DECLARATION OF THE DIRECTOR OF
EMERGENCY SERVICES OF THE CITY OF
SAN JOSE SUSPENDING ENFORCEMENT
OF CERTAIN PROVISIONS IN LAND USE
PERMITS AND APPROVALS AND ZONING
AND SPECIAL USE PERMIT
REQUIREMENTS IN THE SAN JOSE
MUNICIPAL CODE

WHEREAS, on March 10, 2020, the City Council of the City of San José (“City”) ratified
the Director of Emergency Service’s Proclamation of Local Emergency due to the
outbreak of a novel coronavirus in the City; and

WHEREAS, pursuant to California Government Code Section 8634 and San José
Municipal Code Section 8.08.250, I am empowered upon the proclamation of a local
emergency to make and issue rules and regulations on matters reasonably related to the
protection of life and property as affected by such emergency; and

WHEREAS, on March 31, 2020, the Health Officer of Santa Clara County issued an Order
directing all individuals to continue to shelter in place and requiring essential business to
implement a Social Distancing Protocol; and

WHEREAS, on May 18, 2020, the Health Officer of the County of Santa Clara issued a
further Order continuing the Social Distance Protocol but allowing retailers to open with
curbside/outdoor pick up, supply chains for retail establishments to reopen, and certain
outdoor activities to resume; and

WHEREAS, on June 1, 2020, the Health Officer of the County of Santa Clara issued a
further Order effective June 5, 2020 continuing the Social Distance Protocol but allowing
certain additional businesses to resume operations, including outdoor dining at
restaurants, in-store shopping at retail and shopping centers and limited services that do
not require customer contact, subject to limitations; and

WHEREAS, on July 2, 2020, the Health Officer of the County of Santa Clara issued a
further Order effective on the later of (1) 12:01 a.m. on July 13, 2020 or (2) 12:01 am two
days following approval by the State Department of Public Health of a “variance” under
the State’s “Resilience Roadmap” as described at covid19.ca.gov, which updated the
Social Distance Protocol and allowed certain additional businesses to resume operations,
subject to limitations; and

WHEREAS, on July 13, 2020, the California State Public Health Officer issued an order
that, amongst other things: (1) required a number of businesses statewide to immediately
cease indoor operations, (2) required certain additional businesses in Santa Clara County
to cease indoor operations effective July 15, 2020, and (3) allowed businesses to modify operations to provide outdoor services; and

WHEREAS, provisions in land use permits and planning approvals issued by the City and/or provisions in the San José Zoning Code prohibit the use of outdoor property to conduct business activities without first obtaining the City’s authorization through specified application processes; and

WHEREAS, Title 13 of the San José Municipal Code prohibits exclusive special uses of public parks and plazas without first obtaining a permit from the City through specified application processes and paying applicable fees established by the City Council; and

WHEREAS, to ensure compliance with the County Social Distancing Protocol, businesses need outdoor areas to serve customers; and

WHEREAS, under conditions of the emergency and in the interest of public health and safety, it is deemed necessary to suspend enforcement of certain provisions in land use permits and planning approvals issued by the City and certain provisions in the San José Municipal Code; and

WHEREAS, life and property are deemed to be in peril and speed is of the essence.

NOW, THEREFORE, BE IT RESOLVED, I, David Sykes, as Director of Emergency Services, declare that the City shall, subject to the conditions and limitations contained in Exhibit A hereto, which are incorporated herein and shall constitute part of this regulation, suspend enforcement of provisions contained in land use permits or other planning approvals and the provisions of the San José Municipal Code, including, without limitation, those contained in Titles 13 and 20, that are in conflict with the terms of this regulation. This regulation shall apply only to businesses operating from a building within the City; mobile businesses of any type are not covered by this regulation. Except as expressly exempted herein, businesses shall continue to comply with all other requirements in their approved land use permits or other planning approvals and applicable City, County, State and Federal laws, orders and regulations, including, without limitation, Orders from the County of Santa Clara Health Officer, the California Retail Food Code, the California Alcoholic Beverage Control Act and regulations and notices issued by the Department of Alcoholic Beverage Control (ABC), the San José Fire Code, the San José Building Code and the Americans with Disabilities Act (ADA); and

BE IT FURTHER RESOLVED that this regulation shall become effective as of 12:01 a.m. on August 5, 2020 and remain in effect until December 31, 2020, such time as it is terminated or modified by the City Council or the termination of the local state of emergency, whichever occurs first; and
BE IT FURTHER RESOLVED, any violation of this regulation shall be subject to enforcement and penalty as provided under San José Municipal Code Section 8.08.260.

8/5/20 ______________________
Date

________________________
David Sykes
Director of Emergency Services
EXHIBIT A
CONDITIONS AND LIMITATIONS FOR USE OF PUBLIC PARKS AND PLAZAS

Specified Education and Training, Entertainment and Recreation and Food Service businesses may conduct permitted business activities outdoors in public parks and public plazas in the vicinity of their property, subject to the following conditions and limitations.

1. LOCATION OF USE
For purposes of this regulation, “Plaza” shall mean any one of Fountain Alley, Theatre Plaza, the Circle of Palms and Parque de los Pobladores, and “Park” shall have the meaning set forth in Section 13.14.136 of the San José Municipal Code. The City shall designate which Parks are eligible for business use under this regulation. The City may change the list of Parks and Plazas subject to this regulation at its discretion. The location of business use under this regulation shall be determined in accordance with the Park and Plaza Regulations and as follows:
   a. A public eating establishment may only conduct operations in a Plaza or Park in the Downtown Core if its business is adjacent to the requested Plaza or Park. All other eligible businesses may conduct operations in a Park or Plaza in the Downtown Core if the business is located within a one quarter (1/4) mile of the requested Park or Plaza.
   b. A business may request to use a Park anywhere outside the Downtown Core only if the business is located within three (3) miles of the requested Park.
   c. No more than twenty-five percent (25%) of the total area of a Park shall be permitted for outdoor business under this regulation.
   d. The entirety of any Plaza or Park in the Downtown Core may be permitted for outdoor business under this regulation, subject to any limitations contained in this regulation, the Park and Plaza Regulations or in a businesses’ permit.
   e. The City shall not permit the use of any areas within a Park that are located within fifty feet (50’) of any residential property.

2. ELIGIBLE BUSINESSES
The only businesses eligible to use a Park or Plaza under this regulation shall be those (1) allowed to operate under the Health Orders of Santa Clara County, as amended, and (2) with any of the following zoning designations as identified in Table 20-90 of the City’s Zoning Code:
   a. Any uses within the category Education and Training, except School, driving (Class C & M license);
b. Health club, gymnasium, Performing arts rehearsal space and Recreation, commercial indoor uses only within the category Entertainment and Recreation; and

c. Any of the Public eating establishment uses within the category Food Services.

3. LIMITATIONS ON PERMITTED OPERATIONS
   a. All permits issued pursuant to this regulation shall be subject to and in accordance with the Park and Plaza Regulations adopted pursuant to this regulation by the Director of Parks, Recreation and Neighborhood Services and the Director of Cultural Affairs and posted to the City’s website.
   b. The Park and Plaza regulations shall address location criteria, allowed and prohibited uses, hours of operation and other requirements.

4. OTHER REQUIREMENTS
   a. Each business shall obtain a permit from the City prior to operating within a Park or Plaza. Each business shall be subject to all requirements contained in its permit. The City shall review applications and issue permits based on the criteria set forth in this regulation and the Park and Plaza Regulations.
   b. Permits for Parks and Plazas under this regulation shall be issued on a first-come, first-served basis, subject to availability and in accordance with the following:
      i. Permits may allow business use of a location within a Park or Plaza for a maximum of twenty-one (21) consecutive calendar days, each day allowing up to eight (8) hours of business use. Permittees shall be allowed to have only one active permit under this regulation at any time.
      ii. Permittees may submit renewal requests to the City no earlier than seven (7) calendar days prior to the expiration of their active permit. A Permittee may request to renew its permit for the same location or a different location, subject to availability.
   c. This regulation shall not supersede permits or authorizations from the City for existing uses of Parks or Plazas, which shall remain in full force and effect. Businesses operating in a Park or Plaza pursuant to this regulation shall suspend or modify operations, as necessary, to accommodate a special event for the same location that is permitted pursuant to the City’s Municipal Code.

5. APPLICATION PROCESS
   Eligible businesses shall apply online for a permit under this regulation in accordance with the following:
   a. Each business shall submit an application through the City’s website to use a Park or Plaza. The application shall require that businesses provide information about its business and the activities it plans to conduct in the
requested Park or Plaza and provide the City with proof of insurance meeting the requirements set forth on the application website. There shall be no application, approval or use fees.

b. If the City determines that the applicant is an eligible business and the permitted use is consistent with this regulation, the City will contact the business to notify it that its application has been approved or conditionally approved and discuss next steps.

c. All businesses shall be required to provide the City with a cleaning and damage deposit of $250 prior to the issuance of a permit under this regulation for use of a Park. No such deposit shall be required for the use of a Plaza under this regulation.

6. ADMINISTRATION

The provisions relating to Plazas in this Exhibit A shall be under the administration of the Office of Cultural Affairs. The provisions relating to Parks in this Exhibit A shall be under the administration of the Department of Parks, Recreation, and Neighborhood Services.