

RESOLUTION NO. 20-XX

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AUTHORIZING THE TOWN MANAGER TO ENTER INTO CERTAIN RIGHT-OF-WAY USE AGREEMENTS FOR TEMPORARY OUTDOOR USE AND TO CLOSE STREETS FOR OUTDOOR EVENTS

WHEREAS, the Town Council has found that the spread of the novel coronavirus (COVID-19), an infectious disease that causes respiratory illness, globally and within the San Francisco Bay Area, could potentially endanger the public health and safety of the residents of the Town of Fairfax and Marin County (the "County"), requiring the Town to take actions to slow the spread of the disease and protect the health of the public; and

WHEREAS, the Town Council proclaimed the existence of a local emergency related to COVID-19 on March 17, 2020; and

WHEREAS, on March 16, 2020, the public health officers of Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara Counties announced, with the City of Berkeley, a legal order directing their respective residents to shelter at home as of March 17, 2020, and the County has subsequently superseded this order with successive orders, most recently with a Stay-at-Home order issued on May 15, 2020, which remains in effect until superseded; and

WHEREAS, the existence of the State and County Stay-at-Home orders have drastically impacted local businesses which have been unable to operate unless designated as an essential business. Restaurants and other facilities that prepare and serve food have only been able to operate delivery or carry out service, and retail businesses have had to cease in-person sales; and

WHEREAS, the State Stay-at-Home order is beginning to be relaxed to allow for the gradual reopening of businesses. On April 28, 2020, the Governor announced a four-stage roadmap for relaxing the current Stay-at-Home order to gradually reopen businesses. On May 12, 2020, the Governor issued guidance for the eventual reopening of restaurants in counties certified as meeting state benchmarks for addressing the COVID-19 pandemic. On May 18, 2020, the Governor announced a loosening of rules, giving counties more flexibility in making determinations of how to move through Stage 2, and indicated that Stage 3 could begin as soon as June 2020; and

WHEREAS, despite the ability of business to gradually reopen in accordance with State and local health requirements, businesses are limited in their ability to provide services in their existing facilities due to existing and anticipated social distancing requirements; and

WHEREAS, the Town Council intends to provide assistance to local businesses during this time of public health and economic hardships, by encouraging the patronization of local restaurants and other businesses in a safe manner and therefore desires to establish standards that allow restaurants and other businesses to temporarily operate in an expanded outdoor areas in the public right-of-way throughout the Town and to give the Town Manager more flexibility to close streets to allow greater pedestrian access.

NOW, THEREFORE BE IT RESOLVED by the Town Council of the Town of Fairfax as follows:

1. Findings. The Town Council finds that the aforementioned recitals are true and correct and are herein incorporated into this Resolution.

2. Temporary Relief. The uses authorized by Sections 3 and 4 below are intended to provide temporary relief to restaurants and other businesses in the form of allowing businesses to use the public right-of-way and other public spaces to display goods or provide additional outdoor dining seating area necessary to serve patrons and meet social distancing requirements and guidelines, consistent with State and County health orders.

3. Right-of-Way Agreements for Temporary Outdoor Use. Restaurants and other businesses may temporarily provide or expand outdoor dining seating or business activity in portions of the public right-of-way, or into other specified public property, in the areas designated by, and at the sole discretion of, the Town Manager or his or her designee, in addition to the outdoor spaces currently permitted for restaurants or other businesses under the Fairfax Municipal Code or an applicable conditional use permit, upon execution of a Right-of-Way Agreement for Temporary Outdoor Use with the Town. Restaurant or business owners or their representatives may apply to the Town for and enter into Right-of-Way Agreements for Temporary Outdoor Use. The Right-of-Way Agreement for Temporary Outdoor Use shall authorize the revocable and limited use of a portion of the public right-of-way or other public property, as specified in the Agreement, subject to compliance with operational and safety provisions provided by the Town Manager or his or her designee, applicable state and County health orders, applicable regulations of the Department of Alcoholic Beverage Control, applicable building and fire codes, and the Americans with Disabilities Act.

The application for the Right-of-Way Agreement for Temporary Outdoor Use shall be prepared by and subject to the approval of the Town Manager or his or her designee as to substance, and by the Town Attorney as to form and legal requirements.

The term of the Right-of-Way Agreement for Temporary Outdoor Use shall be no longer than 120 days, but may be renewed for additional 60-day periods at the sole discretion of the Town Manager or his or her designee.

4. Closure of Streets for Outdoor Events. Pursuant to Section 21101(e) of the California Vehicle Code, the Town may adopt rules and regulations for highways under its jurisdiction by resolution regarding the temporarily closure of a portion of any

street for local special events, and other purposes when, in the opinion of Town, or a public officer or employee that the Town designates by resolution, the closing is necessary for the safety and protection of persons who are to use that portion of the street during the temporary closing. The Town Council desires that portions of certain streets, including but not limited to Broadway and Mono Avenue (i.e., Mono Alley) be used to temporarily allow for open air dining and other business purposes, intended to allow the public to patronize local businesses and dine outdoors. The Town finds and resolves that the closure of such streets is necessary for the protection of persons using such streets for such purposes during designated events. The Town Council authorizes the Town Manager or his or her designee to determine which streets or portions of streets may be temporarily closed, to establish a schedule for outdoor dining/business events, and to order the closure of streets or portions of streets as necessary to allow for such events.

5. Temporary Change to Rule in Bolinas Park. The Town Council hereby authorizes the Town Manager to suspend the rule of no consumption of alcohol in Bolinas Park. Due to COVID-19, the California Department of Alcoholic Beverage Control has permitted restaurants to sell alcohol with food. This provision would allow customers to enjoy their to-go beverages and meals in Bolinas.

6. CEQA Exemption. The Town Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this resolution, and the prohibitions established hereby, may have a significant effect on the environment, because the resolution only provides for the temporary uses of developed space. It is therefore not subject to the California Environmental Quality Act review pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations. The Town Council further finds that the uses authorized by this Resolution are minor public alterations in the condition of land which do not involve removal of healthy, mature, scenic trees. Therefore, the resolution is exempt from California Environmental Quality Act review pursuant to Title 14, Chapter 3, Section 15304(e) of the California Code of Regulations.

7. Severability. If any provision of this Resolution or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the Resolution that can be given effect without the invalid provision or application, and to this extent, the provisions of this Resolution are severable. The Town Council declares that it would have adopted this Resolution irrespective of the invalidity of any portion thereof.

8. Effective Period. This Resolution shall take effect immediately upon adoption and shall remain valid until rescinded by the Town Council.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Fairfax on the 3rd day of June, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Renee Goddard, Mayor

ATTEST:

Michele Gardner, Town Clerk