



Council Agenda Report

Department Name: Community Development
Cost Center: 4001
For Agenda of: March 16, 2021
Placement: Consent
Estimated Time: NA

FROM: Derek Johnson, City Manager
Prepared By: Michael Codron, Director of Community Development
Brian Leveille, Senior Planner

SUBJECT: ADOPT A RESOLUTION TO FURTHER EXTEND THE LIFE OF ALL CITY DISCRETIONARY APPROVALS AND THE OPEN SLO PILOT PROGRAM DUE TO THE COVID-19 PANDEMIC EMERGENCY

RECOMMENDATION

1. Adopt a Resolution (Attachment A), superseding Council Resolution No. 11131 (2020 Series), to extend the life of all City discretionary approvals, as follows:
 - a. Extend the term of all active City planning entitlements for an additional six months for a total of 18 months following the end of the Covid-19 pandemic emergency.
 - b. Extend the life of all commercial cannabis business operator permits for an additional three months, for a fixed period of nine months from the original date of expiration.
 - c. Extend the life of all building permit applications by an additional six months, for a fixed period of one year from the original date of expiration.
2. Adopt a Resolution (Attachment B), superseding Council Resolution No. 11118 (2020 Series), to extend the life of the Open SLO temporary pilot program for temporary use of City right-of-way to support physical distancing and COVID-19 economic recovery as follows:
 - a. Extend the term of all Open SLO program activities and policies through the end of 2021 or 180 days beyond termination of the City's COVID-19 emergency declaration (whichever comes later).

DISCUSSION

Background

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 20, 2020, the City Council adopted Resolution No. 11131, authorizing extension of City discretionary approvals and building permit applications due to the Covid-19 pandemic.

Another near-term action supporting the Economic Recovery Meta City Goal was continued implementation of the “Open SLO” pilot program, an initiative approved by the City Council on May 22, 2020, with adoption of Resolution No. 11118. The Open SLO program deploys a variety of strategies such as temporary street closures, installation of parklets, and use of Mission Plaza for public outdoor dining to allow the temporary use of City right-of-way to facilitate social distancing and COVID-19 economic recovery for local businesses affected by public health restrictions on indoor services. At the time of adoption, the Open SLO program was identified as a one-year pilot program, with a sunset date of June 2021.

Staff is now recommending an additional extension for entitlement permits and the Open SLO program based on the length of the ongoing pandemic emergency.

City Discretionary Approvals

Staff’s recommendation is to extend all City discretionary approvals, issued under the Zoning Regulations and active on the date of the emergency declaration on March 17, 2020, for eighteen months following the declared end of the state and local emergency. Specifically, for any discretionary approval active on March 17, 2020, the one-year “life” of the permit will be extended by the term of the emergency plus an additional 1.5 years.

The term of the emergency is tied to the Governor’s declaration of a state of emergency, the County Public Health Officer’s declaration of a public health emergency, and the City Council’s local emergency declaration.

Chapter 17.104.070 of the City’s Municipal Code includes the following:

If building permits are not issued for site development authorized by a discretionary permit within one year of the date of approval or such longer time as may be stipulated as a condition of approval, the permit shall expire with the building permit application. Upon written request received prior to expiration, the director may grant renewals of an approval for successive periods of not more than one year each, up to a total of three years. Requests beyond three years are subject to review by the planning commission. Approvals of such renewals shall be in writing and for a specific period. Renewals may be approved with new or modified conditions upon a finding that the circumstances under which the permit was originally approved have substantially changed. Renewal of a permit shall not require public notice or hearing, unless the renewal is subject to new or modified conditions. In order to approve a renewal, the director, or planning commission as applicable, must make the findings required for initial approval. ([Ord. 1650 § 3 \(Exh. B\), 2018](#))

The recommendation before the City Council is to approve a generally applicable extension to the term of any approval covered by this section of the Municipal Code by the term of the pandemic emergency, plus 18 months. This extension would not impact the ability of any individual applicant or project proponent to pursue additional extensions, not to exceed a cumulative three years when combined with this generally applicable extension.

Building Permit Applications

Building permit applications submitted before January 1, 2020 are subject to the 2016 California Building Code (CBC). These applications are required by the CBC to be actively pursued and issued within six months of the application date. The CBC provides for the possibility of successive 90-day extensions. The recommendation before the City Council is to grant a single, one year extension to all building permit applications submitted prior to January 1, 2020, extending their potential life to December 31, 2021. This adds six months to the Council's prior action.

CBC Section 105.3.2 - An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing and justifiable cause demonstrated.

Commercial Cannabis Business Operator Permits

The City of San Luis Obispo has issued seven commercial cannabis operator permits during the past two years. Two of those permits have been activated and five have not met all of the requirements for activation. 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 extension for these permits and staff is now recommending an extension of three additional months (nine 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 other world events define this time as anything but normal. In light of the generally applicable recommended entitlement and building permit extensions discussed above, as well as the inextricable intertwined relationship between such land use entitlements and building permits and the activation requirements of a cannabis operator's permit, staff is also recommending an additional three month (nine-months total) extension on the activation of currently issued operator's permits to align with building permit extensions, due to the effects of the pandemic emergency. The relevant code section follows.

SLOMC 9.10.070.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)

Open SLO Program

Following Council's approval of the Open SLO pilot program in May of 2020, the City has successfully deployed several strategies to allow flexible use of the public right-of-way to support social distancing and economic recovery of local businesses affected by the COVID-19 pandemic. These strategies included:

1. Temporary street closures along Higuera and Monterey Street in June and July of 2020 to allow retailers and restaurants to expand services into the street right-of-way.
2. Installation of approximately 40 temporary parklets and roughly 15 new sidewalk dining permits to allow restaurants to expand services into the public right-of-way.
3. Installation of a pilot street reconfiguration project on Higuera Street between Santa Rosa and Nipomo Streets, converting one of the three auto travel lanes to a buffered bike lane to provide additional clearance between auto traffic and parklets, reduce illegal speeding within the downtown core, and improve access to the downtown for active transportation modes.
4. Activation and use of Mission Plaza for public outdoor take-out dining.
5. Temporary suspension of enforcement of off-street parking requirements, allowing businesses with private parking lots to convert outdoor parking stalls to restaurant seating or other business-supportive activities.
6. Pop-Ups and Quick-Build Street Activation projects to leverage low-cost opportunities to improve public safety and activate street space for community benefit, such as the temporary reconfiguration of Monterey Street between Chorro and Morro Streets, which included converting half the street (the eastbound direction) to outdoor restaurants space, adding a contra-flow protected bike lane to maintain connectivity for active transportation users, and installing a Public Art & Bicycle Plaza at the corner of Monterey/Morro Street to activate the public space in front of the Chamber of Commerce with street murals, landscaped planters and bicycle parking.

As part of this temporary program, the City Council approved administration of new requests for expansion of sidewalk dining, parklets, and other outdoor business services within the public right-of-way through flexible use of the City's existing Sidewalk Café encroachment permit process (established in Section 5.50 of the City Municipal Code), along with provisions for streamlined processing of encroachment permit requests, waiving encroachment permit fees, temporarily waiving enforcement of parking requirements associated with outdoor expansion of retail/restaurant uses, and streamlined review of temporary architectural and aesthetic elements of sidewalk dining and parklet areas.

The Council Resolution approving the Open SLO program (No. 11118, 2020 Series) ties the term of the program to the Governor's declaration of a state of emergency, the County Public Health Officer's declaration of a public health emergency, and the City Council's local emergency declaration. In turn, the May 22, 2020 Council Agenda Report presenting the Open SLO program identified Open SLO as a one-year pilot program with a sunset of June 2021.

The recommendation before the City Council is to grant an extension of the Open SLO temporary pilot program through the end of 2021 or 180 days following termination of the City's COVID-19 emergency declaration (whichever comes later). Attachment B includes a new resolution defining the extended term for the program, which supersedes the existing resolution (No. 11118, 2020 Series) adopting the initial Open SLO program. This extension will allow for the ongoing economic recovery of local businesses post-COVID and provide an opportunity for staff to further evaluate and formulate strategies for the potential permanent adoption of certain Open SLO strategies that may align with the City's long-term goals for economic recovery and community vitality (i.e. permanent parklet program). Staff plans to return to Council in summer of 2021 to request further policy direction with specific alternatives, design guidance and staff recommendations on the long-term potential for these strategies.

Policy Context

The proposed action is consistent with the City's Major City Goal for economic recovery and facilitates the City's sub-goal for Housing Production. Further, the recommendation will help avoid time and cost spent reviewing individual approval extension requests.

Public Engagement

This project has followed an "inform" level of public engagement. However, the City has received specific requests for this action to help preserve the value of entitlements granted by ensuring that they do not expire before they can be acted on.

CONCURRENCE

The Assistant City Manager for Community Services, Public Works Director, and the Economic Development Manager concur with this recommendation.

ENVIRONMENTAL REVIEW

The California Environmental Quality Act does not apply to the recommended action to extend entitlements because the action does not constitute a "Project" under CEQA Guidelines Sec. 15378.

The proposed action to extend the Open SLO pilot program is also 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 consistent with the State's Resilience Roadmap and County and State Guidelines in order to mitigate the COVID- 19 public health emergency.

- 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

Budgeted: No

Budget Year: N/A

Funding Identified: No

Fiscal Analysis:

Funding Sources	Current FY Cost	Annualized On-going Cost	Total Project Cost
General Fund	N/A		
State			
Federal			
Fees			
Other:			
Total			

The recommendation to extend entitlements will have no direct fiscal impact on the City. No additional funding appropriations are requested for the Open SLO program at this time; thus, the action to extend the Open SLO pilot program also has no direct fiscal impact on the City. Indirect fiscal impacts of extending the Open SLO program would include potential loss of encroachment permit fee revenues with the temporary waiver of sidewalk dining permit fees, loss of on-street parking meter revenue due to conversion of metered parking stalls to parklets, and costs associated with City staff resources committed to implementing the program. However, the extension of the life of entitlements and building permit applications, as well as the continued support for temporary expansion of restaurant operations outdoors within the public right-of-way are expected to have a positive economic effect on the community.

ALTERNATIVES

1. *The City Council can extend discretionary approvals for a different time period.* This action is not recommended because together, the tolling of approvals and the one-year extension, will provide a substantial increase in the life of all active entitlements. In the case of building permit applications, six months is the longest term enabled by the California Building Code.
2. *The City Council can decide not to extend entitlements or building permit applications.* This action is not recommended because the City Council has adopted Economic Recovery as a Major City Goal and this action is intended to be supportive of the goal.
3. *The City Council can decide not to extend the Open SLO program.* This action is not recommended because the City Council has adopted Economic Recovery as a Major City Goal and this action is intended to be supportive of the goal.

Attachments:

a - Draft Resolution (Entitlements)

b - Draft Resolution (Open SLO)

RESOLUTION NO. ____ (2021 SERIES)**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN LUIS OBISPO, CALIFORNIA, PROCLAIMING THE CONTINUING EXISTENCE OF A LOCAL EMERGENCY REGARDING THE COVID-19 PANDEMIC AND EXTENDING THE LIFE OF DISCRETIONARY APPROVALS, BUILDING PERMIT APPLICATIONS, AND CANNABIS OPERATOR PERMITS TO MITIGATE ECONOMIC IMPACTS AND AID IN ECONOMIC RECOVERY SUPERSEDING COUNCIL RESOLUTION NO. 11131 (2020 SERIES)**

WHEREAS, section 2.24.060 of the Municipal Code empowers the Emergency Services Director to request that the City Council proclaim a local emergency when the City of San Luis Obispo is affected or likely to be affected by a public calamity and the City Council proclaimed a local emergency at its regular meeting on March 17, 2020 regarding the COVID-19 pandemic and has subsequently regularly reviewed said proclamation and proclaimed the continuation of local emergency; and

WHEREAS, the Secretary of Health and Human Services Director issued a Determination that a Public Health Emergency exists and has existed as of January 27, 2020; and

WHEREAS, the President of the United States has declared a State of National Emergency; the Governor of the State of California has proclaimed a State of Emergency for the State of California and issued Executive Orders and direction regarding measures to mitigate the spread of cases of COVID-19 within the State of California; the San Luis Obispo County Emergency Services Director has proclaimed a local emergency; and the San Luis Obispo County Public Health Director has declared a public health emergency related the spread of cases of COVID-19 within the State of California and all recitals set forth therein, are included as though fully set forth herein; and

WHEREAS, on March 19, 2020, the Governor issued Executive Order N-33-20, including the Order of the State Public Health Officer mandating all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors and has issued subsequent orders permitting phased re-opening and requiring continuing measures to mitigate the spread of COVID- 19; and

WHEREAS, the City of San Luis Obispo will be required to help enforce all restrictions imposed by the State of California and by the County of San Luis Obispo acting as the health agency; and

WHEREAS, the pandemic COVID-19 continues to spread worldwide and in the U.S., continuing to present an immediate and significant risk to public health and safety, and resulting in serious illness or death to vulnerable populations, including the elderly and those with underlying health conditions and is anticipated to continue to spread in response to phased re-openings and significant heightened social interaction and group gatherings associated with recent protest activity; and

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WHEREAS, heightened levels of public health and safety planning and preparedness have been necessitated in preparation for and response to confirmed cases of COVID-19 in the County of San Luis Obispo, and rapid response not lending itself to otherwise applicable notice and approval timelines has been and will be necessary to respond to the rapidly evolving pandemic and its related, and to mitigate against the spread or resurgence of COVID-19 and its resulting mental and physical health, social, and economic impacts, compromising the public health and safety; and

WHEREAS, in the absence of such actions, an escalation of the spread remains an imminent threat and County wide health services may become overwhelmed and unable to keep up with medical demand for care and availability of hospital or care facility capacity; and

WHEREAS, the pandemic and necessary federal, state, and local public health orders requiring social distancing to prevent spread of COVID-19 have had and will continue to have devastating economic impacts on the local community, including residents, businesses, employees and City operations; and

WHEREAS, the City has instituted its Fiscal Health Contingency Plan in order to mitigate against economic impacts of emergency response costs and significant revenue reductions and has made drastic reductions to current and projected city costs through reductions in purchasing, limits on hiring, capital improvement project deferrals, and furloughs of temporary and supplemental staff; and

WHEREAS, Article 14, Section 8630, of the California Emergency Services Act requires that the City Council review the need for continuing the Local Emergency at least every sixty (60) days until such Local Emergency is terminated.

NOW, THEREFORE, BE IT PROCLAIMED AND RESOLVED by the City Council of the City of San Luis Obispo that:

SECTION 1. All recitals set forth above, and all recitals included in support of Federal, State, and County actions referenced herein, are adopted as though fully set forth herein as findings in support of this Resolution; and

SECTION 2. A local emergency continues to exist throughout the City resulting from the condition of extreme peril related to the pandemic of COVID-19, which, absent continuation of preventative measures, and in the absence of widespread vaccination, is still deemed to be beyond the control of normal protective service, personnel, equipment, and facilities of and within the City; and

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SECTION 3. Due to the severe economic impacts of COVID-19 and its economic impacts on the community and the City organization and in order to prevent situations where developers or contractors need to restart the discretionary review process or delay construction projects with the need to reapply for permits or request individual extensions and to focus limited staff resources on supporting the effective implementation of COVID-19 public health and safety compliance measures for the protection of employees and customers of businesses within the City, and enforcement of the highest priority provisions for the protection of the general health and safety of the community, the Council deems it necessary to take the following actions related to the continuing existence of a local emergency and in support of economic recovery therefrom:

1. Toll the expiration of all discretionary approvals covered by Municipal Code Section 17.104.070 from the declaration of the pandemic emergency (beginning January 27, 2020).
2. Automatically extend the life of all discretionary approvals covered by Municipal Code Section 17.104.070 by one and a half years (18 months) after the termination of the declared local emergency.
3. Automatically extend the life of all active building permits applications by one year, as authorized by California Building Code Section 105.3.2.
4. Extend the life of all commercial cannabis business operator permits by a fixed period of nine months from the original expiration date. If any operator's permit currently issued from the existing application period is not activated and expires or is deemed abandoned at the conclusion of the period specified herein, the City shall open a subsequent application period for any retail storefront permits available during which applications from any previously qualified or permitted applicant may follow the normal process to submit a new application, along with the applications of any new applicants.

SECTION 4. All existing orders of the San Luis Obispo County Emergency Services Director as currently in effect and as subsequently clarified, amended, modified or superseded by subsequent action or order of the County Emergency Services Director, the County Public Health Officer, and/or the County Board of Supervisors, are hereby expressly acknowledged and declared to be enforceable within the City of San Luis Obispo as if directly enacted by the City Council pursuant to San Luis Obispo Municipal Code Chapter 2.24 and shall be enforceable under Municipal Code 2.24.100 until such time as terminated by the issuing authority.

SECTION 5. The proclamation of local emergency shall be deemed to continue to exist until it is terminated by the City Council of the City of San Luis Obispo pursuant to a resolution adopted by the City Council of the City San Luis Obispo or its Emergency Services Director.

SECTION 6. The City has been undertaking, and will continue through cessation of this emergency to undertake, necessary measures and incur necessary and extraordinary costs, which are directly related to the prevention of the spread of the COVID-19 Virus and are taken in furtherance of: the Secretary of Health and Human Services Secretary's determination that a public health emergency has existed since January 27, 2020; City Council's Proclamation of Local Emergency on March 17, 2020 and subsequent proclamations of continuing local emergency the Governor's Proclamation of a State of Emergency on March 4, 2020; the President of the United States' Declaration of a National Emergency on March 13, 2020; the County Emergency Services Director's Proclamation of Local Emergency and the County Public Health Director's Declaration of a Public Health Emergency on March 13, 2020, and related orders, regulations and directions.

SECTION 7. During the existence of said local emergency, the powers, functions, and duties of the Emergency Services Director and the Emergency Organization of this City shall be those prescribed by state law, ordinances, and resolutions of this City and by the City of San Luis Obispo Emergency Operations Plan, notwithstanding otherwise applicable procedures, timelines or methods of action and the Emergency Services Director is expressly authorized to take any and all actions in furtherance of emergency powers to address the local emergency.

SECTION 8. This resolution supersedes Council Resolution No. 11131 (2020 Series), adopted by the City Council on June 16, 2020.

Resolution No. _____ (2021 Series)

SECTION 9. A copy of this Resolution shall be posted on all outside public access doors of City Hall of the City of San Luis Obispo and in one public place within any area of the City within which this Resolution applies and personnel of the City of San Luis Obispo shall endeavor to make copies of this order and regulation available to the news media.

Upon motion of _____, seconded by _____,
and on the following roll call vote:

AYES:

NOES:

ABSENT:

The foregoing Resolution was approved this _____ day of _____ 2021.

Mayor Heidi Harmon

ATTEST:

Teresa Purrington
City Clerk

APPROVED AS TO FORM:

J. Christine Dietrick
City Attorney

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Luis Obispo, California, on _____.

Teresa Purrington
City Clerk

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RESOLUTION NO. _____ (2021 SERIES)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN LUIS OBISPO, CALIFORNIA, APPROVING THE CITY OF SAN LUIS OBISPO OUTDOOR PUBLIC SPACE EXPANSION TEMPORARY COVID-19 BUSINESS SUPPORT AND RECOVERY PROGRAM TO FACILITATE COMPLIANCE WITH PUBLIC HEALTH ORDERS AND TO MITIGATE ECONOMIC IMPACTS BY SUPPORTING LOCAL BUSINESSES AND RESTAURANTS

WHEREAS, section 2.24.060 of the Municipal Code empowers the Emergency Services Director to request that the City Council proclaim a local emergency when the City of San Luis Obispo is affected or likely to be affected by a public calamity and the City Council proclaimed a local emergency at its regular meeting on March 17, 2020 regarding the COVID-19 pandemic and proclaimed the continuation of local emergency at its regular meetings of April 7, 2020 and May 8, 2020; and

WHEREAS, the Secretary of Health and Human Services Director issued a Determination that a Public Health Emergency exists and has existed of January 27, 2020; and

WHEREAS, the President of the United States has declared a State of National Emergency; the Governor of the State of California has proclaimed a State of Emergency for the State of California and issued Executive Orders and direction regarding measures to mitigate the spread of cases of COVID-19 within the State of California; the San Luis Obispo County Emergency Services Director has proclaimed a local emergency; and the San Luis Obispo County Public Health Director has declared a public health emergency related the spread of cases of COVID-19 within the State of California and all recitals set forth therein, are included as though fully set forth herein; and

WHEREAS, on March 18, 2020 the San Luis Obispo County Emergency Services Director issued Local Emergency Order and Regulation No. 4 providing for mandatory shelter at home regulations; and

WHEREAS, on March 19, 2020, the Governor issued Executive Order N-33-20, including the Order of the State Public Health Officer mandating all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors; and

WHEREAS, on May 4, 2020, the Governor issued Executive Order N-60-20, directing all residents of California to continue to obey State public health directives, as made available at <http://covid19.ca.gov/stay-home-except-for-essential-needs/> and elsewhere as the State Public Health Officer may provide; and

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Resolution No. _____ (2021 Series)

WHEREAS, on May 16, 2020, San Luis Obispo County Local Emergency Order and Regulation No. 4 expired by its own terms and both the County and the City of San Luis Obispo remain subject to stay at home and business operations regulation under Executive Order N-60-20, as well as County of San Luis Obispo Local Emergency Order and Regulation No. 6 COVID-19 Restricting the Use of Short-Term Lodging Facilities; and

WHEREAS, the City of San Luis Obispo will be required to help enforce all restrictions imposed by the State of California and by the County of San Luis Obispo acting as the health agency; and

WHEREAS, the County Emergency Services Director and Public Health Officer have evaluated the continuing public health threat and determined the need for continuing regulations of personal and business activities at the state level and of local short term lodging and eviction protections, as well as compliance with state orders, at the local level and to mitigate the continuing spread of the COVID-19 pandemic within the County; and

WHEREAS, the pandemic COVID-19 continues to present an present and imminent threat to public health worldwide and in the U.S., resulting in serious present illness or death or an immediate risk thereof to vulnerable populations, including the elderly and those with underlying health conditions; and

WHEREAS, heightened levels of public health and safety planning and preparedness have been necessitated in preparation for and response to confirmed cases of COVID-19 in the County of San Luis Obispo, and rapid response not lending itself to otherwise applicable notice and approval timelines has been and will be necessary to respond to the rapidly evolving pandemic and its related, significant economic impacts, and to mitigate against the spread or resurgence of COVID-19 and its resulting mental and physical health, social, and economic impacts, compromising the public health and safety; and

WHEREAS, in the absence of such actions, an escalation of the spread remains an imminent threat; and

WHEREAS, the pandemic and necessary federal, state, and local public health orders requiring social distancing to prevent spread of COVID-19 have had and will continue to have devastating economic impacts on the local community, including residents, businesses, employees and City operations; and

WHEREAS, the City has instituted its Fiscal Health Contingency Plan in order to mitigate against economic impacts of emergency response costs and significant revenue reductions and has made drastic reductions to current and projected city costs through reductions in purchasing, limits on hiring, and furloughs of temporary and supplemental staff; and

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WHEREAS, due to the severe economic impacts of COVID-19 and its economic impacts on the community and the City organization, the Council deems it necessary to suspend enforcement of certain provisions of the City of San Luis Obispo Municipal Code specified below to support social distancing requirements, effective public communication related to rapidly transitioning business re-opening status, and economic viability of businesses in adhering to permitted opening and social distancing requirements; and

WHEREAS, Article 14, Section 8630, of the California Emergency Services Act requires that the City Council review the need for continuing the Local Emergency at least every sixty (60) days until such Local Emergency is terminated; and

WHEREAS, the below measures are intended to provide economic relief to businesses that are experiencing economic uncertainty while complying with State and County Orders. Accordingly, the City will facilitate a temporary “pilot” program, which will include the development and implementation of a plan to use the right-of-way, sidewalks and streets to help maintain social distancing during the first few phases (stages) of reopening consistent with the State’s Resilience Roadmap and continued economic support of businesses for uses such as walking space, outdoor dining, and pick-up/delivery areas. The program would provide for residents to receive the health and wellness benefits of being outdoors and support businesses with enough space to safely physically distance.

WHEREAS, the program is established for the purpose of supporting and facilitating the recovery of business and economic activity in the City by expanding the spaces available for the safe conduct of such activities for City businesses and their customers and patrons to create more physical distance for pedestrians and business patrons to maintain physical distancing; and nothing herein is intended to nor shall be deemed to create open gathering places or public fora unrelated to the intended business support and recovery purpose

WHEREAS, time is of the essence to quickly implement a program to allow for safe physical distancing consistent with the State’s Resilience Roadmap and County Guidelines in order to address both public health and economic impacts of COVID-19, as residents have been primarily indoors since the initiation of the State and County Orders, this will be a dynamic temporary program, receiving input from the City Council, and shall be subject to administrative modification by the City, as authorized herein, as necessary in response to emerging issues or concerns of public, health, safety or convenience.

NOW, THEREFORE, BE IT PROCLAIMED AND RESOLVED by the City Council of the City of San Luis Obispo that:

SECTION 1. All recitals set forth above, and all recitals included in support of Federal, State, and County actions referenced herein, are adopted as though fully set forth herein as findings in support of this Resolution and, after considering all such findings and current local circumstances the Council hereby declares the continuing existence of a local emergency related to the continued threat of COVID-19 as it relates to public health and economic impacts; and

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SECTION 2. City of San Luis Obispo Outdoor Public Space Program (OPEN SLO).

In order to support the re-opening of restaurants and other businesses in accordance with the State Executive Order N-60-20, the City Council hereby directs and authorizes the City Manager to implement the OPEN SLO program, which shall include the following six strategies that may be used independently or in combination, along with continued implementation of the Sidewalk Dining Ordinance, as outlined below:

A. Six Strategies Identified in the OPEN SLO Pilot Program:

1. Changes to traffic flow, including “Quick-build” improvements toward alignment with the Downtown Concept Plan.
2. Short-term street closures, including short-term road closures in the Downtown and in other areas of the City to facilitate safely distanced pedestrian circulation, expanded outdoor dining, and customer queuing, pickup and waiting areas associated with permitted business activities.
3. Conversion of selected on-street parking spaces to outdoor dining space or other pedestrian uses (parklets), with consideration for at least one installation outside of the downtown; use of the parklet may include:
 - i. Public sidewalk. No improvements other than rail and aesthetic treatments, to create space for safely distanced pedestrian movement and customer queuing, pickup, and waiting areas associated with permitted business activities.
 - ii. Table and Chair. Utilized by one or more businesses under the City’s “Table & Chair” permit process and designated for exclusive use of the business, which may include appropriate signage.
 1. Appropriate signage means no more than 15 square feet per outdoor area.
 - iii. Sidewalk Café. Designated parklet for exclusive use by one business under the City’s Sidewalk Café permit process.
4. Use of private and public parking lots for expansion of commercial uses. Enforcement of current off-street parking requirements would be temporarily suspended so that selected spaces in private parking lots could be converted to seating or expanded retail space. The City could also permit use of spaces in public parking lots through the Sidewalk Cafes Ordinance.
5. Conversion of Mission Plaza at set days and times for community and economic recovery support uses, including tables and chairs for ‘to-go’ dining, space for outdoor retail booths, art and culture pop-ups, which may include the closure of the Broad Street ‘dog-leg’ and/or sections of Monterey Street.
6. Pop-ups to encourage and support additional ideas for outdoor space such as:
 - i. Develop guidelines and allow use of parts of the sidewalk for signage, merchandise and queueing, where adequate sidewalk width exists consistent with disabled access requirements and public safety.
 - ii. Develop guidelines and allow for pavement painting and planter box projects initiated by neighborhoods to slow traffic, create painted bulb-outs or other pedestrian-friendly adaptations.
 - iii. Support ‘traveling’ arts and culture events where exhibits or exhibitions are allowed on public spaces for visitors to stroll by.

- iv. Have designated staff available and a clear process to streamline review and approval of uses to ensure conformity with access and public health and safety regulations.
- B. Support Expansion of Sidewalk Dining in Support of Social Distancing through application of the existing Sidewalk Dining Ordinance. For purposes of the temporary program support and only for such period of time as such temporary program remains in effect the following Sections of Chapter 5.50, Sidewalk Cafes, of the Municipal Code shall be interpreted and applied as follows:

5.50.015: Permits Required.

The encroachment permit process shall be used for the purpose of evaluating, establishing conditions applicable to, and approving all requests for revocable sidewalk cafés permits, and tables and chairs permits, while the temporary program is in place.

5.50.020: Architectural review.

The Community Development Director shall use discretion conferred by this section to process permit requests without a separate application for architectural review and without public notice as may be otherwise specified by section 5.50.035 or other City policy, unless required by state law.

5.50.030: Fees.

Fees associated with administrative approval of permits under this chapter for permits shall be suspended while the temporary program is in place.

5.50.045.C: Required Operational Standards (Parking).

No additional parking will be required for permits approved under this chapter while the temporary program is in place.

5.50.045.G: (Umbrellas, Awnings and street furniture)

Community Development Director may allow great flexibility with respect to the design and appearance of outdoor furniture and barriers, consistent with standards for the protection of public health and safety and subject to the approval of the City Engineer.

5.50.050.A: Terms and expiration.

Sidewalk café permits approved while the temporary program is in place will not be approved for an unlimited term and shall specify an automatic expiration date, unless subsequently renewed.

5.50.060.A: Revocation or Suspension of Permit

The City retains the right to revoke or suspend the permit upon twenty-four hours' notice to the sidewalk café operator for any cause, regardless of conformance with the provisions of the Sidewalk Dining Ordinance.

17.70.100.F.1: Lighting and Night Sky Preservation Exemptions

Low-intensity outdoor lighting fixtures used for architectural decoration may be installed without Architectural Review, provided it shall not otherwise create a nuisance or hazard for passing motorists, pedestrians, cyclists or other modes of transportation, subject to the approval of the City Engineer.

SECTION 3. No facility, structure or improvement may be erected, constructed or placed in the City Right of Way without the express written approval of the City Engineer and nothing herein is intended to or shall be interpreted to convey any vested right in or to the continued use or occupation of public or private property permitted, allowed or suffered by the City pursuant to the temporary program herein.

SECTION 4. Continuing Enforcement of Conditions or Activities Posing a Threat to Public Health, Safety or Welfare; Continued Enforcement of Permit Requirements for Electrical, Plumbing, or Structural Components or Appurtenances and Encroachments into Public Right of Way. Nothing herein is intended to or shall be deemed to relieve any person from the obligation to obtain, or prohibit code enforcement for failure to obtain, any permits that would otherwise be required under state law, the San Luis Obispo Municipal Code, or building and safety codes adopted thereunder, including but not limited to:

- A. Permits otherwise required for electrical, plumbing, or structural work performed within the City.
- B. Encroachment permits required for structures, uses and/or activities within the public right of way, which may be issued at no cost by the City to facilitate physical distancing and the reopening of businesses.

Further, nothing herein is intended to or shall permit or allow the erection or placement of any permanent or temporary structure or improvement, on public or private property in violation of any state or federal accessibility law, including the Americans With Disabilities Act, or to prohibit or suspend code enforcement action deemed necessary by the Chief Building Official, the City Engineer or any other authorized enforcement official of the City, to remedy or abate: a dangerous condition or activity; any activity presenting an imminent threat of harm to the health, safety or welfare of the community; any violation of state or federal accessibility law; or any unauthorized activity on private property or in the public right of way.

SECTION 5. Environmental Review. As a result of the COVID-19 public health emergency, the City of San Luis Obispo proposes a temporary program to use the right-of-way, sidewalks and streets to help maintain social distancing during the first few phases (stages) of reopening consistent with the State's Resilience Roadmap and provide for residents to receive the health and wellness benefits of being outdoors and support businesses with enough space to safely physically distance. The proposed project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) as followed:

- 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 consistent with the State's Resilience Roadmap and County and State Guidelines in order to mitigate the COVID-19 public health emergency.
- 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.

SECTION 6. Notwithstanding any other City policy or procedure, the City Engineer shall be authorized to review and approve on behalf of the City any and all design and construction necessary as part of the temporary program herein and the City Manager shall be authorized to allow and accept on behalf of the City any and all donations of time, materials, labor, professional services and/or funds in support of the temporary program herein without further action of the City Council.

SECTION 7. All current and prior emergency and public health orders as currently enacted and in effect, or as subsequently amended or modified, issued by the Governor, the State or County Public Health Official or the City or County Emergency Services Director are expressly adopted and shall be enforceable as if directly enacted by the City Council pursuant to Chapter 2.24 of the San Luis Obispo Municipal Code.

Resolution No. _____ (2021 Series)

SECTION 8. This resolution supersedes Council Resolution No. 11118 (2020 Series), adopted by the City Council on May 22, 2020, and extends the term of the OPEN SLO program through the end of 2021 or 180 days following termination of the City's emergency declaration, whichever comes later.

SECTION 9. A copy of this Resolution shall be posted on all outside public access doors of City Hall of the City of San Luis Obispo and in one public place within any area of the City within which this Resolution applies and personnel of the City of San Luis Obispo shall endeavor to make copies of this order and regulation available to the news media.

Upon motion of _____, seconded by _____, and on the following roll call vote:

AYES:

NOES:

ABSENT:

The foregoing Resolution was approved this ____ day of _____ 2021.

Mayor Heidi Harmon

ATTEST:

Teresa Purrington
City Clerk

APPROVED AS TO FORM:

J. Christine Dietrick
City Attorney

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Luis Obispo, California, on _____.

Teresa Purrington, City Clerk

R _____