

City Council Staff Report

May 12, 2020



BH

From: Douglas L. White, City Attorney
Prepared by: Douglas L. White, City Attorney
Agendized by: Toby Wells, P.E., City Manager

1. ACTION RECOMMENDED:

Ordinance: Motion to waive reading and introduction of an Urgency Ordinance, reading by title only, waiving further reading, and adoption of an Urgency Ordinance of the City Council of the City of Turlock declaring and implementing the Second Phase of the reopening of Nonessential Businesses within the City subject to certain mitigation measures

2. SYNOPSIS:

Adopting an urgency ordinance (the "Ordinance") of the City Council of the City of Turlock (the "City Council") declaring and implementing the second phase of the reopening of nonessential businesses within the City of Turlock ("City") subject to certain mitigation measures.

3. DISCUSSION OF ISSUE:

COVID-19 is a global health crisis that endangers the public health and safety of City residents. To limit COVID-19 transmission, the Governor of the State of California (the "Governor") issued Executive Order N-33-20 (the "Executive Order") ordering all State of California (the "State") residents to shelter in place, except as needed to obtain or provide essential services or activities. The County of Stanislaus (the "County") Public Health Officer also issued an order requiring all County residents to shelter in place except as needed to provide or receive essential services or to engage in outdoor exercise activities (the "County Health Order"). As a result of the Executive Order, and the County Health Order, many non-essential businesses were required to close their onsite operations.

On May 4, 2020, the Governor announced that the State will move to a "Stage 2" modification of the Executive Order, allowing for certain non-essential businesses that qualify for early-stage reopening, including curbside only retail, manufacturing, and logistics businesses to reopen in accordance with State guidelines ("Stage 2").

On May 7, 2020, in his “Stage 2 of California’s Roadmap to Modify the Stay-at-Home Order,” the Governor set forth certain conditions for non-essential businesses that qualify for early-stage reopening to meet before reopening. The Governor also announced that some counties within the State pose a lower risk of COVID-19 transmission than other counties due to their location within the State, rural setting, population, number of reported COVID-19 cases, and various other factors. In these lower-risk counties, additional non-essential businesses that qualify for a later-stage reopening, including retail (with curbside restrictions relaxed), schools, child care facilities, offices, and limited hospitality and personal services, may be permitted to reopen sooner than in other counties.

4. BASIS FOR RECOMMENDATION:

Due to the Stage 2 modification of the Executive Order, certain non-essential businesses that qualify for early-stage reopening may reopen in accordance with State reopening guidelines. In addition, if the County obtains a local variance, other non-essential businesses that qualify for a later-stage reopening may also reopen. The City must ensure that these businesses reopen in a manner that limits the spread of COVID-19 through the implementation of best practices for the protection of employees and customers.

The Ordinance will require businesses that re-open due to the Governor’s Stage 2 modification to do so but those businesses must comply with State and County reopening protocols. “Stage 2A” businesses are businesses that qualify for early-stage reopening under the Stage 2 modification of the Executive Order. “Stage 2A businesses” include the reopening of retail (through curbside only) and manufacturing and logistics businesses. If the County obtains a local variance, “Stage 2B” businesses will be allowed to operate for later-stage reopening. “Stage 2B businesses” include the reopening of retail (with curbside restrictions relaxed), schools, child care facilities, offices, and limited hospitality and personal services.

The Ordinance will also require all businesses, whether Stage 2A or 2B, to implement measures to limit the spread of COVID-19. The measures that businesses must implement will provide protections to employees, customers and the associated supply chain. It also contains specific measures for restaurants due to the unique risks of contracting COVID-19 in restaurants. To respond to changes at the State and County level, the Ordinance authorizes the City Manager to modify these measures. To allow for City enforcement, the Ordinance provides that violations of the Ordinance constitute a public nuisance and shall be subject to Chapter 5-5, Nuisance Abatement, of Title 5, Public Welfare and Morals and Conduct of the Turlock Municipal Code.

5. FISCAL IMPACT / BUDGET AMENDMENT:

None

6. CITY MANAGER'S COMMENTS:

Recommend Approval.

7. ENVIRONMENTAL DETERMINATION:

The California Environmental Quality Act requires environmental review only if a public agency action constitutes a "project." (Pub. Res. Code § 21065.) The Ordinance is not a "project", since it does not have the potential to cause a direct or reasonably foreseeable indirect physical change in the environment. (Cal. Code Regs., tit. 14, § 15064, subd. (d).)

8. ALTERNATIVES:

The City Council choose to do any of the following:

1. Adopt the Ordinance;
2. Continue consideration of the Ordinance and provide direction to staff for changes; or
3. Reject the Ordinance.

ATTACHMENTS:

1. Ordinance

BEFORE THE CITY COUNCIL OF THE CITY OF TURLOCK

IN THE MATTER OF ADOPTING AN URGENCY	}	
ORDINANCE OF THE CITY COUNCIL	}	ORDINANCE NO. -CS
OF THE CITY OF TURLOCK DECLARING	}	
AND IMPLEMENTING THE SECOND PHASE	}	
OF THE REOPENING OF NONESSENTIAL	}	
BUSINESSES WITHIN THE CITY SUBJECT	}	
TO CERTAIN MITIGATION MEASURES	}	
	}	

WHEREAS, in response to the COVID-19 pandemic and global health crisis, the President of the United States, the Governor of the State of California (the "Governor"), the County of Stanislaus (the "County"), and the City of Turlock (the "City"), have each proclaimed a state of emergency; and

WHEREAS, on March 19, 2020, the Governor issued Executive Order N-33-20 (the "Executive Order"), ordering all State of California (the "State") residents to shelter at home or at their place of residence, except as needed to ensure continuity of operations in essential critical infrastructure sectors and additional sectors as directed by the State Public Health Officer. Subsequently, the State Public Health Officer issued an "Essential List of Critical Infrastructure Workers," which clarifies and implements the Executive Order; and

WHEREAS, to prevent the spread of COVID-19, the County Health Officer has issued orders, the most recent of which directs County residents, including City residents, to shelter at home, except as needed to provide or receive essential services, or engaging in outdoor exercise activities; and

WHEREAS, on April 14, 2020, the City adopted Ordinance No 1277-CS requiring all residents to shelter in place in accordance with the Executive Order and the County Health Officer's Order and providing a mechanism for City enforcement; and

WHEREAS, as the result of the Executive Order and the County Health Officer's Order, many businesses were required to close their onsite operations; and

WHEREAS, as the result of the County Health Officer's latest order, dated May 1, 2020, the County's restrictions regarding essential and nonessential businesses remains in effect; and

WHEREAS, on May 4, 2020, the Governor announced that the State will move to a "Stage 2" modification of the Executive Order, allowing for businesses identified as having a lower risk of COVID-19 transmission to reopen in accordance with State guidelines; and

WHEREAS, on May 7, 2020, the Governor announced specific guidelines for businesses to reopen, with certain criteria to be met; and

WHEREAS, as businesses reopen, to protect public health and safety, businesses must implement measures to limit the spread of COVID-19; and

WHEREAS, Government Code section 8634 authorizes, during a local emergency, the City Council, or officials designated thereby, to promulgate orders and regulations necessary to provide for the protection of life and property; and

WHEREAS, the City, pursuant to the police powers delegated to it by the State Constitution, has the authority to enact laws that promote the public health, safety and general welfare of its residents; and

WHEREAS, pursuant to California Government Code section 36937 the City may adopt an urgency ordinance if it is for the immediate preservation of the public peace, health or safety.

NOW, THEREFORE, the City Council of the City of Turlock does hereby ordain as follows:

SECTION 1. DEFINITIONS.

For purposes of this ordinance, the following words and phrases shall have the meanings respectively ascribed to them:

“All Businesses” means all businesses within the City of Turlock, including all Stage 2A Businesses and Stage 2B Businesses.

“County Orders” means orders issued by the Stanislaus County Board of Supervisors or the Stanislaus County Health Officer.

“Social Distancing” means maintaining at least a six (6) feet separation from all persons, except for family members or those in the same household or living unit, or providing a comparable level of protection against exposure to respiratory droplets or secretions through the use of personal protective equipment or other physical or administrative controls.

“Stage 2A Businesses” means those businesses within the City of Turlock that qualify for early-stage reopening under the Governor’s “Stage 2” directive as part of his roadmap to reopening of businesses in California, including retail (through curbside only) and manufacturing and logistics businesses, utilizing Social Distancing and other measures to mitigate the risk of spreading COVID-19, as described more fully in Sections 3 and 4, below.

“Stage 2B Businesses” means those businesses within the City of Turlock that qualify for later-stage reopening under the Governor’s “Stage 2” directive as part of his roadmap to reopening of businesses in California, including retail (with curbside restrictions relaxed), schools, child care facilities, offices, and limited hospitality and personal services, all as adapted. Stage 2B Businesses shall also utilize Social Distancing and other measures to

mitigate the risk of spreading COVID-19, as described more fully in Sections 3 and 4, below.

SECTION 2. STAGED REOPENING OF ALL BUSINESSES.

- A. Stage 2A Businesses. Effective immediately upon passage of this urgency ordinance, Stage 2A Businesses shall be permitted to operate utilizing Social Distancing and other measures to mitigate the risk of spreading COVID-19, as described more fully in Sections 3 and 4, below.
- B. Stage 2B Businesses. As soon as the County attests that it has met the criteria for a local variance from the State's Roadmap to Modify the Stay-at-Home Order, as allowed under the State Public Health Officer's May 7, 2020 Guidance, Stage 2B Businesses shall be permitted to operate utilizing Social Distancing and other measures to mitigate the risk of spreading COVID-19, as described more fully below.

SECTION 3. REQUIRED MITIGATION MEASURES FOR ALL BUSINESSES.

- A. General Requirements for All Businesses.
 - 1. The mitigation measures set forth herein will not become effective for a particular business or industry sector unless and until that business or industry sector is authorized to operate under State and County orders.
 - 2. All businesses must be in full compliance with all State and County orders regarding reopening. Individual businesses must be able to present proof of compliance with the applicable State and County orders upon request by the enforcement official as authorized under Section 7 herein.
- B. Employee Protection Requirements for All Businesses. To protect employees from COVID-19, All Businesses operating within the City shall:
 - 1. Screen all employees reporting to work for COVID-19 symptoms by asking the employee the following:
 - i. Has the employee been in close contact with a confirmed case of COVID-19?; and
 - ii. Is the employee experiencing a cough, shortness of breath, or sore throat?; and
 - iii. Has the employee had a fever in the past forty-eight (48) hours?; and
 - iv. Has the employee had a loss of taste or smell?; and
 - v. Has the employee had vomiting or diarrhea in the last twenty-four (24) hours?
 - 2. Require an employee to take their temperature before reporting to work to ensure that the employee's temperature does not exceed one hundred and four (100.4) degrees Fahrenheit. Businesses are strongly encouraged to take an employee's temperature onsite with a no-touch thermometer.

3. Require any employee who is vulnerable to COVID-19, feeling ill, or reporting any symptoms of illness to stay home or leave the premises immediately. Businesses shall protect the privacy of an employee's health information.
 4. Require employees to wear a face covering that covers the nose and mouth. Businesses are strongly encouraged to provide employees with face coverings.
 5. Provide employees training on personal protective equipment based on Centers for Disease Control and Prevention Guidelines.
 6. Provide employees either a wash basin with soap or a hand sanitizer containing at least sixty percent (60%) alcohol.
 7. Require all employees to maintain Social Distancing.
 8. Prohibit employees from congregating in breakrooms or common areas, and limit capacity of breakrooms and common areas to allow for employees to maintain Social Distancing. Businesses shall avoid the use of conference or meeting rooms, if possible.
 9. Stagger shifts, breaks and meals in compliance with federal and state law to limit the number of employees on the premises to allow employees to maintain Social Distancing. Businesses are encouraged to limit the amount of employees on the premises to only ten (10) employees and allow employees to telework to the greatest extent possible.
 10. Develop a plan for potential COVID-19 cases, such as monitoring and tracing COVID-19 in the workplace, and deep-cleaning the premises. Businesses shall cooperate with City and County officials to limit the spread of COVID-19.
 11. Clean and disinfect high-touch surfaces at least every two (2) hours and when visibly dirty.
 12. Update the employee illness policy to include symptoms of COVID-19 or create a COVID-19 specific policy. Businesses shall require employees to sign the policy and post the policy in a prominent location.
 13. Post signage on health policies, including the Centers for Disease Control and Prevention's Guidance to Stop the Spread of Germs and the Centers for Disease Control and Prevention's Guidance on Symptoms of COVID-19 in prominent locations.
 14. Follow all workplace safety and health regulations as promulgated by OSHA and Cal/OSHA.
- C. Customer Protection Requirements for All Businesses. To protect customers, clients, patrons, and other consumers of the services offered, All Businesses operating within the City shall:
1. Limit the number of customers inside a store at any given time, excluding employees and representatives of third-party delivery companies, to 50 percent (50%) or less of store occupancy based on Turlock Building and Fire Codes. Businesses are strongly encouraged to establish dedicated shopping hours or appointment times for the elderly, medically vulnerable, and health care workers.

2. Encourage customers to wear face coverings that cover the nose and mouth.
 3. Establish one-way aisles and traffic patterns to facilitate Social Distancing.
 4. Mark increments of six (6) feet in areas where customers may form lines.
 5. Establish and encourage curbside pickup and delivery service to minimize contact and maintain Social Distancing. Businesses are encouraged to use phone and electronic ordering.
 6. Assign dedicated staff to implement Social Distancing.
 7. Post signs in prominent locations reminding customers of Social Distancing, to wear a face covering, to not enter the business if the customer has a cough or fever, to sneeze and cough into the customer's elbow, cloth, or a tissue. Businesses are authorized to deny service to customers who appear sick.
 8. Post signs in prominent locations informing customers that they enter the business at their own risk.
 9. Provide customers with either a wash basin with soap or hand sanitizer containing at least sixty percent (60%) alcohol at or near the entrance of the business and in locations where there are high-frequency interactions with customers and employees.
 10. Sanitize resources used by customers and areas frequently touched by customers at least every two (2) hours and when visibly dirty.
 11. Clearly designate entrance and exits.
 12. Place plastic shields or barriers between customers and clerks at service counters and clean the plastic shields at least every two (2) hours and when visibly dirty.
 13. Adjust operating hours to allow deep cleaning of the premises.
 14. Prohibit the use of reusable bags.
 15. Limit self-service and suspend sampling of food and personal hygiene products.
 16. Provide contactless payment systems, or if not feasible to do so, disinfect all payment portals, pens and styluses regularly.
 17. Frequently disinfect surfaces repeatedly touched by employees or customers such as door knobs, equipment handles, check-out counters, and grocery cart handles, etc.
 18. Frequently clean and disinfect floors, counters, and other facility access areas using EPA-registered disinfectants.
- D. Supply Chain Protection Requirements for All Businesses. To protect delivery service personnel and business employees, All Businesses within the City shall:
1. Utilize curbside pickup for deliveries from third party companies; and
 2. Place delivered packages on the floor rather than countertops until the package is disinfected. Packages should be disinfected by quickly wiping the package with a disinfectant; and
 3. Require employees to wash their hands or use hand sanitizer containing at least sixty percent (60%) alcohol after handling delivered packages.

SECTION 4. ADDITIONAL MITIGATION MEASURES FOR ALL FOODSERVICE AND DRINKING ESTABLISHMENTS.

All Stage 2B Businesses that are restaurants, wineries, breweries, bars, catering services, and all other foodservice or drinking establishments, shall, in addition to utilizing Social Distancing and other measures stated in Section 3 above, comply with the following requirements to the extent possible:

- A. Separate tables six (6) feet apart; and
- B. Clean and sanitize tables and chairs between each seating; and
- C. Wash, rinse, and sanitize food contact surfaces, dishware, utensils, food preparation surfaces, and beverage equipment after use.
- D. Use disposable napkins and utensils, when feasible, and use only cleanable or wipeable table cloths; and
- E. Remove condiments from dining tables. Condiments shall be provided only upon a customer's request; and
- F. Require employees to handle food with gloves; and
- G. Prohibit handshaking, hugs, or close contacts between employees and customers.

SECTION 5. MODIFICATION OF MITIGATION MEASURES.

- A. The City Manager is hereby empowered to modify, revise, abrogate, or clarify any of the mitigation measures stated in Sections 3 and 4 above, as reasonably necessary to conform with the State and County orders currently in place and as may be issued during the time period stated in Section 8 below.
- B. Any modification, revision, abrogation, or clarification of the mitigation measures made by the City Manager at any time during the period stated in Section 8 below, shall have the full force and effect of law and shall be binding upon all residents of the City immediately on the date the City Manager issues such modification, revision, abrogation, or clarification and shall be enforceable as set forth in Section 7 below.
- C. Nothing in this Section shall be construed as expanding or restricting in any manner the powers and duties of the City Manager pursuant to the Turlock Municipal Code ("TMC").

SECTION 6. TEMPORARY STREET, SIDEWALK AND PARKING CLOSURES.

The City Council grants the City Manager temporary land use authority to implement the necessary rules and regulations for this Urgency Ordinance. The City Manager is authorized to implement traffic control measures on neighborhood streets and arterial roadways to include enforcement of advisory speeds, road closures, and to reduce traffic to ensure safety for residents practicing social and physical distancing. The City Manager may authorize the temporary closure of streets, alleys, sidewalks, or parking lots as necessary for businesses to operate, subject to applicable federal and state laws and regulations concerning accessibility and traffic control measures.

SECTION 7. ENFORCEMENT.

A violation of this ordinance constitutes an imminent threat to the public health and is hereby declared to be a public nuisance and shall be subject to the enforcement proceedings in Chapter 5-5 of the TMC (Nuisance Abatement Procedures), and Chapter 2-11 of the TMC (Administrative Citations).

SECTION 8. TERM.

This Ordinance remains in full force and effect until the Governor ends the state of emergency in response to the COVID-19 outbreak or until this ordinance is rescinded by the City Council, whichever occurs first.

SECTION 9. SEVERABILITY.

If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof and shall continue to be in full force and effect.

SECTION 10. URGENCY ORDINANCE.

The City hereby finds, determines and declares that this Ordinance is necessary for the immediate preservation of the public peace, health and safety, because there is an urgent need to slow COVID-19 transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. Therefore, the City further finds, determines and declares that this Ordinance takes effect immediately upon adoption pursuant to the authority conferred upon the City Council by California Government Code section 36937.

SECTION 11. PASSED AND ADOPTED.

The foregoing Ordinance was introduced, adopted, approved and ordered published in full by a four-fifths vote at a meeting of the City Council of the City of Turlock held on the 12th day of May, 2020, and said ordinance was thereupon adopted by the following roll call vote:

AYES:

NOES:

NOT PARTICIPATING:

ABSENT:

Signed and approved this ____ day of _____, 2020.

AMY BUBLAK, Mayor

ATTEST:

Jennifer Land, City Clerk,
City of Turlock, County of Stanislaus,
State of California