

## EMERGENCY ORDER NO. 20-02

### AN ORDER BY THE DIRECTOR OF EMERGENCY SERVICES OF THE CITY OF CUPERTINO 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

**WHEREAS**, Cupertino Municipal Code Section 2.40.060 empowers the City Manager, as the Director of Emergency Services, to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by a proclaimed local emergency; and

**WHEREAS**, March 11, 2020, the City Manager, serving as the Director of Emergency Services, issued a Proclamation of Local Emergency regarding the presence and community spread of the COVID-19 pandemic, and on March 17, 2020, the City Council ratified the Proclamation of Local Emergency; and

**WHEREAS**, the Director of Emergency Services does hereby find the following:

1. On March 16, 2020, the County, along with five other Bay Area counties, issued a sweeping "Shelter-in-Place" Order that included limitations on non-essential work and operations. This Order directed the closure of nonessential operations, including most retail uses and personal care services uses.
2. The latest Shelter-in-Place order was issued on May 18, 2020 and continued restrictions on indoor retail and personal care services operations until further notice; and although the County's June 5 and July 2, 2020, updates to the Shelter-in-Place Order allowed several new categories of businesses and activities to reopen, subject to specific conditions and limitations, key restrictions remain in place under these updates, requiring people to stay in their homes except when engaging in certain essential or allowed activities.
3. The new activities and businesses allowed to reopen under the updated Order included retail and shopping centers for in-store shopping, subject to limitations/social distancing; however, personal care services, including barbershops, hair salons, nail salons, and similar business, as well as gyms and fitness facilities were not allowed to reopen.
4. On July 15, 2020, the Governor ordered, for counties on the State Monitoring List, including Santa Clara County, the closure of indoor operations for additional sectors that include personal care services like barbershops, hair salons, nail salons, and similar business, as well as gyms and fitness facilities; and specifies that certain operations may continue outdoors, where risk of transmission of COVID-19 is lower, under specified circumstances.
5. On July 15, 2020, mandatory directives from the Santa Clara County Health

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Officer went into effect, which established mandatory requirements for the outdoor operation of personal care services and gyms and fitness facilities; and

**WHEREAS**, retail and personal care services businesses constitute an important segment of the Cupertino economy and sales tax base for the City and their ability to operate safely during the COVID-19 pandemic is reasonably related to the protection of life and property as affected by a proclaimed local emergency; and

**WHEREAS**, retail uses and personal care services businesses, including barbershops, hair salons, nail salons, and similar business, as well as gyms and fitness facilities, can begin operations on-site in a manner than protects the public health and safety if they operate in an outdoor, well-regulated setting, in accordance with the guidelines from the State and operative County Shelter-in-Place Order and any subsequent orders;

**NOW, THEREFORE, IT IS HEREBY ORDERED** that effective at 12:00 p.m. on Wednesday, August 26, 2020, and continuing in effect until further notice from the Director of Emergency Services or the City Council:

1. As used in this Order, a qualifying establishment means any retail use and any “personal service” pursuant to Cupertino Municipal Code section 19.60.030 or “personal care services” as defined in the July 15, 2020 Santa Clara County Mandatory Directive: Personal Care Services; and gyms and fitness facilities that will be allowed to operate in compliance with reopening protocols of the State of California and Santa Clara County.
2. Cupertino Municipal Code (“CMC”) Section 19.60.050(A)(1) requires that retail uses and personal care services must be generally be conducted entirely within a building or enclosed patio or atrium. However, in order to allow qualifying establishments to operate outdoors in a safe manner during the COVID-19 pandemic, this requirement is hereby temporarily suspended, provided the operator obtains a Special Temporary Outdoor Operations Permit and complies with the following requirements:
  - a. The 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, as may be amended from time to time or any updated guidelines published by the CDPH and CAL/OSHA.
  - b. Any guiding document related to requirements from the California Department of Consumer Affairs.
  - c. Any guiding document related to requirements from the Santa Clara County Public Health Department, including but not limited

- to its Mandatory Directive: Personal Care Services, Mandatory Directive: Gyms and Fitness Facilities, and Social Distancing Protocols, as may be amended from time to time or any updated guiding document from the Santa Clara County Public Health Department.
- d. Compliance with the City of Cupertino face coverings ordinance.
  - e. Outdoor operations shall be configured in a manner to:
    - i. Only be located along the frontage of the qualifying establishment.
    - ii. Allow adequate social distancing.
    - iii. Meet ADA requirements and be compliant with the latest adopted edition of the California Building Code.
    - iv. Not encroach into any existing egress and/or accessible paths of travel to allow for comfortable flow of pedestrian traffic.
    - v. 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 parking requirement of the establishment. Utilized parking spaces shall be adjacent to the business.
  - g. No permanent fixtures are allowed.
    - i. 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.
3. A qualifying establishment may apply for a Special Temporary Outdoor Operations Permit by applying to the Director of Community Development, on a form prepared by the City. The application shall be accompanied by any additional information required by the Director of Community Development to ensure compliance with the adopted requirements. No application fee shall be charged for such application.

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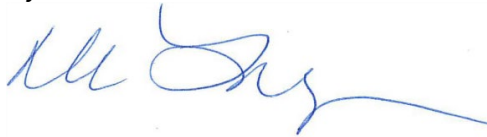
The permit is non-transferable, and only the qualifying establishment for which the temporary outdoor operations permit was issued shall be permitted to operate under the permit.

4. The Special Temporary Outdoor Operations Permit may be approved, conditionally approved, or denied at the discretion of the City. Approval of the permit is contingent upon the operation of the qualifying establishment following the reopening protocols of the State of California and Santa Clara County, and a determination that public health and safety of the City will not be threatened. The Director of Community Development may impose any conditions to ensure the above. A Special Temporary Outdoor Operations Permit does not create any property interest, and the Director of Community Development may revoke a Special Temporary Outdoor Operations Permit issued pursuant to this ordinance at any time and for any reason. The Special Temporary Outdoor Operations Permit shall terminate upon the expiration of the Shelter in Place orders.
5. If any section, subsection, sentence, clause, or phrase of this Order is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Order.

The Cupertino City Council confirmed this Emergency Order in advance on August 25, 2020.

DATED this 26th day of August, 2020.

By:



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Deborah Feng

Director of Emergency Services  
City of Cupertino

ATTEST:



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Kirsten Squarcia, City Clerk