



TOWN OF FAIRFAX

SUPPLEMENTAL STAFF REPORT

October 28, 2020

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager

SUBJECT: Introduction of “An Ordinance Of The Town Council Of The Town Of Fairfax Authorizing The Town Manager To 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, And Authorizing The Expiration Date Of Such Permits To Be Set By Resolution” and Adoption of a Resolution Setting A Expiration Date (May 31, 2021) For The Issuance Of Temporary Outdoor Use Permits To Allow Restaurants And Other Businesses To Provide Outdoor Dining And Curbside Pickup

This supplemental staff report should be used to replace the initial report included with the agenda. The subject line remains the same. Recommendation #2 has been modified.

RECOMMENDATION

1. Introduce and read by title only “An Ordinance Of The Town Council Of The Town Of Fairfax Authorizing The Town Manager To 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, And Authorizing The Expiration Date Of Such Permits To Be Set By Resolution”
2. Establish an expiration date of May 31, 2021 but schedule the consideration of the resolution to be concurrent with the adoption of the Ordinance.

DISCUSSION

In June 2020, the Council adopted an Urgency Ordinance allowing TUP’s which permit outdoor dining in private spaces such as parking lots. There is no fee for the TUP. The TUP’s are good for an initial 120-day period with the ability of staff to issue a one-time 60-day extension. To date, staff has issued 6 TUP’s (see below). All permits are active either under the initial 120-day period or the one-time 60-day extension. All TUP’s cannot be extended past November 30, 2020.

Several businesses have inquired about the possibility of the Town extending the TUP deadlines beyond November 30, 2020. The businesses would like to know so they can invest in improvements (e.g., coverings) to better weatherize the outdoor dining areas for the fall and winter months. Many of the TUP improvements consist of tables and umbrellas in private outdoor parking areas. Several other Marin communities will also be considering the extension of deadlines for the various uses of outdoor public spaces. Other communities have open-ended deadlines for the use of outdoor public and private spaces.

Given the uncertainty of COVID-19 regarding vaccines, limits on indoor uses, and the possibility of a resurgence, staff is recommending the Town extend the use of TUP’s through May 31, 2021

AGENDA ITEM #1

(approx. end of Spring 2021). This would give businesses the ability to make investment decisions based on the extended expiration date.

Should the Council want to: 1) the extend TUP's through May 31, 2021, and 2) prevent a significant gap between the current expiration date of TUP's (11/30/20) and the effective date of the regular ordinance to extend the TUP deadline, the Council would need to introduce the regular ordinance this evening. The adoption (second reading) would be scheduled for the Council's November 4th meeting for consideration. Specifically, the extension of the TUP ordinance deadline must be done by regular ordinance and not by an urgency ordinance. Ordinances can be introduced (first reading) at special meetings, but the adoption (second reading) of ordinances can only occur at regular meetings. A regular ordinance takes effect 30 days after the adoption (second reading).

The proposed ordinance allows the Town Manager or his designee (e.g., Planning and Building Services Director) to issue TUP's for an initial 120-day period with an ability to grant extensions for up to a 90-day period. All TUP's will expire on the date established by the Council.

To provide the Council with added flexibility, the ordinance allows the Council to establish the expiration date by resolution. Should the Council determine the need to further extend the expiration date due to COVID-19, it could do so by resolution, which is much simpler to do and the resolution takes effect immediately. Otherwise, the Council would need to amend the ordinance again, which requires a minimum of two Council meetings and a 30-day period before the amendment can take effect.

We recommend establishing an initial expiration date of May 31, 2021. The resolution is attached for reference, but staff recommends the Council approve the resolution after the adoption of the Ordinance, which is scheduled for consideration at the November 4th Council meeting.

Temporary Use Permit (TUP)

We have issued six (6) TUP's to the following businesses:

- The Lodge 1573 Sir Francis Drake Boulevard
- Hairfax 31 Bolinas Road
- Mas Masa 31a Bolinas Road
- Mettacine 12e School Street Plaza
- Flying Dutchman Gymnastics 60 Pastori Avenue
- Fairfax Gym 725 Center Blvd.

FISCAL IMPACT

To be determined

ATTACHMENTS

- A. Ordinance
- B. Resolution