



Council Agenda Report

Item 6c

Department: Attorney
Cost Center: 1002
For Agenda of: 7/6/2021
Placement: Business
Estimated Time: 20 Minutes

FROM: Christine Dietrick, City Attorney

SUBJECT: ADOPTION OF A RESOLUTION ALIGNING AND CONTINUING CERTAIN PRIOR COUNCIL EMERGENCY ACTIONS FOR CONTINUED COVID-19 MITIGATION AND CONSISTENT WITH NEW STATE DIRECTION

RECOMMENDATION

Adopt a Resolution entitled, "A Resolution of the City Council of the City of San Luis Obispo, California, consolidating and aligning prior Council emergency actions with recently revised State Orders, and continuing certain prior actions to support continued protections for public health, safety and welfare, as well as economic recovery," as follows:

1. Require continued compliance with State and County public health and emergency orders and directives.
2. Partially terminate safety enhancement zones and enhanced penalties for specified violations, except violations of State, County or local orders related to the continuing COVID-19 declared emergency as expressly provided by ordinance.
3. Extend the life of all commercial cannabis business operator permits for an additional three months, for a fixed period of twelve months from the original date of expiration. And extend all other entitlements by a period of 18 months following the end of the declared emergency.
4. Extend the OPEN SLO Pilot Program permitting temporary uses and structures in designated City rights of way for continued public health and safety and to support economic recovery.
5. Authorize the City Manager temporarily to suspend enforcement of certain sign and private parking requirements provisions of the Municipal Code as necessary to facilitate the temporary OPEN SLO programs in designated locations.
6. Continue suspension of use permits and other requirements for the establishment or expansion of safe parking programs within the City for six months following the end of the declared local emergency.
7. Terminate authority provided to the City Manager to use FY 2018-19 Unassigned Fund Balance above required reserve levels and return to generally applicable financial policies following budget adoption.

REPORT-IN-BRIEF

In March 2020, National, State and City states of emergency were declared in response to the COVID-19 pandemic. Since then, and pursuant to its emergency powers, the City Emergency Services Director and City Council have taken several actions via ESD Proclamations and Council Resolutions, or Ordinances designed to address and mitigate the health, safety, welfare and economic impacts of the pandemic in the City.

On June 11, 2021, the Governor issued Executive Order N-07-21, terminating the Stay-at-Home Order that was implemented early in the pandemic and retiring the Blueprint for a Safer Economy, in favor of the Resilience Roadmap. The Governor's Office established a timeline and process to continue winding down the various provisions of the 58 COVID-related executive orders, which suspended statutes and regulations to help the state and businesses continue operations during the pandemic. To ensure that impacted individuals and entities have time to prepare for the changes, the provisions will sunset in phases, beginning later this month, in July and in September. By the end of September, nearly 90 percent of the executive actions taken since March 2020 will have been lifted.

In response the pandemic emergency declarations and restrictions, the City also took more than twenty emergency actions related to the pandemic and facilitated a number of projects and practices that staff believe have continuing value to support the safe and successful progression through the pandemic, to ensure the City, its businesses and residents are well prepared to respond to any similar public health emergency that may emerge going forward, and to support economic vitality and recovery in a manner that supports the continuation of safe, distanced, and outdoor activities in a manner that recognizes the continuing risks of presented by emerging variants and less than optimal vaccination rates.

The resolution attached consolidates and continues those actions deemed necessary to support continued safe progression out of the pandemic and economic recovery in a single location for clarity and ease of reference going forward.

DISCUSSION

Background

With broad availability and effectiveness of vaccines, the Country, State and City are now emerging from the most restrictive aspects of the continuing emergency, which has resulted in the termination of certain State restrictions related to indoor activities, gatherings, governmental and business operations, masking, and social distancing. Nonetheless, vaccines are not yet available to children 12 and younger, virus variants continue to have serious impacts within California, nationally and worldwide, the impacts of reopening as we move into the fall and winter months are not yet known, and there are still many people, both residents and visitors to the city, who are not vaccinated for a variety of reasons.

Accordingly, staff recommends that Council adopt a resolution affirming, continuing and or extending several local programs and policies previously enacted to support public health and economic recovery, while otherwise continuing to align with State and County public health and emergency orders. The resolution continues the City's ability to make such orders applicable and directly enforceable pursuant to the City's Municipal Code and the key provisions are set forth below.

Partial Termination of Safety enhancement zones.

During the height of the pandemic and while County and State stay at home and gathering and indoor activities restrictions were in place, the Council enacted a city-wide safety enhancement zone that increased penalties for previously designated Municipal Code Violations that also had implications with regard to increased risk of spread of the COVID-19 virus (e.g., noise, unruly gatherings, and open container in public violations). First via resolution, and later via emergency ordinance, the Council also made violations of emergency orders, regulations and directives issued by other authorized entities (primarily State and County) pursuant to emergency powers and enhanced penalties subject to enforcement as violations of the City's Municipal Code upon declaration of an emergency and for the duration of the declared emergency.

The current resolution terminates the Citywide Safety Enhancement Zone previously declared pursuant to Resolution 11106 (2020 Series) for all non-emergency related, previously designated, Municipal Code violations specified in Section 9.22.020B and restores the penalty for such violations to the levels otherwise provided by the Municipal Code and related Administrative Guidelines.

However, Section 9.22.020B continues in effect (as enacted by Council emergency ordinance) as to violations of emergency orders and provides that violations of any State or County Public Health or other State or County Order or directive related to the COVID-19 emergency, whether now existing or subsequently adopted, shall remain subject to immediate penalties not to exceed \$1,000 for the duration of the declared emergency.

The application of safety enhancement penalties to emergency order violations will terminate by the terms of the Municipal Code upon termination of State, County, and local emergency proclamations. As a practical matter, there are very few State and County restrictions currently in place that staff would anticipate being subject to enforcement now that stay-at-home orders and most gathering and occupancy restrictions have been lifted. Nonetheless, the way the ordinance was drafted makes the safety enhancement zone more flexible and self-executing, without the need for additional Council action, in the event that conditions change, and the State or County enact subsequent orders related to the declared emergency.

Cannabis Operator Permits Activation Extension

On March 16, 2021, City Council adopted Resolution No. 11231 (which superseded a prior resolution) and extended the life of all discretionary approvals, including extending the life of all commercial cannabis business operator permits for an additional three months. Staff is now recommending an additional three-month suspension and direction to extend expiration provisions for commercial cannabis business operator permits based on the length of the ongoing pandemic emergency and authorization to extend existing operator permits.

The City has issued eight commercial cannabis operator permits during the past two years. Three of those permits have been activated, four are in process of activating their operator permit, and one business has also decided to not continue in the permitting process. If a commercial cannabis operator permit is not fully activated (meaning the business is open and continually operating) within one year of permit issuance, then current code provisions specify that the operator permit expires. Council previously approved a six-month suspension of the expiration provisions/extension permits for these permits, then approved an additional three additional months, and staff is now recommending an extension of three additional months (twelve months total) to these operator permits.

Commercial cannabis business operators have been impacted by COVID-19 similar to other business types in the City. The process of activating a commercial cannabis operator permit is extensive and requires approval of a Conditional Use Permit, application for building permit, construction per the approved building permit, stocking inventory, and opening for business. Accomplishing all of this within one year is an ambitious schedule during normal times and the current pandemic and has created unforeseen obstacles and other complications for cannabis operators working towards opening. Staff believes current circumstances would render enforcement of the current expiration provisions inequitable and counterproductive to economic recovery, COVID-19 business support, and efficient use of staff time and resources.

In light of the intertwined relationship between cannabis land use entitlements and building permits and the activation requirements of a cannabis operator's permit, staff is recommending an additional three-month (twelve months total) suspension of the enforcement of the activation requirements and an extension of currently issued operator's permits to align with the existing building permit extensions previously provided (and recommended to be affirmed and continued) to other projects in the City. The relevant code section of which staff recommends suspension of enforcement, and action to extend current permits, is as follows:

- D. Duration and Activation of Permit. Each commercial cannabis operator permit issued pursuant to this chapter shall expire twelve months after the date of its activation. The permittee may apply for renewal prior to expiration in accordance with this chapter. Each commercial cannabis operator permit must be activated within twelve months of issuance. The permit is activated by the issuance of a use

permit for the commercial cannabis activity pursuant to Section [17.86.080](#), together with all other applicable city permits and state licenses, and the commercial cannabis operator thereafter opening and continuously operating the commercial cannabis activity. Failure to timely activate the permit shall be deemed abandonment of the permit and the permit shall automatically lapse. (Ord. 1673 §§ 1, 2 (Exh. A), 2020; Ord. 1647 § 4 (Exh. A (part)), 2018)

The resolution affirmatively extends the permits for an additional three months.

Extension of Authority to Continue OPEN SLO Program allowing continued outdoor public space expansion for temporary COVID-19 business support and recovery and for continued mitigation against and preparation for impacts of COVID-19 variants and increased seasonal risks of spread.

Throughout the pandemic the Council has taken several quick response actions to create safe outdoor spaces and support our business community and residents through various stages of COVID related closures and restrictions. One of the most significant packages of actions was the authorization of the OPEN SLO program, approved in March 2021 via Resolution 11232. Given the positive progression of the state, but also the continuing existence of unpredictable variables that could negatively affect that progression, staff is recommending the temporary continuation of the OPEN SLO Program, with continuing authority for the City Manager to temporarily suspend enforcement of certain code provisions (e.g., sign and private parking regulations) for the duration of the temporary program. The temporary continuation will also provide time for staff to provide Council with an evaluation of potential longer-term implementations of some of the components of the program that have proven popular and will help to build community resiliency going forward. Staff will bring forward an agenda item on Council's July 16 agenda to review options and receive Council direction.

Extension of discretionary approvals and building permit applications.

On June 2, 2020, the City Council adopted the 2020- 21 Financial Plan supplement with a singular, integrated Meta City Goal – Economic Recovery. One of the near- term actions identified was an extension of entitlements so that they would not expire during the pandemic, causing delays in the economic recovery effort that could result in business closures and lost revenue opportunities for both businesses and City operations.

On June 16, 2020, the City Council adopted Resolution No. 11131, authorizing extension of City discretionary approvals and building permit applications due to the Covid- 19 pandemic. Then, on March 16, 2021, City Council adopted Resolution No. 11231 which superseded the original resolution and extended the life of all discretionary approvals further. Resolution No. 11231 extended the term of all active City planning entitlements for an additional six months, extended the life of all commercial cannabis business operator permits for an additional three months, and extended the life of all building permit applications by an additional six months.

The current resolution affirms and continues extensions to facilitate economic recovery and process efficiency for both the development community and City staff.

Continue suspension of use permit and other requirements for the or expansion of safe parking programs within the City and extend Community Development Director approval authority for new safe parking sites for six month following the end of the declared local emergency.

On August 18, 2020, the City Council adopted Resolution No. 11149 affirming the actions of the Emergency Services Director by ESD Proclamation No. 5, which was adopted on August 7, 2020. Through the two actions, the City found that emergency measures were necessary to support and facilitate the expansion of safe parking facilities for unhoused persons in order to minimize exposure to the elements that compromise health, to minimize risks of sustained close contact and congregation to mitigate transmission of COVID-19, and to advance social distancing and personal hygiene protocols necessary to prevent or minimize the spread of COVID-19 and protect the public health, safety, welfare and economic security of the citizens of San Luis Obispo.

The prior Council action suspended requirements of Chapter 17.86 of the Municipal Code and any and all provisions of any other code provision or use permit, entitlement or contract issued to any current homeless or supportive services provider permitted or contracted with the City of San Luis Obispo to the extent that such provisions would otherwise limit or prevent the expansion of safe parking facilities within the City, until such time as the declared City, County and State emergency declarations are terminated or such other time as may be determined by order of the Emergency Services Director or City Council. The prior action also established requirements for the Community Development Director to approve establishment of new safe parking locations upon review and approval of an application submitted by a new non-profit community partner. Given the ongoing nature of the economic impacts of the pandemic and uncertainty regarding vaccination rates, variants and seasonal impacts of COVID-19, staff recommends continuing the prior actions to allow for expansion and establishment of new safe parking sites for a period of six months after the termination of the local emergency proclamation.

The City has currently authorized and funded one expanded site at Railroad Square in partnership with the City's only current safe parking services provider CAPSLO. While the site has not been fully utilized, the City Homeless Response Manager is currently working with providers and members of the unhoused community to identify and minimize barriers to utilization and the flexibility to quickly expand successful shelter and service models will be helpful to the success of the City's objectives to move unhoused persons into shelter and services in a timely manner responsive to diverse needs.

Conclude City Manager authority to use FY 2018-19 Unassigned Fund Balance

On March 17, 2021, Council adopted Resolution giving the City Manager authority to use FY 2018-19 Unassigned Fund Balance above required reserved levels to address emerging public safety and economic support needs of the community related to COVID-19. As we progress toward full reopening and greater stability in managing the pandemic and its impacts, staff is recommending that the authority granted be terminated and that the City revert to fiscal management and spending practices consistent otherwise applicable City financial management policies.

Previous Council or Advisory Body Action

Throughout the course of the pandemic, the City Manager/Emergency Services Director enacted six Emergency Proclamations, the substance of which was ultimately affirmed as part of comprehensive Council emergency actions, including more than twenty Emergency Resolutions and Ordinances related to COVID-19. The specific actions relevant to the current resolution are outlined above related to each of the subject areas of the resolution.

Policy Context

All of the actions recommended herein are consistent with the Council's adopted Major City Goals, are reflected in the work programs associated with Council's goals and are supported by funding in the recently approved 2021-23 Financial Plan and 2021-22 Budget.

Public Engagement

Public engagement has been ongoing via business, association, resident, employee and visitor outreach and surveys regarding support needs and service levels throughout the pandemic. As the City transitions and begins to evaluate longer term projects, policies and public, health, safety, and economic support activities, more proactive and directed outreach consistent with existing public engagement policies will be conducted and provided to the Council as part of its evaluation and direction on future activities.

CONCURRENCE

The Deputy City Manager, City Attorney and Cannabis Program Coordinator concur with this recommendation.

ENVIRONMENTAL REVIEW

As a result of the COVID-19 public health emergency, the City of San Luis Obispo proposes to continue a temporary program to use the right-of-way, sidewalks and streets to help create continued opportunities for social distancing during the first few phases (stages) of reopening consistent with the State's Resilience Roadmap.

The actions proposed were initiated and are proposed to continue under the City's emergency and general police powers to provide for residents the health and wellness benefits of being outdoors and to support businesses and customers with enough space to safely physically distance as the State and County move toward optimal vaccination rates, monitor the emergence of variants, and monitor transmission rates into the Fall and Winter months. The proposed project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) as follows:

- A. The project is statutorily exempt under State CEQA Guidelines Section 15269 (Emergency Projects), because the temporary program includes specific actions that would allow for safe physical distancing and support continued progression through the pandemic consistent with the State's Resilience Roadmap and County and State Guidelines in order to mitigate the COVID-19 public health emergency and the potential for resurgence.
- B. The project is categorically exempt under State CEQA Guidelines Section 15301 (Existing Facilities) because the actions identified in the program are limited to the permitting, leasing, and minor alteration of existing public facilities, including existing streets, sidewalks, bicycle and pedestrian trails, which would not result in the creation of additional automobile lanes. The program would result in a negligible expansion of existing commercial uses and a negligible expansion of the public's use of City right-of-way, as the uses included in the temporary program would not vary from the current uses of commercial businesses, residential areas, or public access within the City's right-of-way.

FISCAL IMPACT

The adoption of the Resolution will have no fiscal impact and actions authorized or contemplated pursuant to the Resolution have been included in the 2021-23 Financial Plan or will be brought forward for separate Council consideration with a full fiscal analysis.

ALTERNATIVES

- 1. Do not adopt the Resolution. This action is not recommended because the current Council actions are documented throughout multiple prior resolutions making tracking and clarity of Council direction difficult.
- 2. Provide direction to staff regarding modifications to the Resolution.

ATTACHMENTS

A – Draft Resolution consolidating and aligning prior Council emergency actions with recently revised State Orders