



County of San Mateo

Inter-Departmental Correspondence

Department: COUNTY MANAGER

File #: 20-575

Board Meeting Date: 8/4/2020

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Michael P. Callagy, County Manager

Subject: Emergency Regulation Temporarily Suspending County Zoning Regulations and Use Permit Requirements for Outdoor Operation of Specified Businesses and Operations

RECOMMENDATION:

Approve an 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.

BACKGROUND:

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. Meanwhile, the economic impacts of the COVID-19 pandemic have been devastating, with historic records of individuals filing first time claims for unemployment, resulting in unemployment rates not seen since the depths of the Great Depression.

A. Summary of County and State Response to COVID-19

On March 3, 2020, 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 the County related to COVID-19. This Board ratified and extended this declaration of local health emergency, which remains in effect.

Also on March 3, 2020, 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 ("Director") proclaimed a local emergency throughout San Mateo County related to COVID-19. This Board ratified and extended the proclamation of local emergency, and this local emergency ("Local Emergency") remains in effect.

On March 4, 2020, Governor Newsom issued a Proclamation of State of Emergency related to COVID-19 effective throughout California ("State Emergency").

On March 16, 2020, the Health Officer issued an order that, among other things, directed all individuals living within San Mateo County to shelter in their place of residence (the "County Shelter-in-Place Order"). The Health Officer extended the County Shelter-in-Place Order on several occasions due to evidence of continued significant community transmission of COVID-19 within the County and throughout the Bay Area.

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 the federal critical infrastructure sectors or to access necessities such as food, prescriptions, and health care or other authorized activities ("Statewide Shelter-in-Place Order").

On May 8, 2020, Governor Newsom announced a plan to allow the limited reopening of some businesses beyond those in the category of essential critical infrastructure, which is part of the "Resilience Roadmap" for California, the multiphase plan to modify the Statewide Shelter-in-Place Order.

On June 5, 2020, the Director issued Emergency Regulation No. 1, 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").

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.

On June 17, 2020, the Health Officer issued an 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.

On July 13, 2020, due to the increased number of confirmed COVID-19 cases statewide, the Governor ordered all counties to shut down activities such as museums, zoos, dining and theaters, and bars, and to cease indoor operations of dine-in restaurants, wineries and tasting rooms, and other specified operations.

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.

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.

B. Legal Authority

Section 8634 of the California 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.” Chapter 2.46 of the County Ordinance Code tracks Section 8634 of the Government Code with respect to the adoption of emergency rules and regulations. Section 8558 of the Government Code defines “local emergency,” in part, to mean that “duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city . . .” Thus, while the County’s Local Emergency remains in place, the County has the authority to implement this Emergency Regulation.

C. Need for Emergency Regulation

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.

According to a report by the State Employment Development Department, the total number of jobs in the County and the County of San Francisco (San Francisco-Redwood City-South San Francisco Metropolitan Division) decreased by a total of 129,200 jobs between June 2019 and June 2020. Unemployment for the area has quintupled during this time (from 2.3% to 11.7%). Leisure and hospitality was the industry to suffer the greatest job loss with food services and drinking establishments accounting for the majority of the loss.

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.

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.

DISCUSSION:

Emergency Regulation No. 2020-004 would ratify and modify the emergency regulation adopted by the Director of Emergency Services on June 5, 2020, which temporarily suspended 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 provide outdoor table services (Director’s Emergency Regulation No. 1). In addition, Emergency Regulation No. 2020-004 would extend similar temporary relief to additional specified businesses and operations that, if placed on the State Monitoring List, will no longer be permitted unless the operations can transition to providing outdoor and pick-up services. The additional categories of

businesses and operations that would be eligible for relief are the following: hair salons and barber shops, personal care services, places of worship, gyms and fitness centers, and wineries and tasting rooms.

All social distancing requirements and other requirements of the County Health Officer Orders as well as State of California (“State”) Executive Orders, Public Health Orders, and guidance regarding the reopening of businesses will continue to apply.

The Emergency Regulation would apply only in the unincorporated areas of the County, and would remain in effect until the Local Emergency is terminated, or the Emergency Regulation is modified, revoked, or superseded by this Board.

The Emergency Regulation temporarily suspends use permit requirements, including conditions of approval, and any zoning development standards or regulations that otherwise limit the specified businesses and operations from providing their services outdoors on their premises (in adjacent parking lots, for example). All temporary outdoor operations must be conducted safely (e.g., segregating cars from patrons and staff) and in compliance with all applicable building codes and other State and local laws, including those related to accessibility, food safety, and all other applicable health and safety requirements. In addition, the Emergency Regulation prohibits installation of permanent structures in these outdoor areas, emphasizing the temporary nature of the proposed relief.

FISCAL IMPACT:

Adoption of Emergency Regulation No. 2020-004 is not anticipated to have a measurable fiscal impact on the County or Net County Cost.