(O-2021-15) S501B 8/4

ORDINANCE NUMBER O- 21230 (NEW SERIES)

DATE OF FINAL PASSAGE AUG 04 2020

AN EMERGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO PURSUANT TO CHARTER SECTION 295 AND THE URGENCY ORDINANCE PROVISIONS IN CALIFORNIA GOVERNMENT CODE SECTION 65858 ENACTING TEMPORARY AMENDMENTS TO SAN DIEGO MUNICIPAL CODE CHAPTER 13, ARTICLE 1, DIVISION 2, SECTION 131.0220; CHAPTER 13, ARTICLE 1, DIVISION 4, SECTION 131.0420; CHAPTER 13, ARTICLE 1, DIVISION 5, SECTION 131.0520; CHAPTER 13, ARTICLE 1, DIVISION 6, SECTION 131.0620; CHAPTER 13, ARTICLE 1, DIVISION 7, SECTION 131.0706; AND A TEMPORARY ADDITION TO SAN DIEGO MUNICIPAL CODE CHAPTER 14, ARTICLE 1, DIVISION 6, ALL RELATING TO SUPPORTING FITNESS CENTERS, INSTRUCTIONAL STUDIOS, PERSONAL SERVICES, MASSAGE ESTABLISHMENTS, AND PLACES OF RELIGIOUS ASSEMBLY DURING THE NOVEL CORONAVIRUS, COVID-19, BY ALLOWING EXPANSION OF CERTAIN OPERATIONS INTO THE PUBLIC RIGHT-OF-WAY.

WHEREAS, the novel coronavirus, COVID-19, causes infectious disease and was first detected in December 2019; and

WHEREAS, COVID-19 symptoms include fever, cough, and shortness of breath, and those who have been afflicted have experienced anything from mild illness to death; and

WHEREAS, the Centers for Disease Control and Prevention considers COVID-19 to be a very serious public health threat and the World Health Organization declared the COVID-19 outbreak to be a pandemic; and

WHEREAS, on February 19, 2020, the County Board of Supervisors ratified a declaration of local health emergency related to COVID-19; and

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

WHEREAS, on March 12, 2020, Mayor Kevin Faulconer proclaimed the existence of a local emergency in the City of San Diego (City) as a result of COVID-19, which was ratified by the Council of the City of San Diego (Council) on March 17, 2020; and

WHEREAS, COVID-19 is causing, and is expected to continue to cause, severe negative impacts on the local economy and serious financial impacts to local residents and businesses, including substantial loss of income due to the loss of compensable work hours or wages, layoffs, and business closures; and

WHEREAS, these closures have and will continue to negatively affect the local economy by limiting services available to City residents, and decreasing tax revenue to the City to respond to COVID-19; and

WHEREAS, COVID-19 has also severely impacted places of religious assembly by limiting where and how such places can operate, making it challenging to assemble for religious worship, human contact, and spiritual welfare; and

WHEREAS, on July 13, 2020, California Governor Gavin Newsom issued a public health order preventing some businesses and places of religious assembly from operating indoors; and

WHEREAS, the Centers for Disease Control and Prevention recommends staying at least six feet from other people who are not from your household in both indoor and outdoor spaces to reduce the spread of COVID-19; and

WHEREAS, COVID-19 and the prohibition on certain indoor activities has had a devastating impact on local businesses by reducing the number of patrons allowed in a business to comply with public health orders, resulting in some businesses being unable to meet their financial obligations and sustaining significant property loss; and

WHEREAS, expanding allowable outdoor activities to allow for social distancing is necessary and appropriate to prevent further property loss, expedite economic recovery efforts, and for the spiritual wellbeing; and

WHEREAS, this Ordinance allows fitness centers, instructional studios, personal services, massage establishments, and places of religious assembly to operate in the public right-of-way through a sidewalk extension and the establishment of pedestrian plazas in certain public and private parking spaces to allow for social distancing; and

WHEREAS, San Diego Charter, Article III, section 11 vests all legislative authority for the City in the Council; and

WHEREAS, California Government Code Section 65858 expressly authorizes the Council to adopt by four-fifths (4/5) vote, without following the procedures otherwise required for the adoption of a zoning ordinance, an interim urgency ordinance, which is necessary for the immediate protection of the public health, safety, and welfare; and

WHEREAS, the Council finds that adopting this interim emergency Ordinance is necessary and appropriate to prevent or mitigate adverse effects to public health, safety, and welfare related to the impacts of the COVID-19 pandemic, and to further enable compliance with public health orders and recommendations related to COVID-19; and

WHEREAS, the Council finds that there is an emergency necessitating immediate adoption of this Ordinance pursuant to Government Code section 65858; and

WHEREAS, the Council finds that, pursuant to Charter section 295(e), this Ordinance is necessary to provide for the immediate preservation of the public peace, property, health, or safety; and

WHEREAS, under San Diego Charter section 280(a)(3), this Ordinance is not subject to veto by the Mayor because it is an emergency ordinance; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the following amendments are made to Municipal Code Chapter 13, Division 1:

The requirements of Municipal Code sections 131.0220(c), 131.0420(c), 131.0520(c), 131.0620(c), and 131.0706(c) that require a fitness center, instructional studio, personal service, *massage establishment,* or place of religious assembly, as these uses are defined in this Ordinance, to operate within an enclosed building are waived if that fitness center, instructional studio, personal service, *massage establishment,* or place of religious assembly is permitted to operate in a sidewalk extension or pedestrian plaza pursuant to this Ordinance.

Section 2. That the following temporary additions are made to San Diego Municipal Code, Chapter 14, Article 1, Division 6:

I. Sidewalk Extensions.

(a) A sidewalk extension for purposes of this Ordinance means an outdoor space located in the *public right-of-way*, as set forth below. The following uses are permitted in sidewalk extensions: fitness centers; instructional studios as defined in Municipal Code section 131.0112(a)(6)(F); personal services as defined in Municipal Code section 131.0112(a)(6)(I); *massage establishments* as defined in Municipal Code section 33.3502; and places of religious assembly. Sidewalk extension applications may be approved by the City or by a Business Improvement District having jurisdiction over an adjacent fitness center, instructional studio, personal service, or *massage establishment.* Sidewalk

extensions are permitted as a limited use in the zones indicated with an "L" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones), subject to the following regulations.

(b) Limited Use Regulations

(1) Design requirements

(A) A sidewalk extension shall be located adjacent to a street-level fitness center, instructional studio, personal service, *massage establishment*, or place of religious assembly. Sidewalk extensions may extend in front of neighboring properties with written permission from the *record owner* of the neighboring property.

(B) A sidewalk extension that provides a maximum of one row of tables and chairs within 4 feet 6 inches of the *building facade*, placed in a manner that does not block ingress or egress from the associated fitness center, instructional studio, personal service, *massage establishment*, or place of religious assembly, shall not be required to have a barrier in accordance with Section I(b)(1)(C) of this Ordinance.

(C) If not designed in compliance with Section I(b)(1)(B) of this Ordinance, the area of a sidewalk extension may be delineated by a barrier consisting of railings, *fences*, or a combination of railings and *fences*, and planter boxes that are 3 feet in height or less. Solid walls are not permitted. If a barrier is used, it must comply with the following:

(i) The barrier shall be moveable.

(ii) The barrier shall be affixed to the sidewalk while the sidewalk extension is open for business.

(iii) A clear, transparent, shatterproof glass or similar extension material may be used on top of the 3-foot barrier to enclose the sidewalk extension to minimize windy or cold climatic conditions. The height of the sidewalk extension barrier plus the clear enclosure shall not exceed 5 feet.

(iv) *Awnings* or umbrellas may be used in conjunction with a sidewalk extension but shall not be used as a permanent roof or shelter over the sidewalk extension area.

(D) Clear Path of Travel

(i) A clear path, free of all obstructions to the flow of pedestrian traffic, shall be provided in the *public right-of-way* and shall be maintained at all times. Obstructions include traffic signals or *signs*, light standards, parking meters, phone booths, bus stops, trash receptacles, benches, trees, gates that open outward beyond the perimeter of the sidewalk extension, and similar objects.

(ii) The clear path shall be a paved sidewalk that is at least 4 feet wide, the width identified in the applicable adopted *land use plan*, or the width required by the applicable zone or planned district, whichever width is greater. The paved

sidewalk requirement of this Section I(b)(1)(D)(ii) is waived when a clear path of travel is provided in an adjacent pedestrian plaza.

(iii) The clear path may meander from side to side to avoid obstructions, but shall maintain a continuous, common surface at least 3 feet in width that provides a direct path of travel past the sidewalk extension.

(iv) The clear path shall be measured from the outermost point of the sidewalk extension to the curb or to the nearest obstruction within the flow of pedestrian traffic, whichever is shorter. This requirement for a clear path of travel may be satisfied by a pedestrian plaza adjacent to the sidewalk extension provided that the clear path of travel meets the remaining clear path of travel requirements of Section I(b)(1)(D) this Ordinance and all applicable Accessible Design Guidelines of the Americans with Disabilities Act and Title 24 of the California Code of Regulations accessibility standards, whichever offers the most accessibility.

(v) Recesses in the *building facade* shall not be used to satisfy the clear path requirement.

(E) Accessibility. A sidewalk extension shall be designed and operated so that unsafe conditions are not created for the physically

disabled, blind, or partially sighted in accordance with all applicable Accessible Design Guidelines of the Americans with Disabilities Act and Title 24 of the California Code of Regulations accessibility standards, whichever offers the most accessibility.

(F) An unobstructed path of ingress and egress travel with a minimum 4-foot width that leads occupants directly from exit doors to the *public right-of-way* shall be required for a sidewalk extension and associated fitness centers, instructional studios, personal services, *massage establishments*, or places of religious assembly.

(G) No portion of a sidewalk extension may be located within 8 feet of the entrance to a ground *floor* commercial use other than the entrance to the adjacent fitness center, instructional studio, personal service, *massage establishment*, or place of religious assembly unless the property owners and first *floor* tenants of the affected commercial lease spaces provide a notarized letter of permission to the City.

(H) If *awnings* are attached to the main building, they shall be secured in accordance with the California Building Code, the *applicant* may be required to obtain a Building Permit pursuant to Municipal Code Chapter 12, Article 9, Division 2, and the *awnings* shall be subject to inspection by the Building Official prior to occupancy of a sidewalk extension.

(I) The interior of a sidewalk extension shall consist solely of moveable furnishings, including moveable tables, chairs, and umbrellas.

(J) Landscaping may be placed in moveable planters inside a sidewalk extension area adjacent to the barrier.

(2) Permit requirements

(A) Prior to installation of any furniture or improvements in the *public right-of-way* and prior to operation of a sidewalk extension, the *applicant* shall obtain a traffic control permit pursuant to Municipal Code section 82.27 and an Encroachment Maintenance and Removal Agreement in accordance with Municipal Code Section 129.0715. This Encroachment Maintenance and Removal Agreement does not need to be recorded with the Office of the County Recorder. No Public Right-of-Way Permit is required for sidewalk extensions. Violations of any permit required for a sidewalk extension shall be subject to the permit revocation procedures set forth in Chapter 12, Article 1, Division 3.

(B) The dimensions of a sidewalk extension shall be delineated on a site plan and documented in any associated permit.

(C) Prior to occupancy of a sidewalk extension, an inspection shall be required in accordance with Municipal Code Section 129.0111, as applicable.

(D) An annual inspection of a sidewalk extension shall be required to ensure compliance with the limited use regulations for sidewalk extensions if this Ordinance is extended beyond one year.

(E) Unless otherwise stated, a sidewalk extension approved pursuant to this Ordinance is exempt from the Building Permit requirements in Municipal Code section 129.0203(a)(24)(C), and the Neighborhood Use Permit requirements in Municipal Code sections 126.0203(a) and 157.0305(c).

(3) Operational requirements

(A) Sidewalk extensions shall comply with current City, County of San Diego, State of California, and federal requirements in applicable public health orders, including social distancing requirements, and all subsequent amendments to those orders, related to the novel coronavirus, COVID-19. Should any provisions of this Ordinance conflict with applicable public health orders, the requirements of the public health orders shall prevail. If there is a conflict among the requirements of applicable public health orders, the most restrictive order shall prevail.

(B) A sidewalk extension shall only be used only for fitness center, instructional studio, personal service, *massage establishment,* or place of religious assembly purposes, and shall operate only in conjunction with an adjacent fitness center, instructional studio,

personal service, *massage establishment,* or place of religious assembly.

(C) The sidewalk within, and adjacent to, the sidewalk extension shall be clean and free of litter at all times.

(D) Trash or storage areas shall not be located on or adjacent to the *public right-of-way.*

(E) The hours of operation of a sidewalk extension shall be limited to the hours that the fitness center, instructional studio, personal service, *massage establishments,* or place of religious assembly is open.

(F) *Smoking* or *vaping* is not permitted within a sidewalk extension at any time. For purposes of this Section I(b)(3)(F), the terms *smoke, smoking, vape,* and *vaping* have the same meanings as in San Diego Municipal Code section 43.1001.

(G) A sidewalk extension shall comply with all State of California Department of Alcoholic Beverage Control license requirements, as applicable.

(H) Outdoor cooking and preparation of food, games, and entertainment within the *public right-of-way* is prohibited.

(I) Portable heaters, if provided, shall be located a minimum of 4 feet away from the exterior face of the building and from any combustible materials, including *architectural projections*, or in

accordance with manufacturer recommendations, whichever is most restrictive.

(J) A copy of any approved permit for a sidewalk extension shall be posted on the *premises* of the associated fitness center, instructional studio, personal service, *massage establishment,* or place of religious assembly.

II. Pedestrian Plazas.

(a) A pedestrian plaza for purposes of this Ordinance means the conversion of parking spaces and parking lots for public uses by an outdoor fitness center, instructional studio, personal service, *massage establishment,* or place of religious assembly.

(b) Applications for pedestrian plazas made pursuant to this Ordinance must be approved by the City.

(c) Pedestrian plazas may extend from the sidewalk curb into adjacent public on-street parking spaces but must maintain a minimum two-foot-wide buffer separation from bike lanes and travel lanes. Any blue curb or accessible parking spaces used for a pedestrian plaza must be replaced pursuant to the Accessible Design Guidelines of the Americans with Disabilities Act or the accessibility guidelines of title 24 of the California Code of Regulations, whichever offers the most accessibility.

(d) The requirements in Municipal Code section 142.0510 are waived for outdoor fitness centers, instructional studios, personal services, *massage establishments,* or places of religious assembly within private parking lots. A pedestrian plaza

may extend from the sidewalk curb into a private parking lot and that parking lot's drive aisles. Any blue curb or accessible parking spaces used for a pedestrian plaza must be replaced pursuant to the Accessible Design Guidelines of the Americans with Disabilities Act or the accessibility guidelines of title 24 of the California Code of Regulations, whichever offers the most accessibility.

(e) Pedestrian plazas may be used for pedestrian traffic along a *public right-of-way* when access is not available on the sidewalk. Pedestrian plazas must comply with the Accessible Design Guidelines of the Americans with Disabilities Act or the accessibility guidelines of title 24 of the California Code of Regulations, whichever offers the most accessibility.

(f) Pedestrian plazas must provide a visible and tactile edge, pursuant to the Accessible Design Guidelines of the Americans with Disabilities Act or the accessibility guidelines of title 24 of the California Code of Regulations, whichever offers the most accessibility. The visible and tactile edge shall consist of temporary posts, wheel stops, barricades, or their equivalents. Retro reflectors shall be installed along the edge of the pedestrian plaza.

(g) Pedestrian plazas shall comply with current City, County of San Diego, State of California, and federal requirements in applicable public health orders, including social distancing requirements, and all subsequent amendments to those orders, related to COVID-19. Should any provisions of this Ordinance conflict with the applicable public health orders at any time, the requirements of the public health orders shall prevail. If there is a conflict among the requirements of applicable public health orders, the most restrictive order shall prevail.

(h) Applicants for pedestrian plazas are not required to obtain a Public Right-of-Way Permit pursuant to section 129.0703. Applicants must obtain a traffic control permit as required by section 82.27.

(i) Encroachment Maintenance and Removal Agreements are required pursuant to section 129.0715 for pedestrian plazas but do not need to be recorded at the Office of the County Recorder.

III. Stormwater Best Management Practices for Personal Services. Those providing personal services are required to do the following when operating in a sidewalk extension or pedestrian plaza pursuant to this Ordinance:

(a) Possess spill kits at all times while operating that are comprised of paper towels, cloth towels, kitty litter, or sand.

(b) Remove all spilled materials from the *public right-of-way* once the spilled material is absorbed off the ground.

(c) Capture and prevent spills from leaving the sidewalk extension or pedestrian plaza, moving into the surrounding streets and from entering the storm water conveyance system, including curbs, gutters, and storm drains.

(d) Ensure that any liquid used, or waste generated while operating in a sidewalk extension or pedestrian plaza is not disposed in the curbs, gutters, streets, drains or on any public property.

Section 3. That there is a current and immediate threat to the public health, safety, and welfare of the City and its communities caused by COVID-19, thereby necessitating the immediate enactment of this interim urgency Ordinance.

Section 4. That this Ordinance, being an urgency ordinance, is effective upon the day of its passage, and is effective for 45 days from the date of its passage, unless extended for an additional 10 months and 15 days in accordance with California Government Code section 65858 at a noticed public hearing. However, this Ordinance will automatically expire 14 days after the County of San Diego rescinds its social distancing requirements in the County's novel coronavirus COVID-19 health orders.

Section 5. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ *Noah J. Brazier*
Noah J. Brazier
Deputy City Attorney

NJB:als
07/28/2020
Or.Dept: Planning
Doc. No.: 2434526_2

Passed by the Council of The City of San Diego on AUG 04 2020, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Jennifer Campbell	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Monica Montgomery	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
Vivian Moreno	☒	☐	☐	☐
Georgette Gómez	☒	☐	☐	☐

Date of final passage AUG 04 2020.

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By _____, Deputy

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on AUG 04 2020, said ordinance being of the kind and character authorized for passage on its introduction by Section 275 of the Charter.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By _____, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21230