

**RESOLUTION NO. 2474**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOWLER  
APPROVING A TEMPORARY USE PERMIT TO ASSIST RESTAURANTS, RETAIL  
BUSINESSES, AND SERVICE BUSINESSES IN THE CITY TO CONDUCT OUTDOOR  
BUSINESS OPERATIONS AND SERVICES IN PUBLIC AND PRIVATE COMMON  
AREAS UNDER SPECIFIED CIRCUMSTANCES**

**WHEREAS**, on March 16, 2020, the California Department of Public Health established guidelines for social distancing, elimination of non-essential gatherings, and isolation for specific individuals, in order to prevent the transmission of COVID-19; and,

**WHEREAS**, there exists a local emergency in the City of Fowler pursuant to Resolution 2461, approved by the City Council on March 17, 2020, where the City declared a local emergency as a result of the threatened spread of COVID-19 in the City, surrounding areas, and the state; and,

**WHEREAS**, on March 19, 2020, with the adoption of Executive Order N-33-20, the Governor ordered a Statewide stay at home/stay in place order (“Stay at Home Order”) to address the spread of COVID-19, allowing only essential businesses to remain open; and,

**WHEREAS**, the City is operating under the Governor’s Stay at Home Order as supplemented by Fresno County; and,

**WHEREAS**, the Governor and Fresno County have begun the process for allowing restaurants, retail establishments, and other businesses to reopen in the County; and,

**WHEREAS**, the City has determined that there is a need, when feasible and safe, to assist local businesses most severely impacted by the restrictions on reopening; and,

**WHEREAS**, under the most recent State and County orders, many businesses that were allowed to open in accordance with State and County guidance that required physical separation (social distancing) and other actions, are now required to cease indoor operations for customers or conduct indoor operations with severe occupancy and other restrictions that limit the number of customers and will result in substantial hardship to the impacted businesses; and

**WHEREAS**, restaurants, retail establishments, barber shops, hair salons, and other local service businesses that are prohibited from fully operating and serving customers indoors (hereinafter collectively referred to as “Business Establishments” and individually as a “Business Establishment”) play a vital role in the City of Fowler. They not only provide important tax revenue, but jobs and income to employees and owners; and

**WHEREAS**, the list of Business Establishments currently prohibited from fully operating and serving customers indoors may be expanded at any time and this Resolution is intended to cover those Business Establishments as well; and

**WHEREAS**, Business Establishments will be challenged to remain profitable by partially operating with only delivery service, take-out, an on-line presence, store pickup, or limited indoor operations, and many may fail, and therefore it is in the City’s best interest to assist Business Establishments in expanding capacity where feasible and safe so as to lessen the chance of a Business Establishment failing; and

**WHEREAS**, one way the City can assist Business Establishments is to temporarily make available the option of expanding capacity by using outdoor public and private areas for their operation and services, and to otherwise temporarily allow Business Establishments to operate in public and private common areas; and

**WHEREAS**, with the adoption of Resolution No. 2470 on June 16, 2020, the City Council previously approved Temporary Use Permit No. 20-01 to allow businesses to establish outdoor seating areas on public sidewalks and in alleys adjacent to the business in the Form-Based Code Zone District, under specified circumstances; and

**WHEREAS**, this Resolution is intended to supplement and amend Resolution No. 2470, by expanding Temporary Use Permit No. 20-01 to include all Business Establishments, as defined above, in the City limits, and include business operations and services beyond restaurant and customer seating only, and include a portion of the street parking area of Merced Street as depicted in **Exhibit A** attached hereto; and

**WHEREAS**, the City Council of the City of Fowler has reviewed and considered this proposed supplement and amendment of Temporary Use Permit No. 20-01; and

**WHEREAS**, pursuant to California Environmental Quality Act (“CEQA”), the proposed Project is determined to be categorically exempt pursuant to Section 15304(e) of CEQA as it is determined that the Temporary Use Permit will have a negligible, non-permanent effect on the environment.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FOWLER (“APPLICANT”) RESOLVES AS FOLLOWS:**

1. Notwithstanding anything to the contrary in the City’s zoning ordinances, municipal code, approved land use entitlements, or site plan review approvals, all Business Establishments, as defined above, within the City limits are eligible, during the City’s declared local emergency, to apply for a temporary permit issued by the City to allow the Business Establishment to use public and private common areas for business operations and services as follows.

- (a) Public common areas include sidewalks, alleys, a portion of the street parking area of Merced Street as depicted in **Exhibit A** attached hereto, and other public space that might be conducive to outdoor Business Establishment operations and services, as approved.
- (b) Private common areas include sidewalks, parking lots, and other private space, generally within a private site or shopping center, that might be conducive to outdoor Business Establishment operations and services, as approved.

2. Eligible public and private common areas for outdoor Business Establishment operations and services shall be known as the “Expansion Area”. If the Expansion Area is approved, the approval shall be considered a temporary permit to operate Business Establishment operations and services in the Expansion Area, including, but not limited to, outdoor seating for restaurants, retail display, and services. A business owner wishing to apply for a temporary permit shall meet the minimum requirements set forth in Section 6 below. The approval of a temporary permit shall not be deemed to convey a property or vested right to operate contrary to City codes, standards, and permit requirements.

3. Temporary permits shall be approved in the discretion of, and may be revoked by the City’s Public Works Director (“Director”) in accordance with the criteria and procedures set forth in Section 6 below. The Director may impose any conditions deemed reasonably necessary to ensure the safe and lawful operation of outdoor Business Establishment operations and services in the Expansion Area. All temporary permits shall automatically expire upon the lifting or expiration of the City’s declared local emergency or March 1, 2021, whichever is later, unless Temporary Use Permit No. 20-01 is earlier terminated by the City Council.

4. The denial or revocation of a temporary permit may be appealed to the City Manager, where the decision shall be final. Any appeal to the City Manager shall be an informal proceeding without the technical rules of evidence.

5. The City Manager is directed to develop supplemental guidelines for implementation of this program consistent with Section 6, which may be amended as determined by the City Manager.

6. The following requirements and procedures shall apply for any Business Establishment wishing to obtain a temporary permit to conduct outdoor business operations and services:

(a) The business owner shall complete temporary permit application on a form prescribed by the Director. No fee will be required for the application. The applicant is encouraged to consult with the Director prior to completing the application. The application shall include the following:

i. For private shopping centers, a letter of consent, or other evidence satisfactory to the Director, that the shopping center owner has consented to use of the Expansion Area for outdoor Business Establishment operations and services.

ii. A diagram showing the proposed foot print of the Expansion Area. The diagram shall include the proposed location of tables and chairs, furniture, other Business Establishment features or equipment needed to perform services, fencing (ornamental or safety), umbrellas (or other shade structures), misters, fans, heaters,

ground cover (if desired), retail displays, entry and exiting, and Americans with Disabilities Act (“ADA”) paths of travel.

iii. Where parking spaces in a private parking area are proposed to be used, a parking plan showing where employees and customers will park and how impacts to other businesses, if any, will be addressed.

iv. Where public parking lots or public streets are proposed to be used, a safety and traffic control plan showing how employees and customers will be protected from vehicle traffic, including the use of barricades.

v. Any other matter determined necessary by the Director to make a decision.

(b) The Expansion Area shall be limited to areas adjacent to the existing Business Establishment applicant, except as otherwise approved by the Director or City Manager, and in no event shall allow building occupancy, with the implementation of required social distancing measures, to exceed 100% of normal capacity. No entertainment shall be provided in the Expansion Area.

(c) If a restaurant intends to serve alcohol in the Expansion Area, the restaurant owner shall obtain all required Alcoholic Beverage Control approvals.

(d) All structures, entry(ies) and exit(s), paths of travel, source of electrical power, and safety features in the Expansion Area shall be approved by City’s Building, Fire, and Public Works Departments.

(e) The Business Establishment shall comply with applicable public health guidelines, including COVID-19 guidelines in performing business operations and services in the Expansion Area.

(f) The business owner, manager, and any other responsible person, shall keep the Expansion Area free of litter and debris. In addition, the business owner shall be responsible for regularly removing any trash generated by the business within the Expansion Area and immediately surrounding area.

(g) The City shall have the right to immediately suspend outdoor business operations and services operating in the Expansion Area under a temporary permit at any time because of anticipated or actual problems or conflicts with ADA paths of travel or to protect the safety of employees and customers. The City shall attempt to work with the impacted Business Establishment to try to resolve any problems or conflicts.

(h) Upon expiration or revocation of a temporary permit, the business owner shall remove all business owned property and restore the Expansion Area to its prior condition, satisfactory to the City.

(i) The City shall not be responsible for any liability or damages associated with issuance or revocation of a temporary permit, or with the immediate suspension of outdoor business operations and services as provided for under this Resolution, and the business, its owners, affiliates, successors, and assigns, in accepting a temporary permit agree to release, hold harmless, and defend the City from any such liability.

(j) No fee shall be collected for processing or issuing a temporary permit subject to these provisions.

The foregoing resolution of the City of Fowler was duly and regularly adopted by the City Council of the City of Fowler at a meeting held on August 18, 2020, by the following vote:

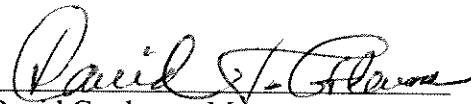
AYES: Cardenas, Hammer, Parra, Rodriguez, & Kazarian

NAYS: None

ABSTAIN: None

ABSENT: None

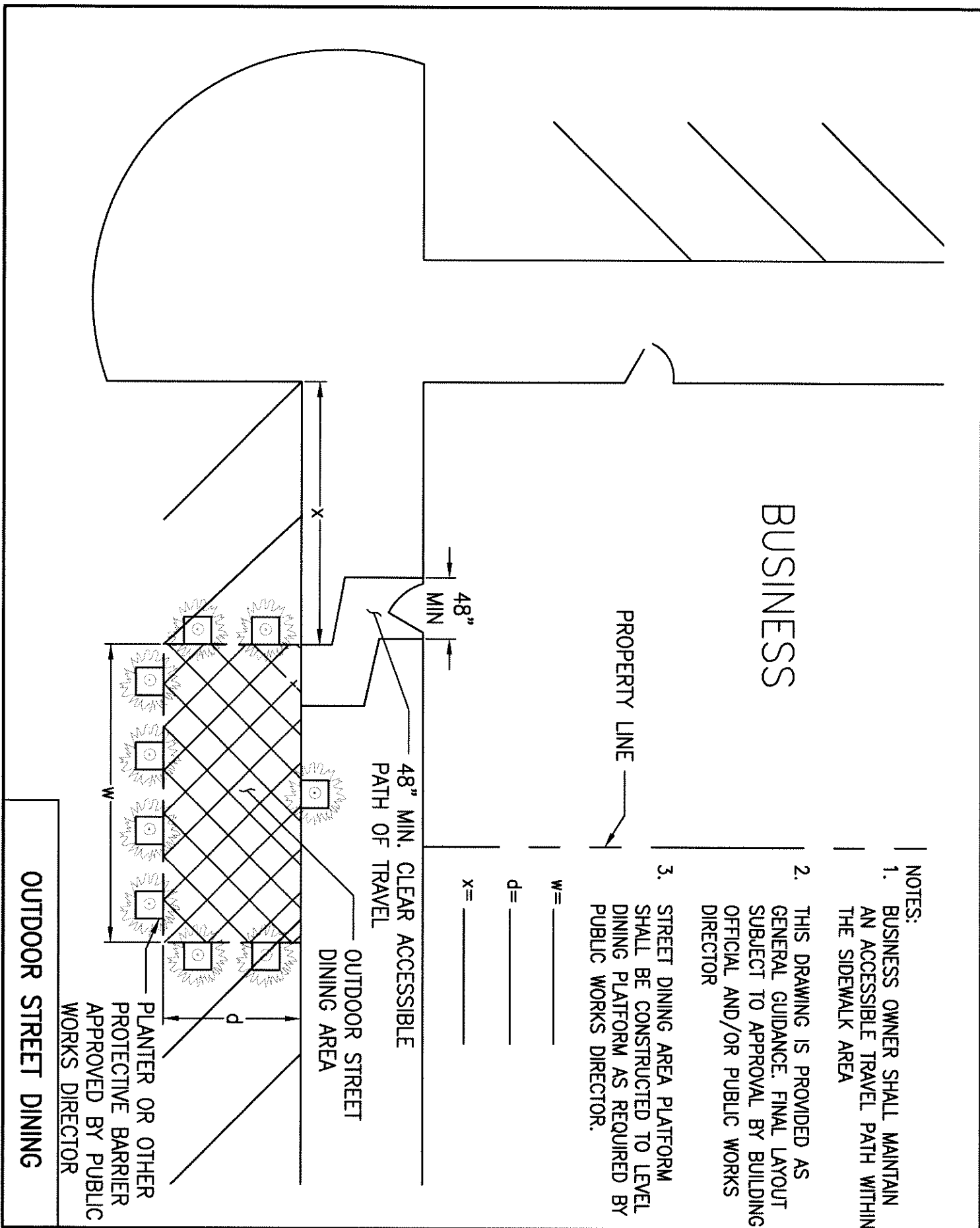
APPROVED:

  
David Cardenas, Mayor

ATTEST:

  
Jeannie Davis, City Clerk

# Exhibit A



BUSINESS

**NOTES:**

1. BUSINESS OWNER SHALL MAINTAIN AN ACCESSIBLE TRAVEL PATH WITHIN THE SIDEWALK AREA
2. THIS DRAWING IS PROVIDED AS GENERAL GUIDANCE. FINAL LAYOUT SUBJECT TO APPROVAL BY BUILDING OFFICIAL AND/OR PUBLIC WORKS DIRECTOR
3. STREET DINING AREA PLATFORM SHALL BE CONSTRUCTED TO LEVEL DINING PLATFORM AS REQUIRED BY PUBLIC WORKS DIRECTOR.

w = \_\_\_\_\_

d = \_\_\_\_\_

x = \_\_\_\_\_

**OUTDOOR STREET DINING**

PLANTER OR OTHER PROTECTIVE BARRIER APPROVED BY PUBLIC WORKS DIRECTOR