either: the owner shall cause the insurer to reduce or

eliminate such deductibles or self-insured retentions with respect to the City, its officers, officials, employees, and volunteers or the owner shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

- iii. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of the use of any outdoor space as authorized herein, including work or operations performed by or on behalf of the Owner involving such use of outdoor space, including materials, parts, or equipment furnished in connection with such work. General liability coverage can be provided in the form of an endorsement to the personal care services business' insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used), unless otherwise approved in advance by City.
- iv. For any claims related to a personal care services business' use of outdoor space as authorized herein, the personal care services business' 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 personal care services business' insurance and shall not contribute with it.
- v. Each insurance policy required by this order shall provide that coverage shall not be canceled, except with reasonable advance notice to the City.
- vi. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City.

G. Other Regulations and Approvals. Personal care services businesses requesting an Outdoor Layout Review and Site Inspection from the City are responsible for maintaining compliance with all other applicable regulations, in general and for their industry, and obtaining any approvals required from other agencies, including, but not limited to, the San Diego County Department of Environmental Health, the San Diego.

SECTION 2. Upon the expiration or termination of this Order, the relaxation of regulations related to outdoor use contained herein shall be of no further force and effect. Regulations relating to outdoor use shall revert back to the regulations as

written and/or codified in the Solana Beach Municipal Code. All improvements used for temporary outdoor use shall be removed immediately at the expense of the personal care services businesses. All outdoor spaces utilized pursuant to this Order shall be returned to the condition they were in just prior to their use for outdoor business purposes.

SECTION 3. Effective Date. This Order shall take immediately and shall remain in effect for the duration of the local emergency or until revoked by the Director of Emergency Services.

SECTION 4. California Environmental Quality Act. This action is statutorily exempt under California Environmental Quality Act (CEQA) section 20180(b)(4) (specific actions necessary to prevent or mitigate an emergency) and is categorically exempt from CEQA under CEQA Guidelines 15301 (existing facilities), 15304(e) (minor temporary use of land having negligible or no permanent effects on the environment).

SECTION 5. Severability. If any provision of this Order is held invalid by a court of competent jurisdiction, such provision shall be considered a separate, distinct, and independent provision and such holding shall not affect the validity and enforceability of the other provisions of this Order.

IT IS **SO ORDERED**.



Gregory Wade, Director of Emergency Services

Date: July 29, 2020