


Office of the City Attorney

**Emergency Order No. 8 of the City of Oakland
City Administrator/Director of the Emergency Operations Center**

Whereas, due to the spread of COVID-19 (coronavirus) within the State, on March 1, 2020, the Alameda County Public Health Department, and on March 4, 2020, Governor Gavin Newsom, declared local and State public health emergencies due to the spread of COVID-19 locally and within the State, pursuant to Health & Safety Code section 101080 and Government Code section 8625, respectively, and

Whereas, on March 9, 2020, the former City Administrator, in her capacity as the Director of the Emergency Operations Center (EOC), issued a proclamation of local emergency due to the spread of COVID-19 in Oakland (COVID-19 Local Emergency). The City Administrator declared the COVID-19 Local Emergency pursuant to her power under Oakland Municipal Code (O.M.C.) section 8.50.050(C) to proclaim a local emergency provided that the local emergency proclamation shall remain in effect only if the City Council confirms the existence of the emergency within seven (7) days of the proclamation; and

Whereas, On March 12, the City Council passed Resolution No. 88075 C.M.S. confirming the existence of the COVID-19 Local Emergency; and

Whereas, the Office of the City Administrator has authority “to promulgate orders, rules, and regulations on matters reasonably related to the protection of life and property and the preservation of public peace and order, in accordance with Article 14 of the California Emergency Services Act, and such rules and regulations must be confirmed at the earliest practicable time by the governing body as required by law”; and

Whereas, COVID-19 testing facilities are in high demand in Oakland and serve to ensure early detection of those who are infected with the virus. Since the coronavirus is highly contagious, the swift approval of community-based COVID-19 testing facilities will make testing more widely available to City residents, in a manner that reduces the spread of COVID-19 to health care providers, other hospital patients, and the public; and

Whereas, the City Administrator has previously authorized the approval of drive-thru, drive-in, and open, walk-up COVID-19 testing facilities on (a) private property within the City of Oakland that are located within 1,000 feet of an existing medical facility (Emergency Order No. 4 dated June 19, 2020), and (b) property owned or controlled by the City and right of way adjacent to City-controlled property (Emergency Order No. 6 dated July 27, 2020); and

Whereas, recognizing the disproportionate toll of COVID-19 in Black and Indigenous populations within Oakland and the lack of existing medical activities in many areas of the City, the City Administrator desires to increase the areas that can accommodate COVID-19 testing facilities to extend beyond 1,000 feet from an existing clinic; and

Whereas, the actions authorized by this Emergency Order No. 8 are exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resources Code sections 21080(b)(4) as actions necessary to mitigate the COVID-19 Local Emergency; and

Whereas, a temporary program authorized by this Order is necessary for the protection of life and property and for the preservation of peace and order by permitting additional COVID-19 testing sites; and

Now, therefore, I, Edward D. Reiskin, City Administrator/Director of the EOC of the City of Oakland, in accordance with the authority vested in me pursuant to Oakland's Emergency Services Act, Oakland Municipal Code Chapter 8.50 and more specifically section 8.50.050.C.5(a), hereby order the following:

- I.** The second and third paragraphs of Section 3 of the City Administrator's Emergency Order No. 4 dated June 19, 2020, are deleted as set forth below (noted with ~~strike-throughs~~ below):

3. Outdoor Dining, Retail or Cafe Approval on Private Property. This Order authorizes the Director of the Planning and Building Department (Planning Director) to allow for the use of private outdoor space (e.g., private parking lots) for: (1) retail businesses to sell goods and merchandise and offer services, and (2) limited or full service restaurants to place tables, chairs, and other dining elements for serving customers in privately owned outdoor areas. The privately-owned outdoor areas must be located on the retail, restaurant, or café premises; or on property adjacent to the retail, restaurant, or café premises to which the applicant demonstrates, in writing, it has legal rights to such proposed uses.

~~The temporary program may also allow drive-through, drive-in, or other open non-residential facilities for COVID-19 testing and related COVID-19 medical activities on privately owned land as an accessory facility and accessory activity to an existing medical activity that is located within one thousand (1,000) feet of the proposed activity and to which the applicant demonstrates, in writing, it has legal rights to such proposed uses.~~

~~Such permits are subject to the rules and regulations attached hereto at **Attachment D** and shall be revocable at any time at the discretion of the Planning Director or his designee.~~

- a. To the extent any such use under the temporary program is not permitted by Title 17 (the Oakland Planning Code) or conditions of approval imposed by the Bureau of Planning or Planning Commission, such laws, regulations, or conditions are hereby suspended at the discretion of the Planning Director in order to issue temporary permits under the program. Any provision of Title 17 authorizing an appeal concerning this program are also suspended.
- b. The user of any space authorized under this Order shall comply with all laws requiring accessibility for people with disabilities, and shall ensure the space and services do not interfere with the accessibility of the public open space to people with disabilities.
- c. This Order shall not authorize conduct that: (1) is prohibited by orders or directives of the Alameda County Health Officer or, (2) violates federal or State law.

- II.** Section II of Attachment D of the City Administrator's Emergency Order No. 4 dated June 19, 2020, is deleted in its entirety (noted with ~~strike-throughs~~ below):

ATTACHMENT D

Temporary Outdoor Dining, Retail, Café, or COVID-19 Testing Facility Approval on Private Property

H. COVID-19 Testing Facility Use

- ~~A. The Planning Director is authorized to allow drive through, drive in, or other open non-residential facilities for COVID-19 testing and related COVID-19 medical activities on privately owned land as an accessory facility and accessory activity to an existing medical activity that is located within one thousand (1,000) feet of the proposed activity.~~
- ~~B. Standards for COVID-19 Testing Facility on Private Property. COVID-19 Testing Facility uses on private property shall comply with the following standards:~~
- ~~1. The COVID-19 Testing Facility shall be properly licensed by appropriate state and local agencies to perform any testing facility activities.~~
 - ~~2. The COVID-19 Testing Facility shall be an accessory facility and accessory activity to an existing medical activity that is located within 1,000 feet of the proposed activity.~~
 - ~~3. The COVID-19 Testing Facility must comply with all applicable laws relating to litter, noise, and other livability matters. The Planning Director or his designee may impose additional conditions or limitations relating to noise on the COVID-19 Testing Facility when the Planning Director or his designee finds that such additional conditions or limitations are necessary or appropriate based on the location of the COVID-19 Testing Facility and the proximity of such area to residential areas, including without limitation existing residences, existing residential neighborhoods, and residentially zoned properties.~~
 - ~~4. Unless authorized as part of the permit, the COVID-19 Testing Facility on private property shall not encroach within any public rights of way.~~
 - ~~5. The COVID-19 Testing Facility shall not encroach into or interfere with required handicapped parking spaces.~~
 - ~~6. The COVID-19 Testing Facility shall not interfere with safe pedestrian and vehicular access or access required to be maintained under the Americans with Disabilities Act (ADA).~~
 - ~~7. The COVID-19 Testing Facility shall not encroach within or interfere with fire or other emergency access.~~
 - ~~8. The COVID-19 Testing Facility shall comply with all applicable provisions of the Building and Fire Codes.~~
 - ~~9. The COVID-19 Testing Facility shall comply with the Alameda County Health Order.~~
 - ~~10. The Planning Director or his designee may impose other reasonable conditions or limitations to protect against adverse impacts from noise, parking, fire, people with disabilities, and travel.~~

III. Amended COVID-19 Testing Facility Use on Private Property.

- A. Notwithstanding the restrictions and/or requirements set forth in the Oakland Planning Code, the City’s Planning Director, or designee, is hereby authorized to allow drive-through, drive-in, walk-up, or other outdoor facilities for COVID-19 testing and related COVID-19 medical activities (COVID-19 Testing Facility) on private property, in accordance with this Section III.
- B. Such permits are subject to the rules and regulations attached hereto at **Attachment A** (Standards for COVID-19 Testing Facility on Private Property) and shall be revocable at any time at the discretion of the Planning Director or his designee. Where such use would not otherwise be permitted by the underlying zoning, the Planning Director, or designee, has sole discretion to approve such uses and the decision is not appealable.
- C. The authority granted herein shall continue for the duration of the COVID-19 Local Emergency and shall terminate automatically without further action, upon the cessation of such emergency. Any permits issued pursuant to this Section III shall automatically expire and be deemed extinguished upon the cessation of the COVID-19 Local Emergency.

I FURTHER DIRECT that as soon hereafter as possible, this Order shall be filed in the Office of the City Clerk, posted on the City of Oakland website, and that widespread publicity and notice of this Order shall be provided to the public.

IN WITNESS WHEREOF I have hereunto set my hand
this 16th day of September , 2020



Edward D. Reiskin
City Administrator/Director of Emergency
Operations Center, City of Oakland, California

Attest:



[Asha Reed \(Sep 16, 2020 13:15 PDT\)](#)
Asha Reed
City Clerk and Clerk of the City Council
City of Oakland, California

ATTACHMENT A

Standards for COVID-19 Testing Facility on Private Property

A. The Planning Director is authorized to allow drive-through, drive-in, walk-up or other open nonresidential facilities for COVID-19 testing and related COVID-19 medical activities on privately owned land, where the applicant has demonstrated, in writing, that it has a legal right to use such private property.

B. Standards for COVID-19 Testing Facility on Private Property. COVID-19 Testing Facility uses on private property shall comply with the following standards:

1. The COVID-19 Testing Facility shall be properly licensed by appropriate state and local agencies to perform any testing facility activities.

2. The COVID-19 Testing Facility must comply with all applicable laws relating to litter, noise, and other livability matters. The Planning Director or his designee may impose additional conditions or limitations relating to noise on the COVID-19 Testing Facility when the Planning Director or his designee finds that such additional conditions or limitations are necessary or appropriate based on the location of the COVID-19 Testing Facility and the proximity of such area to residential areas, including without limitation existing residences, existing residential neighborhoods, and residentially-zoned properties.

3. Unless authorized as part of the permit, the COVID-19 Testing Facility on private property shall not encroach within any public rights-of-way.

4. The COVID-19 Testing Facility shall not encroach into or interfere with required handicapped parking spaces.

5. The COVID-19 Testing Facility shall not interfere with safe pedestrian and vehicular access or access required to be maintained under the Americans with Disabilities Act (ADA).

6. The COVID-19 Testing Facility shall not encroach within or interfere with fire or other emergency access.

7. The COVID-19 Testing Facility shall comply with all applicable provisions of the Building and Fire Codes.

8. The COVID-19 Testing Facility shall comply with the Alameda County Health Order.

9. The Planning Director or his designee may impose other reasonable conditions or limitations to protect against adverse impacts from noise, parking, fire, people with disabilities, and travel.