



**DIRECTOR OF EMERGENCY SERVICES  
EXECUTIVE ORDER 2020-5**

WHEREAS, COVID-19 has spread globally to over 70 countries, infecting more than 118,000 persons and killing more than 4,200 individuals worldwide. Due to the expanding list of countries with widespread transmission of COVID-19, and increasing travel alerts and warnings for countries experiencing sustained or uncontrolled community transmission issued by the Centers for Disease Control and Prevention (CDC), COVID-19 has created conditions that are likely to be beyond the control of local resources and require the combined forces of other political subdivisions to combat; and

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and to help the State prepare for the broader spread of COVID-19; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19; and

WHEREAS, on March 13, 2020, the City Council adopted Resolution No. 6529 declaring the existence of a local emergency concerning the COVID-19 virus pursuant to Government Code Section 8630; and

WHEREAS, the federal, state, and local authorities, including the California Department of Public Health and the Health Officer of the County of San Bernardino, have issued directives, orders, and guidelines to protect public health and prevent transmission of COVID-19, including, but not limited to, stay at home orders, social distancing, staying home if sick, canceling or postponing large group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus; and

WHEREAS these public health directives and orders impact daily life in the community, as well as the livelihood and economic well-being of residents and businesses; and

WHEREAS, the space limitations of some dine-in restaurants make it difficult or impossible to provide an essential service to the public while complying with these public health directives, orders, and guidelines related to COVID-19; and

WHEREAS, the City can assist dine-in restaurants to operate and serve patrons in compliance with these public health directives, orders, and guidelines related to COVID-19 by allowing portions of City-owned public rights-of-way, including certain streets, to be used for outdoor dining during the current City of Upland local emergency, subject to the requirements below; and

WHEREAS, Section 2.20.060 of the Upland Municipal Code authorizes the Director of Emergency Services, to make and issue rules and regulations on matters reasonably related to the protection of life and property affected by such emergency; provided, such rules and regulations are subject to confirmation at the earliest practicable time by the City Council; and

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WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary to exercise my authority pursuant to Section 2.20.060 of the Upland Municipal Code to order the adoption of the regulations below related to the protection of life and property.

NOW, THEREFORE, IT IS HEREBY ORDERED by the City Manager of the City of Upland, acting as the Director of Emergency Services as follows:

SECTION 1. Recitals. The preceding recitals are true and correct.

SECTION 2. Temporary Outdoor Dining Permits. Notwithstanding any provisions in the Upland Municipal Code to the contrary, outdoor dining at restaurants is hereby allowed in certain public places, including limited portions of the public right-of-way subject to the limitations and requirements below.

A. Restaurants otherwise licensed and/or approved to operate in the City may apply for a Temporary Outdoor Dining Permit to serve customers in parking lots or other public areas, including portions of the public right of way. No person shall operate a restaurant on any public property or public right-of-way without an approved Temporary Outdoor Dining Permit or otherwise authorized by law.

B. Applications for a Temporary Outdoor Dining Permit must be made on a form designated by the City and shall include such information as the City Manager or her designee shall reasonably require.

C. The City Manager of her designee shall have the sole authority to approve a Temporary Outdoor Dining Permit subject to following conditions and such other reasonable conditions deemed necessary or convenient to protect the public, health, safety, or welfare.

1. All outdoor dining operations shall be conducted in a manner that is safe, orderly, neat, sanitary, and ADA accessible. Outdoor dining shall not be conducted in any manner causing a public nuisance.

2. All restaurant operations must comply with all applicable public health directives, orders, and guidelines regarding COVID-19.

3. Alcohol sales shall not be allowed without proof of ABC authorization for outdoor alcohol service.

4. Permittees shall be solely responsible for the setup, operations, maintenance and removal of furniture and materials required to facilitate safe and satisfactory use of the outside area.

5. Permittees must agree to indemnify, defend, and hold the City, its officials, officers, employees, and agents free and harmless from any liability arising from the use of public areas, including any approved use of the public right-of-way, for or related to outdoor dining operations.

6. Permits shall be limited to the hours of operation and for the term, if any, specified in the approval.

7. All restaurant operations must be conducted in accordance with federal, State, County and City laws, ordinances, rules and regulations as may from time to time be applicable to such business, including but not limited to rules and regulations related to the

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sale of food and the sale of alcohol. Restaurant shall be required to maintain a valid City business license.

8. The City may modify or revoke any permit for any reason or for no reason upon written notice to permittees. Permittees' use of the premises is subject to temporary modification or suspension at any time based on the public's priority for use of public property or right-of-way as determined solely by the City.

D. No Temporary Outdoor Dining Permit shall be considered an entitlement for use of an outdoor dining and seating area in or on any public property or right-of-way, or to confer any vested rights or property interest to any ongoing or continuing activities beyond the expiration of the Temporary Outdoor Dining Permit or this Order. Permission granted to use the designated public right-of-way is revocable at any time at the City's sole discretion, or upon expiration of the City's emergency declaration, or in the interest of the public health, safety and welfare. The City shall at all times retain exclusive final authority over City property and the public right-of-way, including the right to use the right-of-way for maintenance of utilities, or other public infrastructure, and as necessary to protect the public health, safety, and welfare.

SECTION 3. Enforcement. This Order may be enforced in any manner allowed by law, and violations shall be a misdemeanor punishable by a fine not to exceed \$1,000.00, or by imprisonment not to exceed six months, or both, pursuant to the Upland Municipal Code.

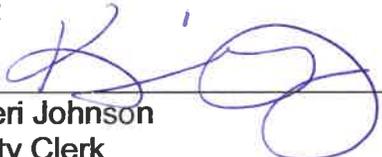
SECTION 4. Severability. The Director of Emergency Services declares that, should any section, subsection, subdivision, sentence, clause, phrase, or portion of this Order for any reason be held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Order. The Director of Emergency Services hereby declares that she would have adopted this Order and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. Notice Order. Copies of this Order shall be disseminated to the public and be given widespread publicity and notice.

SECTION 6. Effective Date. This Order shall take effect immediately and shall remain in effect until terminated by the Director or the City Council or until the City Council declares the local emergency to be over.

ADOPTED this JULY 7, 2020

BY:   
Rosemary Hoerning  
City Manager/Director of Emergency Services

ATTEST:  
BY:   
Keri Johnson  
City Clerk