



TOWN OF FAIRFAX

STAFF REPORT

June 3, 2020

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager

SUBJECT: Adopt a Resolution authorizing the Town Manager to enter into certain right-of-way agreements for outdoor dining seating and outdoor uses for other businesses, to close certain streets for the same purposes, and to waive certain restrictions in publicly owned spaces regarding the consumption of alcoholic beverages; and
Adopt an Urgency Ordinance creating a temporary outdoor use permit for restaurants and other businesses wanting to use private property

RECOMMENDATION

- 1) Adopt a Resolution authorizing the Town Manager to enter into certain right-of-way agreements for outdoor dining seating and outdoor uses for other businesses, to close certain streets for the same purposes, and to waive certain restrictions in publicly owned spaces such as Bolinas Park regarding the consumption of alcoholic beverages.
- 2) Introduce and adopt an Urgency Ordinance entitled "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"

A 4/5 vote of the Town Council is required to adopt an urgency ordinance and it takes effect immediately.

BACKGROUND

To reduce the spread of the novel coronavirus (COVID-19), an infectious disease that causes respiratory illness, State and County health officials in California have instituted orders that have required people to stay at their homes except for conducting certain designated activities. The stay-at-home orders have drastically impacted local businesses which have been unable to operate, absent designation as an essential business. Restaurants and other facilities that prepare and serve food, have only been able to operate for delivery or carry out, and retail businesses have had to halt in-person sales.

The State stay-at-home order is beginning to be relaxed to allow for gradual re-opening of businesses and return of business activity. On Tuesday April 28, 2020, the Governor announced a four-phase roadmap for relaxing the current stay-at-home order requirements. 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 linking coronavirus infection rates to allowed activities, giving counties more flexibility in making determinations of how to move through Phase 2 of the planned reopening, and indicated that Phase 3 could begin as soon as June 2020.

On May 27th, the Council and community received a presentation by John Bela, Fairfax resident and partner/director of Gehl San Francisco, regarding the use of outdoor spaces such as parking spaces to assist Fairfax businesses to gradually reopen in accordance with State and local health requirements. Prior to the Council meeting, staff will distribute a summary of the public comments.

DISCUSSION

In anticipation of Governor Newsom and the County Health Officer allowing certain businesses to resume operations with social distancing protocols in place, we believe businesses will need to temporarily expand into adjacent outdoor spaces, public and private, to meet the requirements. The proposed Resolution and Urgency Ordinance would establish a temporary outdoor dining and business activity program to allow businesses to use private and public open spaces pursuant to an agreement or temporary permit, with certain fees waived.

The proposed temporary outdoor dining and outdoor business activity program will allow local restaurants and businesses to use outdoor spaces to expand their operations and to resume operations in compliance with social distancing requirements. Specifically, this program authorizes the Town Manager to establish standards that allow restaurants and other businesses to temporarily operate in a safe, expanded outdoor capacity in the public right-of-way and private areas adjacent to their businesses. It also gives the Town Manager flexibility to close portions of streets or parking lots to allow greater pedestrian access, as described below.

Right-of-Way Agreements for Temporary Outdoor Uses.

The proposed Resolution would allow restaurants and other businesses to temporarily provide or expand outdoor dining seating or business activity in portions of the public right-of-way, in the areas designated by and at the discretion of Town Manager, upon execution of a Temporary Outdoor Use Right-of-Way Agreement with the Town. This would be in addition to any permanent outdoor dining areas or spaces currently permitted under the Town Municipal Code or an applicable conditional use permit.

These agreements would authorize businesses to temporarily use sidewalk space or parking spaces adjacent to the place of business for activities such as temporary expanded outdoor dining. The agreements would be revocable and subject to compliance with operational and safety provisions provided by the Town Manager or his designee, applicable State and County health orders, applicable regulations of the Department of Alcohol and Beverage Control, and in compliance with the Americans with Disabilities Act. The agreements would also contain provisions providing protection for the Town, requiring the parties to carry insurance, indemnify the Town, and cover the cost of any damage to Town property.

The agreements have a term of no more than 120 days, which could be extended by the Town Manager. At this time, it is unknown how long the social distancing protocols will remain in place and when indoor dining can resume. There would be no fee for entering into these agreements. The possible locations for these temporary outdoor uses are discussed in later in this report.

Temporary Closure of Certain Streets.

To provide additional potential temporary outdoor space for restaurant dining or other business activity, the Town could temporarily close portions of certain streets or parking lots for special events and allow businesses to temporarily operate in the street in compliance with social distancing requirements.

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 the 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. By adopting this Resolution, the Town would authorize the Town Manager to close portions of certain streets for special events for these purposes. Temporary outdoor dining or seating would be considered a special event for purposes of a street closure.

Some potential areas for allowing for the closure of the following streets for such special events:

- *Eastbound Broadway between Claus and Bolinas Rd.*
- *A portion of Mono Alley (Bolinas Rd.) adjacent to Gestalt Haus*
 - *Access to Mono Alley would be maintained from Bank St.*
- *A portion of Mono Alley (Bolinas Rd.) adjacent to Village Sake.*
 - *Access to Mono Alley would be maintained from Pacheco*

Temporary Outdoor Use Permit

The proposed Urgency Ordinance would create a temporary outdoor use permit (TUP) that would allow restaurants and other businesses to temporarily provide or expand outdoor dining seating 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. The Town Manager or his designee would be authorized to approve the permit and create the Temporary Outdoor Use Permit application process.

Such permits would be revocable and only authorize temporary limited use of outdoor areas, and would be subject to compliance with operational and safety provisions provided by the Town Manager or his designee, applicable State and County health orders, applicable regulations of the Department of Alcohol and Beverage Control (ABC), and other relevant laws like the Americans Disability Act.

Provided these conditions are met, permittees would be temporarily exempt from the minimum parking requirements specified in the Fairfax Municipal Code or in a previously granted entitlement, for the duration of the term of the Permit. This

If the applicant intends to use a shared private parking lot for expanded outdoor use, the applicant would need to obtain written consent from the landlord and/or other parties with whom the parking lot is shared. There is no proposed application fee required for this Permit. The TUP would be good for an initial 90 days and could be extended by the Town Manager for up to another 90 days as long as the SIP order continues to require social distancing for restaurants or does not allow for indoor dining. There are only a few businesses with off-street private parking that may be interested in such a TUP.

Fees to Amend Use Permit

The Town has received one application to amend an existing use permit to allow for outdoor dining in the off-street parking area. To mitigate the financial burden and fees on strapped small businesses during this period, we are requesting Council direction regarding the payment of the fee. Similar to the sidewalk grant program, the Town could pay the application fee on behalf of applicants during COVID-19. The Town could set aside a specific amount of funds (e.g., \$4,000) for this purpose and would be available on a first-come, first-serve basis. The use permit fee is \$813. Any other out-of-pocket costs (e.g., special studies, drawings, mailing notices) would continue to be covered by the applicants. Please note these applications are discretionary and require Planning Commission approval.

KEY POLICY DIRECTION

The above recommended actions provide staff with the flexibility to assist businesses with recovery by using outdoor public spaces. As a matter of practice, staff anticipates working with the Chamber, individual business, and a Council ad-hoc subcommittee of Mayor Goddard and Councilmember Hellman to work out the specific details. While good faith efforts will be made to accommodate the various parties, decisions will be made based on what is best for the majority of merchants in specific locations such as the same side of a block. It should be noted that it is high likely that we will not be able to make everyone happy.

That being said, it would be useful to get the Council direction on whether some of the approaches described below are preferred more than others or if some policies should not be considered at all. It should be noted that the items described below are not intended to be a comprehensive list of all policy issues related to the use of public right of way for outdoor uses.

Use of parking spaces/sidewalks to assist retail and restaurants

- Dedicated curbside pick-up parking spaces
- Outdoor seating or retail tables
- Town installation of barriers/delineators
- Pedestrian access in the parking areas or sidewalk

- The use of parking spaces would be “grouped” to maximize uses. In other words, several adjacent parking spaces would be closed at a time to avoid a piece-meal approach of one parking space open and the next one closed. This would also improve pedestrian safety.
- Parking spaces would need to be closed for a prolonged periods of time such as all day or only on the weekend. It would be too difficult to only close the space for several hours at a time such as only in the evenings.
- Loss of parking spaces; staff would seek additional parking on private property

Closure of streets

- Loss of parking in those areas
- Time limits- evenings, weekends
- Locations (as described above)
- Do not close Bolinas, make one way, or otherwise narrow?

Parking lots/Other ROW

Ok use for dining/seating

Bolinas Park

Allow consumption of alcohol in the Park in recognition of temporary change of ABC regulations and restaurants only able to serve to-go meals.

Town Role?

- Clean sidewalks and parking spaces
- Set up barriers/delineators
- Application process
- ADA Ramps
- Require businesses to clean and provide own outdoor furniture
- Probably need 1-2 weeks to set up the process

Other issues/concerns?

Please note the Fire Chief and Police Chief were consulted on all the above options and they both expressed a willingness to work the Town to achieve the stated goals.

FISCAL IMPACT

To be determined

ATTACHMENTS

Resolution

Ordinance