

ORDINANCE NO. ____

AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AUTHORIZING THE TOWN MANAGER TO ESTABLISH AND ISSUE TEMPORARY OUTDOOR USE PERMITS TO ALLOW RESTAURANTS AND OTHER BUSINESSES TO PROVIDE OUTDOOR DINING AND CURBSIDE PICKUP AND WAIVING ANY APPLICANT FEES IN THE TOWN'S REVIEW PROCESS

WHEREAS, in response to the COVID-19 pandemic and global health crisis, the President of the United States, the Governor of the State of California (the "Governor"), the County of Marin (the "County"), and the Town of Fairfax (the "Town"), have each proclaimed a state of emergency; and

WHEREAS, on March 19, 2020, the Governor issued Executive Order N-33-20 (the "Stay-at-Home Order"), ordering all State of California (the "State") residents to shelter at home or at their place of residence, except as needed to ensure continuity of operations in essential critical infrastructure sectors and additional sectors as directed by the State Public Health Officer; and

WHEREAS, as the result of the Stay-at-Home Order and the County Health Officer's orders, restaurants, which usually provide onsite food and beverage service were prohibited from offering dine-in service and have only been allowed to operate by utilizing food delivery or takeout service; and

WHEREAS, the Governor has announced a "Roadmap to Resilience" plan to reopen the state in four stages and on May 4, 2020, the Governor issued Executive Order N-60-20, announcing that the State would move to a "Stage 2" modification of the Stay-at-Home Order, allowing for businesses identified as having a lower risk of COVID-19 transmission to reopen in accordance with State Public Health guidelines; and

WHEREAS, counties throughout the state are in various stages of reopening businesses in Stage 2, and some counties have begun allowing dine-in service at restaurants; and

WHEREAS, State guidelines may prompt restaurants and businesses to create temporary outdoor seating and/or curbside pickup areas as quickly as possible; and

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

WHEREAS, the Town desires to establish a more streamlined permitting process that would allow businesses to quickly install outdoor dining or curbside pickup areas in a safe manner in compliance with State and County public health directives; 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 a temporary use permit to allow restaurants and other businesses to temporarily operate in an expanded outdoor capacity in private outdoor spaces including parking lots and areas adjacent to businesses, subject to the review and approval by the Town Manager; and

WHEREAS, Government Code section 8634 authorizes, during a local emergency, the Town Council, or officials designated thereby, to promulgate orders and regulations necessary to provide for the protection of life and property; and

WHEREAS, the Town, pursuant to the police powers delegated to it by the State Constitution, has the authority to enact laws that promote the public health, safety, and general welfare of its residents; and

WHEREAS, based upon the findings above, the Town Council finds that there is a current and immediate need to allow businesses to use certain outdoor spaces in order to prevent additional harm to small businesses in the Town and to allow the public to patronize Town businesses while complying with social distancing requirements, in order to mitigate the threat to the public health, safety and welfare presented by COVID-19; and

WHEREAS, pursuant to California Government Code section 36937, the Town may adopt an urgency ordinance if it is for the immediate preservation of the public peace, health or safety; and

WHEREAS, based upon the findings above, the Town Council finds that this urgency ordinance is necessary for the immediate preservation of the public health, safety and welfare. The Town Council finds and determines that the immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 36937(b) and take effect immediately upon adoption. As described above, businesses in the Town are facing unprecedented hardships related to COVID-19 and the shelter-in-place orders. It is anticipated that restaurants will be able to reopen for in-person dining within a few weeks, and this Ordinance needs to take effective immediately in order to allow the Town to permit businesses to expand into adjacent spaces subject to obtaining required permits. Therefore, this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared.

NOW, THEREFORE, the Town Council of the Town of Fairfax does ordain as follows:

Section 1. The recitals above are each incorporated by reference and adopted as findings by the Town Council.

Section 2. Compliance with Laws.

Nothing in this ordinance shall require the Town to issue a Temporary Outdoor Use Permit to a Qualifying Business, unless and until that Qualifying Business is authorized to operate under State and County orders. All Qualifying Businesses authorized to reopen must be in compliance with State and County orders regarding reopening protocols.

Section 3. Definitions.

For purposes of this ordinance, the following words and phrases shall have the meanings respectively ascribed to them:

"County Health Officer" means the public health officer of the County of Marin.

"Town Manager" means the Town Manager, or his or her designee.

"Qualifying Business" means any retail business, restaurant, winery, brewery, or bar, that demonstrates it will operate in compliance with reopening protocols of the State of California and the County of Marin.

"Temporary Outdoor Use Permit" means a permit issued by the Town and obtained by a Qualifying Business to operate within the Town on private property in accordance with the provisions of this Ordinance.

Section 4. Indoor Consumption of Food and Beverages.

All Qualifying Businesses that serve food or beverages onsite shall serve food and beverages according to the State's industry guidance for dine-in restaurants, as it may be amended from time to time. A Qualifying Business is required to prioritize outside seating and curbside pickup, and to reconfigure dining areas to provide for at least six feet of physical distancing. Employees must follow the County Health Officer's guidance relating to face coverings to prevent COVID-19 transmission. Qualifying Businesses that offer sit-down, dine-in meals should still encourage takeout and delivery service wherever possible.

Section 5. Temporary Outdoor Use Permit.

A. A Qualifying Business may temporarily provide or expand seating for outdoor dining on private outdoor property, such as parking lots, in addition to the outdoor dining spaces currently permitted for restaurants under the Fairfax Municipal Code or an applicable conditional use permit, subject to the conditions of a Temporary

Outdoor Use Permit. Such a business must obtain a revocable Temporary Outdoor Use Permit prior to operating a temporary outdoor dining area for the purpose of adhering to physical distancing requirements.

B. The Town Council authorizes the Town Manager to create a Temporary Outdoor Use Permit application, to review applications for such a permit, and to issue such permits with any necessary conditions of approval. Qualifying Businesses or their representative may apply to the Town for a revocable Temporary Outdoor Use Permit.

C. A Temporary Outdoor Use Permit shall authorize the revocable and limited use of outdoor dining seating for restaurants or support the permitted uses of the applicant business in parking lots adjacent to restaurants or other businesses, as specified in the Temporary Outdoor Use Permit, subject to compliance with operational and safety provisions provided by the Town Manager, applicable State and County health orders, applicable regulations of the California Department of Alcoholic Beverage Control, the California Fire Code, and the Americans with Disabilities Act. Provided these conditions are met, the applicant shall not be subject to minimum parking requirements specified in the Fairfax Municipal Code or in a previously granted entitlement, for the duration of the term of the Temporary Outdoor Use Permit, which shall be reasonably related to the requirements of State, County, or local social distancing requirements and the economic impacts of COVID-19. If the applicant intends to use a shared private parking lot for expanded outdoor dining seating or curbside pickup, then the applicant must obtain written consent from other parties with whom the parking lot is shared, and such consent shall be provided upon submission of the permit application. If the applicant is a tenant, the tenant shall obtain the property owner's consent and the property owner must also sign the application for a Temporary Outdoor Use Permit.

Section 6. Application for Temporary Outdoor Use Permit.

A. A Qualifying Business may apply for a Temporary Outdoor Use Permit by submitting an application to the Town Manager, on a form approved by the Town Manager. The application shall be accompanied by any additional information required by the Town Manager. There shall be no application fee required for this Permit.

B. Any Qualifying Business applying for a Temporary Outdoor Use Permit may, in connection with its application for the Permit, be exempted by the Town Manager from any applicable Land Use requirements, including, but not limited to, parking, architectural design or signage requirements.

C. The Town Manager shall consider any application submitted for a Temporary Outdoor Use Permit.

D. The Town Manager may approve an application for a Temporary Outdoor Use Permit only if the operation of the Qualifying Business will be in compliance with the reopening protocols of the State and County, applicable regulations of the California Department of Alcoholic Beverage Control, current building codes, the California Fire

Code, and the Americans with Disabilities Act. The Qualifying Business must demonstrate that the public health and safety of the Town will not be threatened by the issuance of the Temporary Outdoor Use Permit. All proposed additional or temporary seating, spaces for curbside pickup, and locations will be reviewed by the Town to ensure compliance with the requirements above and that outdoor seating and curbside pickup areas are safe and secure. The Town will receive each application to ensure that the seating or curbside pickup area will not negatively impact parking supply, noise, or safety.

D. If the application for a Temporary Outdoor Use Permit is approved:

1. The Town Manager may issue a Temporary Outdoor Use Permit on any terms the Town Manager deems necessary to ensure compliance with the reopening protocol of the State of California and the County of Marin and to protect the public health and safety of the Town. The Temporary Outdoor Use Permit shall be valid for an initial 90 days. Permits may be renewed administratively in 90-day increments as needed.

2. Any Qualifying Business operating onsite and outdoors pursuant to a Temporary Outdoor Use Permit must comply with all reopening protocols of the State and County, as they may be amended from time to time.

3. The Qualifying Business agrees to name the Town as an additional insured on its insurance, and the Town Manager shall determine the minimum coverage and limits required as a condition for the issuance of either permit. If applicant's request for a permit is approved, the Qualifying Business shall furnish proof of insurance coverage to the Town Manager prior to the issuance of a permit.

E. The Temporary Outdoor Use Permit issued pursuant to this Ordinance is nontransferable. Only the Qualifying Business for which the Temporary Outdoor Use Permit was issued shall be permitted to operate under the prescribed terms of the permit.

F. An applicant for a Temporary Outdoor Use Permit shall not be charged application or renewal fees.

G. Any provisions of the Fairfax Municipal Code that would otherwise prevent issuance of a Temporary Outdoor Use Permit shall be temporarily waived.

H. The Town Manager may revoke a Temporary Outdoor Use Permit issued pursuant to this ordinance at any time and for any reason.

Section 7. Appeal.

The decision of the Town Manager regarding a Temporary Outdoor Use Permit shall be final unless appealed. Within ten (10) days from the date the Town Manager issues a decision, the applicant requesting the Temporary Outdoor Use Permit may appeal an adverse determination or any conditions or limitations imposed in either

permit. Any other interested person not satisfied with the decision may file an appeal within ten (10) days from the date the written decision was rendered. All appeals shall contain a statement of the grounds for the appeal. Appeals shall be made to the Town Council who shall hear the matter and render a determination as soon as reasonably practicable, but in no event later than thirty (30) days after an appeal has been filed. Following the filing of an appeal, the Town Council shall hold a public hearing on the matter. All determinations on an appeal shall address and be based upon the same findings required to be made in the original determination from which the appeal is taken.

Section 8. Enforcement.

A violation of this Ordinance or the Temporary Outdoor Use Permit constitutes an imminent threat to the public health and is hereby declared to be a public nuisance and shall be subject to the nuisance abatement procedures set forth in Chapter 1.2 of the Fairfax Municipal Code.

Section 9. Term.

This Ordinance remains in full force and effect until this Ordinance is rescinded by the Town Council.

Section 10. Urgency Finding and Effective Date.

The Town hereby finds, determines and declares that this ordinance is necessary to the immediate preservation of the public peace, health or safety, because there is an urgent need to slow COVID-19 transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. Therefore, the Town further finds, determines and declares that this Ordinance shall take effect immediately upon adoption by a four-fifths vote of Town Council pursuant to the authority conferred upon it by California Government Code section 36937.

Section 11. Posting.

The Town Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be posted within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code.

Section 12. Severability.

If any provision of this Ordinance 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 Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this Ordinance are severable. The Town Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

Section 13. CEQA.

This ordinance qualifies for a categorical exemption from the California Environmental Quality Act (CEQA) under Section 15301, Class 1 (Existing Facilities), of the CEQA Guidelines. This exemption applies to a class of projects that are considered not to have a significant effect on the environment. This includes projects that consist of the operation, repair, maintenance, permitting, leasing, licensing or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The proposed project consists of allowing minor site alterations to create temporary ancillary outdoor dining areas or curbside pickup areas for existing retail businesses and restaurants. The project would not have a significant effect on the environment. The Town Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Marin in accordance with CEQA Guidelines.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

Renee Goddard, Mayor

ATTEST:

Michele Gardner, Town Clerk