



Town Council Agenda Report

Date: July 14, 2020 Item No. 10

To: Honorable Mayor and Town Council

Subject: CONFIRM THE TOWN MANAGER'S EMERGENCY EXECUTIVE ORDER NO. 2020-03, RELATING TO OUTDOOR DINING, PURSUANT TO APPLE VALLEY MUNICIPAL CODE SECTION 2.40.060.A(6)(a)

From: Douglas Robertson, Town Manager

Submitted by: Douglas Robertson, Town Manager

Budgeted Item: Yes No N/A

RECOMMENDED ACTION:

Staff recommends that the Town Council confirm the Town Manager's Emergency Executive Order No. 2020-03, relating to outdoor dining, pursuant to Apple Valley Municipal Code Section 2.40.060.A(6)(a).

BACKGROUND:

On March 21, 2020, the Town Manager, in accordance with Section 2.40.060.A(1) of the Apple Valley Municipal Code, issued Proclamation No. 2020-01 proclaiming the existence of a local emergency relating to the worldwide spread of respiratory illness due to the novel coronavirus known as COVID-19. On March 24, 2020, the Town Council adopted Resolution No. 2020-10, ratifying Proclamation No. 2020-01 and declaring a local emergency.

During the pendency of the emergency, the Town Manager as the Director of Emergency Services has the power to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency.

Thus far, the Town Manager has issued three executive orders in accordance with that authority: (1) Executive Order No. 2020-01, dated March 24, 2020, which enacted a temporary moratorium on evictions for non-payment of rent by residential and

commercial tenants impacted by COVID-19; (2) Executive Order No. 2020-02, dated March 27, 2020, which implemented restrictions on stores selling essential products in large quantities to members of single households; and (3) Executive Order No. 2020-03, dated July 4, 2020, which implemented temporary outdoor dining guidelines.

Executive Order No. 3 was issued by the Town Manager in response to the Governor's issuance, on July 1, of "Guidance on Closure of Sectors in Response to COVID-19," which required the closure of indoor dine-in restaurants within the County of San Bernardino. Executive Order No. 3 attempts to mitigate the potentially catastrophic effects of complete closure of local restaurants by permitting the creation of temporary outdoor dining spaces. It provides flexibility for restaurants seeking to cater to their patrons and provides both residents and visitors with safe access to the Town's excellent dining establishments.

On April 15, 2020, the Town Council confirmed Executive Order Nos. 2020-01 and 2020-02.

DISCUSSION:

In accordance with Apple Valley Municipal Code Section 2.40.060.A(6)(a), executive orders must be confirmed by the Town Council at the earliest practicable time in order to remain valid. The proposed action will confirm Executive Order No. 2020-03 and permit it to remain in effect until the earlier to occur of: (1) the conclusion of the local emergency; (2) the termination of the order by the Town Manager acting as the Director of Emergency Services; or (3) the termination of the order by the Town Council

FISCAL IMPACT:

None.

CONCLUSION:

Staff recommends the Town Council confirm the Town Manager's Emergency Executive Order No. 2020-03 pursuant to Apple Valley Municipal Code Section 2.40.060.A(6)(a).

ATTACHMENTS:

Executive Order No. 2020-03

**APPLE VALLEY
DIRECTOR OF EMERGENCY SERVICES**

EXECUTIVE ORDER NO. 2020-03

**EMERGENCY EXECUTIVE ORDER OF THE TOWN
MANAGER/DIRECTOR OF EMERGENCY SERVICES OF
THE TOWN OF APPLE VALLEY, CALIFORNIA,
IMPLEMENTING TEMPORARY OUTDOOR DINING
GUIDELINES**

WHEREAS, conditions of extreme peril to the safety of persons and property have arisen within the Town of Apple Valley caused by the worldwide spread of respiratory illness due to the novel coronavirus known as COVID-19; and

WHEREAS, the federal government, the State of California, and the County of San Bernardino have declared emergencies as a result of the spread of COVID-19; and

WHEREAS, on March 19, 2020, California Governor Gavin Newsom issued a stay-at-home order to protect the well-being of all Californians and to establish consistency across the state in order to slow the spread of COVID-19; and

WHEREAS, on March 20, 2020, in my capacity as Director of Emergency Services, I proclaimed the existence of a local emergency in the Town of Apple Valley ("Town") in connection with the global pandemic caused by the spread of a novel coronavirus, COVID-19 ("Proclamation 2020-01 "); and

WHEREAS, on March 24, 2020, the Town Council ratified Proclamation 2020-01 through the adoption of Resolution No. 2020-10 proclaiming the existence of a local emergency and expressly authorizing the Town Manager/Director of Emergency Services to enact protections to protect the public health, safety, and welfare; and

WHEREAS, Government Code section 8634 and Chapter 2.40 of the Town's Municipal Code designates the Town Manager to serve as Emergency Services Director and make rules and regulations to protect life and property; and

WHEREAS, on July 1, 2020, Governor Newsom and the California Department of Public Health issued "Guidance on Closure of Sectors in Response to COVID-19," requiring closure of indoor dine-in restaurants in the County of San Bernardino; and

WHEREAS, the suspension and modification of rules within the Town that limit and restrict outdoor dining, and the implementation of temporary procedures for expanded outdoor dining is therefore critical in order to continue to provide safe, nutritional dining options for residents of Apple Valley; and

WHEREAS, this Order is adopted pursuant to the Town's police powers under article XI, section 7 of the California Constitution and under any powers afforded to the Town in time of national, state, county and local emergency during an unprecedented health pandemic, such powers being afforded by the State Constitution, State law, and the Chapter 2.40 of the Apple Valley Municipal Code to protect the peace, health, and safety of the public; and

WHEREAS, this Order is necessary for the preservation of the public peace, health, and safety of residents living within the Town and, under Government Code Section 8634, this Order is necessary to provide for the protection of life and property.

BE IT ORDERED BY THE TOWN MANAGER/DIRECTOR OF EMERGENCY SERVICES OF THE TOWN OF APPLE VALLEY AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference. The recitals and findings in Proclamation 2020-01 and Resolution 2020-10 are also incorporated herein by this reference.

SECTION 2. Temporary Outdoor Dining Guidelines. The "Temporary Outdoor Dining Guidelines" attached hereto as Exhibit A shall take effect immediately and shall take precedence over any inconsistent provisions contained in the Town's Municipal Code, Development Code, use permit, condition of approval, or other regulation or entitlement. Town staff is hereby directed not to enforce such regulations and entitlements to the extent they are inconsistent with the guidelines and procedures promulgated herein. Nothing herein limits any Town officer from enforcing other provisions of the Town's Codes. This Order does not supersede or allow deviations from any federal, state, or county laws and regulations applicable to dining services, including but not limited to the Americans with Disabilities Act.

SECTION 3. Severability. If any provision of this Order or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications and, to this end, the provisions of this Order are declared to be severable.

SECTION 4. Effective Date and Termination. This Order shall become effective immediately and shall continue until the earlier to occur of: (1) the conclusion of the local emergency; (2) its termination is ordered by the Town Manager/Director of Emergency Services; or (3) it is duly terminated by the Town Council. The Order may also be superseded by a duly enacted ordinance of the Town Council expressly superseding this Order.

ORDERED by the Town Manager/Director of Emergency Services this 4th day of July, 2020.



Douglas B. Robertson
Town Manager/Director of Emergency
Services
Town of Apple Valley

EXHIBIT A
TEMPORARY OUTDOOR DINING GUIDELINES

The Town of Apple Valley will allow dining establishments within the Town to temporarily create or expand outdoor dining areas notwithstanding any preexisting limitations imposed under the Town's Municipal Code.

General Guidelines

1. Restaurant owners and operators shall read and comply with the current Emergency Orders issued by the State of California and County of San Bernardino Public Health Officer.
2. Outdoor seating arrangements shall limit the number of patrons at a single table to no more than six (6) individuals.
3. Outdoor seating arrangements shall maintain a minimum six-foot (6') social distance between patrons seated at different tables.
4. Outdoor dining areas shall comply with any applicable ADA access requirements. A minimum three-foot (3'-0") foot wide path of travel shall be maintained along all pedestrian walkways from the parking lot and/or public right-of-way to all public building entrances.
5. The restaurant owner or operator shall obtain written authorization from the property owner for the use of private sidewalks or other areas for outdoor dining. In general, outdoor dining areas may be located on sidewalks or patio areas immediately adjacent to the front of the restaurant. Any use of private property must be approved by the landowner. These guidelines do not authorize trespass on private property.
6. Tenants in shopping centers with multiple restaurants shall work with the other tenants and management to equitably allocate the available space for temporary outdoor dining in coordination with landowners.
7. Tables, chairs, umbrellas, or other temporary objects shall not be located in a manner that creates a hazardous condition as determined by the Fire District officials, obstructs the entrance to any building or fire safety equipment, or impedes the flow of pedestrian or vehicle traffic.
8. Removable barriers, such as stanchions, retractable belts, plants, or screens no more than three feet (3'-0") in height, may be used to delineate outdoor dining areas from the pedestrian path of travel.
9. No furniture, fixture, or equipment shall be permanently affixed to the sidewalk.
10. Outdoor storage or preparation of food or beverages is not permitted.

11. Access to indoor restroom must be provided; portable toilets are not permitted.
12. Operating hours for outdoor dining areas shall be consistent with the indoor operating hours.
13. Entertainment events and all forms of amplified sound are not allowed in conjunction with temporary outdoor dining.
14. Restaurant operators shall maintain the cleanliness and appearance of all outdoor dining areas.
15. No advertising shall be allowed in temporary outdoor dining areas except the restaurant's name and logo. Each restaurant may post one sign with a maximum area of four (4) square feet.
16. Alcohol may be sold to patrons in conjunction with a meal, but it may not be sold independently. Bar areas shall remain closed to customers. Dining establishments must comply with all applicable regulations of the California Department of Alcoholic Beverage Control (ABC).
17. Parking areas immediately adjacent to the restaurant (head-in parking) may be considered for temporary use as outdoor dining if no other options are available. Each restaurant shall maintain the minimum number of parking spaces required for available seating. Total outdoor seating area shall not under any circumstances exceed the original occupancy of the restaurant.
18. Adequate safety barriers such as walls, water-filled or concrete K-rails, concrete wheelstops in conjunction with a visual barrier a minimum of three (3) feet in height, or planters shall be installed to protect any outdoor seating areas adjacent to drive aisles.
19. Facilities open for outdoor dining must also offer curbside pickup, takeout, or delivery alternatives.

Informal Review Process

Restaurant owners or operators who want to provide temporary outdoor dining in compliance with the above guidelines may do so without a permit and without availing themselves of this informal review process. Nevertheless, as an additional service to assist businesses with compliance, informal review may be sought from the Town's Planning Division (planning@applevalley.org). A request for an informal review should include a simple site layout (may be drawn by hand). No fee will be charged, and nextbusiness day approval will be possible for most applications. Please note that no requests for informal review will be processed until July 7. Planning staff will contact the applicant if additional information is needed. A complete informal review application will include the following:

- a. A detailed description of the proposed outdoor seating area and operations. Please include the general location and square footage of the outdoor dining area, the total number of tables and chairs, approved occupancy of restaurant, hours of operation, number of employees per shift, and total onsite parking spaces. Please include the property owner authorization (if applicable).
- b. A scaled diagram showing the location of the temporary dining area, number of tables and chairs, location of emergency/ADA access, and location of parking and any safety barriers, etc. A sample diagram showing each of the required components is attached.

TYPICAL PARKING LOT DINING SET UP



TOWN OF APPLE VALLEY

OUTDOOR DINING GUIDELINES

What: State and local Health Department regulations have limited the capacity of interior dining areas in response to COVID-19. Outdoor parking lot dining areas are temporary installations that may be proposed by a business in order to allow for increased capacity to serve patrons normally handled in an interior dining area.

Where: Any parking space normally utilized by a business, with the exception of handicap spaces.

How big can they be: Three (3) parking spaces per 1,000 square feet of total business lease area, including any dining rooms, kitchens, bathrooms, etc. For example, a 2,000 square-foot restaurant may use up to 6 parking stalls for parking lot dining.

Does it need to be Enclosed? All parking lot outdoor dining areas must be protected by both a vehicle barrier (to prevent cars from intruding into the space) and a visual barrier (to allow people to clearly see the space). A vehicle barrier can be a concrete wheelstop, or a

K-rail. Visual barriers must be at least 36 inches high for visibility. wrought iron or vinyl fences are some of the few materials that are considered visual barriers. **NOTE:** Temporary signs may be placed on the fence (or similar barrier) without a Temporary Sign Permit.

Entrance and Exits? Aside from the main entrance and exit into the space, an emergency exit with a minimum width of 36 inches is required.

Can I put shade structures? Any shade structures such as umbrellas or tents must be significantly anchored and fixed in place. Please contact us with your proposal.

Is Lighting Required? Any parking lot dining area that is used during the evening hours require lighting. Power may be obtained from a variety of sources such as running a power line from inside your business, or connecting to a parking lot light. Please contact us with your proposal.

The Town cares about the well being of your business! We understand that each space is unique and may require a unique set of solutions. If you have any questions about setting up an outdoor dining area, please contact the Apple Valley Planning Department at 760.240.7000 or planning@applevalley.org.



TOWN OF APPLE VALLEY