

Resolution on Outdoor Dining in San Diego County

Submitted to the Board of Supervisors by Restaurants, Bars, Cafes and Retailers in San Diego.

December 11, 2020

The following resolution has been initiated by the restaurants in Little Italy and endorsed by them. We ask that you circulate this resolution on the 11th and 12th and submit to the Little Italy office so we can gather them and deliver the petitions to all of the Supervisors' offices on Monday the 14th. We also acknowledge that the virus is real and is spreading rapidly in the County and all protocols for wearing masks, social distancing and minimizing gatherings are critical to arrest the spread of the virus.

WHEREAS a Superior Court Judge in Los Angeles has just ruled the "The Restaurant Closure order is an abuse of the Department's (LA Health Dept) emergency powers, is not grounded in science, evidence or logic and should be adjudicated to be unenforceable as a matter of law." And further that COVID cases traced back to bars and restaurants accounted for just 3.1% of the non-residential outbreak locations "the vast majority of which were chain/fast food type restaurants and almost exclusively involved employees rather than customers"; and

WHEREAS on December 9th, the San Diego Union Tribune stated that 20% of the intensive care beds remained unoccupied across San Diego County, and the state requires a shutdown of outdoor dining once it has hit the threshold of 15% as being unoccupied. Furthermore, the article states "That's not to say that action cannot be taken to spread out the load. Hospitals could intensify the current trend of delaying non-emergency surgeries and other procedures, or they could, with the cooperation with the state health department, consider using field hospital beds already set up and waiting at Palomar Medical Center Escondido." and;

WHEREAS San Diego County has been placed in a mega-region under the Governor's Emergency Health order which includes counties from San Luis Obispo on the coast to the border, (Santa Barbara, Ventura, LA, Orange, San Diego) and Imperial and Yolo Counties – representing over 20 million Californians with varying rates of COVID cases; and

WHEREAS the Center for Disease control has stated that it is very difficult for the COVID 19 virus to spread in an outdoor environment and the "Purple Zone" of the state restrictions allowed for full outdoor restaurant, bar and retail activities in that phase; and

WHEREAS our political representatives must use a balanced approach in protecting first line professionals and workers in the health care industry against infection and overwork, but simultaneously must acknowledge that issues like steady income, paying rent and providing for one's family is also "essential" and should not be disregarded.

THEREFORE, BE IT RESOLVED THAT:

The following restaurants, retailers and bars strongly urge the County Board of Supervisors act upon the following recommendations during the week of December 14th.

1. Vote as other Board of Supervisors have done to insist that the Governor eliminate his mega-region approach to monitoring ICU bed thresholds and allow County Health administrators base any decision of eliminating outdoor dining and retail sales on specific County conditions and accommodation of health care needs in that County.
2. That the County work with all regional hospitals to immediately increase the supply of available ICU beds by banning non-elective surgeries for now as well as using field hospital beds already set up at Palomar Medical Center Escondido.
3. That County Counsel review the California Restaurant Association case against the LA County Health Dept and report to the San Diego Board of Supervisors on the LA Superior Court judge's ruling on the legal implications of that case ruling in San Diego County.
4. That the County immediately set up a COVID Hospitality Advisory Board consisting up all 5 Supervisorial District and include reps from the restaurant, retail, hotel and visitor related industry to give input on future County directives impacting this industry.
5. That the County Board of Supervisors vote to reduce the 3-week period of shutting down outdoor dining and retail sales to allow Purple zone outdoor dining protocols to commence again at 12:01 a.m., Saturday December 19th, 2020 and apply such an order County wide.

We ask this on behalf for tens of thousands of restaurant, bar and retail small business owners and employees who see their work as "essential" and are all attempting to survive the crushing and indiscriminate policies that have been adopted by the Governor and County Board of Supervisors.

Supported by the undersigned organizations and business owners in San Diego County.

Organizations

Little Italy Association of San Diego
 Representing 800+ Businesses
 Ocean Beach Main Street Association
 Representing 520+ Businesses
 Gaslamp Quarter Association
 Representing 400+ Businesses
 La Jolla Village Merchants Association
 Representing 1,250+ Businesses
 Mission Hills Business Improvement
 District
 Representing 500+ Businesses
 San Diego Event Coalition
 Representing 35+ Businesses

Businesses

4864 Newport Avenue, LLC
 AMN Real Estate Services, Inc.
 Andaz San Diego
 Annette Crutchfield Insurance Agency, Inc.
 ArtWalk San Diego
 Bar One
 Barbusa
 Barleymash
 Batten Accountancy, Inc.
 Bencotto
 BK Printing
 Blarney Stone Pub
 Bolt Brewery
 Born & Raised
 Broken Yolk Café
 Broken Yolk Café (7 Locations)
 Broken Yolk Café (8 Locations)

Buon Appetito
Café Gratitude
Café Zucchero
Caffe Italia
California Wild Ales
Chapter One Tattoo
CheckerboardSTUDIOS
Cheswicks
Ciro's
Civico 1845
Cloak & Petal
Coleman Moving Systems, Inc.
Convivio
Craft & Commerce
Davanti Enoteca
Daybreak Island Grill
Details SalonSpa, Inc.
Diane Sullivan Realty
Dirty Birds OB
Dreamgirls
EcoLux Interiors
EdITS, LLC
Edward Jones Investments
El Camino
Extraordinary Desserts
Filippi's Pizza Grotto (14 Locations)
Frost Me Café & Bakery
Fuse Events
Gilmore Family Jewelers
Graze by Sam the Cooking Guy
H.G. Fenton Co.
Harbor Breakfast
Hoppy Beer Gear
Humble Heart Thrift Store and Boutique
Hunter & Maddox Real Estate Intl.
Huntress
Iannitti Realty Group
Ironside Fish & Oyster
Isola Pizza Bar
James A. Shaw & Company
Juniper & Ivy
Kaiserhof
Karen's Consignment Gallery
Kettner Exchange
La Puerta

Landini's Pizzeria
Le Parfait Paris
Little Italy Food Hall
Lumi
M Winehouse
Marriott San Diego Gaslamp
Matt Kalla Insurance Agency, Inc.
Mavericks Beach Club
Meyer Fine Art, Inc.
Mikes Taco Club
Mimmo's
Mona Lisa Italian Foods
Monello
MVP Media Network
MVP Real Estate, LLC
Nolita Hall
Nonna
OB Sands Property Management, Inc.
OB Theatre Company
OB Waves Salon
Ocean Villa Inn
Pappalecco
Parakeet Café
Peak Performance Holistic Therapies
Petrini's
Point Loma/Ocean Beach Landscape
Princess Pub & Grille
Pruett Realty, Inc.
Puerto La Boca Argentinian Restaurant
Queenstown Public House
Rabbit Hole
Raglan Public House
Rest & Relax Real Estate
Retired Councilmember
Roma Mia
Rooftop by STK
RoVino Rotisserie & Wine
Royal India (5 Locations)
Rustic Root
Sandbar Sports Grill
Sandbox Pizza
Seaport Realtors
Service Kings
Shino Sushi & Kappo
Shore Thing Pet Supply

Side Bar
Sign Diego
Social Syndicate
Sogno Di Vino
Solunto
Sorrento
South Beach Bar & Grille
Stride
Stroll
Sunnies Ocean Beach
Sunset Cliffs Pilates
Tacos El Cabron
TapShack
Tavern at the Beach
Tazza D'Oro
TD Himalaya
The Black Stores, Inc.
The Crack Shack
The Double Deuce

The Field Irish Pub & Restaurant
The Foodery by RoVino
The Market by Buon Appetito
The Smoking Gun
The Stronghold
The Tipsey Crow
Tockin' Baja Lobster Restaurants
TORO
Tranquil Home
True North Tavern
Underbelly
Urban Strategies Group
Volcano Rabbit
Voltaire Beach House
Waterfront Bar & Grill
Whiskey Girl
Wolfie's Carousel
Zinque

cc: Supervisor Greg Cox
Supervisor Diane Jacobs
Supervisor Gaspar
Supervisor Jim Desmond
Supervisor-Elect Nora Vargas
Supervisor-Elect Joel Anderson
Supervisor-Elect Terra Lawson-Remer
Mayor Todd Gloria
Councilmember Jo LaCava
Councilmember Jennifer Campbell
Councilmember Stephen Whitburn
Ocean Beach Main Street Association
Gaslamp Quarter Association
La Jolla Village Merchants Association
Mission Hills Business Improvement District

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In this Tuesday, Dec. 1, 2020, file photo, general manager Damien Williams prepares outdoor seating at Settebello Pizzeria Napoletana in Pasadena, Calif. | Marcio Jose Sanchez, File/AP

California judge calls L.A. outdoor dining ban 'abuse' of powers

By **KATY MURPHY** and **VICTORIA COLLIVER** | 12/08/2020 08:00 PM EST

SACRAMENTO — A judge on Tuesday issued a blistering rebuke to Los Angeles County public health officials racing to control Covid-19's spread, saying an indefinite ban on

outdoor dining announced late last month was "unsupported by any findings" and an abuse of emergency powers.

"The Restaurant Closure Order is an abuse of the Department's emergency powers, is not grounded in science, evidence, or logic, and should be adjudicated to be unenforceable as a matter of law," wrote Los Angeles Superior Court Judge James C. Chalfant in a tentative ruling issued Tuesday to a legal challenge from the California Restaurant Association.

The tentative ruling to block the indefinite ban won't have immediate practical consequences for Los Angeles-area restaurants, as the county is now under a temporary stay-home order tied to the region's quickly diminishing ICU capacity. But it marks a symbolic and legal victory for those challenging the emergency powers flexed by state and local officials — and a rare setback for public health authorities facing a worsening crisis.

The judge's 73-page assessment found that the county failed to justify its decision to shutter outdoor dining or perform a required risk-benefit analysis about the restriction. Outbreak data provided to the court, Chalfant wrote, showed that cases traced back to bars and restaurants accounted for just 3.1 percent of the non-residential outbreak locations, "the vast majority of which were chain/fast food type restaurants" and almost exclusively involved employees rather than customers.

He also wrote that the county's logic behind the closure "ignores the outdoor nature of the activity, which the CDC says carries only a moderate risk."

L.A. County Public Health Director Barbara Ferrer, who was named in the lawsuit, declined to comment about the case when asked during a briefing Monday. A spokesperson for Los Angeles County said in a statement Tuesday that "Los Angeles County is committed to protecting the health and safety of its residents from a deadly virus that has claimed the lives of nearly 8,000 of our friends, family and neighbors and that has sickened more than 450,000 people just in L.A. County."

The nation's most populous county, with more than 10 million residents, reported 8,547 new cases on Tuesday alone. Its five-day average shot to nearly 9,000, almost double the five-day average for the day after Thanksgiving that triggered the local order. The county also for the first time reported a daily hospitalization tally exceeding 3,000.

California Health and Human Services Agency Secretary Mark Ghaly on Tuesday acknowledged the state's regional prohibition on outdoor dining has more to do with preventing gatherings and limiting movement than the activity itself.

“The decision to include among other sectors outdoor dining and limiting that — turning to restaurants to deliver and provide takeout options instead — really has to do with the goal of trying to keep people at home, not a comment on the relative safety of outdoor dining,” he said at a press briefing.

“We have worked hard with that industry to create safer ways for outdoor dining to happen — to keeping tables further apart, to ensuring masking happens as much as possible, to create opportunities for air circulation to continue — all of those factors make sectors like outdoor dining lower risk,” he said.

But Ghaly said the current levels of transmission mean Californians should reduce their risks by leaving home as little as possible. The state on Tuesday reported 23,727 new cases Monday — an increase from about 11,000 just two weeks ago — and a seven-day positivity rate of 10.1 percent. Hospitalizations have jumped nearly 71 percent and intensive care unit admissions are up 68.7 percent in the two-week period.

The exploding case count prompted Gov. Gavin Newsom last week to issue a new stay-at-home order that divides the state into five regions and imposes new restrictions, including the closure of outdoor dining, based on regional ICU admission rates. State health officials moved two of the regions — Southern California and the San Joaquin Valley — into the new lockdown on Sunday evening when their ICU capacities dropped below the 15 percent trigger.

Five Bay Area counties plus the city of Berkeley on Friday moved preemptively to abide by the order through Jan. 4, even though the region’s capacity hovers at 24.5 percent. The regions required to adhere to the new order must do so for at least three weeks.

“Right now, we’re seeing such high levels of transmission that almost every activity — I should say every activity — that can be done differently and keep us at our homes, not mixing with others, is safer,” he said. “Those are going to be the tools that help us get this under control.”

But Ghaly did not directly address a reporter’s question about the Los Angeles judge’s request for more specific data that shows that outdoor dining is riskier than other outdoor activities that are still permitted. Brett Giroir, assistant secretary for health at U.S. Health and Human Services, told Fox News Monday that he hasn’t seen “any data that says you need to shut down outdoor dining or outdoor bars.”

Ghaly noted that the order still allows restaurant pickup and delivery and reiterated that “now is not the time to spend additional time outside of your household, potentially mixing

with others, transmitting the illness far and wide.”

He said the hope is that if the restrictions continue for “a short period of time” that the spread will be reduced enough for outdoor dining to resume. He said “we look forward to moving beyond the surge, having that industry and many other sectors reopen for business and really to move beyond the period we are in now.”

The California Restaurant Association tried to block the county order last month before it took effect. Chalfant denied that request but ultimately ordered the county to submit evidence to support its decision. The restaurant trade group argued that the rule was arbitrary and unfair to businesses that had invested in outdoor dining spaces to weather the pandemic.

"Countless times in recent weeks, we've heard public health experts say that the key sources of spread of coronavirus currently are holiday gatherings and other private, household events, which are unregulated," said the association's president, Jot Condie, in a statement Tuesday. "Without evidence, it is unconscionable that the county can close businesses entirely and put thousands of restaurant employees out of work during the holidays."

Assemblyman James Gallagher (R-Nicolaus) compared the Los Angeles court ruling to a lower-court decision in a lawsuit he and Kevin Kiley (R-Rocklin) filed to challenge Newsom's use of emergency powers to shape the November election, including the order that every voter be mailed a ballot. Sutter County Superior Court Judge Sarah Heckman agreed that Newsom had exceeded his powers. Newsom appealed, and the case is being argued in a California appeals court.

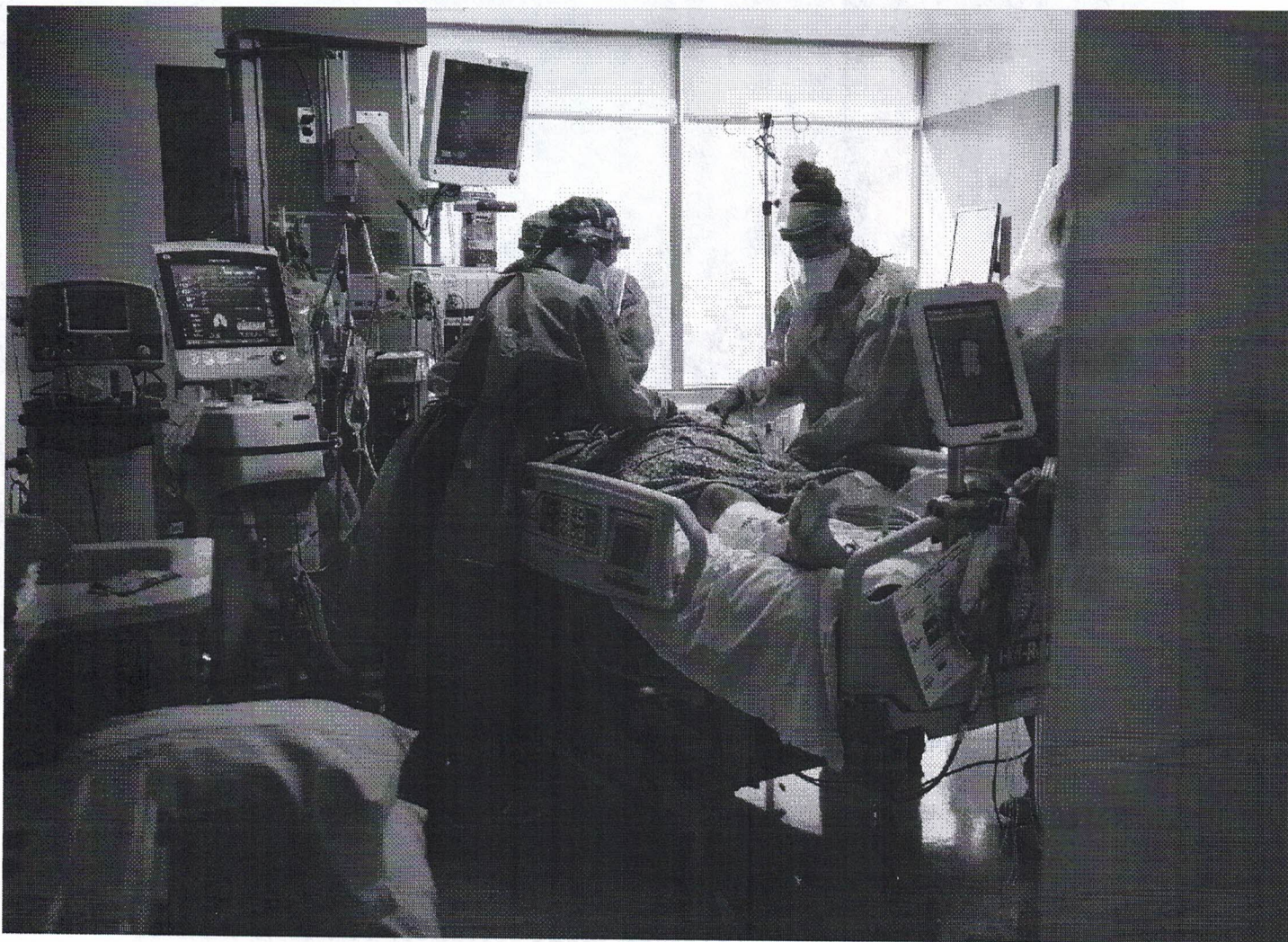
"There still has to be a nexus between what you are mandating and actually curbing the spread of the virus," Gallagher said. "It's a sign that the judicial branch is finally starting to check these emergency powers, and they need to do so. We all agree that this is a serious pandemic and emergency responses need to be taken but that doesn't mean we undermine the foundational principles of our democracy."

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ICU beds could be filled by next week

Expert warns county supervisors that bed unavailability also possible by Christmas



Sharp Memorial Hospital nurses care for a patient diagnosed with COVID-19 in a negative pressure room on Friday. (Nelvin C. Cepeda U-T)

BY PAUL SISSON

The county announced a record 26 COVID-19-related deaths Tuesday amid dire warnings of dwindling hospital bed capacity.

Though the latest fatalities did not all occur on one day, they nonetheless represented the largest single-day addition to the region's COVID-19 total. They ranged in age from 56 to

98 and all had other underlying conditions present in addition to testing positive for coronavirus infection.

And, just 20 percent of available intensive care unit beds remained unoccupied across San Diego County, with 140 out of 684 still available for additional patients. Tuesday's new case total was 1,276.

Natasha Martin, a UC San Diego infectious disease modeler, told county supervisors during a biweekly COVID-19 update that at current admission rates, models predict that local intensive care units will reach full occupancy as soon as next week with hospital beds likely reaching a similar state by Christmas.

Because hospital and intensive care admissions tend to lag infection by two to three weeks, there is really not much anyone can do at the moment to dodge the hospitalization wave that is about to arrive, especially since new case totals have continued to run far over the 1,000 mark for more than a week.

That's not to say that actions cannot be taken to spread out the load. Hospitals could intensify the current trend of delaying non-emergency surgeries and other procedures, or they could, with the cooperation of the state health department, consider using field hospital beds already set up and waiting at Palomar Medical Center Escondido.

County officials did not respond Tuesday to requests for more information on how hospital capacity will be collectively managed through 2020.

Modeling, which has generally tracked with actual infection rates, does suggest that the situation can begin to reverse itself about two weeks after the community takes action to stop the spread of the coronavirus.

"If we see a substantial reduction in mobility and movement, combined with high adherence to masks, we could see a very strong impact," Martin said.

That message did not seem to have much traction with a very frustrated public. Many called in during Tuesday's meeting to express their displeasure at the effects of the shut down, which has brought to bear even-more-significant levels of emotional and financial pain for many whose jobs cannot be performed remotely and for those who find themselves disconnected from cherished relationships.

County Supervisor Dianne Jacob urged everyone in San Diego County to "look in the mirror" to find who's responsible. Too many, she said, have bought into a growing narrative that the disease is no big deal or a total fabrication.

"Just wear the damn mask; it's that simple," Jacob said.

Those words were punctuated later in the day by a jarring Amber Alert that blared out a COVID-19 transmission warning to every mobile phone in the region.

Not even kids dreaming of playgrounds could catch a break.