



CITY OF POMONA

COUNCIL REPORT

November 16, 2020

To: Honorable Mayor and Members of the City Council

From: James Makshanoff, City Manager

Submitted By: Anita D. Gutierrez, AICP, Development Services Director

**SUBJECT: UPDATE ON ACTIVATE POMONA PILOT PROGRAM AND
REQUEST TO EXTEND EXPIRATION DATE UNTIL THE
LIFTING OF THE GOVERNOR OF CALIFORNIA
EXECUTIVE ORDER PERTAINING TO COVID-19**

RECOMMENDATION:

It is recommended that the City Council adopt the following resolution:

**RESOLUTION NO. 2020-165 – A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF POMONA EXTENDING THE EXPIRATION DATE OF THE ACTIVATE
POMONA PILOT PROGRAM FROM DECEMBER 31, 2020 UNTIL THE LIFTING OF
THE GOVERNOR OF CALIFORNIA EXECUTIVE ORDER PERTAINING TO COVID-
19**

EXECUTIVE SUMMARY:

On June 15, 2020, the City Council approved the Activate Pomona Pilot Program (AP), which temporarily relaxed regulations contained in the Pomona City Code and Zoning Code in an effort to aid Pomona-based businesses in economic recovery from the outbreak of the novel coronavirus disease (COVID-19). The Development Services Department formally began accepting applications on July 2, 2020. In the 18 weeks since launch, 141 applications have been submitted citywide, representing 56 home-based businesses, 42 private property expansions, and 43 public right-of-way activations. The program is set to expire on December 31, 2020. To provide greater certainty to the Pomona business community and due to the ongoing financial and physical constraints from COVID-19, Staff is recommending extending the program until the lifting of the Governor of California executive order pertaining to COVID-19.

FISCAL IMPACT:

A 12-month extension of the program may result in up to approximately \$56,000 in additional lost permit revenue. To date, the program has provided \$27,396.05 in permit cost support to applicants, as the cost for a typical Outdoor Dining Permit or Temporary Use Permit has been waived.

DISCUSSION:

Since its launch on July 2, 2020, AP has accepted 141 applications. Of these, 19 have been rejected. The reasons for rejection include: erroneous applications, seeking the wrong type of permit, insufficient space to safely conduct the activity, or proposing an activity not authorized by the Los Angeles County Department of Public Health (LACDPH) during COVID-19, such as a gathering or special event. Table 1 illustrates the types of proposed activities requested.

Table 1. Types of Proposed Activities in Activate Pomona Applications

<i>Type of Proposed Activity</i>	<i>Number of Applications</i>
Home-Based Business	56
Home Office/Online/Artisanal Goods	41
Food-Based Sales	10
Rejected/Paused	5
Private Property Expansion	42
Non-Profit/Charitable Activity	7
Outdoor Dining	10
Outdoor Personal Services/Recreation	10
Outdoor Retail	3
Rejected/Paused	12
Public Rights-of-Way Activation	43
Public Art	2
Outdoor Activity (Sidewalk)	18
Outdoor Activity (Parklet/Street)	15
Rejected/Paused	8

Home-Based Businesses

Home-based businesses are currently permitted through a Home Occupation Permit, which is issued by the City's Finance Department in conjunction with a Planning Division review and clearance. Between March and October of 2020, which represents the time period since the beginning of COVID-19 quarantine measures, the City received 87 home occupation applications. This represents nearly twice as many applications over the same time period in 2019. The doubling of applications, in spite of COVID-19 constraints, may be explained by multiple variables. First, the home occupation permit application had not previously been promoted by the City, but under Activate Pomona, was promoted actively by the City, which increased interest in establishing home-based businesses. Second, interest in home-based businesses has increased in the City and County over the last several years, due to the ease by which residents may start a business at home and rely on internet-based sales and services that do not require lease commitments, commercial property ownership, or investment in tenant improvements.

Prior to Activate Pomona, home-based businesses were reviewed against existing *Home Occupation* language contained in the Pomona Zoning Code. This language is limiting and based on a dated perception of acceptable home-based businesses from the mid-20th century. Relying on this perception not only inadequately reflects trends in home-based businesses today, but also

perpetuates classifications of home-based businesses that are biased along lines of gender, race, and income.

There are three trends in home-based businesses, based on review of applications submitted under Activate Pomona:

1. Artisan Goods/Online Sales. The City receives applications to conduct home-based businesses that are based on online sales and the fulfillment of orders. This may be artisanal, such as a resident creating goods and selling them online through boutique websites such as Etsy, or it may be commercial in nature, such as importing and exporting goods without a brick-and-mortar operation or warehouse. These requests are generally granted under Activate Pomona so long as the proposed activity does not have visible activity outside, is not storing goods outside, and is not forming customer queues.
2. Home-Based Salons/Barber Shops. The City receives applications to operate home-based salons and barber shops. The State of California Board of Cosmetology does allow such operations with a permit (Attachment No. 2). This has presented a challenge for the City, as it does not formally have any local regulatory framework to permit such businesses. However, the City is open to legalizing such establishments if they are first permitted by the State and otherwise follow the same storage, queuing, and advertising restrictions as other home-based businesses.
3. Home-Based Food Sales. The City receives applications to operate food-based home businesses. This includes catering, pre-packaged foods, and outdoor food sales. Home-based businesses are never permitted to establish outdoor activities in any format. However, the LACDPH does regulate cottage food operations (Attachment No. 3). The City itself amended the Pomona Zoning Code—Home Occupations section to add cottage foods as an acceptable home occupation (Attachment No. 4). However, a local permitting program was not established. LACDPH has a two-tiered permitting system. Class A operators may sell foods directly to the consumer and are required to register with LACDPH and submit a self-certification compliance checklist. This permit allows sales from home, at farmer's markets and other food-related events, and through community-supported agriculture uses. Class B operators may do all of Class A activities and indirectly sell to restaurants, grocery and food markets, and food trucks, subject to inspections. LACDPH follows the California Department of Public Health (CDPH) regulations on permitted foods, which are foods that do not support rapid growth of bacteria that would make people sick when held outside of refrigeration temperatures. CDPH maintains a food list with ethnic variations, and has a formal process to request foods be added to this list (Attachment No. 5). The City is generally accepting of applications that request the pre-packaged home-based sale of baked goods and other non-perishable items. However, the City can generate its own community-based list of ethnically inclusive cottage foods and request clearance from CDPH. In addition, the City could then require a Class A or B County health permit prior to issuance of a home occupation permit.

Private Property Expansion

The City received 42 applications for proposed activities on private property. The majority of requests were to allow some form of expansion of retail or restaurant services into private parking lots of other available space on private property, including personal services. Personal services vary in need as LACDPH COVID-19 guidance changes. An additional seven requests were for specific one-off or semi-regular charitable events, such as food distribution or house of worship services. Outdoor house of worship services are currently permitted by the LACDPH, subject to COVID-19 guidelines. The Public Works Department works directly with the Planning Division to review circulation requirements for all private property expansion proposals. In some cases, applications have been rejected as the proposed activity was to be located on a property with existing circulation challenges or with an existing cluster of intense land uses, such as gas stations with car washes and convenience stores.

Public Rights-of-Way Activation

The City received 43 applications for proposed activities on public rights-of-way. Nearly half of these activities involved the activation of the public sidewalk to support outdoor dining or retail sales. Over a third of these activities involved the use of a parklet or street closure. A parklet is defined as the use of an on-street parking space for some type of activation, such as dining, queuing, public art, or seating. The City currently has permitted parklets at four locations within the Downtown Pomona Specific Plan, on streets that are marked as 25 miles per hour or less. Parklets cannot be supported on streets with higher speed limits as the risk of vehicular collision is high, even with protective barriers. The City has also temporarily closed two street segments: Thomas Street between Second and Third Streets, and Second Street between Garey Avenue and Gibbs Street. The City previously closed Second Street between Garey Avenue and Main Street, but lifted the closure upon request from tenants and property owners located on that block. The City secured \$23,130.91 in grant funding from Active San Gabriel Valley, through the San Gabriel Valley Council of Governments, sourced from re-purposed active transportation dollars, to purchase concrete and water-filled plastic barriers to use on parklets and street closures. This allowed businesses to pursue outdoor expansion without bearing the cost of public safety improvements. In September, the Cultural Arts Commission approved a companion temporary art pilot program that will provide an additional \$49,999 in artist aid by awarding dollars to Pomona-based artists to paint the concrete barriers.

The City has rejected requests that involved approving outdoor events or gatherings that did not meet LACDPH guidelines. For example, the Downtown Pomona Owner's Association requested activation for the regularly scheduled Art Walk held monthly. The City requested permission from LACDPH for this event but was denied and therefore has not been able to formally approve this event, along with other similar events classified as gatherings. Moreover, the City has not received permission to approve permits to support live entertainment, including concerts, or other temporary public assembly uses, except the restricted guidelines pertaining to house of worship services held outdoors. The purpose of City-initiated street closures and parklets is to recognize the challenging reality of businesses that are unable to host gatherings or community events in typical ways, and provide an opportunity for ample outdoor space without vehicular interference to facilitate social distancing and safer alternatives that may be approved by the LACDPH.

Ensuring Pilot Program Intents Are Met

When the City Council approved the pilot program on June 15, 2020, the regulatory framework was based upon four key criteria that work together to form a robust program. These questions are re-stated below with updates.

1. **Equity.** Do the regulations benefit all residents and business owners citywide, or only a specific few? How can regulations reflect a wider range and type of restaurants and retailers and neighborhoods?

Yes. The 141 applications are located in neighborhoods across the entire city. Moreover, the applications are not limited to restaurant or dining, but include personal services, recreation and fitness, public arts, passive seating, informational uses, and home-based businesses.

2. **Liability.** Do the regulations satisfactorily address liability and risk management concerns that jurisdictions contend with in the public right-of-way? Do the regulations account for insurance requirements?

Yes. The City has developed strict public safety standards for street closures and parklets, which includes the use of concrete or plastic water-filled barriers on streets with speed limits less than 25 miles per hour. Moreover, the City's Risk Manager reviews each request for activities in the public rights-of-way for insurance requirements. The Risk Manager has explored innovative opportunities for the City to streamline insurance requirements for future permits.

3. **Safety.** Do the regulations satisfactorily define development and operational standards that can be enforced by Code Enforcement and used to preserve public health and safety? Do the regulations adequately balance the need for flexible accommodations against the need for safety?

Yes. The regulations principally track the guidance provided by the LACDPH, but also relies on Pomona City Code and Pomona Zoning Code. While typical community events such as art walks or concerts have been denied permits, which can be a source of frustration for all involved, the current status of COVID-19 prohibits the City's ability to pursue more flexible accommodations which may risk public health and safety.

4. **Practicality.** Do the regulations provide a clear, quick, and low-cost pathway to activate a public or private space? Are the regulations accessible and communicated well?

Yes. The permit application takes approximately five minutes to complete. There is no cost to apply or procure a permit. The City has been overwhelmed by the demand to apply to the pilot program, which has caused tangible delays in issuing permits. However, as the program enters its fifth month, the City has been able to streamline the review of applications as it better understands public health and safety requirements. The City continues to communicate the program requirements through official social media channels, and through stakeholders such as the

Downtown Pomona Owner's Association, Pomona Chamber of Commerce, Camara de Comercio Hispana de Pomona, and in-person visits to City Hall counters.

Prepared by:

Ata Khan
Supervising Planner

ATTACHMENT:

Attachment No. 1—Resolution No. 2020-165
Attachment No. 2 - Establishment Application for Home-Based Salons/Barbers
Attachment No. 3—Los Angeles County Public Health Cottage Food Guide
Attachment No. 4—City of Pomona Cottage Food Ordinance
Attachment No. 5—California Department of Public Health Cottage Food Approved Foods List