



COMMUNITY DEVELOPMENT DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting Date: September 15, 2020

Subject

An Emergency Order authorizing the outdoor operations of qualifying establishments (retail uses, personal care services uses, and gym and fitness facilities) pursuant to a Special Temporary Outdoor Operations Permit.

Recommended Action

Ratify the Emergency Order authorizing the outdoor operations of qualifying establishments (retail uses, personal care services uses, and gym and fitness facilities) pursuant to a Special Temporary Outdoor Operations Permit.

Discussion

On August 28, 2020, the state released its Blueprint for a Safer Economy ("Blueprint"), which allows hair salons and barbershops to conduct indoor operations statewide effective August 31 (see Attachment B – Blueprint Activity and Business Tiers).

Hair salons and barbershops must comply with the following guidelines and directives:

1. California Industry Guidelines for Hair Salons and Barbershops
2. Cal/OSHA COVID-19 General Checklist for Hair Salons and Barbershops
3. Submit New Online Santa Clara County Social Distancing Protocol
4. Wear a Face Covering

All other personal services, including gyms and fitness facilities, are still only allowed to operate outdoors and will need to apply for a Cupertino Special Temporary Outdoor Operating Permit.

In addition to these general requirements applicable to all businesses under the County Order, all retail use and personal care services businesses must comply with industry-specific Directives and Requirements issued by the County. Please refer to Attachment C – July 15, 2020 Santa Clara County Mandatory Directives pertaining to operations for Personal Care Services, Attachment D – July 15, 2020 Santa Clara County Mandatory Directives pertaining to operations and Gyms

and Fitness Facilities, and Attachment E – Santa Clara County COVID-19 Requirements for All Businesses.

Furthermore, any qualifying establishment must operate in compliance with State guidelines. Please refer to Attachment F: guidelines as published by the California Department of Public Health (CDPH) and State of California Department of Industrial Relations (CAL/OSHA) in its *COVID-19 Industry Guidance: Retail*, *COVID-19 Industry Guidance: Hair Salon and Barbershop Services Provided Outdoors*, and *COVID-19 Industry Guidance: Expanded Personal Care Services*.

In accordance with both the State and County Health Order allowing personal services to operate outdoors, Cupertino's Special Temporary Outdoor Operations Permit program would allow qualifying establishments to operate outdoors in a safe manner for workers and clients.

Special Temporary Outdoor Operations Permit: The Cupertino Municipal Code ("CMC") 19.60.050(A)(1), Land Use Activity, limits outdoor operations of retail uses and personal care services. The Ordinance will temporarily suspend this limitation and allow qualifying establishments to operate outdoors, while ensuring compliance with State and County guidelines, by applying for and obtaining a Special Temporary Outdoor Operations Permit from the Director of Community Development.

All businesses must be in full compliance with all State and County Orders regarding reopening. Individual businesses must be able to present proof of compliance with the applicable State and County orders upon request by the enforcement official as authorized in the Ordinance. Applicants must comply with the following requirements:

- A. Any guiding documents published by the California Department of Public Health (CDPH) and State of California Department of Industrial Relations (CAL/OSHA).
- B. Any guiding documents related to requirements from the California Department of Consumer Affairs.
- C. Any guiding documents related to requirements from the Santa Clara County Public Health Department, including Social Distancing Protocols.
- D. Compliance with the City of Cupertino face coverings ordinance.
- E. Outdoor operations areas shall be configured in a manner to:
 - 1. Only be located along the frontage of the qualifying establishment.
 - 2. Allow adequate social distancing.
 - 3. Meet ADA requirements and be compliant with the latest adopted edition of the California Building Code.

4. Not encroach into any existing egress and/or accessible paths of travel to allow for comfortable flow of pedestrian traffic.
5. Not be located within six feet of crosswalks or within the required staging area in front of fire hydrants.
- F. If the applicant is requesting to utilize privately owned parking spaces for outdoor operations, the number of spaces used shall not be more than 50% of the maximum occupant load of the establishment. Utilized parking spaces shall be adjacent to the business.
- G. No permanent fixtures are allowed.
 1. Temporary umbrellas not affixed into the ground or other objects are allowed. No signage is allowed on the umbrellas.
- H. No operations are allowed within the public right-of-way without first obtaining an encroachment permit from the Department of Public Works.
- I. Operations must comply with any requirements imposed by the Building Division of the Community Development Department, Santa Clara County Fire Department, Environmental Services Division, and Public Works Department. If conditions proposed by various departments/divisions conflict, the Director of Community Development shall decide which ones to attach to the application.
- J. Applicant must possess a City of Cupertino Business License.
- K. A property manager of a shopping center may apply for a permit for their tenants as a joint application subject to the requirements as outlined above.

Any retailer or personal services establishments wishing to operate in the public right of way may file an application for an Encroachment Permit through the City's Public Works Department.

Permit Limitations: The Special Temporary Outdoor Operations Permit may be approved, conditionally approved, or denied by the Director of Community Development. The Director of Community Development may impose any conditions deemed necessary to ensure compliance with the reopening protocol of the State of California and Santa Clara County and to protect the public health and safety of the City. The permit would be non-transferable and only the establishment for which the temporary permit is issued would be permitted to operate.

In order to encourage compliance and to support businesses during the Pandemic, it is proposed that no application fee be required in order to obtain this permit.

Because the Special Temporary Outdoor Operations Permit does not create any property interest, a Special Temporary Outdoor Operations Permit issued pursuant to this ordinance may be revoked at any time and for any reason.

Noticing and Public Comment

Since this is an Urgency Ordinance, no notice is required pursuant to the California

Government Code. No public comment has been received with regard to this Ordinance as of the date of this staff report.

Environmental Impact (CEQA)

The proposed Ordinance is not a project as defined by section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately. If the Ordinance is found to be a project under CEQA, the Ordinance is considered exempt via CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of significant effect on the environment.

Sustainability Impact

No sustainability impacts.

Fiscal Impact

No fiscal impact other than a potential revival in sales tax revenue from the reopening and operations of retail establishments and products sales ancillary to personal services.

Prepared by: Angela Tsui, Economic Development Manager

Reviewed by: Benjamin Fu, Director of Community Development

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

A – Emergency Order No. 20-02

B – California Blueprint Activity and Business Tiers

C – July 15, 2020 Santa Clara County Mandatory Directives pertaining to operations for Personal Care Services

D – July 15, 2020 Santa Clara County Mandatory Directives pertaining to operations for Gyms and Fitness Facilities.

E – Santa Clara County COVID-19 Requirements for All Businesses

F – California Department of Public Health (CDPH) and State of California Department of Industrial Relations (CAL/OSHA) *COVID-19 Industry Guidance: Retail, COVID-19 Industry Guidance: Hair Salon and Barbershop Services Provided Outdoors, and COVID-19 Industry Guidance: Expanded Personal Care Services.*