



**Staff Report**

**Date:** June 18, 2020

**To:** Mayor McMillan and Council Members

**From:** Joe Chinn, Town Manager  
Patrick Streeter, Planning and Building Director

**Subject:** Town Council consideration of Resolution No. 2166 Ratifying Ross Emergency Order No. 2-2020 regarding outdoor dining and activities and encroachments for businesses operating in compliance with social distancing requirements.

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**Recommendation**

Council adopt Resolution No. 2166 ratifying the Town of Ross Emergency Order No. 2-2020 that was issued by the Town of Ross Director of Emergency Services (Mayor McMillan) and Assistant Director of Emergency Services (Town Manager Chinn) which provides guidance and regulations for outdoor dining and other activities to operate in the public way while complying with social distancing requirements.

**Background and Discussion**

On March 16, 2020 seven Bay Area counties, including Marin County, issued a Shelter in Place Order effective beginning March 17, directing residents to remain at their place of residence except as necessary to perform essential activities, such as food shopping and medical visits. On March 19, 2020, the Town Council of the Town of Ross declared a Local Emergency relating to the existence and anticipated spread of COVID-19, as defined in California Government Code Section 8630. Also, on March 19, 2020, California Governor Newsom issued Executive Order N-33-20, a similar Shelter in Place Order, directing all Californians to remain at their place of residence except as necessary for essential activities. In May, the Governor of California and the California Department of Public Health published guidance regarding the reopening of certain businesses, subject to stages established by the State.

Following State guidance, the County of Marin has revised its Health Order to allow certain business and other activities to re-open in gradual fashion. However, despite the ability of businesses to gradually re-open in accordance with State and local health requirements, local businesses are limited in their capacity to provide services in their existing facilities due to social distancing requirements and as a result, business activity remains at a fraction of its normal level. In an effort to continue the gradual re-opening of business activity in a safe way, on June 1, 2020, outdoor in-person dining options and outdoor retail shopping were permitted to operate

pursuant to the requirements of the County Health Order and compliance with local regulations. Among other requirements for these activities, the County Health Order requires site specific safety protocols be in place in order for business and other activities to resume. The ability to expand business outdoors is intended to promote social distancing and health safety requirements and potentially increase consumer confidence and encourage customers to patronize local business more frequently.

Many businesses in Ross lack outdoor space and are not currently permitted to operate in the public right-of-way (streets and sidewalks). To accommodate the continued operation or reopening of businesses in a manner that is consistent with County requirements and protects the health and safety of Ross community members, on June 5, 2020, the Director and Assistant Director of Emergency Services of the Town of Ross issued Emergency Order No. 2-2020, finding that an order was necessary to protect the health and safety of the Town while fostering economic well-being of the Town's citizens and businesses. The Town wishes to assist businesses in remaining open or reopening when lawfully permitted to do so. The Order facilitates the operation and reopening of businesses in a manner that is consistent with State and local social distancing requirements.

Emergency Order No. 2-2020 suspends Town of Ross laws, regulations, and/or policies that would otherwise prohibit businesses from engaging in their business activities outside in the public right-of-way and establishes a framework by which a business may enter into a Temporary COVID-19 Outdoor Dining and/or Activities Encroachment Agreement (the "Outdoor Dining and Activities Agreement"). The Outdoor Dining and Activities Agreement streamlines the issuance of temporary rights of encroachment into the public right-of-way. The Town shall only enter into an Outdoor Dining and Activities Agreement that authorizes activities that are consistent with State and County orders.

Resolution No. 2166 ratifies the Town of Ross Emergency Order No. 2-2020 that was signed by the Director and Assistant Director of Emergency Services.

#### **Fiscal, resource and timeline impacts**

Processing any proposed Outdoor Dining and Activities Agreements will require staff time and resources and no cost recovery fees are proposed at this time. However, the increased flexibility provided through Emergency Order No. 2-2020 may help to protect the economic viability of Ross' businesses.

#### **Alternative actions**

None recommended but Council could choose not to adopt the resolution.

**Environmental review (if applicable) – Not applicable**

#### **Attachments**

- Resolution No. 2166
- Emergency Order No. 2-2020 including attached Outdoor Dining and Activities Agreement

## **TOWN OF ROSS**

### **RESOLUTION NO. 2166**

#### **A RESOLUTION OF THE TOWN OF ROSS AUTHORIZING EMERGENCY SERVICES ORDER NO. 2-2020 REGARDING OUTDOOR DINING AND ACTIVITIES AND ENCROACHMENTS FOR BUSINESSES OPERATING IN COMPLIANCE WITH SOCIAL DISTANCING REQUIREMENTS**

**WHEREAS**, California Government Code section 8630 empowers the Town Council to proclaim the existence or threatened existence of a Local Emergency when the Town is affected or likely to be affected by a public calamity; and

**WHEREAS**, California Government Code section 8634 empowers the Town to promulgate orders and regulations to provide for the protection of life and property; and

**WHEREAS**, on March 16, 2020 seven Bay Area counties, including Marin County, issued a shelter in place order, directing residents to remain at their place of residence except as necessary to perform essential activities, such as food shopping and medical visits; and

**WHEREAS**, on March 19, 2020, the Town Council of the Town of Ross declared a Local Emergency relating to the existence and anticipated spread of COVID-19, as defined in to California Government Code Section 8630; and

**WHEREAS**, on March 19, 2020, California Governor Newsom issued Executive Order N-33-20, a similar shelter in place order, directing all Californians to remain at their place of residents except as necessary for essential activities; and

**WHEREAS**, in mid-May 2020, the Governor of the State of California and the California Department of Public Health published guidance regarding the opening of certain businesses subject to stages established by the State; and

**WHEREAS**, the Town has an important governmental interest in maintaining a thriving business community and protecting the health, safety, and economic welfare of its citizens and businesses; and

**WHEREAS**, in order to protect the health and safety of the Town, while fostering economic well-being of the Town's citizens and businesses, the Town wishes to assist both essential and non-essential businesses in remaining open, or re-opening when lawfully permitted to do so; and,

**WHEREAS**, on June 5, 2020, the Director and Assistant Director of Emergency Services of the Town of Ross issued Emergency Order No. 2-2020 which suspends certain permit and license requirements in order to facilitate business operations in a manner that is consistent with social distancing requirements, and protects the health and safety of the citizens of Ross; and

**WHEREAS**, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, it was necessary to issue and implement said Order to protect life, property and civil order; and

**WHEREAS**, the Town Council of the Town of Ross wishes to ratify this order by adopting this Resolution.

**NOW, THEREFORE, BE IT RESOLVED**, that the Town Council of the Town of Ross does hereby resolve as follows:

Section 1. It is found by the Town Council of the Town of Ross that the existence and spread of COVID-19 that resulted in the County Shelter Order, this Resolution is necessary for the immediate preservation of the public health, safety and welfare of residents by providing a framework by which business activities can be conducted in a manner consistent with public health guidelines and requirements.

Section 2. The Emergency Order No. 2-2020 is hereby ratified by the Town Council. To be eligible to engage in outdoor activities pursuant to this Order, businesses shall be required to enter into a Temporary COVID-19 Outdoor Dining and/or Activities Encroachment Agreement (hereinafter the "Outdoor Dining and Activities Agreement"). The Town Manager or his designee shall be authorized to enter into an Outdoor Dining and Activities Agreement with the applicant and shall be entitled to seek the review of any Town staff regarding any and all site-specific considerations related to the proposed outdoor activities. The Town Manager may choose to enter into an Outdoor Dining and Activities Agreement on any terms he deems necessary, including but not limited to modifications to the proposed location of outdoor activities, to ensure ongoing protection of the public health and safety of the Town. The Town shall only enter into an Outdoor Dining and Activities Agreement that authorizes activities which are consistent with State and County orders.

The foregoing Resolution was duly and regularly adopted by the Ross Town Council at its regular meeting held on the 18<sup>th</sup> day of June 2020, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Julie McMillan, Mayor

**ATTEST:**

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Linda Lopez, Town Clerk

DIRECTOR OF EMERGENCY SERVICES ORDER NO. 2-2020

AN ORDER OF THE DIRECTOR OF EMERGENCY  
SERVICES OF THE TOWN OF ROSS REGARDING  
OUTDOOR DINING AND ACTIVITIES AND  
ENCROACHMENTS FOR BUSINESSES OPERATING IN  
COMPLIANCE WITH SOCIAL DISTANCING  
REQUIREMENTS

WHEREAS, California Government Code Section 8630 empowers the Town Council of the Town of Ross to proclaim the existence or threatened existence of a Local Emergency when the Town is affected or likely to be affected by a public calamity; and,

WHEREAS, Government Code Section 8634 empowers the Town to promulgate orders and regulations to provide for the protection of life and property; and,

WHEREAS, pursuant to Ross Municipal Code (RMC) section 2.28.060(a)(6)(A)), the Director of Emergency Services has declared the existence of a Local Emergency, which Local Emergency has been ratified by the Town Council on March 19, 2020; and,

WHEREAS, the Director of Emergency Services does hereby find that conditions of extreme peril and a crippling disaster, which severely impairs the safety of persons or property, have arisen within the Town caused by the virus COVID-19 and its rapid transmission as reported by various local, state and national health organizations; and,

WHEREAS, the aforesaid conditions of extreme peril warranted and necessitated the proclamation of the existence of a Local Emergency; and

WHEREAS, on March 16, 2020, the Marin County Health Official issued a County-wide shelter-in-place order that requires individuals to isolate in their places of residence, except as needed for the performance of essential activities; and

WHEREAS, on March 19, 2020, the Governor of the State of California ("Governor") issued Executive Order N-33-20, which provides that individuals living in the State of California are required to stay at home except as needed to maintain continuity of operations of the critical infrastructure sectors; and

WHEREAS, in mid-May 2020, the Governor of the State of California and the California Department of Public Health published guidance regarding the opening of certain businesses subject to stages established by the State; and

WHEREAS, the Town has an important governmental interest in maintaining a thriving business community and protecting the health, safety, and economic welfare of its citizens and businesses; and

WHEREAS, in order to protect the health and safety of the Town, while fostering economic well-being of the Town's citizens and businesses, the Town wishes to assist both essential and non-essential businesses in remaining open, or re-opening when lawfully permitted to do so; and

WHEREAS, to the extent non-essential businesses are permitted to re-open pursuant to State and County orders, laws, and/or guidance, the Town hereby suspends certain permit and license requirements in order to facilitate business operations in a manner that is consistent with social distancing requirements, and protects the health and safety of the citizens of Ross;

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 issue and implement said Order to protect life, property and civil order; and

NOW, THEREFORE, THE DIRECTOR OF EMERGENCY SERVICES OF THE TOWN OF ROSS DOES HEREBY ORDER AS FOLLOWS:

SECTION 1. Outdoor Activities Permitted. To facilitate the reopening of businesses in a manner that is consistent with State and local social distancing requirements, all Town of Ross laws, regulations and/or policies that would otherwise prohibit businesses from engaging in their business activities outside are hereby suspended.

SECTION 2. Eligible Businesses. Only those businesses that require outdoor space in order to effectively run their business while complying with State and local social distancing requirements are eligible to operate pursuant to this Order. Nothing in this Order shall authorize a particular business to operate outside unless and until that business is authorized to operate pursuant to State and County Orders. All businesses must be in full compliance with all State and County Orders regarding reopening and operation in order to comply with this Order.

SECTION 3. Temporary COVID-19 Outdoor Dining and Activities and Encroachment Agreement. To be eligible to engage in outdoor activities pursuant to this Order, businesses shall be required to enter into a Temporary COVID-19 Outdoor Dining and/or Activities Encroachment Agreement (hereinafter the "Outdoor Dining and Activities Agreement") attached hereto and incorporated herein by reference.

The Town Manager or his designee shall be authorized to enter into an Outdoor Dining and Activities Agreement with the applicant and shall be entitled to seek the review of any Town staff regarding any and all site-specific considerations related to the proposed outdoor activities. The Town Manager may choose to enter into an Outdoor Dining and Activities Agreement on any terms he deems necessary, including but not limited to modifications to the proposed location of outdoor activities, to ensure ongoing protection of the public health and safety of the Town.

The Town shall only enter into an Outdoor Dining and Activities Agreement that authorizes activities which are consistent with State and County orders.

SECTION 4. Encroachment Into Public Right-of-Way. To streamline the issuance of temporary rights of encroachment into the public right-of-way, the Town hereby amends its encroachment permit and agreement process as follows:

1. The following requirements set forth in the Ross Municipal Code Chapter 12.08 regarding encroachment permits and encroachment agreements shall not apply to businesses seeking to encroach into the public right of way for purposes of conducting business in compliance with State and local social distancing requirements: RMC §§ 12.08.030, 12.08.050, 12.08.060-130, 12.080.

2. Businesses seeking to encroach into the public right way for purposes of conducting business in compliance with State and local social distancing requirements shall execute an Outdoor Dining and Activities Agreement in lieu of obtaining encroachment permits and encroachment agreements required by RMC Ch. 12.08.

SECTION 5. No Interference with Private Property. Nothing in this Order 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 written consent of any private property owners whose property will be used for outdoor operations pursuant to the attached "Consent to Use Private Property for Temporary Outdoor Activities" form.

SECTION 6. Building Permit and Design Review Required. Nothing in this Order 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 Order relieve a business from complying with all provisions of the Building Code, including but not limited to, maximum occupancy requirements.

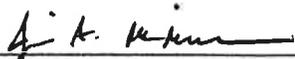
SECTION 7. County Permits. Nothing in this Order relieves a business from the requirement to obtain any and all County permits regarding the provision of food and dining services.

SECTION 8. Violations of Order. Any violation of this Order 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 Order may result in the immediate termination of an Outdoor Dining and Activities Agreement and the cessation of any activities authorized by said Agreement and this Order.

SECTION 9. Effective Date of Order. This Order shall become effective on the date signed by the Director of Emergency Services of the Town of Ross and shall expire when repealed by the Town Council or upon a declared termination of the state of emergency regarding COVID-19 by the Ross Town Council. This Order shall only apply to the extent businesses are authorized to operate pursuant to State and County orders regarding essential businesses.

SECTION 10. The Town Clerk shall certify the adoption of this Order and shall cause a certified Order to be filed in the Office of the Town Clerk.

PASSED and ADOPTED this 5<sup>th</sup> day of June 2020.

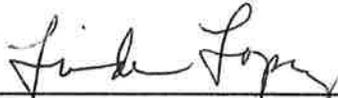


Julie McMillan  
Director of Emergency Services, Town of Ross



Joe Chinn  
Assistant Director of Emergency Services, Town of Ross

ATTEST:



Linda Lopez, Town Clerk

**TEMPORARY COVID-19 OUTDOOR DINING AND/OR ACTIVITIES  
ENCROACHMENT AGREEMENT**

**1. Business Identification**

Business Name (Permittee): \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
Business Phone: \_\_\_\_\_  
Business Email: \_\_\_\_\_

**2. Type of Business** [Check one]

Restaurant   
Retail   
Other  Please Describe \_\_\_\_\_

**3. Proposed Encroachment** [Check one or more if Business Proposes to Use Public Right-of-Way for Outdoor Activities]

Outdoor Dining   
Outdoor Food Sales   
Outdoor Retail Display   
Outdoor Retail Sales   
Other  Please Describe \_\_\_\_\_

**4. Will proposed outdoor activity require the use of private property not owned or leased by Permittee?**  Yes  No

If response to above question is yes, has Permittee obtained all required authorizations (including but not limited to written agreements, licenses, and/or leases) to use said private property?  Yes  No

**5. Proposed Activities.** Please briefly provide the following information on a separate attachment: (1) a description of the Business, (2) proposed outdoor activities, (3) a description of all improvements, structures and/or materials to be used to facilitate outdoor activities, (4) a description of the area in which proposed outdoor activities will take place along with a simple drawing, map or other visual depiction showing said area, improvements, structures and/or materials to be placed in said area.

**6. Requested Start Date of Outdoor Activities:** \_\_\_\_\_

**7. Proposed Duration of Outdoor Activities:** \_\_\_\_\_

**8. Amendments to Proposal by Town and/or Additional Terms of Agreement** [To be Completed by Town]:

## 9. Terms of Agreement:

A. Permittee agrees to accept all responsibility for loss or damage to any person or entity and to indemnify, hold harmless, and defend and release the Town of Ross, its elected and appointed officials, officers, employees, agents, and volunteers from and against any and all liability actions, claims, damages, costs, or expenses which may be asserted by any person or entity, including Permittee, arising out of or in connection with the willful act or negligence of Permittee engaging in the activities associated with this Agreement, whether or not there is concurrent negligence on the part of the Town, but excluding liability due to the sole active negligence or sole willful misconduct of the Town.

B. The Town reserves the right to order the removal or relocation of the improvements listed in paragraphs 3-6, above, at Permittee's cost in the event same is required by the Town and/or a Utility. Whether or not said removal or relocation is required shall be left to the discretion of the Town and/or a Utility. Permittee hereby grants to the Town the right to remove or relocate said improvements and to come upon Permittee's land to effect said removal or relocation if deemed necessary by the Town and/or a Utility. Permittee waives any claim or right he/she/it may have for inverse condemnation, damages, or loss of income or business resulting from said removal. However, the Town will be responsible for repairing any physical damage caused to Permittee's structure(s) or property by the Town's (but not a Utility's) removal or relocation of said improvements. Upon removal or relocation of said improvements, all rights of Permittee under this agreement and the permit itself shall terminate.

C. Permittee shall comply with all applicable local, State, and Federal laws and regulations at all times during the effective period of this agreement, including but not limited to laws regarding the obstruction of vehicular traffic, the Americans with Disabilities Act and County health laws regarding provision of food services.

D. If Permittee's proposed activities encroach into public right-of-way and/or a public easement, Permittee shall procure and maintain for the duration of this Agreement, and furnish proof of along with this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Agreement, as set forth in this section. The cost of such insurance shall be borne by Permittee. A Permittee whose activities do not encroach into public right-of-way and/or a public easement shall not be required to obtain said insurance.

Minimum Scope of Required Insurance. Permittee shall obtain and all times during duration of this Outdoor Activities Agreement maintain coverage at least as broad as:

(a) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

(b) Workers' Compensation insurance as required by the State of California and Employer's Liability insurance (for Permittees with employees).

(c) Property insurance against all risks of loss to any tenant improvements or betterments.

Permitee shall maintain limits no less than:

(a) General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(b) Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.

(c) Property Insurance: Full replacement cost with no coinsurance penalty provision.

Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the Town. At the option of the Town, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its officers, officials, employees and volunteers; or the Permitee shall provide a financial guarantee satisfactory to the Town guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions.

The general liability policy is to contain, or be endorsed to contain, the following provisions:

(a) The Town, its elected and appointed officials, officers, employees, agents, and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of the premises/property owned by or leased to the Permitee.

(b) The Permitee's insurance coverage shall be primary insurance as respects the Town, its elected and appointed officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by the Town, its elected and appointed officials, officers, employees, agents, or volunteers shall be in excess of the Permitee's insurance and shall not contribute to it.

(c) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town.

Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII unless prior approval is received from the Town Attorney.

E. Liquor Liability Coverage. If Permittee proposes to sell or serve alcohol as a part of its outdoor activities, Permittee shall furnish, along with this Agreement, proof of a liquor liability coverage endorsement or policy.

F. Violation of Agreement. Any violation of this Agreement 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 Agreement and/or Emergency Order No. 2-2020 may result in the immediate termination of this Agreement and the cessation of any activities authorized by this Agreement and Emergency Order No. 2-2020.

G. No Vested or Ongoing Rights Conferred. Permittee understands and agrees that this Agreement and Emergency Order No. 2-2020 confer no vested rights to any ongoing or continued activities, and any and all activities authorized by this Agreement and Order are temporary in nature and granted solely to enable businesses to operate in compliance with State and local orders regarding social distancing and COVID-19. All improvements, structures and installments approved pursuant to this Agreement shall be removed in their entirety upon expiration of this Agreement.

H. Non-Transferable. This Agreement is non-transferable. Only the Permittee with whom this Agreement was entered shall be permitted to engage in the activities authorized herein.

I. Entire Agreement. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations of modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing, signed by the party to be charged and duly recorded.

THE UNDERSIGNED AGREES THAT THE PROPOSED ACTIVITIES DESCRIBED ABOVE SHALL BE IN ACCORDANCE WITH AND SUBJECT TO THIS AGREEMENT'S TERMS AND CONDITIONS, TOWN OF ROSS EMERGENCY ORDER NO. 2-2020 AND ALL OTHER APPLICABLE LOCAL, STATE AND FEDERAL LAWS, INCLUDING BUT NOT LIMITED TO STATE AND COUNTY EMERGENCY ORDERS REGARDING THE COVID-19 PANDEMIC.

\_\_\_\_\_  
Permittee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Joe Chinn  
Town Manager  
Town of Ross

\_\_\_\_\_  
Date

**CONSENT TO USE PRIVATE PROPERTY  
FOR TEMPORARY OUTDOOR ACTIVITIES**

[This form must be completed if proposed outdoor activity requires the use of private property which is neither owned nor leased by Permittee]

I, \_\_\_\_\_, declare that:

1. I am the record title owner of the property located at:  
\_\_\_\_\_, Ross, California,  
(Physical Address)

2. I am aware that the Permittee \_\_\_\_\_ (Business name) is in the process of entering into a Temporary COVID-19 Outdoor Dining and Activities Agreement with the Town of Ross to use my property, described in paragraph 1, for certain outdoor activities described in the Agreement.

3. I consent and agree to use of my property for the outdoor activities described in the Agreement.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20

\_\_\_\_\_  
(Landowner Signature)