



Department: Attorney
Cost Center: 1002
For Agenda of: 7/6/2021
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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

RESOLUTION NO. _____ (2021 SERIES)

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

WHEREAS, on March 4, 2020, the Governor proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS, on March 17, 2020, the City Council adopted Resolution 11099 proclaiming a local emergency and has thereafter affirmed and continued its proclamation of local emergency to extend through the duration of the declared State and/or County proclamations of emergency; and

WHEREAS, since March 2020, the State of California and both the City and County of San Luis Obispo have taken a series of actions to reduce the spread, and mitigate the impacts, of COVID-19, limiting harm and loss of life in our community; and

WHEREAS, as a result of the effective actions taken, as well as the successful and ongoing distribution of COVID-19 vaccines, California is turning a corner in its fight against COVID-19 and cases and hospitalization rates in San Luis Obispo are continuing a relatively low trend at present; and

WHEREAS, on June 11, 2021, the Governor of the State of California issued Executive Order N-07-21, which formally rescinded the Stay-at-Home Order (Executive Order N-33-20, issued on March 19, 2020), as well as the framework for a gradual, risk-based reopening of the economy (Executive Order N-60-20, issued on May 4, 2020); and

WHEREAS, in light of the current state of the COVID-19 pandemic in California, the State has rolled back certain provisions of the Governor's COVID-19-related Executive Orders; and

WHEREAS, certain provisions of those COVID-19 related Executive Orders have been deemed to remain necessary to continue to help California respond to, recover from, and mitigate the impacts of the COVID-19 pandemic, and the City intends to align and act in accordance with those continuing COVID-19 related Executive Orders to the extent applicable to the City's operations in order to maintain clarity and consistency for the public; and

WHEREAS, the City has, through its emergency and general police powers, implemented various programs to support the safe conduct of business and leisure activities in the City and to facilitate the economic recovery of the community and its residents from the impacts of COVID-19;

WHEREAS, the City Council finds that COVID-19 presents a continuing threat to the health and economic wellbeing of the residents of San Luis Obispo because the Country, State, City and County have not yet reached optimal vaccination rates to fully protect against community spread of COVID-19, variants are emerging in the State and the likelihood of spread remains a concern as we enter the Fall and Winter months; and the City Council further finds that continuation of certain of those programs enacted pursuant to its emergency authority remain important to advance the health, safety and welfare of San Luis Obispo, mitigate the continuing risks and effects of the COVID-19 pandemic, and support economic recovery.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of San Luis Obispo as follows:

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. There is a continuing emergency related to the pandemic COVID-19 as declared by the Governor of the State of California via Executive Order N-08-21 and the City Council finds that a concurrent local emergency continues to exist in the City resulting from continuing low level case and hospitalization rates related to the pandemic of COVID- 19, and vaccination rates that are not at levels to achieve “herd immunity” to protect against the peril of increased spread related to emerging variants and the potential for a seasonal spike in the Fall and Winter, which, absent continuation of preventative measures, and in the absence of widespread vaccination, is still deemed to present an imminent threat beyond the control of normal protective service, personnel, equipment, and facilities of and within the City; and

SECTION 3. Partial termination of Safety Enhancement Zone. The Citywide Safety Enhancement Zone previously declared pursuant to Resolution 11106 (2020 Series) for all Municipal Code violations specified in Section 9.22.020B is hereby terminated and the penalty for such violations shall be as otherwise provided by the Municipal Code and related Administrative Guidelines; except 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, as expressly set forth by ordinance in Section 9.22.020B of the Municipal Code, and nothing herein shall be interpreted to suspend or otherwise affect enforcement or penalties consistent therewith.

SECTION 4. Cannabis Business Operator Permit Extensions. Due to the severe economic impacts of COVID-19 and its impacts on scheduling, inspection and construction of projects in the City, and in order to prevent situations where cannabis operators must restart the discretionary review process and further delay the opening of previously approved businesses due to the need to reapply for permits or request individual extensions, and to prevent unnecessary distraction of staff focus and resources away from continued support of COVID-19 recovery and continued public health and safety compliance measures to prevent the resurgence of COVID-19 within the City, the Council deems it in the best interest of public health and safety to suspend enforcement of Section 9.10.070 D of the Municipal Code and reaffirm and continue certain prior actions taken related to the continuing existence of a local emergency and economic recovery as set forth in Resolution 11231 (2020 Series), as follows:

- A. Extend the life of all currently issued commercial cannabis business operator permits by a fixed period of twelve months from the original expiration date. If any operator's permit currently issued is not activated and expires or is deemed abandoned at the conclusion of the extension period specified herein, the City shall open a subsequent application period for any retail storefront permits made available as the result of the expiration or abandonment, during which any previously permitted applicant may follow the established process to submit a new application, which shall be evaluated at the same time and in accordance with the same process for the applications of any new applicants who may submit applications during the open application period.

SECTION 5. Continuation of OPEN SLO Pilot Program. In order to support the continued safe re-opening of restaurants and other businesses in a manner that will facilitate ongoing outdoor alternatives while vaccination efforts continue, variants emerge and fall and winter approach, presenting an increased risk of resurgence of COVID-19 spread, the City Council hereby directs and authorizes the City Manager to continue the OPEN SLO program at least until the termination of the proclamation of local emergency and for such additional period of time, not to exceed one year from the termination of the proclamation of local emergency, as is necessary to accomplish a safe and orderly transition to preexisting regulations and/or the implementation of revised long term programs to support emergency resiliency and economic recovery. Temporary programs expressly authorized herein 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 (meaning 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. Temporary use of private and public parking lots for expansion of commercial uses. The City Manager is authorized to suspend current off-street parking in order to permit selected spaces in private parking lots to 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. Any program recommended for implementation that includes permanent or long-term use of public property shall include an appropriate fee schedule related to the use for recommendation for Council approval.

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, Festoon Lighting and Street Furniture)

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

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

For the duration of the temporary program, 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 or festoon 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 and/or Building Official.
- C. Upon recommendation by the Community Development Director, the City Manager may authorize suspension of enforcement of certain regulations as set forth below to facilitate the operation of the temporary program, solely for the duration of the temporary program:
1. Sign Regulations
 - a. Sections 15.40.200 (Exempt Signs), subsections H (Temporary Window Signs) and
 - b. L (Temporary Signs in Non-Residential zones).
 - c. Section 15.40.470 (Sign Standards by Sign Type), subsection I. [A-Frame (Sandwich Board) Signs].
 - d. For the time period specified above, any permitting requirements for the types of
 - e. Signs specified in this Resolution, as set forth in Section 15.40.500 of the Sign Regulations herein also may be suspended.
- D. Parking Regulations (as to uses and activities on private properties only)
- a. Section 17.72.020 A (Requirements by Type of Use)
 - b. Section 17.72.020 C (Parking Calculations), as applied to existing uses only, and only to expressly exclude any temporary use of space on private property for safe outdoor use purposes during the period of suspension from parking calculations requirements for the property.
- E. 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.
- F. 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:
1. Permits otherwise required for electrical, plumbing, or structural work performed within the City.

2. 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.
- G. 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.
 - H. 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 6. Extension of discretionary approvals and building permit applications. Due to the severe economic impacts of COVID-19 and its impacts on scheduling, inspection and construction of projects in the City, and in order to prevent situations where developers or contractors need to restart the discretionary review process or delay previously approved construction projects due to the need to reapply for permits or request individual extensions, and to prevent unnecessary distraction of staff focus and resources away from continued support of COVID-19 recovery and continued public health and safety compliance measures to prevent the resurgence of COVID-19 within the City, the Council finds it in the best interest of public health and safety and hereby reaffirms and continues certain prior actions taken related to the continuing existence of a local emergency and economic recovery as set forth in Resolution 11232 (2021 Series), as follows:

- A. 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) until the termination of local emergency proclamations.

- B. Automatically extend the life of all discretionary approvals existing as of the date of the termination of the local emergency and covered by Municipal Code Section 17.104.070 by an additional one and a half years (18 months) after the termination of the declared local emergency.
- C. Automatically extend the life of all active building permit applications by one year, as authorized by California Building Code Section 105.3.2.

SECTION 7. Continued Suspension of Safe Parking Requirements

Expansion. Pursuant to the City's authority under California Constitution Article XI, Section 7 to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations necessary for the protection of the City; the City of San Luis Obispo Charter; and Chapter 2.24 of the San Luis Obispo Municipal Code, the City Council hereby directs the extension of emergency measures as follows to support and facilitate the expansion of safe parking facilities for unhoused persons in order to minimize exposure to the elements and risks of transmission of COVID-19 and protect the public health, safety, welfare and economic security of the citizens of San Luis Obispo:

- A. **Requirements Suspended.** Any and all provisions of the San Luis Obispo Municipal Code, Chapter 17.86, and any and all provisions of any other currently applicable code provision or use permit, entitlement or contract issued to any current homeless or supportive services provider permitted by or contracted with the City of San Luis Obispo, are hereby suspended to the extent that such provisions would otherwise limit or prevent the expansion by such party of safe parking facilities within the City, until 180 days following the end of the declared City, County and State emergency declarations, or such other time as may be determined by order of the Emergency Services Director or City Council, subject to the requirements and restrictions set forth herein
- B. **Requirements for the temporary expansion of the 40 Prado Road Safe Parking Program (City Conditional Use Permit #USE-0413-2014).**
 - 1. The Community Development Director is hereby authorized, upon written request, to administratively allow for the temporary expansion of the existing permitted operation for Safe Parking located at 40 Prado Road at that location or at any other location authorized by the City Manager within the City of San Luis Obispo if the Community Development Director determines that the expansion is consistent with the purpose and intent of San Luis Obispo Municipal Code Section 17.86.230.
 - 2. If the operators of Safe Parking at 40 Prado Road wish to maintain the establishment or expansion of a Safe Parking location after the period authorized by this Resolution, any such operator shall submit the appropriate Planning Application to the Community Development Department for processing in accordance with otherwise applicable city regulations for issuance of a use permit or modification to an existing permit. Any limitations or new conditions of approval that result from the review process shall be implemented following approval of the permit modification.

C. Requirements for the establishment of new Safe Parking locations.

1. The Community Development Director is hereby authorized to immediately allow for the establishment and operation of new Safe Parking locations by the City and/or third party non-profit partner, upon submittal of a complete Planning Application for a Conditional Use Permit demonstrating compliance with the performance standards required by SLOMC Section 17.86.230.E.I as may be required to normally establish Safe Parking at the proposed location.
2. The Community Development Department will process the new application through the normal course of review for the permit application submitted. Upon approval of the Safe Parking permit, all conditions of approval shall be applied to the use. If a Conditional Use Permit is not approved within 120 days of the date of the application, then the Safe Parking use shall cease.

D. Operations in violation. In the event that the Safe Parking site is operated in violation of any requirement established for the temporary operation and such violation is not remedied as directed by the City, the Community Development Director may notify the operator in writing that the temporary operation authorization is terminated; and, upon receipt of said notice, the operator shall terminate operations and return the site to its original condition within 10 days of receipt of said notice.

SECTION 8. Financial Management Authority. The authority granted to the City Manager by Resolution No. 11117 (2020 Series) to use FY 2018-19 Unassigned Fund Balance above required reserve levels is hereby ended and practices shall be conducted in accordance with generally applicable financial policies upon adoption of the Resolution.

SECTION 9. All existing orders of the State Public Health Officer, the Governor, the San Luis Obispo County Emergency Services Director, Public Health Officer, and the County Board of Supervisors as currently in effect and as subsequently clarified, amended, modified or superseded by subsequent action of any of those parties 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 any such order(s) is terminated by the issuing authority.

SECTION 10. The City's 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 but shall continue at least until such time as the State proclamation of emergency is terminated by the Governor.

SECTION 11. 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' determination that a public health emergency has existed since January 27, 2020; the Governor's Proclamation of a State of Emergency for the State of California on March 4, 2020; the President of the United States' Declaration of a National Emergency on March 13, 2020; the County of San Luis Obispo 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; the City Council's Proclamation of Local Emergency on March 17, 2020 and subsequent proclamations of continuing local emergency and related orders, regulations and directives of each of those parties.

SECTION 12. 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 13. This resolution supersedes all prior Council Emergency Resolutions and Emergency Services Proclamations related to the COVID-19 pandemic adopted by the City Council between March 16, 2021, and the date of this resolution.

SECTION 14. 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 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.

SECTION 15. A copy of this Resolution shall be posted in the kiosk outside of City Hall of the City of San Luis Obispo and on the outside doors of the City Clerk's office 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 Council Member _____, seconded by Council Member _____, and on the following roll call vote:

- AYES:
- NOES:
- ABSENT:

The foregoing resolution was adopted 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 _____