

RESOLUTION NO.

EMERGENCY REGULATION NO. 2020-004

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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**EMERGENCY REGULATION OF THE COUNTY OF SAN MATEO
TEMPORARILY SUSPENDING COUNTY ZONING REGULATIONS AND USE
PERMIT REQUIREMENTS, INCLUDING CONDITIONS OF APPROVAL, FOR
OUTDOOR DINING ON THE PREMISES OF RESTAURANTS, AND FOR
OUTDOOR SERVICES ON THE PREMISES OF HAIR SALONS AND BARBER
SHOPS, PERSONAL CARE SERVICES, PLACES OF WORSHIP, GYMS AND
FITNESS CENTERS, AND WINERIES, IN COMPLIANCE WITH THE SOCIAL
DISTANCING AND OTHER REQUIREMENTS OF THE COUNTY HEALTH
OFFICER ORDER AND STATE AND LOCAL DIRECTIVES REGARDING
REOPENING OF BUSINESSES**

SECTION 1. FINDINGS.

The Board of Supervisors of the County of San Mateo (the “Board”) hereby makes the following findings in support of the ratification of the San Mateo County Director of Emergency Services’ Emergency Regulation No. 1, as restated and amended herein, and the immediate adoption and application of this Emergency Regulation (the “Emergency Regulation”):

WHEREAS, on March 3, 2020, and pursuant to Section 101080 of the California Health and Safety Code, the San Mateo County Health Officer (the “Health Officer”) declared a local health emergency throughout San Mateo County (the “County”) related to the novel coronavirus (“COVID-19”); and

WHEREAS, on March 10, 2020, this Board ratified and extended this declaration of local health emergency and on April 7, 2020, this Board further extended this local health emergency, which remains in effect throughout the County; and

WHEREAS, on March 3, 2020, and pursuant to Section 8630 of the California Government Code and Chapter 2.46 of the San Mateo County Ordinance Code, the San Mateo County Director of Emergency Services (the “Director”) proclaimed a local emergency throughout San Mateo County related to COVID-19; and

WHEREAS, on March 10, 2020, this Board ratified and extended the proclamation of a local emergency, and this local emergency remains in effect, and on April 7, 2020, this Board extended the proclamation of local emergency (“Local Emergency’), which remains in effect; and

WHEREAS, on March 4, 2020, Governor Newsom issued a Proclamation of State of Emergency related to COVID-19 (“State of Emergency”), effective throughout the State of California, which remains in effect; and

WHEREAS, on March 14, 2020, the Health Officer prohibited all public or private gatherings of 50 or more people and urged the cancelation of all gatherings of 10 or more people in a single confined space; and

WHEREAS, on March 16, 2020, the Health Officer issued an order that, among other things, directed all individuals currently living within the County to shelter in their

place of residence and authorized individuals to leave their residences only for certain essential activities, governmental functions, and business activities (“County Shelter-in-Place Order”); and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20, which imposed a statewide shelter-in-place order requiring individuals to remain in their places of residence except as needed to maintain continuity of operations of critical infrastructure, access necessities such as food, prescriptions and healthcare, or engage in other authorized activities (“Statewide Shelter-in-Place Order”), and the Statewide Shelter-in-Place Order remains in place with certain modifications to authorized activities and business operations; and

WHEREAS, on March 31, 2020, April 29, 2020, May 15, 2020, May 22, 2020, May 28, 2020, and June 4, 2020, the Health Officer extended the expiration date of the County Shelter-in-Place Order due to evidence of continued significant community transmission of COVID-19 within the County and throughout the Bay Area and modified activities and business operations authorized under the County Shelter-in-Place Order; and

WHEREAS, Section 8634 of the Government Code provides that “during a local emergency, the governing body of a political subdivision, or officials designated thereby, may promulgate orders and regulations necessary to provide for the protection of life and property,” and that such orders “shall be in writing and shall be given widespread publicity and notice;” and

WHEREAS, Section 2.46.060(a)(6) of the County Ordinance Code provides that, during the Local Emergency and/or State of Emergency, the Director is empowered “[t]o make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations shall be submitted to the Board of Supervisors for confirmation at the earliest practicable time;” and

WHEREAS, pursuant to Government Code Section 8634 and County Ordinance Code Section 2.46.060(a)(6), the Director issued Emergency Regulation No. 1 on June 5, 2020, temporarily suspending County use permit requirements, including conditions of approval, and any zoning development standards or regulations specified therein in order to facilitate the ability of restaurants in the unincorporated area to operate in compliance with the requirements of the County Shelter-in-Place Order (the “Director’s Emergency Regulation No. 1”); and

WHEREAS, the findings from the Director’s Emergency Regulation No. 1, which is included as Attachment A hereto, are incorporated by reference as if set forth herein; and

WHEREAS, as provided by County Ordinance Code Section 2.46.060(a)(6), the Director’s Emergency Regulation No. 1 is submitted to the Board of Supervisors for ratification, and this Board wishes to ratify and modify the Director’s Emergency Regulation No. 1 as restated in this Emergency Regulation; and

WHEREAS, on June 16, 2020, the State approved the County's request for a variance allowing the County to align with the Resilience Roadmap for California; and

WHEREAS, on June 17, 2020, the Health Officer rescinded the June 4, 2020 Shelter-in-Place Order and replaced it, effective immediately, with a new order aligning the County with the Statewide Shelter-in-Place Order/Resilience Roadmap, emphasizing individual behavior and the practices that businesses must follow as they resume operations, including limiting gatherings to no more than 50 people, outlining social distancing and face covering requirements, allowing for social bubbles, and requiring businesses to implement a social distancing protocol and written health and safety plans, based on evidence of continued significant community transmission of COVID-19 within the County and throughout the Bay Area; and

WHEREAS, as of July 28, 2020, there are 5,306 confirmed COVID-19 cases and 118 COVID-19 related deaths within the County, and 475,305 confirmed COVID-19 cases and 8,715 COVID-19 related deaths in California; and

WHEREAS, effective July 13, 2020, the State required all counties to close indoor operations of dine-in restaurants, wineries and tasting rooms, and other specified operations; and

WHEREAS, on July 29, 2020, the State informed the County that it was placed in the three-day Active Engagement period in connection with the County's placement on

the State's Monitoring List based on the State's assessment of data and trends related to the incidence of COVID-19 in the County; and

WHEREAS, counties that are placed on the State Monitoring List are required to suspend specific industries and activities, including, but not limited to gyms and fitness centers, places of worship, personal care services, and hair salons and barber shops, unless they can be modified to operate outdoors or by pick-up; and

WHEREAS, since March 2020, as a direct result of the COVID-19 pandemic, over 50 million Americans have filed first time claims for unemployment benefits, resulting in unemployment rates and economic distress not seen since the depths of the Great Depression; and

WHEREAS, these abrupt and severe negative economic impacts have affected restaurants, wineries and tasting rooms, gyms and fitness centers, places of worship, personal care services, and hair salons and barber shops in the unincorporated area, which have been forced to close or operate on a limited basis for periods of time in the last several months; and

WHEREAS, this Board finds that, unless immediate steps are taken to allow restaurants, wineries and tasting rooms, gyms and fitness centers, places of worship, personal care services, and hair salons and barber shops in the unincorporated area of the County to provide outdoor services pursuant to the Statewide Shelter-in-Place

Order, such operations, in addition to the local communities they serve and the County residents they employ, will be irreparably harmed; and

WHEREAS, this Board further finds that, in order to facilitate the ability of restaurants, wineries and tasting rooms, gyms and fitness centers, places of worship, personal care services, and hair salons and barber shops in the unincorporated area to operate in compliance with the requirements of the Statewide Shelter-in-Place Order, it is appropriate to temporarily suspend County use permit requirements, including conditions of approval, and any zoning development standards or regulations as set forth in this Emergency Regulation that would otherwise limit such establishments from providing outdoor services, subject to the social distancing requirements and limitations provided in the June 17, 2020 County Shelter-in-Place Order and the Statewide Shelter-in-Place Order and any subsequent modifications to the Shelter-in-Place Orders; any future County restrictions, standards, rules, regulations, or directives regarding outdoor services and business operations during the Local Emergency; all applicable State laws, rules, and regulations; and all California Building Codes including the Fire Code, Americans with Disabilities Act (“ADA”) accessibility requirements, food safety requirements, and all other applicable health and safety requirements; and

WHEREAS, in temporarily suspending County use permit requirements, including conditions of approval, and any zoning development standards or regulations, as set forth in this Emergency Regulation, this Board is taking action pursuant to its authority under Government Code Section 8634 in order to protect life and property

within the unincorporated area of the County during the Local Emergency and State of Emergency.

NOW, THEREFORE, the Board of Supervisors of the County of San Mateo, State of California, hereby ratifies the Director's Emergency Regulation No. 1, as modified and restated herein, and further orders as follows:

SECTION 2. JURISDICTION.

This Emergency Regulation shall apply throughout the unincorporated area of the County.

SECTION 3. AUTHORIZATION.

This Emergency Regulation hereby temporarily suspends, until terminated or modified as set forth in Section 9, use permit requirements, including conditions of approval, and any zoning development standards or regulations, such as, but not limited to setback requirements and onsite parking requirements, that otherwise limit the provision of outdoor services on private property at the premises of a Specified Business or Operation, including, but not limited to, in setbacks or in parking lots or other private property adjacent or proximate to such premises. Specifically, under this Emergency Regulation:

- (a) Zoning requirements which would otherwise require a use permit for outdoor services and any zoning development standards or regulations that otherwise

limit outdoor services by a Specified Business or Operation, are temporarily suspended.

(b) Use permit conditions that would otherwise prohibit outdoor services by a Specified Business or Operation are temporarily waived.

(c) On-site parking requirements are waived to the extent that the Specified Business or Operation uses such parking areas to provide outdoor services. To the extent that parking is also made available in these areas, the Specified Business or Operation must maintain adequate safety barriers between vehicles and tables and other equipment used by the Specified Business or Operation, patrons, and workers.

SECTION 4. DEFINITIONS.

For purposes of this Emergency Regulation, the following definition shall apply: “Specified Business or Operation” includes restaurants, wineries and tasting rooms, gyms and fitness centers, places of worship, personal care services, and hair salons and barber shops, as those businesses and operations are defined and described by the Statewide Shelter-in-Place Order and any applicable State industry guidance.

SECTION 5. REQUIREMENTS.

Any Specified Business or Operation that is authorized by the Statewide Shelter-in-Place Order to provide outdoor services, shall do so only according to the requirements of this Emergency Regulation. Any Specified Business or Operation shall remain compliant with all social distancing requirements and limitations set forth in the

June 17, 2020 County Shelter-in-Place Order, the Statewide Shelter-in-Place Order and any State industry guidance and any subsequent modifications to the Shelter-in-Place Orders or State guidance; any future County restrictions, standards, rules, regulations, or directives regarding outdoor service and business operations during the Local Emergency; all applicable State laws, rules, and regulations; and all California Building Codes including the Fire Code, ADA accessibility requirements, food safety requirements, and all other applicable health and safety requirements.

This Emergency Regulation does not authorize the installation of any permanent structures in the outdoor areas used for services temporarily authorized herein.

In addition, outdoor food preparation is prohibited. Restaurants shall prepare all food inside of their premises and shall not prepare food in or near the outdoor areas used for table service.

Restaurants may serve alcohol in conjunction with the service of food in outdoor dining areas to the extent that such service is allowed by the California Department of Alcoholic Beverage Control (“ABC”) and it is done in compliance with all current ABC orders, rules, and regulations. Outdoor operation of wineries and tasting rooms shall also be allowed only to the extent authorized by the ABC and in compliance with its current orders, rules, and regulations.

SECTION 6. REMAINING PROVISIONS OF COUNTY ORDINANCE CODE AND ZONING REGULATIONS UNAFFECTED.

Except as temporarily suspended by this Emergency Regulation, the San Mateo County Ordinance Code and Zoning Regulations shall remain unchanged and shall continue in full force and effect.

SECTION 7. SEVERABILITY.

If any provision of this Emergency Regulation is declared invalid or unconstitutional by a court of competent jurisdiction, it is the intent of this Board that such invalid provisions(s) be severed from the remaining provisions of this Emergency Regulation.

SECTION 8. NO MANDATORY DUTY.

Nothing in this Emergency Regulation is intended to create a mandatory duty on the part of the County, County employees, any Cities or City employees, to protect persons or property from a violation of the provisions of this Emergency Regulation.

SECTION 9. EFFECTIVE DATE AND TERMINATION.

This Emergency Regulation shall take effect and be in full force immediately and shall remain in effect until the Local Emergency is terminated, or this Emergency Regulation is modified or revoked by this Board or superseded by the adoption of amendments to the County Ordinance Code and/or Zoning Regulations by this Board, whichever is earlier.

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