



Agenda Report

May 4, 2020

TO: Honorable Mayor and City Council

FROM: City Attorney and City Manager

**SUBJECT: DISCUSSION OF THE FRAMEWORK FOR DECISION-MAKING
AUTHORITY AND PARAMETERS FOR RE-OPENING THE ECONOMY**

RECOMMENDATION:

This report is for information only and provides background about the authority for staff issuance and (where required) City Council review of the health orders and local health emergencies/local emergencies in relation to COVID-19, no City Council action is required.

BACKGROUND:

The context of this discussion involves questions about the process for the City to, where appropriate, ease restrictions and allow residents and businesses to gradually transition away from restrictions imposed as a result of COVID-19.

At the federal level, throughout the COVID-19 pandemic, there has been various guidance issued by the Department of Homeland Security identifying essential critical infrastructure workers and business operations that are allowed to continue during the emergency. Those take the form of CISA Guidelines for individual jurisdictions, which are advisory, and not considered a federal directive, and have been used by California and other states to provide guidance.

At the State level, the State Public Health Officer issued a Stay at Home order on March 19, and Governor Newsom's Executive Order N-33-20 issued that same date follows that of the State Public Health Officer. In that document, the Governor and State Health Officer ordered "all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined in [the federal CISA guidelines]." In that March 19 State Order, the State issued a lengthy Essential Workforce listing which lists those who are allowed to perform a continuity of essential services.

Los Angeles County Board of Supervisors and the Los Angeles County Health Director have also issued emergency declarations and orders; however, since the City of Pasadena has its own health department, we are not subject to those orders and

directives, although we can choose to adopt identical or similar requirements in furthering a regional approach to addressing this pandemic.

Pasadena has the option of imposing restrictions (through public health orders, local health emergencies, and local emergencies) which are as strict, or more strict, than the State. Of note, the Pasadena Health Officer has incorporated the State's listing of non-essential businesses in her March 22 Revised Safer at Home Order. Nonetheless, the State's restrictions currently apply, even in the absence of the Pasadena Health Officer's Safer at Home Order. For example, Pasadena cannot "open" non-essential retail businesses, or "allow" sit-down dining, because those activities are currently prohibited by the State Public Health Officer's March 19 order, as well as Governor Newsom's March 19 Executive Order. The landscape continues to change as the State and other jurisdictions gain more experience and encounter different situations, and the regulations and requirements continue to evolve. For instance, the State most recently updated its Essential Workforce listing on April 28, 2020, which also provides additional guidance. Potential consequences for violating the State's orders could include criminal prosecution for those who violate, as well as potentially jeopardizing the City's ability to get reimbursement for COVID-19 related expenditures from FEMA and the state if the City chooses to defy the State's requirements.

As noted in the chart below, State law provides that the City Council is responsible for ratifying "declarations" of a local public health emergency (by the Health Officer) and a local emergency (by the City Manager). As to health "orders," though, Health & Safety Code Section 120175 authorizes the Health Officer to "take measures as may be necessary to prevent the spread of [a contagious, infectious, or communicable] disease or occurrence of additional cases." However, State law does not require that the Health Officer obtain ratification by the governing body (here, the City Council) of health "orders."

As to local health emergencies and local emergencies (and supplements), the City Council is not required to review and renew its prior ratifications during this COVID-19 state of emergency, as a result of paragraphs 7 and 8 of Governor Newsom's March 4 state of emergency proclamation. The City Manager, as the Director of Disaster Emergency Services, can, among other things, "[p]roclaim the existence or threatened existence of a local emergency; provided, that the city council shall take action to ratify the proclamation within 7 days thereafter..." (PMC Sec. 2.370.080.) With that said, since the Council has adopted resolutions ratifying each declaration of local health emergencies and local emergencies (and supplements), it is the Council's prerogative to adjust the scope of the emergency declarations, by amending (or repealing) a resolution, if it so desired. Further, as provided in City Charter Section 604(J), the City Council can "instruct the City Manager in all matters of policy, and any action, determination or omission of the City Manager shall be subject to review by the City Council," upon at least five votes of the Council. As such, other decisions of the City Manager, beyond those set forth in a declaration of local emergency, can also be reviewed by the Council, at its discretion.

Pasadena Municipal Code Section 2.370.080 enumerates several powers and duties of the City Manager in his role as Director of Disaster Emergency Services, including, among others, exercising all of the ordinary powers of the office of the City Manager. If the City Manager enacts a rule or regulation beyond such ordinary powers, such rule or regulation would need to be confirmed by the Council at the earliest practicable opportunity. So long as the City Manager takes steps within his regular and ordinary powers, and local public health emergency/local emergency declarations are submitted to the Council for ratification, further Council review would be optional.

Action	Examples	Council ratify or review?	Reqs. presently suspended?	Similar State action
Health Officer Order – H&S Code Section 120175	Safer at home order (and revised order), quarantine, isolation, temporarily closing parks, face coverings, skilled nursing facilities	No	Not applicable	State Public Health Officer's March 19 Stay at Home Order , tracking essential workers set forth in federal CISA list (last updated April 17) and designating essential workers through California Department of Public Health list (last updated April 28)
Declaration of Local Health Emergency (City Manager) – H&S Code Section 101080	Declaration of local health emergency	Yes – ratify within seven days, and then review every 30 days thereafter	30-day review by City Council not required (§ 7 of Governor's March 4 State of Emergency Proclamation)	
Declaration of Local Emergency (City Manager) – Government Code Section 8630 <i>et seq.</i> and PMC Chapter 2.370	Seeking federal assistance, closing bars/restaurants, eviction moratorium, suspending time limits under Municipal Code	Yes – ratify within seven days, and then review every 60 days thereafter	60-day review by Council not required (§ 8 of Governor's March 4 State of Emergency Proclamation)	Governor's March 4 State of Emergency Proclamation

Given the regulatory framework in which the City finds itself, staff has been closely monitoring the Governor's announcements related to the lifting of Stay-At-Home restrictions affecting businesses and recreational areas.

On April 28th the Governor revealed six indicators for modifying the state-wide Stay-At-Home Order. These indicators include:

- Ability to test, contact trace, isolate, and support the exposed
- Ability to protect those at high risk for COVID-19
- Surge capacity for hospital and health systems
- Therapeutic development to meet the demand
- Ability of businesses, schools and childcare facilities to support physical distancing
- Determination of when to reinstitute measure like Stay-At-Home

As part of this, the Director of the California Department of Health Services outlined a series of four stages of lessening restrictions, ultimately leading to the end of the Stay-At-Home Order. These Stages are described as follows:

Stage 1 – Safety and Preparedness: Making essential workforce environment as safe as possible. At present California is operating in Stage 1.

Stage 2 – Lower Risk Workplaces: Creating Opportunities for lower risk sectors to adapt and re-open. Modified School programs and childcare re-open.

Stage 3 – Higher Risk Workplaces: Creating opportunities for higher risk sectors to adapt and re-open.

Stage 4 – End of Stay-At-Home Order: Return to expanded workforce in highest risk workplaces. Requires Therapeutics (e.g., a COVID-19 vaccine).

While no particular timetable was provided, the Governor indicated that if current positive trends continue, the state could move to Stage 2, the gradual opening of some lower risk workplaces with adaptations, in a matter of weeks. These would include retail locations, manufacturing, offices (where telework is not possible) and the opening of more public spaces. The types of adaptations that would be required to re-open businesses and offices would likely be the same or similar to protocols placed into effect for Essential Businesses under the current health orders. For example, requirements for face coverings when entering businesses, measures to protect employee health, measures to keep people properly spaced and avoid crowds. Another example that was discussed in the Governor's presentation, would be providing for curbside pick-up for retail locations.

The Governor stressed that the transition to Stage 2 will occur through a statewide modification to the Stay-At-Home Order and that once in Stage 2, counties may choose to relax stricter local orders at their own pace. Presumably, this would apply to Pasadena as it is its own Health jurisdiction. At present the City's Health Orders are no more restrictive than the State's order.

Stage 3: Higher Risk Workplaces refers to Personal Care (hair and nail salons, gyms), Entertainment venues such as movie theaters and sports venues; however, without live audiences.

The final stage, Stage 4: End of the Stay-At-Home Order would allow large gatherings to resume such as: concerts, conventions and live audience sports. In terms of timing, the Governor stated that Stage 4 would be measured in months. However, some are projecting that live audience sports and concert events may not return for up to a year.

In regard to recreational activities, at his daily press conference held on April 30th the Governor announced revisions to State's Stay-At-Home order as it relates to outdoor recreational activities. These revisions included a non-exhaustive list of outdoor activities such as Golf (singles only, walking only), Hiking (trails/paths allowing distancing), jogging and running that are permitted provided participants gather only with members of their own household and maintain a safe physical distance of six feet. Staff is currently reviewing these revisions to determine whether the re-opening of certain recreational areas within the City can occur safely. Staff will report further at the City Council meeting on Monday.

As outlined in the report on Economic Development Efforts, presented under separate cover this afternoon, in anticipation of a shift to Stage 2 of the Governor's re-opening plan City staff, led by the Economic Development Division of the City Manager's Office, will be organizing new outreach and engagement with various businesses sectors. The purpose of this effort will be to identify how the City can assist with re-opening efforts through the identification and resolution of issues unique to various types of businesses. The groups will likely be organized as follows: 1) storefronts/retailers; 2) restaurants; 3) office R&D tenants and manufacturing; 4) schools/universities; 5) medical/dental offices; and 6) hotels and event venues.

In regard to City operations such as the re-opening of libraries and community centers, and various departmental programs and services to the extent there's been changes during the Safer-At-Home period, staff is assessing the appropriateness of moving back to more traditional operations.

Respectfully submitted,


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