

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**

WHEREAS, the Los Angeles County Department of Public Health has declared a public health emergency due to the novel coronavirus disease (“COVID-19”);

WHEREAS, the State of California has declared a public health emergency due to COVID-19;

WHEREAS, the public health orders require social distancing measures that significantly reduces the indoor capacity of restaurants, retailers, public assembly uses, and other uses, affecting the economic viability of their day-to-day operations;

WHEREAS, the City anticipates significant economic impacts to the business, civic, cultural, and residential home-based business sectors due to COVID-19;

WHEREAS, the City seeks to pursue land use solutions that will directly aid in Pomona’s economic recovery from COVID-19, both in the rights-of-way (“Public Realm”) and private property (“Private Realm”);

WHEREAS, activating the Public Realm and Private Realm to increase activity has been referred to using various terminology, including “placemaking,” “tactical urbanism,” “DIY urbanism,” and “informal urbanism;”

WHEREAS, adopting land use standards that formalize “informal urbanism” may provide immediate economic benefits to the business, civic, cultural and residential-based business sector in the City of Pomona during COVID-19, and thereafter;

WHEREAS, on June 15, 2020, the City Council of the City of Pomona adopted the Activate Pomona Pilot Program, with an expiration date of December 31, 2020;

WHEREAS, the financial and physical constraints due to COVID-19 continue to remain real, tangible, and without a foreseeable end, necessitating an extension to the program;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Pomona as follows:

SECTION 1. The City Council, exercising independent judgment, finds that the project will not have an adverse impact on the environment pursuant to Article 5, 15060(c)(2) and 15060(c)(3) which exempts activities that will not result in a direct or reasonably foreseeable indirect change to the environment and that are not defined as a project under Section 15378.

SECTION 2. The City Council hereby makes and adopts as findings the facts and conclusions set forth above in the recitals of this Resolution, and finds and determines that the prevalence of COVID-19 is a threat to public health, welfare, and safety, and the waiver of any fees associated with the permitting of Proposed Activity that conforms to the standards of this Resolution would improve public health, welfare, and safety.

SECTION 3. *Expanded Use Permit.* The City Council hereby determines that the regulations contained in *Exhibit A: Public Realm (“Expanded Use Permit”)*, shall be applied to any Proposed Activity along the Frontage within the Public Realm (as defined in the exhibit), in lieu of any other Municipal Code standard regulating the Proposed Activity in the Public Realm, until the lifting of the Governor of California executive order pertaining to COVID-19.

SECTION 4. *Private Realm.* The City Council hereby determines that the regulations contained in *Exhibit B: Private Realm* shall be applied to proposed activity in the Private Realm (as defined in the exhibit), until the lifting of the Governor of California executive order pertaining to COVID-19.

SECTION 5. *Temporary Street Closures.* The City Council hereby authorizes the Public Works Department to temporary close any public street or public alley within the *Downtown Pomona Specific Plan*, including the portion of Garey Avenue within the Plan boundaries, to accommodate Permitted Activity. The process and length of temporary closures shall be at the discretion of the Public Works Director.

SECTION 6. *Administrative Amendments.* The City Council hereby authorizes the Public Works Department and Development Services Department to administratively process any amendments to discretionary permits that are required to adequately permit the activities outlined in this Resolution.

SECTION 7. *Additional Standards.* The City Council hereby authorizes the City Manager to promulgate any additional rules and regulations beyond those contained in Exhibits A and B as needed for public health and safety.

SECTION 7. The City Clerk shall attest and certify to the passage and adoption of this Resolution.

PASSED, APPROVED AND ADOPTED THIS 16TH DAY OF NOVEMBER, 2020

ATTEST:

CITY OF POMONA:

Rosalia A. Butler, City Clerk

Tim Sandoval, Mayor

APPROVED AS TO FORM:

Sonia Carvahlo, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF POMONA)

I, ROSALIA A. BUTLER, CITY CLERK of the City of Pomona do hereby certify that the foregoing Resolution was considered at a regular meeting of the City Council of the City of Pomona held on the 16th day of November, 2020, and adopted on the 16thh day of November, 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Rosalia A. Butler, City Clerk

Exhibit A: Public Realm (“Expanded Use Permit”)

1. Purpose:

The purpose of these standards and procedures is to accommodate the temporary activation of the Public Realm during COVID-19. Activation is intended to include various types of activity that will allow a business to successfully operate, including outdoor seating and dining and retail, and use of on-street parking for parklets and curbside pick-up, but also civic and cultural forms of activation, including outdoor public assembly accommodations and temporary public art and sculptures.

2. Definitions:

“Frontage” is defined as the area of the Public Realm immediately parallel or adjacent to a private property line, measured as the entire width of the property line.

“Pedestrian Path” is defined as a continuous obstruction-free sidewalk area between the outside boundary of the Proposed Activity and any obstruction, including, but not limited to, parking meters, street trees, landscaping, street lights, bus benches, public art, and curb lines.

“Proposed Activity” is defined as outdoor seating, outdoor dining (including serving alcoholic beverages if the private property currently possesses a valid on-sale alcohol license from Alcoholic Beverage Control), outdoor retail, sculptures or other public art installations, and using on-street parking for parklets or curbside pick-up. This does not include *temporary street closures* or *sidewalk vending*. Additional activities may be considered at the joint discretion of the Development Services Director and Public Works Director.

“Public Realm” is defined as the rights-of-way, inclusive of public streets, public alleys, sidewalks, and parkways.

3. Location:

Proposed activities are permitted in the Public Realm anywhere in the City that is along the frontage of private property currently and lawfully used for commercial use, industrial use, mixed-use, or public assembly.

4. Permitting:

Any Proposed Activity may not be conducted without a permit, to be jointly issued by the Public Works and Development Services Departments.

An individual permit may either:

- a) Regulate Proposed Activity in the Public Realm along the frontage of a single private property, subject to consent of property owner.
- b) Regulate Proposed Activity in the Public Realm along multiple frontages of multiple private properties, subject to consent of all property owners affected.

Applicant may be private property owner(s) or representative acting on behalf of private property owner(s) with consent.

Applications for a permit shall include:

- i. ***Layout.*** Site plan identifying any fixtures or furnishings, Pedestrian Path and patron circulation to and from the area of the Proposed Activity, dimensions of Proposed Activity, Pedestrian Path, and Public Realm.
- ii. ***Maintenance & Operations.*** Maintenance and operations statement, including proposed hours of operation, and how space will be maintained and kept orderly.
- iii. ***COVID-19.*** Compliance with any applicable local, County, State, or Federal public health orders and guidelines related to COVID-19.
- iv. ***Liability.*** Proof of insurance and execution of Hold Harmless Agreement.

All permits shall expire upon the lifting of the Governor of California executive order pertaining to COVID-19

5. Fees:

There shall be no fee associated with permitting any Proposed Activity. There shall be no maintenance deposit required at time of permit issuance. However, permittee shall agree to all responsibility for Proposed Activity in the Public Realm to be maintained throughout the permit. Damage(s) that result during the permit shall be assessed by the Public Works Department and charged to the permittee and the permittee's permit will be revoked for a minimum of three days, or until assessed bill is paid, or as determined by the Development Services Director.

6. Design Standards:

The Proposed Activity shall be designed to meet the following standards:

- i. ***Access.*** Proposed Activity is permitted only where the sidewalk is wide enough to adequately accommodate both the usual pedestrian traffic in the area and the operation of the Proposed Activity. A clear, continuous

Pedestrian Path not less than four feet in width shall be required for unimpeded pedestrian circulation outside of the Proposed Activity. The minimum width of said Pedestrian Path may be increased by the Public Works Director in areas requiring public utility access. Proposed Activity may not block access either to or from a building. A minimum unobstructed clearance which extends two feet to either side of both door jambs shall be maintained. If Proposed Activity is located on a corner, it shall not be permitted within three feet of the corner of the building, along both frontages. If Proposed Activity is located adjacent to a driveway or an alley, it shall not be permitted within five feet of said driveway or alley. These requirements may be modified at the discretion of the Development Services Director or Public Works Director in locations where the sidewalk adjacent to the Proposed Activity is wider than usual, where the perimeter of the building has an unusual configuration, or where public safety is at risk. The Proposed Activity shall be accessible to the disabled. The buildings adjacent to these areas shall maintain building egress as defined by the California Building Code and State of California Title 24 Disabled Access standards.

- ii. **Safety.** The floor of the Proposed Activity shall be at the same level as the sidewalk, and no alterations to the sidewalk or coverings on the sidewalk shall be permitted, except for in conjunction with use of on-street parking spaces for parklets or other on-street parking space activation. Perimeter barriers are not required for any Proposed Activity, except for proposed use of on-street parking spaces. If the Proposed Activity includes the use of a perimeter barrier, it shall be reviewed on a case-by-case basis. Fixtures and equipment approved may remain in the Proposed Activity area for the duration of the permit only. Any objects placed on the sidewalk shall not interfere with safe line-of-sight distance. Any umbrellas, heaters, or similar feature used shall be safely secured, and must be removed and stored when business is not in operation.
- iii. **Parking.** Space used for Proposed Activity will not be added to the gross square footage of the related business when calculating parking requirements.
- iv. **Public Health.** Proposed Activity shall be designed to comply with any applicable local, County, State, or Federal public health orders and guidelines related to COVID-19.

7. **Operational Standards:**

- i. **Hours.** Hours of Operation for Proposed Activity are to coincide with those of the adjoining business.

- ii. ***Unpermitted Uses.*** The operator shall not permit the following as part of the Proposed Activity: food preparation, utensils, glasses, napkins, and condiments on unoccupied tables, busing service stations, or trash and garbage storage.
- iii. ***Maintenance.*** Permittee shall maintain area of Proposed Activity and the adjoining street, curb, gutter, and sidewalk in a neat, clean, and orderly condition at all times. This shall include all tables, chairs, benches, displays, or other objects placed in the Public Realm. Trash receptacles may be permitted on a case-by-case basis subject to review and approval of the Public Works Director. If disposable materials are used, the establishment shall comply with all applicable City recycling programs. All exterior surfaces shall be easily cleaned and shall be kept clean at all times by permittee. Awnings and umbrellas shall be kept clean and in good condition at all times.
- iv. ***Sound.*** Musical instruments or sound reproduction systems are permitted as part of Proposed Activity, but shall not violate City noise ordinance.
- v. ***Approved Permit.*** Plans and permits for the Proposed Activity approved by the City shall be kept on the premises for inspection at all times when the establishment is open for business.

8. Insurance:

Permittee shall comply with the following insurance requirements:

- i. A policy or policies of ***Comprehensive General Liability Insurance***, with minimum limits of \$1,000,000 per occurrence against any personal injury, death, loss, or damage resulting from the wrongful or negligent acts by the Permittee. The general liability insurance shall contain an ***additional insured endorsement*** naming the City, including its elected or appointed officials, officers, directors, employees, agents, and volunteers as additional insureds. The insurance documents shall be comprised of and submitted as a certificate of insurance that names the City as the certificate holder and a separate insured endorsement.
- ii. The Permittee shall also execute, in writing, a ***Hold Harmless*** agreement for the duration of the permit.
- iii. Permittee shall provide proof of ***Workers' Compensation insurance*** as required by the State of California.

9. Special Closures:

The City shall have the right and power, acting through the City Manager or their designee, to prohibit the operation of the Proposed Activity at any time because of anticipated or actual problems or conflicts in the use of the right-of-way. To the extent possible, the permittee shall be given prior notice of any time period during which the operation of the Proposed Activity shall be prohibited by the City.

10. Revocation:

If any portion of the Proposed Activity obstructs the right-of-way beyond that which is provided for in this Resolution, the Public Works Director or Development Services Director or their designee shall immediately direct the permittee to move the obstruction. If the permittee fails to do so, the City Manager or their designee is entitled to immediately move the obstruction. If the Proposed Activity is not maintained in a neat, clean, and orderly condition, the Development Services Director or their designee shall direct that the permittee or property owner correct the violation. If the Development Services Director or their designee finds that it is necessary to remove any part of the Proposed Activity in the interest of the public health, safety, or general welfare, they may immediately remove it at the expense of the permittee or property owner. A permit may be revoked by the Development Services Director, or Public Works Director, or their designee, following written notice being sent to the permittee by certified mail. The permit may be revoked if one or more standards outlined in this Resolution have been violated or if the Proposed Activity is being operated in a manner which constitutes a nuisance, or the operation unduly impedes or restricts the movement of pedestrians past the Proposed Activity area. Following revocation of a permit, no application for the same site shall be filed prior to the lifting of the Governor of California executive order pertaining to COVID-19. Revocation decisions may be appealed to the Planning Commission. Planning Commission decisions may be appealed to the City Council. Unless otherwise indicated, all appeals shall be made in writing and state the reason(s) for appeal. Such appeals shall be filed with the Development Services Department—Planning Division within five days of receipt of notice of revocation. The receipt of a written appeal shall stay all actions, or put in abeyance all permits or other approvals which may have been granted, pending the effective date of the decision of the Planning Commission or City Council. Appeals shall be scheduled for the earliest regular meeting of the hearing body, not less than 15 days or more than 45 days after the date of filing an appeal, consistent with the agenda preparation procedures and scheduling of the Planning Commission and City Council. An appeal fee will not be assessed for such appeals.

The City Manager may promulgate additional rules and regulations beyond what is contained in Exhibit A, as needed for public health and safety.

Exhibit B: Private Realm

1. *Temporary Uses.*

The Development Services Director shall consider the review and approval of various temporary uses applied for by private property owners to accommodate business and site operations during COVID-19 using *Section .583—Temporary Uses* of the Pomona Zoning Ordinance.

- a. ***Uses.*** Temporary uses may include, but are not limited to: expansion of retail into parking lots and other areas of private property, and accommodating food trucks on private property.
- b. ***Fees.*** There shall be no fee associated with a Temporary Use Permit application that is submitted by the lifting of the Governor of California executive order pertaining to COVID-19
- c. ***Duration.*** Temporary uses approved under this Resolution shall be in effect until the lifting of the Governor of California executive order pertaining to COVID-19
- d. ***Standards.*** The Development Services Director may impose conditions of approval on the permittee as is appropriate for the proposed temporary use.

2. *Home Occupations.*

The Development Services Director shall consider the review and approval of home-based businesses applied for by residents during COVID-19, using *Section .530—Home Occupations* of the Pomona Zoning Ordinance.

- a. ***Uses.*** The following additional home-based businesses may be considered:
 - i. *Any business that: does not involve the storage of goods beyond what may be stored in typical two-car garage or accessory structure; does not involve the storage of vehicles beyond what may be driven by the individual residing on the property; and does not involve the flow of customer traffic in-person beyond what may be typical in a residential setting.*

- b. ***Duration.*** A Home Occupation Permit for the aforementioned uses must be applied will expire 12 months following the lifting of the Governor of California executive order pertaining to COVID-19

The City Manager may promulgate additional rules and regulations beyond what is contained in Exhibit B, as needed for public health and safety.