

CITY OF YUBA CITY
STAFF REPORT

Date: July 21, 2020
To: Honorable Mayor & Members of the City Council
From: Public Works Department
Presentation by: Diana Langley, Interim City Manager/Public Works Director

Summary

Subject: Plumas Street Summer Marketplace

Recommendation: A. Confirm the Director of Emergency Services' Order authorizing the temporary waiver of certain Municipal Code and Entitlement Restrictions for impacted businesses on Plumas Street

B. Pre-authorize the City Manager or designee to enter into Waiver, Release, Hold Harmless, and Agreements Not to Sue for Activities Pursuant to Emergency Orders subject to approval as to legal form by the City Attorney.

Fiscal Impact: FY 19/20 – \$7,500
FY 20/21 - \$2,531 – In-kind request for street closure or can be addressed through the Community Sponsorship Account

Purpose:

Provide the means from an administrative standpoint for the Downtown Business Association to implement an economic stabilization effort to allow Plumas Street businesses to expand their storefronts onto the sidewalk and street to promote re-engagement with customers, while adhering to public health guidelines.

Background:

COVID-19 has had a significant impact on businesses, and with current public health guidelines in place, businesses are encouraged to find innovative ways to conduct business.

The Downtown Business Association (DBA) submitted a letter dated June 12 proposing a “Plumas Street Summer Marketplace” (Marketplace). The Marketplace is a strategy that would allow Plumas Street businesses to expand their storefronts onto the sidewalk and the street to allow for re-engagement with customers, while adhering to public health guidelines. The DBA’s request originally included the closure of Plumas Street for three Saturdays during the summer.

On June 16th, the City Council considered the DBA’s request and expressed overall support for the concept but noted the following requirements.

- Submission of a formal sponsorship application to utilize \$7,500 that the City previously provided for the 2020 Summer Stroll and \$2,531 of in-kind services for the street closure
- Authorization from Dr. Luu, the Bi-County Public Health Officer
- Order from the Director of Emergency Services authorizing the temporary waiver of certain Municipal Code and entitlement restrictions, which would also address the need for an encroachment permit and compliance for service of alcohol with the California Department of Alcoholic Beverage Control (ABC)

The Order is required to allow the businesses to expand their storefronts without violating current Municipal Code and entitlement restrictions.

The DBA complied with the requirements and an Order that allowed for the closure of Plumas Street for three Saturdays during the summer was approved by the City Council July 7th. However, at the July 7th Council meeting, there was much discussion related to the expectation that Sutter County would imminently be placed on the State's Monitoring List. Once counties are on the Monitoring List for 3 days, the State requires that those counties implement additional measures to reduce the risk of COVID-19 transmission including:

- Closure of all bars, pubs, brewpubs, and breweries, applicable to both indoors and outdoors services.
- Closure of all indoor services for the following sectors:
 - Dine-in restaurants must close indoor seating to customers. During the closure all dine-in restaurants may continue to utilize outdoor seating, takeout, and delivery service.
 - Wineries and tasting rooms
 - Family entertainment centers and movie theaters
 - Zoos and museums
 - Cardrooms

Based on the understanding that these restrictions would go into effect within a matter of days, a concept was introduced of closing Plumas Street for the Marketplace for an extended period of time. After discussion, there was consensus amongst the City Council to allow an extended closure provided that the majority of businesses along Plumas Street were in favor and the logistics could be coordinated with the City per the approval of the Director of Emergency Services.

Sutter County was placed on the Monitoring List and on July 10th and Dr. Luu issued Amendment 20-004 modifying the May 4, 2020 Public Health Order to restrict the activities noted above, effective July 12th. In addition, on July 13th, the State issued an Order expanding the restrictions noted above statewide, and implemented additional restrictions for counties on the Monitoring List. Those additional restrictions include the closure of indoor operations for the following:

- Gyms and fitness centers
- Places of worship
- Indoor protests
- Offices for non-critical infrastructure sectors
- Personal care services (including all nail salons, massage parlors, and tattoo parlors)
- Hair salons and barbershops
- Malls

Analysis:

DBA representatives contacted the businesses along Plumas Street and noted that a large majority of the businesses were in favor of the long-term temporary closure. The DBA representatives also coordinated with City staff and finalized a closure plan (Attachment 3). The DBA had already planned to close Plumas Street on July 18th for one of the Marketplace events. With the transition to a long-term temporary closure, the closure began on July 18th and will continue until State and County restrictions are lifted, until a DBA request to end the street closure is granted, or until Emergency Order No. 2020-02 is otherwise rescinded.

Staff is requesting that Council confirm the Director of Emergency Services' Order authorizing the temporary waiver of certain Municipal Code and entitlement restrictions for impacted businesses on Plumas Street and approve the sponsorship of the Marketplace, including the extended temporary closure of Plumas Street.

In addition, staff is requesting that Council pre-authorize the City Manager or designee to enter into Waiver, Release, Hold Harmless, and Agreements Not to Sue for Activities Pursuant to Emergency Orders (Agreement) subject to approval as to legal form by the City Attorney. This will provide flexibility for the City Manager to enter into Agreements of other Orders if needed.

Fiscal Impact:

At the July 7th Council meeting, the City Council authorized the DBA to utilize \$7,500 that the City had already contributed for the now canceled 2020 Summer Stroll. In addition, Council approved a sponsorship in the amount of \$2,531.70 for the City to provide the traffic control for the street closures. The long-term temporary closure will require more barricades and more staff time to check and maintain the closure over a longer period of time. Staff will track the costs and report back to City Council. As this is directly related to impacts of COVID-19, there may be opportunities to receive reimbursement through CARES Act funding.

Alternatives:

If it is determined that the long-term temporary closure is not working for the businesses, the DBA may request to revert back to the original concept of closing Plumas Street for three Saturdays during the summer. Another option is to work with the restaurants along Plumas Street to close parking spaces directly in front of their businesses to allow expanded outdoor dining.

Recommendation:

- A. Confirm the Director of Emergency Services' Order authorizing the temporary waiver of certain Municipal Code and Entitlement Restrictions for impacted businesses on Plumas Street
- B. Pre-authorize the City Manager or designee to enter into Waiver, Release, Hold Harmless, and Agreements Not to Sue for Activities Pursuant to Emergency Orders subject to approval as to legal form by the City Attorney.

Attachment:

1. Emergency Order No. 2020-02

2. Waiver, Release, Hold Harmless, and Agreement Not to Sue
3. Closure Map

Prepared & Submitted by:

/s/ Diana Langley

Diana Langley
Interim City Manager/Public Works Director

Reviewed by:

City Attorney

[SLC by email](#)

ATTACHMENT 1

EMERGENCY ORDER NO. 2020-02

**ORDER OF THE DIRECTOR OF EMERGENCY SERVICES OF
THE CITY OF YUBA CITY AUTHORIZING TEMPORARILY
WAIVER OF CERTAIN MUNICIPAL CODE AND
ENTITLEMENT RESTRICTIONS FOR IMPACTED BUSINESSES
ON PLUMAS STREET (COVID-19: BUSINESS STABILIZATION
EVENT – PLUMAS SUMMER STREET MARKETPLACE)**

WHEREAS, on March 3, 2020, Governor Newsom declared the existence of a state of emergency for the State of California; and,

WHEREAS, on March 13, 2020, the President of the United States declared that the outbreak of COVID-19 in the United States constitutes a national emergency; and

WHEREAS, the Sutter County has declared a local emergency, and on March 18, 2020, the Yuba-Sutter Health Officer issued directive to stay home except for essential activities; and

WHEREAS, on March 19, 2020, Governor Newsom issued a “stay home” order per Executive Order 33-20; and

WHEREAS, on March 21, 2020, the City’s Director of Emergency Services declared a local emergency thereby activating the Emergency Operations Center; and

WHEREAS, on March 24, 2020, the City Council ratified and confirmed the declaration of a local emergency by the Emergency Services Director; and

WHEREAS, the downtown area along Plumas Street has been especially impacted by COVID-19 and resulting emergency responses including the “stay home” order issued by the State; and

WHEREAS, the Downtown Business Association proposed an economic stabilization effort for these impacted businesses. This effort is known as the Plumas Street Summer Marketplace (“Marketplace”) and would temporarily allow Plumas Street businesses to expand their storefronts onto the sidewalk and the street to promote re-engagement with customers, while adhering to public health guidelines; and

WHEREAS, the Marketplace proposal is temporary in nature, and will result in the closure of Plumas Street between Church Street and Teegarden Avenue and Forbes Avenue and Bridge Street beginning July 18 and continuing until State and County restrictions are lifted, until a Downtown Business Association request to end the street closure is granted, or until this Order is otherwise rescinded; and

WHEREAS, there are currently restrictions in the Municipal Code, including entitlements issued thereunder, prohibiting businesses from providing services on public streets, sidewalks, etc., mandating a certain level of parking spaces be provided, or otherwise restricting business activities to certain locations on the property; and

WHEREAS, the Municipal Code does not currently provide a mechanism for a “special event” permit such as a temporary conditional use permit, etc.; and

WHEREAS, Sections 2-8.05 and 2-8.06 of the Yuba City Municipal Code appoint the City Manager as the Director of Emergency Services and empowers the Emergency Services Director to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations shall be confirmed at the earliest practicable time by the City Council; and

WHEREAS, in ratifying the declaration of a local emergency the Council has acknowledged that strict compliance with certain Municipal Code and other City regulations would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19; and

WHEREAS, continued economic viability of local businesses is essential to maintain the City's financial ability to provide emergency, first responder, and other services to mitigate the effects of COVID-19, thereby benefiting the public health, safety, and welfare; and

WHEREAS, after consideration of all items the Director of Emergency Services now desires to order the temporary waiver of certain Municipal Code and entitlement provisions to allow the Marketplace event to occur beginning July 18 subject to compliance with the terms of this Order and public health requirements.

NOW, THEREFORE, the Director of Emergency Services for the City of Yuba City does find and order as follows:

1. The recitals set forth above are true and correct and are incorporated by reference.
2. The Director hereby authorizes the Plumas Street Marketplace event(s) subject to, and consistent with, the following:
 - a. Waiver of Certain Municipal Code and Entitlement Conditions: It is the intent of this order to allow for the applicant to have an event that would allow businesses on Plumas Street located between Church Street and Teegarden Avenue and Forbes Avenue and Bridge Street to temporarily expand their storefronts and services onto the sidewalk and the street to promote re-engagement with customers, while adhering to public health guidelines. In this regard, such businesses, and any other businesses authorized by the applicant to participate in the event, are expressly authorized to utilize the public sidewalk and street right-of-ways at the dates, location, and conditions specified herein. Any local ordinances or other regulations (such as those related to use of the street, parking requirements, conditional use permit or site plan restrictions), are temporary suspended for the Marketplace event to the most minimal extent necessary to allow the Marketplace event to occur.

For example, if a business has City-imposed restrictions on the service and consumption of beverages in designated areas, this order would expressly allow outdoor dining (including service and consumption of alcoholic beverages) in the sidewalk areas and street locations during the Marketplace event(s), waive parking requirements, etc. However, the service of food would still need to comply with public health requirements for the service of food, service of alcohol would still subject to a license issued by the California Department of Alcoholic Beverage Control (ABC) (including areas of service specifically permitted by ABC), and business would still need to comply with any security or monitoring requirements mandated by a use permit or other City entitlement, operate under a valid business license, etc.

- b. Authorized Dates and Location: The authorization for the Marketplace event(s) is temporary, and shall only take place beginning July 18 and continuing until State and County health

restrictions are lifted, until the Downtown Business Association requests to end the closure and said request is approved by the Director of Emergency Services, or until this Order is otherwise rescinded or modified by the Director of Emergency Services. The Marketplace event(s) shall be restricted to Plumas Street, between Church Street and Teegarden Avenue and Forbes Avenue to Bridge Street.

- c. Encroachment Permit: The Downtown Business Association is the designated applicant and shall be required to obtain an encroachment permit. The encroachment event may be conditioned by the City to ensure that adequate insurance, restroom facilities, trash receptacles, ongoing cleanup, and other protections are provided to protect the public health, safety, and welfare. In addition, any business operating along Plumas Street in the affected area that chooses to participate by expanding services into the public right-of-way shall obtain an encroachment permit from the City and provide proof of adequate insurance satisfactory to the City.
- d. COVID-19 Safety Measures: The Marketplace event must receive the appropriate pre-approval from the Bi-County Public Health Officer (Dr. Luu) and provide evidence of the same to the City prior to the Marketplace event taking place.
- e. Compliance and Conditions: The applicant must comply with the following conditions:
 - i. The applicant must notify all residents, property owners, managers, or lessees in the closure area of the date, time, location and purpose of the closure. This notification may be accomplished by distributing flyers, door hangers or by circulating the petition. Notification shall be completed prior to the event.
 - ii. All participants must comply with COVID-19 safety measures and directives issues by the Bi-County Public Health Officer.
 - iii. Any ABC license requirements, including those related to where alcohol may be served and consumed, must be maintained.
 - iv. ADA access to businesses and along the public sidewalk shall be maintained and complied with at all times.
 - v. No structures, either temporary or permanent, shall be constructed in the public right of way. Temporary items such as booths, tables, chairs, shade structures, generators, and other ancillary items are expressly authorized within the City's street right-of-way. No person may fasten, drill or bore into the public street, sidewalk, trees, or curb to mount or erect tent poles, supports, or any other appurtenances or fixtures.
 - vi. A 15-foot free and unobstructed fire lane, extending from the curb and continuing for the entire length of the closure, must remain open at all times, even if tables, booths, etc., will be placed in the street. Fire hydrants shall be accessible and not be blocked by vehicles, tables, or other objects.
 - vii. No activity shall constitute a nuisance.
 - viii. Any applicable State or federal requirements shall be complied with at all times.
 - ix. Any other Municipal Code section, entitlement condition, or other requirements that

would not inhibit the intent of this Order remain in full force and effect.

- f. Waiver: Participation by any person, business, entity, or other participant in the Marketplace event(s) authorized under this Order is an acknowledgment and is deemed to do so at their own risk and at no liability or obligation to the City. Applicant and participating businesses shall enter into an agreement agreeing to defend, hold harmless, and indemnify the City for the Marketplace event.

3. This Order shall take effect immediately as of the date first set forth below, and supersedes and replaces the Order issued on June 17, 2020.

Dated: June 17, 2020

Diana Langley
Diana Langley
Interim Emergency Services Director

ATTACHMENT 2

WAIVER, RELEASE, HOLD HARMLESS, AND AGREEMENT NOT TO SUE

This Waiver, Release, Hold Harmless, And Agreement Not To Sue (“Agreement”) is made by and between the City of Yuba City (“City”) and the undersigned (“Covenantor”) and is effective the date first appearing below.

RECITALS

Covenantor has requested an encroachment permit from the City for permission to operate using a portion of the Public Right of Way (“Encroachment Area”) per the City’s Director of Emergency Services Order dated July 17, 2020 (“Order”), and desires to enter into this Agreement.

AGREEMENT

In consideration of the City allowing use of the public right-of-way and waiver of certain Municipal Code sections as further set forth in the Order, the desire to allow for certain expansion of business opportunities, and other valuable consideration, the Parties agree as follows:

1. Permission to Occupy: In accordance with this Agreement and the Order, a nonexclusive, revocable right to use and occupy the Encroachment Area (“Permission to Occupy”) is hereby granted to Covenantor.

2. Use of Encroachment Area: Covenantor, at its sole cost, expense, liability, and risk, shall use the Encroachment Area consistent solely for purposes of use authorized by this Agreement, the Order as may be amended, and the encroachment permit. If Covenantor is the DBA, the “Encroachment Area” consists of Plumas Street between Church Street and Teegarden Avenue and Forbes Avenue and Bridge Street. For all other Covenantors within that area, the “Encroachment Area” consists of certain property located immediately adjacent to the business consisting of the public right-of-way to the center of the street.

3. No Vesting Rights: Covenantor acknowledges and agrees no vested or any other property right is created by the approval of this Agreement, the Order, or the encroachment permit. Should the City repeal or amend the Order to restrict or prohibit a use previously authorized by the Order, this Agreement or encroachment permit, no claim for loss of property rights or due process of any kind shall be maintained against City.

4. Maintenance: Covenantor shall maintain the Encroachment Area free of any nuisance in fact or in law. Covenantor shall at all times conduct Covenantor’s activities, or cause Covenantor’s activities to be conducted, in full compliance with all applicable laws and regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended, when using the Encroachment Area. Covenantor shall be solely responsible for damages to the Encroachment Area, including without limitation all costs and liability. Covenantor shall at all times operate, maintain its operations in the Encroachment Area so that there is no unreasonable interference with pedestrian traffic or emergency responder access.

5. Liens and Assessments: Covenantor shall maintain the Encroachment Area free from any taxes and assessments.

6. Structures: No structures, either temporary or permanent, shall be constructed in the public right of way. Temporary items such as booths, tables, chairs, shade structures, generators, and other ancillary items are expressly authorized within the City’s street right-of-way. Covenantor may not fasten, drill or bore into the public street, sidewalk, trees, or curb to mount or erect tent poles, supports, or any other appurtenances or fixtures.

7. Damage to Public Right of Way: City may repair at the sole cost, expense and liability of Covenantor arising from Covenantor’s use of the Encroachment Area.

8. Verification of Compliance: In addition to its governmental, legislative, administrative and regulatory activities, City retains the right to verify Covenantor is performing its obligations in accordance with this Agreement and may enter into Encroachment Area at any time.

9. Duration: The Permission to Occupy shall automatically terminate if: i) Covenantor requests the City to terminate; ii) the Marketplace event is terminated by emergency order; iii) the City, in its sole discretion, unilaterally revokes the Permission to Occupy upon determination by the City Manager, or designee, the use of any portion of the Encroachment Area is required for any municipal or public utility purpose, or is detrimental to or not in furtherance of the public health, safety, welfare and interest; or iv) City unilaterally revokes the Permission to Occupy upon determination by the City Manager, or designee, the Covenantor has failed to comply with one or more of the terms, conditions, or restrictions of this Agreement, the encroachment permit, or any applicable emergency order. The revocation or termination of the Permission to Occupy is not subject to Municipal Code revocation proceedings.

Revocation or termination of the Permit does not revoke or terminate Covenantor's obligations under this Agreement, and the Covenantor's obligations shall remain in full force until released as described herein.

10. Restoration: Upon any revocation or termination of the Permission to Occupy, Covenantor shall, at its sole cost, expense and liability, remove its equipment and property located in the Encroachment Area, restore the Encroachment Area to substantially the same condition it was in prior to use, and surrender to the City all possession, use and occupation of the Encroachment Area.

11. Insurance: At all times Covenantor shall pay for and maintain in full force and effect a policy of Commercial General Liability insurance which shall include contractual, products and completed operations coverages, bodily injury and property damage liability insurance with combined single limits of not less than \$1,000,000 per occurrence. The General Liability insurance policy shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy of insurance shall be endorsed so Covenantor's insurance shall be primary and no contribution shall be required of City; subrogation is required to be waived. Covenantor shall furnish City with the certificate(s) and applicable endorsements for the required insurance prior to any occupancy or use of the Encroachment Area. The City Manager has authority to modify insurance requirements set forth by this Section.

12. Indemnification: Participation by any person, business, entity, or other participant in the Marketplace event authorized under the Order at their own risk and at no liability or obligation to the City. Covenantor shall not sue the City, and shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether imposed under authority of statute or common law, in contract, tort, or strict liability, including but not limited to personal injury, death at any time, and property damage) incurred by City, Covenantor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses) arising or alleged to have arisen directly or indirectly out of or in any way connected with (a) this Agreement, including claims related to COVID-19; (b) the Marketplace event; (c) the design, installation, operation, removal, or maintenance of the work and improvements on City right-of-way, easements, or property (including public streets, curbs, sidewalks, trees, landscaping, etc.) within or immediately adjacent to the Encroachment Area; or (d) the reoccupation of the Encroachment Area by the City. Covenantor's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or authorized volunteers are actively or passively negligent. This section shall survive revocation or termination of this Agreement and/or the encroachment permit.

13. Attorney's Fees: If either party is required to commence any proceeding or legal action to enforce or interpret any term or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses. For the purposes of this Agreement, "attorneys' fees" and "legal expenses" include, without limitation, paralegals' fees and expenses, attorneys, consultants fees and expenses, expert witness fees and expenses, and all other expenses incurred by the prevailing party's attorneys in the course of the representation of the prevailing party in anticipation of and/or during the course of litigation, whether or not otherwise recoverable as "attorneys' fees" or as "costs" under California law, and the same may be sought and awarded in accordance with California procedure as pertaining to an award of contractual attorneys' fees.

14. Legal Remedies: Except as provided by Section 13 regarding attorney's fees and legal expenses, in no event shall City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed Covenantor's sole legal remedy for breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement. City may enforce this Agreement in any manner available at law or in equity, and no remedy or election by City shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

15. Waiver: The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

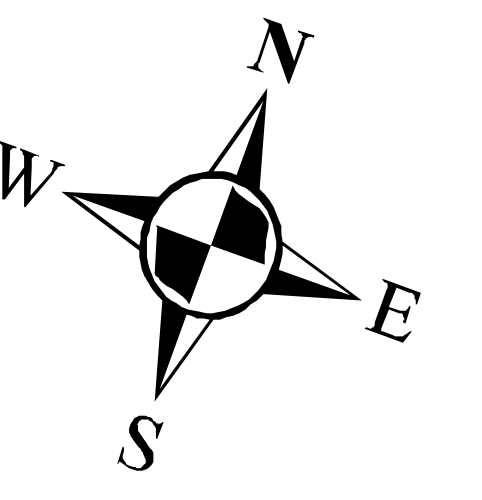
CITY OF YUBA CITY

By: _____
Diana Langley, Interim City Manager
Date: _____, 2020

COVENANTOR:


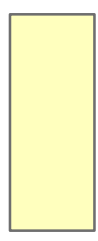
By: _____
Print Name: _____
Business: _____

ATTACHMENT 3



1 inch = 40 feet

Legend

-  15 ft clearance
-  barricade location

