



Staff Report

File #: REPORT 20-0484, Version: 1

Honorable Mayor and Members of the Hermosa Beach City Council
Regular Meeting of July 28, 2020

**ADOPTION OF AN URGENCY ORDINANCE OF THE
CITY OF HERMOSA BEACH, CALIFORNIA, THAT REQUIRES
MEMBERS OF THE PUBLIC TO WEAR FACE COVERINGS; AND
TO CONFIRM CITY MANAGER/DIRECTOR OF EMERGENCY
SERVICES EXECUTIVE ORDER NO. 2020-09 REGARDING
SUSPENDING LOCAL ZONING REGULATIONS TO PERMIT
SPECIFIED BUSINESSES TO OPERATE OUTDOORS AND TO
PERMIT CERTAIN HOME OCCUPATIONS TO OPERATE
WITHOUT A COMMERCIAL BUSINESS LOCATION
DURING THE COVID-19 CRISIS**

(City Attorney Michael Jenkins)

Recommended Action:

Staff recommends that the City Council:

1. Confirm City Manager/Director of Emergency Services Executive Order No. 2020-09, to temporarily permit: (1) gyms, fitness facilities, hair salons, barbershops and personal care establishments to operate outdoors and (2) home occupations to operate without a commercial business location during the COVID-19 crisis (**Attachment 1**); and
2. Adopt an Urgency Ordinance No. 20-1415U of the City of Hermosa Beach, to implement the measures in Executive Order No. 2020-09 and to require members of the public to wear face coverings whenever outside of their place of residence (**Attachment 2**).

The urgency ordinance requires four-fifths vote of the City Council and if approved, will take effect immediately.

Background:

On March 15, 2020, the City Council of the City of Hermosa Beach ("City") declared a state of local emergency in response to the global pandemic caused by a respiratory disease which has been named "COVID-19". At a special meeting on March 16, 2020, the City Council adopted Resolution No. 20-7230, approving and confirming the declaration of emergency.

On March 19, 2020, the Governor of the State of California, issued Executive Order N-33-20 an Order of the State Public Health Officer ordering all individuals living in California to stay home or at

their place of residence except as needed to maintain continuity of operations of outlined federal critical infrastructure sectors.

Evidence in late April and early May demonstrated that state and local orders slowed the increase of community transfer of the disease by limiting interactions amongst people. As a result, on May 7, 2020, Governor Newsom, announced a four-staged framework, titled “Resilience Roadmap” that is intended to guide the state’s gradual modification of its Safer at Home Order to reopen California. The state also issued sector specific guidance to help specified businesses reopen under new restrictions, which require businesses to, among other things, implement social distancing measures.

In line with the State’s health guidance, the Los Angeles County Public Health Officer issued a revised Order on May 13, 2020 entitled “Continuation of Safer at Home Order that begins to move the County of Los Angeles into Stage 2 of the County’s Roadmap to Recovery,” that authorized some limited retail and outdoor recreation venues to reopen subject to among other things, social distancing measures to prevent the further spread of COVID-19. The Order was updated again on May 26th, May 29th, June 11th and June 18th, 2020 to continue to allow the gradual reopening of additional sectors including bars, hair salons, personal care establishments (including esthetician, skin care and cosmetology services; electrology; nail salons; body art professionals, tattoo parlors, microblading and permanent make-up; and piercing shops; and massage therapy), gyms and fitness facilities subject to social distancing measures. The May 29th Order for example, permitted restaurants and food facilities to remain open and offer limited dine-in seating. The Order also encouraged restaurants to expand outdoor seating where possible in compliance with local zoning codes to comply with social distancing requirements.

To assist in the economic recovery of local businesses and restaurants, on May 26, 2020, the City Manager issued Executive Order No. 2020-05 to temporarily suspend City of Hermosa Beach Municipal Code Sections 17.26.050 (B), (C) and 17.44.030 regarding off-street parking requirements for commercial and business uses. Many surrounding cities, including Los Angeles, Pasadena, and Long Beach also implemented similar rules and regulations to assist in the economic recovery of these businesses during the COVID-19 crisis.

Since that time, the State and County have seen a sharp increase in confirmed COVID-19 cases and hospitalizations, and the timing of these increases is in line with the reopening of “high risk” businesses where individuals may congregate with members who are not part of the same household and remove their face coverings to eat and drink. As a result, the County Health Officer issued a revised Order on July 1, 2020 to backtrack on the County’s gradual reopening to prohibit indoor dining and order the immediate closure of bars, wineries and winery tasting rooms.

On July 13, 2020, the State Public Health Officer issued a state-wide Order to require the immediate closure of: (1) indoor and outdoor operations of bars, pubs, brewpubs and breweries; and (2) indoor operation of restaurant dining, movie theatres, zoos, museums, cardrooms, wineries and tasting

rooms. The Order also imposes more stringent requirements on specified counties, including Los Angeles County that have appeared on the State's monitoring list for three consecutive days to order the immediate closure of indoor operations of the following sectors: gyms and fitness facilities, places of worship, indoor protests, offices for non-critical infrastructure sectors, personal care establishments, hair salons, barbershops, and malls.

The following day, on July 14, 2020, the County Health Officer issued a revised Order to coincide with Governor's July 13th Order and require the closure of indoor operations of the following establishments: malls, shopping centers, hair salons, barbershops, fitness facilities, and personal care establishments.

To assist in the safe outdoor operation of hair salons, barbershops, and personal care establishments, on July 20, 2020, Governor Newsom along with the State Health Officer released mandatory guidance on the outdoor operation of personal care establishments, hair salons and barbershops as permitted under its July 13th Order. Consistent with this updated state guidance, the County Health Officer updated its reopening protocol for personal care establishments, hair salons and barbershops in Appendices R and H of its Order, respectively. Appendix R expressly states that electrolysis, tattooing, microblading and permanent make-up and piercing may not operate outside because they are invasive procedures that require a controlled hygienic environment to be performed safely.

Permitting Outdoor Operation of Gyms, Fitness Facilities, Hair Salons, Barbershops and Personal Care Establishments

Under the recent State and County Health Orders, local gyms, fitness centers, hair salons, barbershops and personal care establishments that are unable to shift their operations outdoors have been forced to shut down for the second time during the COVID-19 pandemic. Many of these businesses were struggling to financially recover following the first mandatory closure in March, and some may not be able to survive a second closure. Executive Order No. 2020-09 and this confirming Urgency Ordinance are intended to assist the economic recovery of these establishments and to permit them to continue to operate outdoors under State and County Health Orders by temporarily suspending local zoning regulations during the COVID-19 crisis.

In light of California Business and Professions Code section 7317, which requires that all barbershops, hair salons and cosmetology services including specified personal care services to be performed in a licensed establishment, Executive Order No. 2020-09 and this confirming Urgency Ordinance are further intended to permit the outdoor operation of these businesses to the extent they are permitted to do so by the State Board of Barbering and Cosmetology.

Permitting Certain Home Occupations to Operate without a Commercial Business Location

State and County Stay-At-Home Orders also forced all non-essential office workspaces to close in an effort to slow the spread of COVID-19. City of Hermosa Beach Municipal Code section 17.08.020(D)

(14) prohibits professional offices in residential zones, that include but are not limited to: the healing arts, law, accounting, real estate, clergy, insurance and similar professional or semi-professional offices, unless the person engaged in such home occupation maintains a principal licensed office in an area permitting such activity as a principal use. Section 17.08.020(D)(14) clearly impedes on these businesses' ability to continue their home occupations in light of State and County Orders that have forced them to close their commercial office spaces.

As with the specified businesses discussed above, the City Council seeks to assist City residents to continue to pursue their livelihoods from home, while complying with State and County Health Officer Orders by temporarily suspending Section 17.08.020(D)(14).

Mandatory Use of Face Coverings

On June 18, 2020, Governor Newsom alongside the State Health Officer released mandatory health guidance that requires Californians, subject to limited exceptions to wear face coverings when outside the home. In line with the mandatory guidance, the Los Angeles County Health Officer issued a revised Order on the same date to require all persons to wear a face covering whenever they leave their place of residence and are or can be in contact with or walking near or past others who are non-household members in both public and private places whether indoors or outdoors. According to State and County Health officials, wearing face coverings reduces the risk of transmission to others who do not have symptoms and do not know that they're infected.

Recent recommendations issued by the Center for Disease Control ("CDC") also reaffirms the use of face coverings in reducing the community spread of COVID-19. According to the CDC, laboratory studies demonstrate that cloth face coverings reduce the spray of respiratory droplets that spread the virus. COVID-19 spreads mainly among people who are in close contact with one another (within about 6 feet) so the use of cloth face coverings is particularly important in settings where people are close to each other or where social distancing is difficult to maintain.

Conclusion

There is no vaccine available, or proven treatment to combat the disease. At the time of writing this report, there were 161,673 confirmed cases in the County and 4,154 deaths, with July 14, 2020 reporting the highest number of confirmed cases since the start of the pandemic.

In line with State and County Health Orders, this Ordinance is necessary to supplement Executive Order No. 2020-09 to: (1) temporarily suspend City of Hermosa Beach Municipal Code Sections 17.26.050 (B), 17.44.030, 17.38.550(B) and 17.08.020(D)(14) regarding uses permitted within commercial zones, off-street parking requirements for commercial and business use, and home occupation permits to the extent they conflict with this Ordinance; and (2) require members of the public to wear face coverings when outside of their place of residence.

Analysis

The local economic recovery of gyms, fitness facilities, hair salon, barbershops and personal care establishments will be challenging as some of these establishments will be unable to shift their operations outdoors under State and County Health Order requirements. Relaxing local zoning regulations to temporarily allow these businesses to operate outdoors and to the extent they are permitted to do so by State licensing agencies will assist in the economic recovery of these establishments.

City residents engaged in certain home occupations as defined in this Ordinance will similarly be permitted to continue to pursue their livelihood while complying with State and County Health directives. Lastly, more stringent action is required in response to the recent increase in confirmed cases and hospitalizations. Requiring members of the public to wear face coverings when outside of their place of residence will help curb the continued spread of the disease.

In light of the foregoing, the proposed ordinance should be adopted on an urgency basis, to temporarily suspend City of Hermosa Beach Municipal Code Sections 17.26.050(B), 17.44.030, 17.38.550(B) and 17.08.020(D)(14) regarding uses permitted within commercial zones, off-street parking requirements for commercial and business use, and home occupation permits, taking effect immediately pursuant to Government Code section 36937, for the preservation of the public peace, health, and safety of residents living within the City, based on the facts described herein and set forth in the Ordinance:

1. Confirm City Manager\Director of Emergency Services Executive Order No. 2020-09;
and
2. Adopt Urgency Ordinance No. ____ to implement the measures in Executive Order No. 2020-09 and to require members of the public to wear face coverings when outside of their place of residence

Fiscal Impact:

The City of Hermosa Beach initially incurs all costs related to the City's response to the COVID-19 Pandemic, but will submit requests for cost recovery to the California Office of Emergency Services (CalOES), either directly, or through the Los Angeles County Office of Emergency Management, (LACoOEM), the local reporting agent.

Attachments:

1. Executive Order No. 2020-09.
2. Urgency Ordinance No. 20-1415 to implement the measures in Executive Order No. 2020-09 and to require members of the public to wear face coverings when outside of their place of residence

Respectfully Submitted by: Michael Jenkins, City Attorney

Legal Review: Michael Jenkins, City Attorney

Approved: Suja Lowenthal, City Manager