

TEMPORARY USE PERMIT NO. 20-1

Approval of expansion of a restaurant at 1573 Sir Francis Drake Boulevard to include outdoor public seating

WHEREAS, the Town of Fairfax has received an application for a Temporary Use Permit (TUP) to create public outdoor seating areas at 1573 Sir Francis Drake Boulevard on June 5, 2020; and

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 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, during this time of public health and economic hardships, the Town encourages the patronization of local restaurants and other businesses in a safe manner via a temporary use permit to allow restaurants and other businesses to temporarily operate in private outdoor spaces; 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 has found 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, the Town Council adopted Urgency Ordinance No. 848 on June 3, 2020, which took effect immediately and allowed the Town to permit businesses to expand into adjacent spaces subject to obtaining required permits; and

WHEREAS, the Planning Department has reviewed the plans submitted for the Lodge at 1573 Sir Francis Drake Boulevard and determined that, as conditioned, .

THEREFORE, the Temporary Use Permit (TUP) is approved subject to the following conditions:

1. The TUP shall be conducted in conformance with the plans entitled "Supplemental Diagram" for 1573 Sir Frances Drake, dated 6-1-2020 and herein attached as "Exhibit A", except as further modified by the following conditions.
2. The applicant shall comply with provisions of the May 15, 2020 ORDER OF THE HEALTH OFFICER OF THE COUNTY OF MARIN DIRECTING ALL INDIVIDUALS IN THE COUNTY TO CONTINUE SHELTERING AT THEIR PLACE OF RESIDENCE EXCEPT FOR IDENTIFIED NEEDS AND ACTIVITIES, IN COMPLIANCE WITH SPECIFIED REQUIREMENTS; CONTINUING TO EXEMPT HOMELESS INDIVIDUALS FROM THE ORDER BUT URGING GOVERNMENT AGENCIES TO PROVIDE THEM SHELTER; REQUIRING ALL BUSINESSES AND RECREATION FACILITIES THAT ARE ALLOWED TO OPERATE TO IMPLEMENT SOCIAL DISTANCING, FACE COVERING, AND

CLEANING PROTOCOLS; AND DIRECTING ALL BUSINESSES, FACILITY OPERATORS, AND GOVERNMENTAL AGENCIES TO CONTINUE THE TEMPORARY CLOSURE OF ALL OTHER OPERATIONS NOT ALLOWED UNDER THIS ORDER ("Shelter in Place Order"), and any subsequent Health Order issued by the Health Officer of the County of Marin ("Subsequent Order").

3. The applicant shall further comply with the following, as applicable:
 - a. the June 1, 2020 INDUSTRY-SPECIFIC GUIDANCE OF THE HEALTH OFFICER OF THE COUNTY OF MARIN REGARDING REQUIRED BEST PRACTICES FOR RESTAURANTS ALLOWING SEATED OUTDOOR DINING issued pursuant to the May 15, 2020 Shelter in Place Order and any subsequent updates or guidelines issued by the Health Officer of the County of Marin; and/or
 - b. Any applicable subsequent updates or guidelines issued by the Health Officer of the County of Marin ("Subsequent Guidelines").
4. The applicant shall incorporate and address all applicable Best Practices included in the applicable Guidelines.
5. The applicant shall operate approved outdoor activities in a manner that provides an accessible path of travel allowed as part of approved activities,
6. Outside lighting shall be the minimum necessary for safe function of outdoor seating and shall be shielded from direct offside illumination.
7. The parking spaces shown on the "Supplemental Diagram" as redesignated for outdoor seating may be so used for the duration of the TUP, and shall not be subject to any requirements involving vehicular or parking outside of those as may be determined to be necessary for public safety.
8. Hours of operation involving use of outside seating areas shall be from 9 am. to 10 pm. on Fridays and Saturdays, and 9 am. to 9 pm. on other nights.
9. The premises shall be maintained in a neat and attractive manner at all times.
10. The Town of Fairfax reserves the right, at any time and in its sole discretion, to revoke or modify the TUP to require removal or modification of any or all uses, improvements, structures, and/or materials used to facilitate approved outdoor activities authorized by this TUP.
11. The applicant shall comply with all applicable local, county, state and federal laws and regulations. Local ordinances which must be complied with include, but are not limited to: the Noise Ordinance, Chapter 8.20, Polystyrene Foam, Degradable and Recyclable Food Packaging, Chapter 8.16, Garbage and Rubbish Disposal, Chapter 8.08, Urban Runoff Pollution Prevention, Chapter 8.32 and the Americans with Disabilities Act.

12. This **TUP** shall run and be valid for 120 days, or until October 3, 2020, and thereafter shall be null and void until and unless extended by the Town. A determination on whether or not to extend the TUP shall be at the sole discretion of the Town.
13. Any additional changes proposed to the outdoor seating beyond the scope of this approval shall be applied for in writing prior and be subject to review by the Town. Any changes shall be subject to the approval of the Town in writing prior to being made.
14. The applicant and its heirs, successors, and assigns shall, at its sole cost and expense, defend with counsel selected by the Town, indemnify, protect, release, and hold harmless the Town of Fairfax and any agency or instrumentality thereof, including its agents, officers, commissions, and employees (the "Indemnitees") from any and all claims, actions, or proceedings arising out of or in any way relating to the processing and/or approval of the project as described herein, the purpose of which is to attack, set aside, void, or annul the approval of the project, and/or any environmental determination that accompanies it, by the Planning Commission, Town Council, Planning Director or any other department or agency of the Town. This indemnification shall include, but not be limited to, suits, damages, judgments, costs, expenses, liens, levies, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the Indemnitees, arising out of or in connection with the approval of this project, whether or not there is concurrent, passive, or active negligence on the part of the Indemnitees. Nothing herein shall prohibit the Town from participating in the defense of any claim, action, or proceeding. The parties shall use best efforts, acting in good faith, to select mutually agreeable defense counsel. If the parties cannot reach agreement, the Town may select its own legal counsel and the applicant agrees to pay directly, or timely reimburse on a monthly basis, the Town for all such court costs, attorney fees, and time referenced herein, provided, however, that the applicant's duty in this regard shall be subject to the Town's promptly.
15. The applicants shall list on their liability insurance the Town of Fairfax as additionally insured.
16. The applicants must comply with all conditions imposed by an outside agency unless that agency waives its conditions in a written letter to the Department of Planning and Building Services.



Ben Berto, Director of Planning and Building Services

June 5, 2020
Date