

URGENCY ORDINANCE No. 1147
UNCODIFIED URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO
CREATING A TEMPORARY COVID-19 OUTDOOR ACTIVITIES PERMIT
FOR RESTAURANTS AND OTHER BUSINESSES

WHEREAS, on March 16, 2020, the Director of Emergency Services issued a Proclamation of the Director of Emergency Services for the Town of San Anselmo Proclaiming the Existence of a Local Emergency Related to COVID-19 ("Emergency Proclamation"); and

WHEREAS, on March 19, 2020, the Town Council adopted Resolution No. 4332 ratifying the Emergency Proclamation; and

WHEREAS, on March 16, 2020, the Marin County Health Officer imposed an order directing residents to shelter in their place of residence beginning on March 17, 2020; and

WHEREAS, on March 19, 2020, California Governor Gavin Newsom issued Executive Order No. N-33-20 ordering all individuals in the State of California to stay at their place of residence except as needed to maintain continuity of operations for the federal critical infrastructure sectors and for certain businesses deemed "essential"; and

WHEREAS, on March 31, 2020, the Marin County Health Officer issued a new order superseding the March 16 County Order, which continued to require residents to shelter in place, but included among other provisions, an allowance for construction and outdoor businesses to resume; and

WHEREAS, on May 15, 2020, the Marin County Health Officer issued a new order superseding the March 31 County Order, which continues to mandate that residents shelter in place, but loosening some restrictions including those related to child care and recreational activities; and

WHEREAS, the State and County shelter-in-place orders have dramatically impacted local businesses that are not permitted to open and restaurants that are only allowed to provide food for take-out and delivery; and

WHEREAS, the State shelter-in-place order has slowly been modified based on the April 28, 2020 phased roadmap for relaxing restrictions; and

WHEREAS, in mid-May, 2020, the Governor and the State Department of Public Health issued guidance for the eventual reopening of restaurants and other businesses in counties that are found to meet state benchmarks related to the COVID-19 pandemic; and

WHEREAS, on June 1, 2020, Marin County announced that outdoor dining options are available to restaurants, bakeries, coffee shops, brewpubs, breweries, bars, pubs, craft distilleries and wineries that provided sit-down food service prior to the first sheltering order that was imposed on March 16; and

WHEREAS, on June 1, 2020, Marin County announced that retailers, with permission from the Town, may display merchandise curbside or create an outdoor retail location; and

WHEREAS, even as restaurants and other businesses are allowed to reopen, State and County health requirements will limit their capacity to provide services in their existing facilities due to social distancing requirements; and

WHEREAS, the Town has an important governmental interest in maintaining a strong business community, maintaining the jobs and revenue that local businesses provide, providing essential food by maximizing the number of people that can be fed, and also helping to protect the health, safety, and economic welfare of its residents and businesses while ensuring public safety through social distancing requirements; and

WHEREAS, as businesses are permitted to reopen pursuant to State and County orders, laws and/or guidance, the Town Council desires to provide assistance to local restaurants and businesses by encouraging the public to utilize their services in a manner that is consistent with social distancing requirements and protects the health and safety of the community; and

WHEREAS, the Town Council wishes to allow for the issuance of revocable temporary outdoor activities permits that will allow restaurants and other businesses to temporarily operate in an expanded outdoor capacity in designated public areas and private outdoor areas; and

WHEREAS, in the interest of public health and safety and to protect life and property due to the impacts of the COVID-19 emergency, it is necessary to issue and implement this Urgency Ordinance.

NOW THEREFORE, the Town Council of the Town of San Anselmo does hereby find and ordain as follows:

Section 1. Urgency Findings

1. The Town Council finds that the aforementioned recitals are true and correct and are herein incorporated into this Ordinance.
2. Based upon the facts in the recitals above, the Town Council finds that there is a current and immediate need to allow businesses to use certain outdoor spaces in order to prevent additional harm to small businesses in the Town and to allow the public to patronize San Anselmo businesses while complying with social distance requirements, in order to mitigate the threat to the public health, safety and welfare presented by COVID-19.
3. Based upon the facts in the recitals above, the Town Council finds and determines that the immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 36937(b) and take effect immediately upon adoption.
4. As described in the recitals above, businesses in San Anselmo are facing unprecedented hardships related to COVID-19 and the shelter-in-place orders. On June 1, 2020, Marin County announced that outdoor dining options are available to restaurants, bakeries, coffee shops, brewpubs, breweries, bars, pubs, craft distilleries and wineries that provided sit-down food service prior to the first shelter-in-place order that was issued on March 16. In addition, with permission from the Town a curbside retailer may display merchandise curbside or create an outdoor retail location. The County requires each business to prepare a COVID-19 Site Specific Protection Plan prior to reopening.
5. To facilitate the ability of restaurant and businesses to utilize the opportunity presented by the County on June 1, this Ordinance must become effective immediately. Given the importance of allowing these establishments to operate with appropriate safety measures and sufficient

outdoor space, this Ordinance is necessary for the immediate preservation of the public health, safety and welfare and its urgency is hereby declared.

Section 2. Environmental Review.

Adoption of this Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 *et seq.* ("CEQA"), because it relates to an emergency. (CEQA Guidelines §15269). In addition, the Ordinance is exempt under CEQA Guidelines section 15061(b)(3), because it can be seen with certainty that there is no possibility that adoption of this Ordinance may have a significant effect on the environment, because the Ordinance provides for temporary use of existing public and private spaces. Finally, the Ordinance is also exempt under CEQA Guidelines section 15304(e), because the outdoor activities authorized by this Ordinance involve minor public and private alterations to land.

Section 3. Outdoor Activities and Temporary Structures Permitted.

To protect life, public health and safety, and to facilitate reopening of restaurants and businesses in a manner that is consistent with State, County and Town social distancing requirements, all Town of San Anselmo laws, regulations and/or policies that would otherwise prohibit outdoor business activities and temporary outdoor structures are hereby suspended.

The following provisions of the Town of San Anselmo Municipal Code are expressly suspended for purposes of this Ordinance and the outdoor dining and business program: Sections 4-6.03, 4-6.04, 4-11.01, and 10-3.1304(a)(2). Additionally, Land Use Table 3A is temporarily modified for purposes of this Ordinance to allow, as an accessory use with Planning Director approval, off sale alcohol, outdoor sales, fast food restaurants and take out restaurants.

Section 4. Eligible Businesses for Outdoor Activities.

Only those businesses that require outdoor space in order to effectively operate their business while complying with State, County and Town social distancing requirements are eligible to operate under a permit authorized by this Ordinance. Nothing in this Ordinance shall authorize a particular business to operate outside unless and until the business is authorized to operate pursuant to State and County Orders. All businesses must be in full compliance with State and County Orders regarding business reopening and operation in order to comply with this Ordinance.

Section 5. Temporary COVID-19 Outdoor Activities Permit

To be eligible to engage in outdoor activities under this Ordinance, businesses shall be required to have a Temporary COVID-19 Outdoor Activities Permit, the form of which will be developed by and may be modified by the Town Manager or his designee. The Town shall only issue a Temporary COVID-19 Outdoor Activities Permit that authorizes activities which are consistent with State and County Orders regarding permissible businesses.

All Temporary COVID-19 Outdoor Activities Permit applications seeking to use outdoor private property must be accompanied by proof of the property owner's permission to use the property. If the applicant intends to use a shared private parking lot or shared outdoor private property, the applicant must obtain written consent from all other parties with whom the lot or property is shared before an Outdoor Activities Permit can be issued.

The Town Manager or his designee shall be authorized to approve a Temporary COVID-19 Outdoor Activities Permit and shall be entitled to seek the review of Town staff regarding any and all site-specific considerations related to the proposed outdoor activities. The Town Manager or his designee at his sole discretion may choose to approve or deny a Temporary COVID-19 Outdoor Activities Permit. The Permit may be issued on any terms or conditions the Town Manager or his designee deems necessary, including but not limited to modifications to the proposed location of outdoor activities and

limits on noise and hours of operation to ensure ongoing protection of the public health and safety of the Town's residents and the community.

Temporary COVID-19 Outdoor Activities Permits shall authorize the revocable and limited use of outdoor dining seating for restaurants or support the permitted uses of the applicant's business in parking lots or on outdoor property as specified in the Permit, subject to compliance with operational and safety provisions provided by the Town Manager or his designee, applicable State and County health orders, applicable regulations of the Department of Alcohol and Beverage Control, and in compliance with the Americans with Disabilities Act. Provided these conditions are met, the applicant and/or property owner shall not be subject to the minimum parking requirements specified in the San Anselmo Municipal Code or in a previously granted permit or entitlement for the property.

Section 6. No Interference with Private Property

Nothing in this Ordinance relieves a business from any obligations or laws requiring consent of adjacent property owners for use of private property. Businesses seeking to operate outdoors shall obtain consent of any private property owners whose property will be used for outdoor operations.

Section 7. Building Permit and Design Review

Nothing in this Ordinance relieves a business from the requirement to obtain a building permit for outdoor activities if a building permit would otherwise be required, nor does this Ordinance relieve a business from complying with all provisions of the Building Code, including but not limited to, maximum occupancy requirements. For purposes of this Ordinance, unless required as a condition of approval for a Temporary COVID-19 Outdoor Activities Permit, design review requirements are suspended for modifications to businesses in the C-1, C-2, C-L and C-3 Districts if the changes are associated with activities permitted under the Permit.

Section 9. State and County Permits

Nothing in this Ordinance relieves a business from the requirement to obtain any and all State and County permits regarding the provision of alcohol, food and dining services.

Section 10. Violations

Any violation of this Ordinance or any other local, State, or Federal law shall constitute an imminent threat to the public health and is hereby declared to be a public nuisance and shall be subject to enforcement as such; violations of this Ordinance may result in the immediate termination of an Outdoor Activities Permit and the cessation of any activities authorized by said Permit and this Ordinance. At the Town's discretion, violations may be enforced by the Town under its Administrative Citations Ordinance, SAMC § 1-6.01 et seq.

Section 11. Effective Date of Ordinance

This Ordinance shall become effective immediately and shall expire when repealed by the San Anselmo Town Council. This is intended to be an uncodified ordinance and therefore, will not become part of the San Anselmo Municipal Code. A summary of this ordinance shall, within fifteen days after passage, be published in accordance with section 36933 of the Government Code with the names of the Town Council members voting for and against the Ordinance.

Section 13. Severability

The Town Council hereby declares every section, paragraph, sentence, clause and phrase is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found

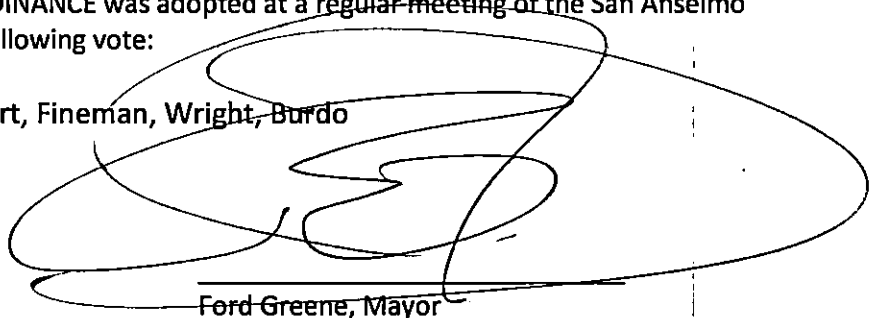
to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

Section 14 Savings Clause

Neither the adoption of this ordinance nor the repeal or amendment by this ordinance or any ordinance or part or portion of any ordinance previously in effect in the Town, or within the territory comprising the Town, shall in any manner affect the prosecution for the violation of any ordinance, which violation was committed prior to the effective date of this ordinance, nor be construed as a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinances.

THE FOREGOING URGENCY ORDINANCE was adopted at a regular meeting of the San Anselmo Town Council on June 9, 2020, by the following vote:

AYES:	Greene, Colbert, Fineman, Wright, Burdo
NOES:	None
ABSENT:	None
ABSTAIN:	None



Ford Greene, Mayor

ATTEST:

Carla Kacmar, Town Clerk