



Office of the City Manager

SUPPLEMENTAL AND REVISED AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: July 28, 2020

Item Number: 39

Item Description: Amendments to the Urgency Ordinance (Number 7,725-N.S.) to safely support local businesses during the COVID-19 pandemic.

Submitted by: Jordan Klein, Interim Director, Planning and Development Department

The attached materials provide the attachments that were not included in the first packet. Although those materials were available by link to websites and from previous agenda packets, we are including them here for ease of reference.

We are also suggesting several refinements to the proposed ordinance. These are:

- Clarifying that the outdoor activity would be limited to non-residential properties.
- Clarifying that the displaced parking would be limited to non-residential spaces.
- Clarifying that new businesses that do not have a brick-and-mortar location in Berkeley (“pop-ups”) would qualify for the opportunities presented by this urgency ordinance subject to obtaining a business license.

It should also be noted that the temporary activities allowed by this ordinance would not supersede fundamental pre-existing conditions of approval on the existing businesses, such as hours of operation and limits on amplified entertainment.



Office of the City Manager

PUBLIC HEARING
July 28, 2020

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Jordan Klein, Interim Director, Department of Planning and Development
Subject: Amendments to the Urgency Ordinance (Number 7,725-N.S.) to safely support local businesses during the COVID-19 pandemic.

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt amendments to the Urgency Ordinance (Number 7,725-N.S.) amending Berkeley's Zoning Ordinance, Chapter 23E.18, to allow additional categories of commerce and establish additional operating criteria for outdoor activities on private property.

Deleted: and Section 23B.20.045

FISCAL IMPACTS OF RECOMMENDATION

May result in increased sales and employment tax revenues due to additional commercial activity compared to the status quo.

CURRENT SITUATION AND ITS EFFECTS

On July 7, 2020, City Council adopted an Urgency Ordinance adding Chapter 23E.18 and Section 23B.20.045 to provide a non-discretionary approval process (Zoning Certificate/Business License) to establish outdoor commerce on private property, subject to certain objective criteria and nuisance provisions. For more information on adoption of the Urgency Ordinance, refer to the July 7, 2020 City Council report (see *Attachment 3*).

Deleted: 2

At that hearing, Councilmembers asked whether additional business activities could be considered for inclusion in the program, and what restrictions would be appropriate for those categories of uses. Examples included manufacturing, salons, and other uses. Equity considerations and broad risk reduction strategies were also raised as considerations. Concern was also expressed about internally inconsistent lists of allowable activities. This report provides recommendations for amendments that satisfy Council inquiries.

BACKGROUND

The COVID-19 pandemic, and the associated imperative to avoid close physical contact with others, especially indoors, is having devastating impacts on Berkeley businesses. On June 2, 2020, the Berkeley City Council adopted a referral to the City Manager to explore strategies to expand outdoor dining and commerce so that businesses will be

able to comply with health guidelines and operate with sufficient capacity to remain solvent during the duration of the current public health emergency. At the meeting on June 16, 2020, the City Council adopted three urgency ordinances to permit outdoor dining, commerce, and associated amenities in the public right-of-way.

On July 7, 2020, the Berkeley City Council adopted an ordinance (*see Attachment 1*) pursuant to the City Charter to allow outdoor commercial activity on private property without discretionary zoning approval for certain uses in specified districts subject to objective operating criteria and nuisance provisions. The ordinance focused on outdoor retail and dining, assuming that most such businesses would be located along established commercial corridors where a parking lot or patio could be repurposed for customer access and would not result in unusual difficulties maintaining physical distance if proper protocols are followed. The ordinance also allowed outdoor assembly (e.g. classes, exercise, and religious assembly). The ordinance also applied in the MU-LI (Mixed Use Light Industrial) and MM (Mixed Manufacturing) zoning districts, where similar uses are allowed.

ENVIRONMENTAL SUSTAINABILITY

None.

RATIONALE FOR RECOMMENDATION

The proposed amendments to the urgency ordinance include additional uses and criteria based on the existing orders of the California Governor and the City Health Officer, including a list of allowable activities and criteria. The following links are to the most recent orders (*see Attachments 4 and 5*).

<https://covid19.ca.gov/stay-home-except-for-essential-needs/>

https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Public_Health/covid19/COB-health-order-n20-10-phased-reopening.pdf

https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Public_Health/covid19/COB-health-order-n20-07-shelter-in-place-appendix-c-additional-businesses-permitted.pdf

Future orders may influence the pace of reopening and the allowable activities and criteria. Therefore, staff recommends that the Council incorporate those future orders by reference to maintain compliance with expansions or contractions in allowable activities. Overall, it is expected that businesses that are able to adjust to outdoor activity will take the opportunity, and thus will be better able to maintain their economic viability and employment base, but others will be limited by space and operational constraints. Therefore, the ordinance also allows businesses to share space in order to facilitate outdoor markets, use of vacant or underutilized space, and cost sharing.

ALTERNATIVE ACTIONS CONSIDERED

Council may consider other allowable used and criteria for outdoor commerce on private property.

CONTACT PERSON

Jordan Klein, Interim Director, Department of Planning and Development, 510-981-7489
Steven Buckley, Land Use Planning Manager, Department of Planning and Development, 510-981-7411

Attachments:

1: Ordinance 7,725-N.S.

2: Proposed Amendments

3: [July 7, 2020 Council Report](#)

4: Governor's Order

5: Health Officer's Order and Appendices

6: Public Hearing Notice

Deleted: 3

Deleted: 4

Deleted: 5

ORDINANCE NO. -N.S.

AMENDING URGENCY ORDINANCE NO. 7,725-N.S. ADOPTED JULY 7, 2020 TO INCLUDE ADDITIONAL ALLOWABLE COMMERCIAL ACTIVITIES AND TO INCLUDE ADDITIONAL OPERATIONAL CRITERIA ON PRIVATE PROPERTY WITHOUT REQUIRING A DISCRETIONARY PERMIT IN ORDER TO SAFELY SUPPORT LOCAL BUSINESSES DURING THE COVID-19 PANDEMIC.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 23E.18 is readopted to read as follows:

BMC Chapter 23E.18 Temporary Outdoor Uses on Private Property

Sections:

- 23E.18.010 Purpose
- 23E.18.020 Definitions
- 23E.18.030 Applicability
- 23E.18.040 Requirements
- 23E.18.050 Operating Standards
- 23E.18.060 Remedies

23E.18.010 Purpose

The purpose of this chapter is:

- A. To relax regulation on private property to support existing or new legally established businesses during the locally declared state of emergency related to COVID-19.
- B. To expand customer access to businesses during the locally declared state of emergency related to COVID-19.
- C. To establish requirements and operating standards associated with relaxed regulation during the locally declared state of emergency related to COVID-19.

Deleted: commercial

Deleted: commercial

23E.18.020 Definitions

The definitions set forth in this Section shall govern the meaning of the following terms as used in this Chapter:

- A. Temporary Outdoor Use – An allowable temporary use on private property conducted by a legally established business in the same zoning district as it currently operates.

- B. Temporary Fixtures and Structures – Physical equipment necessary to safely conduct business outdoors.

23E.18.030 Applicability

- A. Regulation in this Chapter is valid during and up to 90 days after the locally declared state of emergency related to COVID-19.
- B. Regulation in this Chapter applies to existing and new businesses with a valid City of Berkeley Business License.
- C. Regulation in this Chapter applies to private property in all Commercial zoning districts, the Mixed Use Light-Industrial (MU-LI) district, the Manufacturing (M) district, and the Mixed Manufacturing (MM) district.
- D. The following businesses are not eligible to obtain a Zoning Certification for Temporary Outdoor Use:
 - 1. Delivery-Only (Cannabis) Retailers
 - 2. Liquor Stores / Wine Shops
 - 3. Adult-oriented Businesses
 - 4. Smoke Shops
 - 5. Firearm/Munitions Businesses

23E.18.040 Requirements

- A. Legally established businesses authorized by the Governor’s Executive Orders and Public Health Orders and the Public Health Orders of the City Health Officer, including appendices, to conduct outdoor business may conduct business outdoors on private property with a Zoning Certificate for Temporary Outdoor Use subject to compliance with the Executive Orders and Public Health Orders and other guidance related to phased reopening in Berkeley.
- B. Temporary Outdoor Uses may be conducted:
 - 1. On private property at the address listed on a business’s City of Berkeley business license, and/or
 - 2. On private property at an address other than that listed on a business’s City of Berkeley business license if the property is used **solely** for commercial purposes, is a vacant lot, or is a vacant building, **and/or**
 - 3. **As a new stand-alone outdoor business, subject to obtaining a City of Berkeley Business License for the temporary location.**
- C. The operator of the Temporary Outdoor Use must have the written permission of the property owner,

Deleted: and assurance of

Deleted: to maintain compliance with Section 23E.18.050 [Operating Standards]

- D. An application for a Zoning Certificate for a Temporary Outdoor Use must be accompanied by a site plan, business description and operational plan that certifies compliance with Section 23E.18.050 [Operating Standards]

23E.18.050 Operating Standards

A Zoning Certificate does not constitute permission to operate unless businesses comply with the following regulations:

- A. Businesses shall comply with State and local regulations for normal business operations, including previously-imposed conditions of approval related to hours of operation and other conditions of approval not in conflict with the allowances in this ordinance, in addition to State regulations for outdoor operations.
- B. Businesses shall follow the Governor's Executive Orders Public Health Orders and the City of Berkeley Public Health Orders, including Appendices.
- C. Businesses shall comply with Americans with Disabilities Act (ADA) requirements and Berkeley Building Code (BMC Chapter 19.28).
- D. Temporary Outdoor Uses shall maintain a 10-foot setback adjacent to property in a Residential District.
- E. Food Service Establishments with incidental alcoholic beverage service must comply with all applicable regulations of the California Department of Alcohol Beverage Control and obtain a COVID-19 temporary catering authorization.
- F. Sanitation
 1. Businesses shall provide garbage, recycling and compost services in accordance with the Alameda County Mandatory Recycling Ordinance.
 2. Food service establishments shall provide restrooms and sanitation during hours of operation.
 3. Food service establishments shall comply with Berkeley's Single Use Foodware and Litter Reduction Ordinance effective July 1, 2020.
- G. Operating Hours for Temporary Outdoor Uses shall be limited to 9 a.m. to 9 p.m. Hours of operation include the time that the business is open for customer access to the departure of the last patron. These limitations do not apply to the delivery, maintenance, security, product preparation and other pre-opening activities, and, cleanup, shutdown, and other post-closure activities which do not involve presence of customers.
- H. Safety:
 1. If Temporary Outdoor Uses are located within an active parking lot, businesses shall provide temporary barriers to separate vehicle traffic from pedestrians and commercial activity.

2. If Temporary Outdoor Uses fully occupy a parking lot, businesses shall provide temporary barriers to prevent vehicle traffic from entering the parking lot.

I. Non-residential parking and loading requirements on private property are temporarily suspended if a Temporary Outdoor Use displaces areas designated for these purposes.

Deleted: P

J. Permits issued pursuant to this Section shall be posted in plain view within the commercial establishment for which the permit has been issued.

K. Other Impacts

1. Temporary Outdoor Uses shall be conducted in a manner that protects the residential character of surrounding neighborhoods from adverse impacts, including, but not limited to commercial noise and offensive odors.

2. Smoking shall be prohibited in areas designated for Temporary Outdoor Uses as set forth in BMC Section 12.70.030 [Locations where smoking is prohibited].

3. Temporary outdoor lighting fixtures must be oriented in a manner to direct the light away from adjacent parcels.

L. Temporary Fixtures and Structures

1. Temporary Fixtures and Structures intended to support Temporary Outdoor Uses must be identified on a site plan and show compliance with Section 23E.18.050 [Operating Standards]

2. Movable fixtures such as tables/chairs, umbrellas, heaters, generators, trucks and trailers shall be stored in a secure place on private property when not in use.

3. Fixed structures such as semi-permanent tents, shipping containers, portable sinks and toilets, shall occupy no more than 50% of the outdoor space dedicated to a Temporary Outdoor Use in order to allow for appropriate social distancing

4. The location, type and operation of Temporary Fixtures and Structures must comply with the requirements of and be inspected by the Building and Safety Division, Health Department, Fire Department, Police Department and/or Public Works Department, as applicable.

23E.18.060 Remedies

A. A Zoning Certificate for Temporary Outdoor Use may be revoked for non-compliance with any conditions designated herein and the Zoning Officer may issue a cease and desist order immediately.

- B. A Temporary Outdoor Use that meets the nuisance criteria set forth in Section 23B.64.020 [Nuisances Defined] shall be considered a public nuisance and is subject to abatement as set forth in Chapter 23B.64 [Nuisance Abatement].

~~Section 2.~~ This Ordinance is adopted as an urgency ordinance pursuant to the Charter of the City of Berkeley, Article XIV, Section 93 and shall be effective immediately. The City Council finds and determines that the adoption of this Ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health and safety of the residents of the City of Berkeley, as more fully set forth below.

~~Section 3.~~ Findings

- a. In December 2019, an outbreak respiratory illness due to a novel coronavirus (COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, across the world, including the United States.
- b. COVID-19 presents a public health concern that requires extraordinary protective measures and vigilance.
- c. The Center for Disease Control (“CDC”) activated its Emergency Response System to provide ongoing support for the response to COVID-19 on January 23, 2020.
- d. A national emergency was declared on March 13 to assist with combating COVID-19.
- e. Governor Gavin Newsom declared a state of emergency in California to “prevent, hinder, or delay appropriate actions to prevent and mitigation the effects of the COVOD-19” on March 14.
- f. Between March 16, 2020 and June 19, 2020, Berkeley’s Public Health Officer issued a series of health orders placing prohibitions on indoor activities and severe limitations on commercial business operations.
- g. In an effort to support businesses during the shelter in place orders, the City of Berkeley is establishing a Temporary Outdoor Use for commercial activities on private property to provide businesses with an option to operate safely and remain solvent during the duration of the public health emergency.
- h. In an effort to protect customers and employees of commercial businesses, the City of Berkeley is establishing a Temporary Outdoor Use for commercial activities on private properties to allow businesses to operate in compliance health guidelines and reduce risks of viral transmission.
- i. For these reasons, there is a current and immediate threat to the public health, safety, and welfare, and that failure to adopt the proposed amendments to the Zoning Ordinance would exacerbate that threat to public health, safety, and welfare.

~~Section 4.~~ Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134

Deleted: ~~Section 2.~~ That Berkeley Municipal Code Section 23B.20.045 is adopted to read as follows:¶
BMC Section 23B. 20.045 Zoning Certificates for Temporary Outdoor Uses¶
Zoning Certificates for Temporary Outdoor Uses shall be required for businesses that are not normally permitted to operate outdoors, but are allowed to operate outdoors on private property during the locally declared state of emergency related to COVID-19 and for 90 days after the emergency is lifted.¶
Zoning Certificates for Temporary Outdoor Uses are subject to the requirements of Chapter 23B.20 [Zoning Conformance Review].¶

Deleted: 3

Deleted: 4

Deleted: 5

Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. 7,725 -N.S.

ADOPT BMC CHAPTER 23E.18 [TEMPORARY OUTDOOR USES ON PRIVATE PROPERTY] AND BMC SECTION 23B.20.045 [ZONING CERTIFICATE FOR TEMPORARY OUTDOOR USES]

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 23E.18 is adopted to read as follows:

BMC Chapter 23E.18 Temporary Outdoor Uses on Private Property

Sections:

- 23E.18.010 Purpose
- 23E.18.020 Definitions
- 23E.18.030 Applicability
- 23E.18.040 Requirements
- 23E.18.050 Operating Standards
- 23E.18.060 Remedies

23E.18.010 Purpose

The purpose of this chapter is:

- A. To relax regulation on private property to support existing or new legally established commercial businesses during the locally declared state of emergency related to COVID-19.
- B. To expand customer access to commercial businesses during the locally declared state of emergency related to COVID-19.
- C. To establish requirements and operating standards associated with relaxed regulation during the locally declared state of emergency related to COVID-19.

23E.18.020 Definitions

The definitions set forth in this Section shall govern the meaning of the following terms as used in this Chapter:

- A. Temporary Outdoor Use – An allowable temporary use on private property conducted by a legally established Retail, Food Service Establishment or General Assembly business in the same zoning district as it currently operates.
- B. Temporary Fixtures and Structures – Physical equipment necessary to safely conduct business outdoors.

23E.18.030 Applicability

- A. Regulation in this Chapter is valid during and up to 90 days after the locally declared state of emergency related to COVID-19.
- B. Regulation in this Chapter applies to existing and new commercial businesses with a valid City of Berkeley Business License.
- C. Regulation in this Chapter applies to private property in the Commercial zoning districts, the Mixed Use Light-Industrial (MU-LI) district, and the Mixed Manufacturing (MM) district.
- D. The following commercial businesses are not eligible to obtain a Zoning Certification for Temporary Outdoor Use:
 - 1. Delivery-Only (Cannabis) Retailers
 - 2. Liquor Stores / Wine Shops
 - 3. Adult-oriented Businesses
 - 4. Smoke Shops
 - 5. Firearm/Munitions Businesses

23E.18.040 Requirement

- A. Legally established businesses in the following Use categories may conduct business outdoors on private property with a Zoning Certificate for Temporary Outdoor Use
 - 1. Retail, except those listed in Section 23E.18.030 [Applicability]
 - 2. Food Service Establishments
 - 3. Alcoholic Beverage Service (Incidental to Food Service)
 - 4. Assembly Uses
 - 5. Entertainment
- B. Temporary Outdoor Uses may be conducted on private property at the address listed on a business's City of Berkeley business license.
- C. Temporary Outdoor Uses may be conducted on private property at an address other than that listed on a business's City of Berkeley business license if the following conditions are met:
 - 1. The property is used for commercial purposes, is a vacant lot, or is a vacant building in a Commercial zoning district, the MU-LI district or the MM district.
 - 2. Temporary Outdoor Uses shall be conducted in the same Zoning District where the business legally operates.

- D. The operator of the Temporary Outdoor Use has the permission of and assurance of the property owner to maintain compliance with Section 23E.18.050 [Operating Standards].
- E. An application for a Zoning Certificate for a Temporary Outdoor Use must be accompanied by site plan, business description and operational plan that certifies compliance with Section 23E.18.050 [Operating Standards]

23E.18.050 Operating Standards

A Zoning Certificate does not constitute permission to operate under the orders of the State and local Health Officers unless businesses comply with the following regulations:

- A. Businesses shall comply with State and local regulations for normal business operations in addition to State regulations for outdoor operations.
- B. Businesses shall follow the City of Berkeley's COVID-19 Public Health Officer Orders.
- C. Businesses shall comply with Americans with Disabilities Act (ADA) requirements and Berkeley Building Code (BMC Chapter 19.28).
- D. Temporary Outdoor Uses shall maintain a 10-foot setback adjacent to property in a Residential District in order to reduce impacts from allowable noise, odor, smoke and light.
- E. Food Service Establishments with incidental alcoholic beverage service must comply with all applicable regulations of the California Department of Alcohol Beverage Control and obtain a COVID-19 temporary catering authorization.
- F. Sanitation
 - 1. Businesses shall provide garbage, recycling and compost services in accordance with the Alameda County Mandatory Recycling Ordinance.
 - 2. Food service establishments shall provide restrooms and sanitation during hours of operation.
 - 3. Food service establishments shall comply with Berkeley's Single Use Foodware and Litter Reduction Ordinance effective July 1, 2020.
- G. Operating Hours for Temporary Outdoor Uses shall be limited to 9am to 9pm. Hours of operation include the time that the business is open for customer access to the departure of the last patron. These limitations do not apply to the delivery, maintenance, security, product preparation and other pre-opening activities, and, cleanup, shutdown, and other post-closure activities which do not involve presence of customers.
- H. Safety:

1. If Temporary Outdoor Uses are located within an active parking lot, businesses shall provide temporary barriers to separate vehicle traffic from pedestrians and commercial activity.
 2. If Temporary Outdoor Uses fully occupy a parking lot, businesses shall provide temporary barriers to prevent vehicle traffic from entering the parking lot.
- I. Parking and loading requirements on private property are temporarily suspended if a Temporary Outdoor Use displaces areas designated for these purposes.
- J. Permits issued pursuant to this Section shall be posted in plain view within the commercial establishment for which the permit has been issued.
- K. Other Impacts
1. Temporary Outdoor Uses shall be conducted in a manner that protects the residential character of surrounding neighborhoods from adverse impacts, including, but not limited to commercial noise and offensive odors.
 2. Smoking shall be prohibited in areas designated for Temporary Outdoor Uses as set forth in BMC Section 12.70.030 [Locations where smoking is prohibited].
 3. Temporary outdoor lighting fixtures must be oriented in a manner to direct the light away from adjacent parcels.
- L. Temporary Fixtures and Structures
1. Temporary Fixtures and Structures intended to support Temporary Outdoor Uses must be identified on a site plan and show compliance with Section 23E.18.050 [Operating Standards]
 2. Movable fixtures such as tables/chairs, umbrellas, heaters, generators, trucks and trailers shall be stored in a secure place on private property when not in use.
 3. Fixed structures such as semi-permanent tents, shipping containers, portable sinks and toilets, shall occupy no more than 50% of the outdoor space dedicated to a Temporary Outdoor Use in order to allow for appropriate social distancing
 4. The location, type and operation of Temporary Fixtures and Structures must comply with the requirements of and be inspected by the Building and Safety Division, Health Department, Fire Department, Police Department and/or Public Works Department for safety.

23E.18.060 Remedies

- A. A Zoning Certificate for Temporary Outdoor Use may be revoked for non-compliance with any conditions designated herein and the Zoning Officer may issue a cease and desist order immediately.
- B. A Temporary Outdoor Use that meets the nuisance criteria set forth in Section 23B.64.020 [Nuisances Defined] shall be considered a public nuisance and is subject to abatement as set forth in Chapter 23B.64 [Nuisance Abatement].

Section 2. That Berkeley Municipal Code Section 23B.20.045 is adopted to read as follows:

BMC Section 23B. 20.045 Zoning Certificates for Temporary Outdoor Uses

- A. Zoning Certificates for Temporary Outdoor Uses shall be required for businesses that are not normally permitted to operate outdoors, but are allowed to operate outdoors on private property during the locally declared state of emergency related to COVID-19 and for 90 days after the emergency is lifted.
- B. Zoning Certificates for Temporary Outdoor Uses are subject to the requirements of Chapter 23B.20 [Zoning Conformance Review]

Section 3 This Ordinance is adopted as an urgency ordinance pursuant to the Charter of the City of Berkeley, Article XIV, Section 93 and shall be effective immediately. The City Council finds and determines that the adoption of this Ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health and safety of the residents of the City of Berkeley.

Section 4. Findings

- a. In December 2019, an outbreak respiratory illness due to a novel coronavirus (COVID–19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, across the world, including the United States.
- b. COVID-19 presents a public health concern that requires extraordinary protective measures and vigilance.
- c. The Center for Disease Control (“CDC”) activated its Emergency Response System to provide ongoing support for the response to COVID–19 on January 23, 2020.
- d. A national emergency was declared on March 13 to assist with combating COVID-19.
- e. Governor Gavin Newsom declared a state of emergency in California to “prevent, hinder, or delay appropriate actions to prevent and mitigation the effects of the COVID-19” on March 14.

- f. Between March 16, 2020 and June 19, 2020, Berkeley’s Public Health Officer issued a series of health orders placing prohibitions on indoor activities and severe limitations on commercial business operations.
- g. In an effort to support businesses during the shelter in place orders, the City of Berkeley is establishing a Temporary Outdoor Use for commercial activities on private property to provide businesses with an option to operate safely and remain solvent during the duration of the public health emergency.
- h. In an effort to protect customers and employees of commercial businesses, the City of Berkeley is establishing a Temporary Outdoor Use for commercial activities on private properties to allow businesses to operate in compliance with health guidelines and reduce risks of viral transmission.
- i. For these reasons, there is a current and immediate threat to the public health, safety, and welfare, and that failure to adopt the proposed amendments to the Zoning Ordinance would exacerbate that threat to public health, safety, and welfare.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

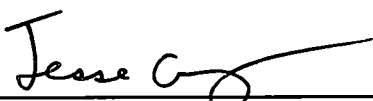
At a special meeting of the Council of the City of Berkeley held on July 7, 2020, this Urgency Ordinance was adopted by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.

ATTEST: 
 Mark Numainville, City Clerk


 Jesse Arreguin, Mayor

In effect: Immediately



Office of the City Manager

CONSENT CALENDAR
July 7, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Timothy Burroughs, Director, Department of Planning and Development
 Subject: Urgency Ordinance Allowing Temporary Outdoor Uses on Private Property

RECOMMENDATION

Adopt an urgency ordinance that creates Berkeley Municipal Code (BMC) Chapter 23E.18 [Temporary Outdoor Uses on Private Property] and BMC Section 23B.20.045 [Zoning Certificate for Temporary Outdoor Uses] to allow outdoor dining and commerce on private property without requiring a discretionary permit in order to safely support local businesses during the COVID-19 pandemic.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The COVID-19 pandemic, and the associated imperative to avoid close physical contact with others, especially indoors, is having devastating impacts on Berkeley businesses. On June 2, 2020, the Berkeley City Council adopted a referral to the City Manager to explore strategies to expand outdoor dining and commerce so that businesses will be able to comply with health guidelines and operate with sufficient capacity to remain solvent during the duration of the current public health emergency. At the meeting on June 16, 2020, the City Council adopted three urgency ordinances to permit outdoor dining, commerce, and associated amenities in the public right-of-way. This proposed urgency ordinance would facilitate the use of private outdoor space, such as parking lots, for additional commercial activity.

BACKGROUND

On March 3, 2020, the City of Berkeley declared a state of local emergency due to coronavirus (SARS-CoV-2), for which there is no known cure or vaccine. The pandemic has had a severe impact on local businesses, resulting in extreme revenue losses, layoffs and, in some cases, closures. In a survey conducted in April 2020, 561 Berkeley's businesses and arts organizations reported the following impacts of the pandemic on their operations:

- More than a quarter of respondents would expect to close permanently if they had to stay closed for 2 months.

- More than half of respondents would expect to close permanently if they had to stay closed for 3-4 months.
- More than two-fifths of respondents have either “Shifted to online sales or virtual services” or “Reduced salaries or staff hours.”
- More than two-fifths of respondents expect a revenue loss greater than 80% over the 3 months following when the coronavirus pandemic began impacting our community (approximately March 2020).

On June 2, 2020 the Berkeley City Council adopted the “Berkeley Safe Open Air Dining” proposal to “facilitate and expedite potential use of both public and private (parking lots, yards, setbacks, etc.) property for outdoor dining and other retail activities” and directed the City Manager “to implement or, where necessary, return to Council for approval any and all required temporary or permanent changes to, or suspensions of, Berkeley Municipal Code sections, fees, permitting requirements/timelines, and other rules and regulations.”

Since the outbreak of COVID-19 and subsequent health orders, cities around the world have taken steps to reimagine their use of public space for outdoor commerce and recreation including exercising, shopping, and dining, while ensuring adequate social distance to protect the public. Such initiatives recognize the vital role that small businesses and lively commercial districts play in cities. A creative approach, utilizing the public right of way, consistent with health and safety protocols, and best practices in accessibility and circulation, is necessary to ensure that our valued commercial districts are able to recover from this disaster, and that Berkeley’s small business community is once again able to thrive.

Complementing the expanded use of public space to stimulate commerce, temporary use of outdoor private property will allow local businesses to safely reopen with physical distancing. In Berkeley’s commercial corridors, where many commercial spaces are relatively small and narrow, it is often difficult for businesses to operate while observing health and safety measures indoors. Given existing indoor space and capacity constraints, additional outdoor area will better facilitate business operations while ensuring the observance of physical distancing requirements and other safety guidelines. For example, outdoor space that is often currently devoted to parking could be repurposed by restaurants for appropriately spaced seating and by retail stores as additional browsing space.

Temporary Outdoor Uses (as defined in the proposed ordinance) will include retail, food service establishments and group assembly uses in Commercial, Mixed Use Light Industrial, and Mixed Manufacturing districts. Due to businesses’ acute need to re-open, permits will be issued ministerially, i.e. as a Zoning Certificate.

Regulation in the urgency ordinance is compatible with the Zoning Ordinance. Existing and newly established businesses with valid Berkeley Business Licenses will be allowed

to operate outdoors on private property in the district in which their business currently operates. Temporary Outdoor Uses would be required to operate in compliance with State and County regulations, such as alcohol and food safety requirements, in addition to conforming to the operating standards set forth in the new ordinance, which are based on existing regulations. Operating standards are intended to ensure basic safety measures are in place and that neighboring businesses and residents are not unduly impacted by outdoor uses. Non-compliance with operating standards could result in a modification or revocation of the approval.

ENVIRONMENTAL SUSTAINABILITY

The activation of outdoor private space for commercial use will not require additional construction or development. There are no perceived detrimental impacts on the environment as a result of this allowing this temporary use.

RATIONALE FOR RECOMMENDATION

Outdoor commercial uses are already allowed in the public right-of-way during this public health emergency. Outdoor private space can be leveraged to accommodate local businesses, comply with Public Health directives, mitigate the effects of the pandemic and provide additional outdoor spaces for commercial activity.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Alene Pearson, Principal Planner, Department of Planning and Development, 510-981-7489

Attachments:

1: Ordinance to Adopt BMC Chapter 23E.18 [Temporary Outdoor Uses on Private Property] and BMC Section 23B.20.045 [Zoning Certificate for Temporary Outdoor Uses]

ORDINANCE NO. -N.S.

ADOPT BMC CHAPTER 23E.18 [TEMPORARY OUTDOOR USES ON PRIVATE PROPERTY] AND BMC SECTION 23B.20.045 [ZONING CERTIFICATE FOR TEMPORARY OUTDOOR USES]

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 23E.18 is adopted to read as follows:

BMC Chapter 23E.18 Temporary Outdoor Uses on Private Property

Sections:

- 23E.18.010 Purpose
- 23E.18.020 Definitions
- 23E.18.030 Applicability
- 23E.18.040 Requirements
- 23E.18.050 Operating Standards
- 23E.18.060 Remedies

23E.18.010 Purpose

The purpose of this chapter is:

- A. To relax regulation on private property to support existing or new legally established commercial businesses during the locally declared state of emergency related to COVID-19.
- B. To expand customer access to commercial businesses during the locally declared state of emergency related to COVID-19.
- C. To establish requirements and operating standards associated with relaxed regulation during the locally declared state of emergency related to COVID-19.

23E.18.020 Definitions

The definitions set forth in this Section shall govern the meaning of the following terms as used in this Chapter:

- A. Temporary Outdoor Use – An allowable temporary use on private property conducted by a legally established Retail, Food Service Establishment or General Assembly business in the same zoning district as it currently operates.

- B. Temporary Fixtures and Structures – Physical equipment necessary to safely conduct business outdoors.

23E.18.030 Applicability

- A. Regulation in this Chapter is valid during and up to 90 days after the locally declared state of emergency related to COVID-19.
- B. Regulation in this Chapter applies to existing and new commercial businesses with a valid City of Berkeley Business License.
- C. Regulation in this Chapter applies to private property in the Commercial zoning districts, the Mixed Use Light-Industrial (MU-LI) district, and the Mixed Manufacturing (MM) district.
- D. The following commercial businesses are not eligible to obtain a Zoning Certification for Temporary Outdoor Use:
 - 1. Delivery-Only (Cannabis) Retailers
 - 2. Liquor Stores / Wine Shops
 - 3. Adult-oriented Businesses
 - 4. Smoke Shops
 - 5. Firearm/Munitions Businesses

23E.18.040 Requirement

- A. Legally established businesses in the following Use categories may conduct business outdoors on private property with a Zoning Certificate for Temporary Outdoor Use
 - 1. Retail, except those listed in Section 23E.18.030 [Applicability]
 - 2. Food Service Establishments
 - 3. Alcoholic Beverage Service (Incidental to Food Service)
 - 4. Assembly Uses
 - 5. Entertainment
- B. Temporary Outdoor Uses may be conducted on private property at the address listed on a business's City of Berkeley business license.
- C. Temporary Outdoor Uses may be conducted on private property at an address other than that listed on a business's City of Berkeley business license if the following conditions are met:
 - 1. The property is used for commercial purposes, is a vacant lot, or is a vacant building in a Commercial zoning district, the MU-LI district or the MM district.

2. Temporary Outdoor Uses shall be conducted in the same Zoning District where the business legally operates.
- D. The operator of the Temporary Outdoor Use has the permission of and assurance of the property owner to maintain compliance with Section 23E.18.050 [Operating Standards].
- E. An application for a Zoning Certificate for a Temporary Outdoor Use must be accompanied by site plan, business description and operational plan that certifies compliance with Section 23E.18.050 [Operating Standards]

23E.18.050 Operating Standards

A Zoning Certificate does not constitute permission to operate under the orders of the State and local Health Officers unless businesses comply with the following regulations:

- A. Businesses shall comply with State and local regulations for normal business operations in addition to State regulations for outdoor operations.
- B. Businesses shall follow the [City of Berkeley's COVID-19 Public Health Officer Orders](#).
- C. Businesses shall comply with [Americans with Disabilities Act \(ADA\)](#) requirements and Berkeley Building Code (BMC Chapter 19.28).
- D. Temporary Outdoor Uses shall maintain a 10-foot setback adjacent to property in a Residential District in order to reduce impacts from allowable noise, odor, smoke and light.
- E. Food Service Establishments with incidental alcoholic beverage service must comply with all applicable regulations of the [California Department of Alcohol Beverage Control](#) and obtain a [COVID-19 temporary catering authorization](#).
- F. Sanitation
 1. Businesses shall provide garbage, recycling and compost services in accordance with the Alameda County Mandatory Recycling Ordinance.
 2. Food service establishments shall provide restrooms and sanitation during hours of operation.
 3. Food service establishments shall comply with Berkeley's Single Use Foodware and Litter Reduction Ordinance effective July 1, 2020.
- G. Operating Hours for Temporary Outdoor Uses shall be limited to 9am to 9pm. Hours of operation include the time that the business is open for customer access to the departure of the last patron. These limitations do not apply to the delivery, maintenance, security, product preparation and other pre-opening activities, and, cleanup, shutdown, and other post-closure activities which do not involve presence of customers.

H. Safety:

1. If Temporary Outdoor Uses are located within an active parking lot, businesses shall provide temporary barriers to separate vehicle traffic from pedestrians and commercial activity.
2. If Temporary Outdoor Uses fully occupy a parking lot, businesses shall provide temporary barriers to prevent vehicle traffic from entering the parking lot.

I. Parking and loading requirements on private property are temporarily suspended if a Temporary Outdoor Use displaces areas designated for these purposes.

J. Permits issued pursuant to this Section shall be posted in plain view within the commercial establishment for which the permit has been issued.

K. Other Impacts

1. Temporary Outdoor Uses shall be conducted in a manner that protects the residential character of surrounding neighborhoods from adverse impacts, including, but not limited to commercial noise and offensive odors.
2. Smoking shall be prohibited in areas designated for Temporary Outdoor Uses as set forth in BMC Section 12.70.030 [Locations where smoking is prohibited].
3. Temporary outdoor lighting fixtures must be oriented in a manner to direct the light away from adjacent parcels.

L. Temporary Fixtures and Structures

1. Temporary Fixtures and Structures intended to support Temporary Outdoor Uses must be identified on a site plan and show compliance with Section 23E.18.050 [Operating Standards]
2. Movable fixtures such as tables/chairs, umbrellas, heaters, generators, trucks and trailers shall be stored in a secure place on private property when not in use.
3. Fixed structures such as semi-permanent tents, shipping containers, portable sinks and toilets, shall occupy no more than 50% of the outdoor space dedicated to a Temporary Outdoor Use in order to allow for appropriate social distancing
4. The location, type and operation of Temporary Fixtures and Structures must comply with the requirements of and be inspected by the Building and Safety Division, Health Department, Fire Department, Police Department and/or Public Works Department for safety.

23E.18.060 Remedies

- A. A Zoning Certificate for Temporary Outdoor Use may be revoked for non-compliance with any conditions designated herein and the Zoning Officer may issue a cease and desist order immediately.
- B. A Temporary Outdoor Use that meets the nuisance criteria set forth in Section 23B.64.020 [Nuisances Defined] shall be considered a public nuisance and is subject to abatement as set forth in Chapter 23B.64 [Nuisance Abatement].

Section 2. That Berkeley Municipal Code Section 23B.20.045 is adopted to read as follows:

BMC Section 23B. 20.045 Zoning Certificates for Temporary Outdoor Uses

- A. Zoning Certificates for Temporary Outdoor Uses shall be required for businesses that are not normally permitted to operate outdoors, but are allowed to operate outdoors on private property during the locally declared state of emergency related to COVID-19 and for 90 days after the emergency is lifted.
- B. Zoning Certificates for Temporary Outdoor Uses are subject to the requirements of Chapter 23B.20 [Zoning Conformance Review]

Section 3 This Ordinance is adopted as an urgency ordinance pursuant to the Charter of the City of Berkeley, Article XIV, Section 93 and shall be effective immediately. The City Council finds and determines that the adoption of this Ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health and safety of the residents of the City of Berkeley.

Section 4. Findings

- a. In December 2019, an outbreak respiratory illness due to a novel coronavirus (COVID–19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, across the world, including the United States.
- b. COVID-19 presents a public health concern that requires extraordinary protective measures and vigilance.
- c. The Center for Disease Control (“CDC”) activated its Emergency Response System to provide ongoing support for the response to COVID–19 on January 23, 2020.
- d. A national emergency was declared on March 13 to assist with combating COVID-19.
- e. Governor Gavin Newsom declared a state of emergency in California to “prevent, hinder, or delay appropriate actions to prevent and mitigation the effects of the COVID-19” on March 14.

- f. Between March 16, 2020 and June 19, 2020, Berkeley's Public Health Officer issued a series of health orders placing prohibitions on indoor activities and severe limitations on commercial business operations.
- g. In an effort to support businesses during the shelter in place orders, the City of Berkeley is establishing a Temporary Outdoor Use for commercial activities on private property to provide businesses with an option to operate safely and remain solvent during the duration of the public health emergency.
- h. In an effort to protect customers and employees of commercial businesses, the City of Berkeley is establishing a Temporary Outdoor Use for commercial activities on private properties to allow businesses to operate in compliance with health guidelines and reduce risks of viral transmission.
- i. For these reasons, there is a current and immediate threat to the public health, safety, and welfare, and that failure to adopt the proposed amendments to the Zoning Ordinance would exacerbate that threat to public health, safety, and welfare.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Health, Housing & Community Services Department
Public Health Officer

**ORDER OF THE HEALTH OFFICER
OF THE CITY OF BERKELEY DIRECTING
ALL INDIVIDUALS IN THE CITY TO CONTINUE SHELTERING AT
THEIR PLACE OF RESIDENCE EXCEPT FOR IDENTIFIED NEEDS
AND ACTIVITIES, IN COMPLIANCE WITH SPECIFIED
REQUIREMENTS; CONTINUING TO EXEMPT HOMELESS
INDIVIDUALS FROM THE ORDER BUT URGING GOVERNMENT
AGENCIES TO PROVIDE THEM SHELTER; REQUIRING ALL
BUSINESSES AND RECREATION FACILITIES THAT ARE ALLOWED
TO OPERATE TO IMPLEMENT SOCIAL DISTANCING, FACE
COVERING, AND CLEANING PROTOCOLS; AND DIRECTING ALL
BUSINESSES, FACILITY OPERATORS, AND GOVERNMENTAL
AGENCIES TO CONTINUE THE TEMPORARY CLOSURE OF ALL
OTHER OPERATIONS NOT ALLOWED UNDER THIS ORDER**

DATE OF ORDER: MAY 18, 2020

Appendix C: Additional Businesses Permitted to Operate



**Health, Housing & Community Services Department
Public Health Officer**

Appendix C: Additional Businesses Permitted to Operate

May 18, 2020

The “Additional Businesses” listed below may begin operating, subject to the requirements set forth in the Order and to any additional requirements set forth below or in separate industry-specific guidance by the Health Officer. These businesses were selected to implement an initial measured expansion of commercial activity based on health-related considerations including the risks of COVID-19 transmission associated with types and modes of business operations, the ability to substantially mitigate transmission risks associated with the operations, and related factors, such as the following:

- **Increase in mobility and volume of activity**—the overall impact the reopening will have on the number of people leaving their homes and traveling to work at or access the business;
- **Contact intensity**—the type (close or distant) and duration (brief or prolonged) of the contact involved in the business;
- **Number of contacts**—the approximate number of people that will be in the setting at the same time;
- **Modification potential**—the degree to which mitigation measures can decrease the risk of transmission.

To mitigate the risk of transmission to the greatest extent possible, before resuming operations, each Additional Businesses must:

- a. Prepare, post, implement, and distribute to their Personnel a Social Distancing Protocol as specified in Section 15.h of the Order for each of their facilities in the City frequented by Personnel or members of the public; and
- b. Prepare, post, implement, and distribute to their Personnel a written health and safety plan that addresses all applicable best practices set forth in relevant Health Officer orders or directives.

As used in this Appendix C, “Personnel” means the following people who provide goods or services associated with the Additional Business in the City: employees; contractors, and sub-



**Health, Housing & Community Services Department
Public Health Officer**

contractors (such as those who sell goods or perform services onsite or who deliver goods for the business); independent contractors (such as “gig workers” who perform work via the Additional Business’s app or other online interface); vendors who are permitted to sell goods onsite; volunteers; and other individuals who regularly provide services onsite at the request of the Additional Business.

Each Additional Business must comply with Social Distancing Requirements as well as all relevant state guidance and local directives. Where a conflict exists between the state guidance and local public health directives related to the COVID-19 pandemic, the most restrictive provision controls.

For purposes of the Order, Additional Businesses include the following based on the summarized health risk related rationale:

- (1) **Retail Stores**. Beginning at 11:59 p.m. on May 18, 2020, retail stores not otherwise authorized to operate by an Order of the Health Officer may operate in the City of Berkeley for curbside pickup and/or delivery only.
 - a. Retail stores must implement measures to prevent customers from blocking pedestrian access or causing vehicle congestion while picking up goods.
 - b. All retail stores must place limitations on the number of employees in enclosed areas, to ensure at least six feet of separation between employees to limit COVID-19 transmission, and shall comply with the requirements of the Retail Industry Guidance published by the California Department of Public Health (“CDPH”) and the Department of Industrial Relations (“DIR”) (<https://covid19.ca.gov/pdf/guidance-retail.pdf>), as may be amended from time-to-time. No customer may enter a store authorized to operate under this paragraph at any time.
 - c. Retail stores that do not have direct access to a sidewalk, street, or alley may not allow customers to enter any enclosed or partially enclosed area, but may arrange for curbside pickup of goods at a safe outdoor location in compliance with the requirements of this Paragraph and the Retail Industry Guidance.
 - d. The curbside display of goods by stores or other vendors is not permitted at this time.
- (2) **Manufacturing**. Beginning at 11:59 p.m. on May 18, 2020, manufacturing businesses permitted to operate under the state Resilience Roadmap (<https://covid19.ca.gov/roadmap/>), as it is amended from time-to-time, may operate in the City of Berkeley. Manufacturers must place limitations on the number of employees in enclosed areas, to ensure at least six feet of



**Health, Housing & Community Services Department
Public Health Officer**

separation between employees to limit COVID-19 transmission, and shall comply with the requirements of the Manufacturing Industry Guidance published by CDPH and DIR (<https://covid19.ca.gov/pdf/guidance-manufacturing.pdf>), as it is amended from time-to-time.

- (3) **Logistics and Warehousing**. Beginning at 11:59 p.m. on May 18, 2020, logistics and warehousing facilities permitted to operate under the state Resilience Roadmap (<https://covid19.ca.gov/roadmap/>), as it is amended from time-to-time, may operate in the City of Berkeley. Logistics and warehousing facilities must place limitations on the number of employees in enclosed areas, to ensure at least six feet of separation between employees to limit COVID-19 transmission, and shall comply with the requirements of the Logistics and Warehousing Facility Industry Guidance published by CDPH and DIR (<https://covid19.ca.gov/pdf/guidance-logistics-warehousing.pdf>), as it is amended from time-to-time.



**Health, Housing & Community Services Department
Public Health Officer**

**ORDER OF THE HEALTH OFFICER OF THE CITY OF BERKELEY
DIRECTING ALL INDIVIDUALS IN THE CITY TO CONTINUE TO
COMPLY WITH SOCIAL DISTANCING MEASURES AND OTHER
RESTRICTIONS NECESSARY TO CONTROL THE SPREAD OF
COVID-19**

DATE OF ORDER: JUNE 18, 2020 (Revised July 17, 2020)

Summary of Order: This Order of the Berkeley Public Health Officer continues to maintain restrictions on movement and public and private gatherings set forth in the Health Officer's June 5, 2020 Order. However, in light of the continued progress toward controlling the spread of COVID-19 in the City of Berkeley and neighboring jurisdictions, this Order allows certain additional activities to resume. The Order continues to implement a phased reopening of businesses and recreational, social, and cultural activities, consistent with the State of California's Resilience Roadmap. The Order:

1. Allows retail stores to open for indoor shopping, subject to limitations on occupancy and other conditions;
2. Allows restaurants and other dining establishments to open for outdoor dining;
3. Strongly encourages places of worship to continue to hold services remotely, but allows them to hold religious services and cultural ceremonies attended by up to 100 individuals, subject to limitations on occupancy and other conditions. In person religious services and cultural ceremonies may not be held indoors, by order of the State of California;
4. Authorizes outdoor non-contact fitness classes with up to 12 participants;
5. Allows college sports teams to conduct non-contact, socially distanced athletic training and practices;
6. Authorizes the opening of outdoor museums, historic sites, and publicly accessible gardens;
7. Allows outdoor political events and protests with appropriate social distancing;
8. Allows dog parks to reopen; and
9. Authorizes socially distanced "vehicle-based gatherings," such as drive-in movies.

Order of the City Health Officer to Continue Restrictions Necessary
to Control the Spread of COVID-19 (July 17, 2020)



**Health, Housing & Community Services Department
Public Health Officer**

Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295)

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101475 AND 120175, THE HEALTH OFFICER OF THE CITY OF BERKELEY (“HEALTH OFFICER”) ORDERS:

1. This Order supersedes the June 5, 2020 Order of the Health Officer (“Prior Order”). This Order amends, clarifies, and continues certain terms of the Prior Order to ensure continued social distancing and limit person-to-person contact to reduce the rate of transmission of Novel Coronavirus Disease 2019 (“COVID-19”). This Order continues to restrict activity, travel, and governmental and business functions. But in light of progress achieved in controlling the spread of COVID-19 in the City of Berkeley (the “City”) and neighboring jurisdictions, the Order allows certain additional business, recreational, social, and cultural activities to resume, subject to the limitations set forth herein.
2. The primary intent of this Order is to slow the spread of COVID-19 and mitigate the impact on delivery of critical healthcare services. All provisions of this Order must be interpreted to effectuate this intent. However, this Order allows additional business, recreational, social, and cultural activities to resume while the Health Officer continues to assess the transmissibility and clinical severity of COVID-19 and monitors indicators described in Section 11. Failure to comply with any of the provisions of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.
3. Except as otherwise provided in this Order, no public or private gathering of individuals who are not members of the same household or living units is permitted. Individuals who do not currently reside in the City must comply with all applicable requirements of the Order when in the City. Persons experiencing homeless should comply with the Order to the maximum extent feasible. Governmental and other entities are strongly urged to, as soon as possible, make such shelter available and provide handwashing or hand sanitation facilities to persons who continue experiencing homelessness.
4. When people need to leave their place of residence for the limited purposes allowed in this Order, they must strictly comply with Social Distancing Requirements as defined in Section 15.k, except as expressly provided in this Order, and must wear Face Coverings as provided in, and subject to the limited exceptions in, the Health Officer Order dated June 5, 2020 (the “Face Covering Order”) or in this Order.

Order of the City Health Officer to Continue Restrictions Necessary
to Control the Spread of COVID-19 (July 17, 2020)



**Health, Housing & Community Services Department
Public Health Officer**

5. The following business and activities are permitted within the City of Berkeley and may operate or be carried out consistent with the requirement of this Order:
 - a. Essential Activities, as defined in Section 15.a.
 - b. Healthcare Operations, as defined in Section 15.b.
 - c. Essential Infrastructure, as defined in Section 15.c.
 - d. Essential Governmental Functions, as defined in Section 15.d
 - e. Essential Businesses, as defined in Section 15.f.
 - f. Essential Travel, as defined in Section 15.i.
 - g. Outdoor Businesses, as defined in Section 15.l.
 - h. Outdoor Activities, as defined in Section 15.m.
 - i. Additional Businesses and Additional Activities, as set forth in Section 15.n-15.o and Appendix C.

Nothing in this Order prevents personnel, volunteers, or contractors from performing activities at their own residences (i.e., working from home). Further, businesses not otherwise permitted to operate under this Order may perform Minimum Basic Operations as defined in Section 15.g. All businesses, including Essential Businesses, must maximize the number of personnel who work from home, and may only assign those personnel who cannot perform their job duties from home to work outside the home.

6. All businesses operating under this Order must prepare or update, post, implement, and distribute to their personnel a Site-Specific Protection Plan for each of their facilities in the City frequented by personnel or members of the public, as specified in Section 15.h. In addition to the Site-Specific Protection Plan, all businesses allowed to operate under this Order must follow any industry-specific guidance issued by the Health Officer related to COVID-19 and any conditions on operation specified in this Order, including those specified in Appendix C, or in industry guidance issued by the California Department of Public Health and Department of Industrial Relations (<https://covid19.ca.gov/industry-guidance/>). Except as otherwise provided in this Order, businesses that include an Essential Business or Outdoor Business component at their facilities alongside other components must, to the extent feasible, scale down their operations to the Essential Business and Outdoor Business components only; provided,



**Health, Housing & Community Services Department
Public Health Officer**

however, mixed retail businesses that are otherwise allowed to operate under this Order may continue to stock and sell non-essential products.

7. Notwithstanding the requirements of Section 3, small public and private gatherings comprised of individuals within a Social Bubble, or comprised of children and adults within a single Childcare or Youth Extracurricular Activity Unit, are permitted, subject to the requirements of this Order. For purposes of this Section:
 - a. A “Social Bubble” means a group of not more than 12 individuals who may attend social or other events outdoors with persons outside their household or living unit.
 - b. A Childcare or Youth Extracurricular Activity Unit means a group of not more than 12 children or youth that is formed for the purpose of providing childcare or for the purpose of allowing children and youth to engage in extracurricular activities. If more than one group of children or youth is at one facility, each group shall be in a separate room or area. Groups shall not mix with each other.
 - c. No person may be a member of more than one Social Bubble during any three-week period, except that a child who resides in more than one dwelling unit as part of a shared custody arrangement may be part of the Social Bubble of each of the child’s parents or guardians.
 - d. No person may be a member of more than one Childcare or Youth Extracurricular Activity Unit during any three-week period.
 - e. Members of a Social Bubble or Childcare or Youth Extracurricular Activity Unit are strongly encouraged to comply with Social Distancing Requirements and wear face covering to the extent feasible. Children 2 years or younger should not wear face coverings, and the use of face coverings in children under the age of 12 must be subject to adult supervision.

Nothing in this Order prevents any person from being a member of both a Social Bubble and a Childcare or Youth Extracurricular Activity Unit during any three-week period. Further, nothing in this Order prohibits members of a single household or living unit from engaging in Essential Travel, Essential Activities, Outdoor Activities, or Additional Activities together.

8. All travel, except Essential Travel, as defined below in Section 15.i, is prohibited. People may use public transit only for purposes of performing activities permitted under this Order. Transit agencies and people riding on public transit must comply with Social



**Health, Housing & Community Services Department
Public Health Officer**

Distancing Requirements, as defined in Section 15.k, to the greatest extent feasible, and personnel and passengers must wear Face Coverings as required by the Face Covering Order. Any travel into or out of the City not expressly permitted by this Order is prohibited.

9. This Order is issued based on evidence of continued significant community transmission of COVID-19 within the City and throughout the Bay Area; continued uncertainty regarding the degree of undetected asymptomatic transmission; scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically; evidence that the age, condition, and health of a significant portion of the population of the City places it at risk for serious health complications, including death, from COVID-19; and further evidence that others, including younger and otherwise healthy people, are also at risk for serious outcomes. Due to the outbreak of the COVID-19 disease in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the City. Making the problem worse, some individuals who contract the virus causing the COVID-19 disease have no symptoms or have mild symptoms, which means they may not be aware they carry the virus and are transmitting it to others. Further, evidence shows that the virus can survive for hours to days on surfaces and be indirectly transmitted between individuals. Because even people without symptoms can transmit the infection, and because evidence shows the infection is easily spread, gatherings and other direct or indirect interpersonal interactions can result in preventable transmission of the virus.
10. The collective efforts taken to date regarding this public health emergency have slowed the virus' trajectory, but the emergency and the attendant risk to public health remain significant. As of July 17, 2020, there are 302 confirmed cases of COVID-19 in the City as well as 8,556 confirmed cases and at least 160 deaths in Alameda County. The cumulative number of confirmed cases continues to increase. Evidence suggests that the restrictions on mobility and social distancing requirements imposed by the Prior Order continue to be necessary to slow the rate of increase in community transmission and confirmed cases by limiting interactions among people, consistent with scientific evidence of the efficacy of similar measures in other parts of the country and world.
11. The Health Officer will continue to monitor several key indicators ("COVID-19 Indicators") to inform their decision as to whether to modify the restrictions in this Order. The Health Officer will continually review whether modifications to the Order are warranted based on (1) progress on the COVID-19 Indicators; (2) developments in epidemiological and diagnostic methods for tracing, diagnosing, treating, or testing for COVID-19; and (3) scientific understanding of the transmission dynamics and clinical



**Health, Housing & Community Services Department
Public Health Officer**

impact of COVID-19. The COVID-19 Indicators include, but are not limited to, the following:

- a. The trend of the number of new COVID-19 cases and hospitalizations per day.
 - b. The capacity of hospitals and the health system in the City and region, including acute care beds and Intensive Care Unit beds, to provide care for COVID-19 patients and other patients, including during a surge in COVID-19 cases.
 - c. The supply of personal protective equipment (PPE) available for hospital staff and other healthcare providers and personnel who need PPE to safely respond to and treat COVID-19 patients.
 - d. The ability and capacity to quickly and accurately test persons to determine whether they are COVID-19 positive, especially those in vulnerable populations or high-risk settings or occupations.
 - e. The ability to conduct case investigation and contact tracing for the volume of cases and associated contacts that will continue to occur, isolating confirmed cases and quarantining persons who have had contact with confirmed cases.
12. Scientific evidence shows that at this stage of the emergency, it remains essential to continue to slow virus transmission to help (a) protect the most vulnerable; (b) prevent the health care system from being overwhelmed; (c) prevent long-term chronic health conditions, such as cardiovascular, kidney, and respiratory damage and loss of limbs from blood clotting; and (d) prevent deaths. This Order is necessary to slow the spread of the COVID-19 disease, preserving critical and limited healthcare capacity in the City and advancing toward a point in the public health emergency where transmission can be controlled. At the same time, since the Prior Order was issued, the City has continued to make progress in expanding health system capacity and healthcare resources and in controlling community transmission of COVID-19. In light of progress on these indicators, and subject to continued monitoring and potential public health-based responses, the Health Officer has identified additional business and activities that may resume operations under this Order, taking into account health-related considerations and transmission risk factors including, but not limited to, the intensity and quantity of contacts and the ability to substantially mitigate transmission risks associated with the operations.
13. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the March 3, 2020 Proclamation by the Director of Emergency Services Declaring the



**Health, Housing & Community Services Department
Public Health Officer**

Existence of a Local Emergency in the City, and the March 10, 2020 and April 21, 2020 Resolutions of the City Council ratifying and extending the Declaration of a Local Emergency.

14. This Order is also issued in light of the March 19, 2020 Order of the State Public Health Officer (the “State Shelter Order”), which set baseline statewide restrictions on non-residential business activities, and subsequent orders and guidance issued by the Governor, the State Health Officer, and the California Department of Public Health and Department of Industrial Relations. This Order adopts in certain respects more stringent restrictions addressing the particular facts and circumstances in this City, which are necessary to control the public health emergency as it is evolving within the City and the Bay Area. Without this tailored set of restrictions that further reduces the number of interactions between persons, scientific evidence indicates that the public health crisis in the City will worsen to the point at which it may overtake available health care resources within the City and increase the death rate. Where a conflict exists between this Order and any state public health order related to the COVID-19 pandemic, the most restrictive provision controls.

15. Definitions and Exemptions.

- a. Individuals may leave their residence to perform the following “Essential Activities.” However, people at high risk of severe illness from COVID-19 and people who are sick are strongly urged to stay in their residence to the extent possible, except as necessary to seek or provide medical care or Essential Governmental Functions. Essential Activities are as follows:
 - i. To engage in activities or perform tasks important to their health and safety, or to the health and safety of their family or household members (including pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, or visiting a health care professional.
 - ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, or products necessary to maintain the habitability, sanitation, and operation of residences.



**Health, Housing & Community Services Department
Public Health Officer**

- iii. To engage in outdoor recreation activity, including, by way of example and without limitation, walking, hiking, bicycling, and running, in compliance with Social Distancing Requirements and with the following limitations:
 1. Outdoor recreation activity at parks, beaches, and other open spaces must comply with any restrictions on access and use established by the Health Officer, government, or other entity that manages such area to reduce crowding and risk of transmission of COVID-19. Such restrictions may include, but are not limited to, restricting the number of entrants, closing the area to vehicular access and parking.
 2. Use of outdoor recreational areas and facilities with high-touch equipment or that encourage gathering, including, but not limited to, playgrounds, gym equipment, climbing walls, picnic areas, pools, spas, and barbecue areas, is prohibited outside of residences, and all such areas shall be closed to public access including by signage and, as appropriate, by physical barriers.
 3. Except as expressly allowed under this Order, sports or activities that include the use of shared equipment or physical contact between participants may only be engaged in by members of the same household or living unit.
 4. Use of shared outdoor facilities for recreational activities that may occur outside of residences consistent with the restrictions set forth in subsections 1, 2, and 3, above, including, but not limited to, skate parks, athletic fields, and tennis and pickleball courts, must, before they may begin, comply with social distancing and health/safety protocols posted at the site and any other restrictions, including prohibitions, on access and use established by the Health Officer, government, or other entity that manages such area to reduce crowding and risk of transmission of COVID-19. Tennis and pickleball courts may be used by members of different households or living units so long as no more than two people are present (i.e., singles tennis or pickleball).
- iv. To perform work for or access an Essential Business, Outdoor Business, or Additional Business; or to otherwise carry out activities specifically



**Health, Housing & Community Services Department
Public Health Officer**

permitted in this Order, including Minimum Basic Operations, as defined in this Section.

- v. To provide necessary care for a family member or pet in another household who has no other source of care.
 - vi. To attend a funeral with no more than 25 individuals present.
 - vii. To move residences. When moving into or out of the Bay Area region, individuals are strongly urged to quarantine for 14 days. To quarantine, individuals should follow the guidance of the United States Centers for Disease Control and Prevention.
- b. Individuals may leave their residence to work for, volunteer at, or obtain services at “Healthcare Operations,” including, without limitation, hospitals, clinics, COVID-19 testing locations, dentists, pharmacies, blood banks and blood drives, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption for Healthcare Operations shall be construed broadly to avoid any interference with the delivery of healthcare, broadly defined. “Healthcare Operations” excludes fitness and exercise gyms and similar facilities.
- c. Individuals may leave their residence to provide any services or perform any work necessary to the operation and maintenance of “Essential Infrastructure,” including airports, utilities (including water, sewer, gas, and electrical), oil refining, roads and highways, public transportation, solid waste facilities (including collection, removal, disposal, recycling, and processing facilities), cemeteries, mortuaries, crematoriums, and telecommunications systems (including the provision of essential global, national, and local infrastructure for internet, computing services, business infrastructure, communications, and web-based services).
- d. Individuals may leave their residences to perform or access “Essential Governmental Functions,” as determined by the governmental entity performing those functions in the City, including election related activities such as signature gathering. Each governmental entity shall identify and designate appropriate personnel, volunteers, or contractors to continue providing and carrying out any Essential Governmental Functions, including the hiring or retention of new personnel or contractors to perform such functions. Each governmental entity and



**Health, Housing & Community Services Department
Public Health Officer**

its contractors must employ all necessary emergency protective measures to prevent, mitigate, respond to, and recover from the COVID-19 pandemic, and all Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements to the greatest extent feasible. For the purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others who need to perform essential services are categorically exempt from this Order to the extent they are performing those essential services.

- e. For the purposes of this Order, a “business” includes any for-profit, non-profit, or educational entity, whether a corporate entity, organization, partnership or sole proprietorship, and regardless of the nature of the service, the function it performs, or its corporate or entity structure.
- f. Essential Businesses may operate in the City of Berkeley. For the purposes of this Order, “Essential Businesses” are as follows:
 - i. Healthcare Operations and businesses that operate, maintain, or repair Essential Infrastructure.
 - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of unprepared food, canned food, dry goods, non-alcoholic beverages, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, as well as hygienic products and household consumer products necessary for personal hygiene or the habitability, sanitation, or operation of residences, or to enable work from home. The businesses included in this subparagraph (ii) include establishments that sell multiple categories of products provided that they sell a significant amount of essential products identified in this subparagraph, such as liquor stores that also sell a significant amount of food.
 - iii. Food cultivation, including farming, livestock, and fishing.
 - iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals.
 - v. Construction, but only as permitted under the State Shelter Order and only pursuant to the Construction Safety Protocols listed in Appendix B and incorporated into this Order by this reference. Public works projects shall



**Health, Housing & Community Services Department
Public Health Officer**

also be subject to Appendix B, except if other protocols are specified by the Health Officer.

- vi. Newspapers, television, radio, and other media services.
- vii. Gas stations and auto-supply, auto-repair (including, but not limited to, for cars, trucks, motorcycles and motorized scooters), and automotive dealerships, but only for the purpose of providing auto-supply and auto-repair services. This subparagraph (vii) does not restrict the on-line purchase of automobiles if they are delivered to a residence or Essential Business.
- viii. Bicycle repair and supply shops.
- ix. Banks and related financial institutions.
- x. Service providers that enable real estate transactions (including rentals, leases, and home sales), including, but not limited to, real estate agents, escrow agents, notaries, and title companies, provided that appointments and other residential real estate viewings must only occur virtually or, if a virtual viewing is not feasible, by appointment with no more than two visitors at a time residing within the same household or living unit and one individual showing the unit (except that in person visits are not allowed when the occupant is present in the residence).
- xi. Hardware stores.
- xii. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the habitability, sanitation, or operation of residences and Essential Businesses.
- xiii. Businesses providing mailing and shipping services, including post office boxes.
- xiv. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of conducting in-person summer school, facilitating distance learning or career internship and pathways, conducting or participating in COVID-19 related research, or performing essential functions, or as allowed under subparagraph xxvi, provided that social distancing of six feet per person is maintained to the greatest extent possible.



**Health, Housing & Community Services Department
Public Health Officer**

- xv. Laundromats, drycleaners, and laundry service providers.
- xvi. Restaurants and other facilities that prepare and serve food, but only for Outdoor Dining (as described in Appendix C), delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site.
- xvii. Funeral home providers, mortuaries, cemeteries, and crematoriums, to the extent necessary for the transport, preparation, or processing of bodies or remains.
- xviii. Businesses that supply other Essential Businesses, Outdoor Businesses, or Additional Businesses with the support or supplies necessary to operate, but only to the extent that they support or supply these businesses. This exemption shall not be used as a basis for engaging in sales to the general public from retail storefronts that are not otherwise authorized under this Order.
- xix. Businesses that have the primary function of shipping or delivering groceries, food, or other goods directly to residences or businesses. This exemption shall not be used to allow for other functions besides those necessary to the delivery operation.
- xx. Airlines, taxis, rental car companies, rideshare services (including shared bicycles and scooters), and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order.
- xxi. Home-based care for seniors, adults, children, and pets.
- xxii. Residential facilities and shelters for seniors, adults, and children.
- xxiii. Professional services, such as legal, notary, or accounting services, when necessary to assist in compliance with non-elective, legally required activities or in relation to death or incapacity.



**Health, Housing & Community Services Department
Public Health Officer**

- xxiv. Services to assist individuals in finding employment with Essential Businesses.
 - xxv. Moving services that facilitate residential or commercial moves that are allowed under this Order.
 - xxvi. Childcare establishments, summer camps, and other educational or recreational institutions or programs providing care or supervision for children of all ages, subject to the requirements of Section 7. Childcare establishments may also be required to comply with other applicable federal, state, and local requirements. To the extent there is any inconsistency between the different regulations, the strictest rule governs. For additional guidance from the state regarding childcare licensing, please visit:
https://www.cdss.ca.gov/Portals/9/CCLD/PINs/2020/CCP/PIN_20-06-CCP.pdf.
 - xxvii. The operation of public libraries for curbside pickup of books and other media.
- g. Businesses not otherwise permitted to operate under this Order may nonetheless carry out Minimum Basic Operations. For the purposes of this Order, “Minimum Basic Operations” means the following activities for businesses, provided that owners, personnel, and contractors comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:
- i. The minimum necessary activities to maintain and protect the value of the business’s inventory and facilities; ensure security, safety, and sanitation; process payroll and employee benefits; provide for the delivery of existing inventory directly to residences or businesses; and related functions. Curbside pickup to goods is permitted only to the extent permitted and subject to the conditions set forth in Appendix C.
 - ii. The minimum necessary activities to facilitate owners, personnel, and contractors of the business being able to continue to work remotely from their residences, and to ensure that the business can deliver its service remotely.
- h. For the purposes of this Order, all businesses that are operating at facilities in the City visited or used by the public or personnel must, as a condition of such operation, prepare and post a “Site-Specific Protection Plan” for each of these



**Health, Housing & Community Services Department
Public Health Officer**

facilities; provided, however, that construction activities shall instead comply with the Construction Project Safety Protocols set forth in Appendix B and not the Site-Specific Protection Plan. The Site-Specific Protection Plan must be substantially in the form attached to this Order as Appendix A, and it must be updated from prior versions to address new requirements listed in this Order or in related guidance or directives from the Health Officer. The Site-Specific Protection Plan must be posted at or near the entrance of the relevant facility, and shall be easily viewable by the public and personnel. A copy of the Site-Specific Protection Plan must also be provided to each person performing work at the facility. All businesses subject to this paragraph shall implement the Site-Specific Protection Plan and provide evidence of its implementation to any authority enforcing this Order upon demand. The Site-Specific Protection Plan must explain how the business is achieving the following, as applicable:

- i. Limiting the number of people who can enter into the facility at any one time to ensure that people in the facility can easily maintain a minimum six-foot distance from one another at all times, except as required to complete Essential Business activity.
- ii. Requiring face coverings to be worn by all persons entering the facility, other than those exempted from face covering requirements (e.g., young children).
- iii. Where lines may form at a facility, marking six-foot increments at a minimum, establishing where individuals should stand to maintain adequate social distancing.
- iv. Providing hand sanitizer, soap and water, or effective disinfectant at or near the entrance of the facility and in other appropriate areas for use by the public and personnel, and in locations where there is high-frequency employee interaction with members of the public (e.g., cashiers).
- v. Providing for contactless payment systems or, if not feasible to do so, the providing for disinfecting all payment portals, pens, and styluses after each use.
- vi. Regularly disinfecting other high-touch surfaces.
- vii. Posting a sign at the entrance of the facility informing all personnel and customers that they should: avoid entering the facility if they have any COVID-19 symptoms; maintain a minimum six-foot distance from one



**Health, Housing & Community Services Department
Public Health Officer**

another; sneeze and cough into one's elbow; not shake hands or engage in any unnecessary physical contact.

viii. Any additional social distancing measures being implemented (see the Centers for Disease Control and Prevention's guidance at: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>).

- i. Essential Travel is permitted within, or to or from, the City of Berkeley. For the purposes of this Order, "Essential Travel" means travel for any of the following purposes:
- i. Travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, Minimum Basic Operations, Outdoor Activities, Outdoor Businesses, Additional Activities, and Additional Businesses.
 - ii. Travel to care for any elderly, minors, dependents, or persons with disabilities.
 - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
 - iv. Travel to return to a place of residence from outside the City.
 - v. Travel required by law enforcement or court order.
 - vi. Travel required for non-residents to return to their place of residence outside the City. Individuals are strongly encouraged to verify that their transportation out of the City remains available and functional prior to commencing such travel.
 - vii. Travel to manage after-death arrangements and burial.
 - viii. Travel to arrange for shelter or avoid homelessness.
 - ix. Travel to avoid domestic violence or child abuse.
 - x. Travel for parental custody arrangements.



**Health, Housing & Community Services Department
Public Health Officer**

- xi. Travel to a place to temporarily reside in a residence or other facility to avoid potentially exposing others to COVID-19, such as a hotel or other facility provided by a governmental authority for such purposes.
- j. For purposes of this Order, “residences” include hotels, motels, shared rental units, and similar facilities. Residences also include living structures and outdoor spaces associated with those living structures, such as patios, porches, backyards, and front yards that are only accessible to a single family or household unit.
- k. For purposes of this Order, “Social Distancing Requirements” means:
 - i. Maintaining at least six-foot social distancing from individuals who are not part of the same household or living unit.
 - ii. Frequently washing hands with soap and water for at least 20 seconds, or using hand sanitizer that is recognized by the Centers for Disease Control and Prevention as effective in combatting COVID-19.
 - iii. Covering coughs and sneezes with a tissue or fabric or, if not possible, into the sleeve or elbow (but not into hands).
 - iv. Wearing a face covering when out in public, consistent with the orders or guidance of the Health Officer.
 - v. Avoiding all social interaction outside the household when sick with a fever, cough, or other COVID-19 symptoms.

All individuals must strictly comply with Social Distancing Requirements, except to the limited extent necessary to provide care (including childcare, adult or senior care, care to individuals with special needs, and patient care); as necessary to carry out the work of Essential Businesses, Essential Governmental Functions, or provide for Minimum Basic Operations; or as otherwise expressly provided in this Order. Outdoor Activities, Outdoor Businesses, Additional Activities, and Additional Businesses must strictly adhere to these Social Distancing Requirements, except as otherwise permitted in this Order.

- l. Outdoor Businesses are permitted to operate in the City of Berkeley consistent with the requirements of this Order. For purposes of this Order, “Outdoor Businesses” means businesses that normally operated primarily outdoors on or prior to March 16, 2020 and where there is the ability to fully maintain social distancing of at least six feet between all persons, and includes the following:



**Health, Housing & Community Services Department
Public Health Officer**

- i. Businesses primarily operated outdoors, such as wholesale and retail plant nurseries, agricultural operations, and garden centers.
- ii. Service providers that primarily provide outdoor services, such as landscaping and gardening services, and environmental site remediation services.

“Outdoor Businesses” does not include bars. Except as otherwise provided in Appendix C, Outdoor Businesses also do not include businesses that promote large, coordinated, and prolonged gatherings, such as outdoor concert venues and amusement parks.

- m. Individuals may leave their residence to engage in Outdoor Activities consistent with the requirements of this Order. For purposes of this Order, “Outdoor Activities” means:
 - i. To obtain goods, services, or supplies from, or perform work for, an Outdoor Business.
 - ii. To engage in outdoor recreation activity as permitted in Section 15.a.iii.
 - iii. Outdoor social, childcare, or youth extracurricular activities permitted under Section 7.
- n. Additional Businesses are permitted to operate in the City of Berkeley consistent with the requirements of this Order. For purposes of this Order, “Additional Business” means any business, entity, or other organization identified as an Additional Business in Appendix C, which will be updated as warranted based on the Health Officer’s ongoing evaluation of the COVID-19 Indicators and other data. In addition to the other requirements in this Order, operation of those Additional Businesses is subject to any conditions and health and safety requirements set forth in Appendix C and in any industry-specific guidance issued by the Health Officer or by the California Department of Public Health and/or the Department of Industrial Relations.
- o. Individuals may leave their residence to engage in Additional Activities consistent with the requirements of this Order. For purposes of this Order, “Additional Activities” means to obtain goods, services, or supplies from, or perform work for, Additional Businesses identified in Appendix C or to perform other activities permitted under Appendix C, subject to requirements in this Order, and any conditions and health and safety requirements set forth in this Order or in any



**Health, Housing & Community Services Department
Public Health Officer**

industry-specific guidance issued by the Health Officer or by the California Department of Public Health and/or the Department of Industrial Relations.

16. Government agencies and other entities operating shelters and other facilities that house or provide meals or other necessities of life for individuals experiencing homelessness must take appropriate steps to help ensure compliance with Social Distancing Requirements, including adequate provision of hand sanitizer. Also, individuals experiencing homelessness who are unsheltered and living in encampments should, to the maximum extent feasible, abide by 12 foot by 12 foot distancing for the placement of tents, and government agencies should provide restroom and hand washing facilities for individuals in such encampments as set forth in Centers for Disease Control and Prevention Interim Guidance Responding to Coronavirus 2019 (COVID-19) Among People Experiencing Unsheltered Homelessness (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/unsheltered-homelessness.html>).
17. Pursuant to Government Code Sections 26602 and 41601 and Health and Safety Code Section 101029, the Health Officer requests that the Chief of Police in the City ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.
18. This Order shall become effective at 8:00 a.m. on July 18, 2020 and will continue to be in effect until it is rescinded, superseded, or amended in writing by the Health Officer.
19. Copies of this Order shall promptly be: (1) posted at 2134 Martin Luther King Jr. Way, Berkeley, CA 94704; (2) posted on the City's website at www.cityofberkeley.info and (3) provided to any member of the public requesting a copy of this Order.
20. If any provision of this Order or its application to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.



**Health, Housing & Community Services Department
Public Health Officer**

IT IS SO ORDERED:

A handwritten signature in blue ink, appearing to read "Lisa B. Hernandez", written over a horizontal line.

Lisa B. Hernandez, MD, MPH
Health Officer of the City of Berkeley

Dated: July 17, 2020

- Attachments: Appendix A – Site-Specific Protection Plan
Appendix B-1 – Small Construction Project Safety Protocol
Appendix B-2 – Large Construction Project Safety Protocol
Appendix C – Additional Permitted Businesses and Activities

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-33-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS in a short period of time, COVID-19 has rapidly spread throughout California, necessitating updated and more stringent guidance from federal, state, and local public health officials; and

WHEREAS for the preservation of public health and safety throughout the entire State of California, I find it necessary for all Californians to heed the State public health directives from the Department of Public Health.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8627, and 8665 do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

- 1) To preserve the public health and safety, and to ensure the healthcare delivery system is capable of serving all, and prioritizing those at the highest risk and vulnerability, all residents are directed to immediately heed the current State public health directives, which I ordered the Department of Public Health to develop for the current statewide status of COVID-19. Those directives are consistent with the March 19, 2020, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, found at: <https://covid19.ca.gov/>. Those directives follow:

ORDER OF THE STATE PUBLIC HEALTH OFFICER
March 19, 2020

To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. In addition, and in consultation with the Director of the Governor's Office of Emergency Services, I may designate additional sectors as critical in order to protect the health and well-being of all Californians.

Pursuant to the authority under the Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150, this order is to go into effect immediately and shall stay in effect until further notice.

The federal government has identified 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or

destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof. I order that Californians working in these 16 critical infrastructure sectors may continue their work because of the importance of these sectors to Californians' health and well-being.

This Order is being issued to protect the public health of Californians. The California Department of Public Health looks to establish consistency across the state in order to ensure that we mitigate the impact of COVID-19. Our goal is simple, we want to bend the curve, and disrupt the spread of the virus.

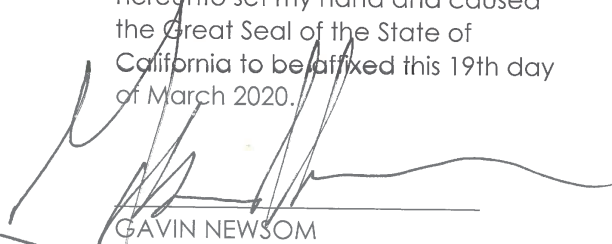
The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care. When people need to leave their homes or places of residence, whether to obtain or perform the functions above, or to otherwise facilitate authorized necessary activities, they should at all times practice social distancing.

- 2) The healthcare delivery system shall prioritize services to serving those who are the sickest and shall prioritize resources, including personal protective equipment, for the providers providing direct care to them.
- 3) The Office of Emergency Services is directed to take necessary steps to ensure compliance with this Order.
- 4) This Order shall be enforceable pursuant to California law, including, but not limited to, Government Code section 8665.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

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 State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of March 2020.



GAVIN NEWSOM
Governor of California

ATTEST:



ALEX PADILLA
Secretary of State



EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-60-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS on March 19, 2020, I issued Executive Order N-33-20, which directed all California residents to immediately heed current State public health directives; and

WHEREAS State public health directives, available at <https://covid19.ca.gov/stay-home-except-for-essential-needs/>, have ordered all California residents stay home except for essential needs, as defined in State public health directives; and

WHEREAS COVID-19 continues to menace public health throughout California; and

WHEREAS the extent to which COVID-19 menaces public health throughout California is expected to continue to evolve, and may vary from place to place within the State; and

WHEREAS California law promotes the preservation of public health by providing for local health officers—appointed by county boards of supervisors and other local authorities—in addition to providing for statewide authority by a State Public Health Officer; and

WHEREAS these local health officers, working in consultation with county boards of supervisors and other local authorities, are well positioned to understand the local needs of their communities; and

WHEREAS local governments are encouraged to coordinate with federally recognized California tribes located within or immediately adjacent to the external geographical boundaries of such local government jurisdiction; and

WHEREAS the global COVID-19 pandemic threatens the entire State, and coordination between state and local public health officials is therefore, and will continue to be, necessary to curb the spread of COVID-19 throughout the State; and

WHEREAS State public health officials have worked, and will continue to work, in consultation with their federal, state, and tribal government partners; and

WHEREAS the State Public Health Officer has articulated a four-stage framework—which includes provisions for the reopening of lower-risk businesses and spaces (“Stage Two”), to be followed by the reopening of higher-risk businesses and spaces (“Stage Three”)—to allow Californians to gradually resume various activities while continuing to preserve public health in the face of COVID-19; and

WHEREAS the threat posed by COVID-19 is dynamic and ever-changing, and the State's response to COVID-19 (including implementation of the four-stage framework) should likewise retain the ability to be dynamic and flexible; and

WHEREAS to preserve this flexibility, and under the provisions of Government Code section 8571, I find that strict compliance with the Administrative Procedure Act, Government Code section 11340 et seq., would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571, 8627, and 8665; and also in accordance with the authority vested in the State Public Health Officer by the laws of the State of California, including but not limited to Health and Safety Code sections 120125, 120130, 120135, 120140, 120145, 120150, 120175, and 131080; do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

- 1) All residents are directed to continue to obey State public health directives, as made available at <https://covid19.ca.gov/stay-home-except-for-essential-needs/> and elsewhere as the State Public Health Officer may provide.
- 2) As the State moves to allow reopening of lower-risk businesses and spaces ("Stage Two"), and then to allow reopening of higher-risk businesses and spaces ("Stage Three"), the State Public Health Officer is directed to establish criteria and procedures—as set forth in this Paragraph 2—to determine whether and how particular local jurisdictions may implement public health measures that depart from the statewide directives of the State Public Health Officer.

In particular, the State Public Health Officer is directed to establish criteria to determine whether and how, in light of the extent to which the public health is menaced by COVID-19 from place to place within the State, local health officers may (during the relevant stages of reopening) issue directives to establish and implement public health measures less restrictive than any public health measures implemented on a statewide basis pursuant to the statewide directives of the State Public Health Officer.

The State Public Health Officer is further directed to establish procedures through which local health officers may (during the relevant stages of reopening) certify that, if their respective jurisdictions are subject to proposed public health measures (which they shall specify to the extent such specification may be required by the State Public Health Officer) that are less restrictive than public health measures implemented on a statewide basis pursuant to the statewide directives of the State Public Health Officer, the public health will not be menaced. The State Public Health Officer shall additionally establish procedures to permit, in a manner consistent with public health and

safety, local health officers who submit such certifications to establish and implement such less restrictive public health measures within their respective jurisdictions.

The State Public Health Officer may, from time to time and as she deems necessary to respond to the dynamic threat posed by COVID-19, revise the criteria and procedures set forth in this Paragraph 2. Nothing related to the establishment or implementation of such criteria or procedures, or any other aspect of this Order, shall be subject to the Administrative Procedure Act, Government Code section 11340 et seq. Nothing in this Paragraph 2 shall limit the authority of the State Public Health Officer to take any action she deems necessary to protect public health in the face of the threat posed by COVID-19, including (but not limited to) any necessary revision to the four-stage framework previously articulated by the State Public Health Officer.

- 3) Nothing in this Order shall be construed to limit the existing authority of local health officers to establish and implement public health measures within their respective jurisdictions that are more restrictive than, or that otherwise exist in addition to, the public health measures imposed on a statewide basis pursuant to the statewide directives of the State Public Health Officer.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

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 State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 4th day of May 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State



ORDER OF THE STATE PUBLIC HEALTH OFFICER
March 19, 2020

To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. In addition, and in consultation *with* the Director of the Governor's Office of Emergency Services, I may designate additional sectors as critical in order to protect the health and well-being of all Californians.

Pursuant to the authority under the Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150, this order is to go into effect immediately and shall stay in effect until further notice.

The federal government has identified 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof. I order that Californians working in these 16 critical infrastructure sectors may continue their work because of the importance of these sectors to Californians' health and well-being.

This Order is being issued to protect the public health of Californians. The California Department of Public Health looks to establish consistency across the state in order to ensure that we mitigate the impact of COVID-19. Our goal is simple, we want to bend the curve, and disrupt the spread of the virus.

The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care. When people need to leave their homes or places of residence, whether to obtain or perform the functions above, or to otherwise facilitate authorized necessary activities, they should at all times practice social distancing.


SONIA Y. ANGELL, MD, MPH

3/19/2020
DATE



ORDER OF THE STATE PUBLIC HEALTH
OFFICER
May 7, 2020

On March 19, 2020, I issued an order directing all individuals living in the State of California to stay at home except as needed to facilitate authorized, necessary activities or to maintain the continuity of operations of critical infrastructure sectors. (See <https://covid19.ca.gov/stay-home-except-for-essential-needs/>.) I then set out California's path forward from this "Stay-at-Home" Order in California's Pandemic Roadmap <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.4.20-Update-on-Californias-Pandemic-Roadmap.pdf>. That Roadmap identifies four stages of the pandemic: safety and preparation (Stage 1), reopening of lower-risk workplaces and other spaces (Stage 2), reopening of higher-risk workplaces and other spaces (Stage 3), and finally an easing of final restrictions leading to the end of the stay at home order (Stage 4).

Today, COVID-19 continues to present a significant risk to the health of individuals throughout California. There are confirmed cases of the virus in 54 of the 58 counties across the State, and each day over the past two weeks over one thousand new cases have been confirmed in California and dozens of people have lost their lives due to the virus. However, owing to Californians' mitigation efforts, statewide data currently demonstrates stable rates of new infections and hospitalizations, the maintenance of surge capacity, and an improved ability to test, contact trace, isolate, and provide support to individuals exposed to COVID-19. As State Public Health Officer, I have determined that the statewide data now supports the gradual movement of the entire state from Stage 1 to Stage 2 of California's Pandemic Resilience Roadmap.

Gradual movement into Stage 2 is intended to reintroduce activities and sectors in a phased manner and with necessary modifications, in order to protect public health and result in a lower risk for COVID-19 transmission and outbreak in a community. Such deliberate phasing is critical to allowing the State to protect the public, and to mitigate and manage the impact of the re-openings, such that our health care delivery system has the capacity to respond to potential increased demands. Differences across the state in the prevalence of COVID-19, as well as testing rates, containment capability, and hospital capacity, have resulted in differences among local health jurisdictions' ability to safely progress through the various stages. The low and stable data reported by some local health officers in their local health jurisdictions, combined with sufficient COVID-19 preparedness, justifies allowance for some variation in the speed with which some local health jurisdictions will be able to move through the phases of Stage 2.

NOW, THEREFORE, I as State Public Health Officer and Director of the California Department of Public Health, order:

1. All local health jurisdictions in the state may begin gradual movement into Stage 2, as set forth in this Order, effective on May 8, 2020; however, a local health jurisdiction may implement or continue more restrictive public health measures if the jurisdiction's Local Health Officer believes conditions in that jurisdiction warrant it.
2. I will progressively designate sectors, businesses, establishments, or activities that may reopen with certain modifications, based on public health and safety needs, and I will add additional sectors, businesses, establishments, or activities at a pace designed to protect public health and safety. Those sectors, businesses, establishments, or activities that are permitted to open will be designated, along with necessary modifications, at <https://covid19.ca.gov/roadmap/>, as I announce them.
3. To the extent that such sectors are re-opened, Californians may leave their homes to work at, patronize, or otherwise engage with those businesses, establishments, or activities and must, when they do so, continue at all times to practice physical distancing, minimize their time outside of the home, and wash their hands frequently. To prevent further spread of COVID-19 to and within other jurisdictions within the State, Californians should not travel significant distances and should stay close to home. My March 19, 2020, Order otherwise remains in full effect.

4. The California Department of Public Health has set forth criteria to help local health officers assess the capacity of their local health jurisdictions to move through Stage 2. Local health jurisdictions that meet the criteria and follow the process set forth <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID-19-County-Variance-Attestation-Memo.aspx> will be permitted to move through Stage 2 more quickly than the State as a whole and reopen additional low-risk businesses before the rest of the state, if they choose to do so. A list of the sectors, businesses, establishments, or activities, and any necessary modifications, that such a qualifying jurisdiction may choose to reopen will be available at <https://covid19.ca.gov/roadmap-counties/>, and may be expanded if I deem it to be in the interest of public health and safety.

Pursuant to the authority under EO N-60-20, and Health and Safety Code sections 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150, this Order is to go into effect immediately and shall stay in effect until further notice.

This Order is being issued to protect the public health of Californians as we move as expeditiously to minimize risk to the extent possible throughout the Stages of the Pandemic Resilience Roadmap.



Sonia Y Angell, MD, MPH
State Public Health Officer & Director
California Department of Public Health