



TOWN OF FAIRFAX

STAFF REPORT

May 5, 2021

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager

SUBJECT: Adopt two resolutions to extend the terms of temporary outdoor encroachment and temporary use permits from May 31, 2021 to September 7, 2021, continue discussion of the use of outdoor public spaces (e.g., parking spaces), and provide direction to staff

RECOMMENDATIONS

- 1) Adopt a Resolution Extending Expiration Date to September 7, 2021, of Temporary Outdoor Uses Permits to Allow Restaurants and Other Businesses to Provide Outdoor Dining, Other Retail/Commercial Uses, and Curbside Pickup.
- 2) Adopt a Resolution Extending the Terms of Certain Right-of-Way Agreements for Temporary Outdoor Uses to September 7, 2021.
- 3) If the Council desires, continue to discuss the use of outdoor public spaces (e.g., parking spaces), and provide direction to staff as appropriate.

BACKGROUND

In June 2020, in response to COVID-19 restrictions, the Council took actions to allow for outdoor dining and business uses. Specifically, the Council adopted: 1) a resolution allowing staff to issue temporary outdoor encroachment permits (TEP's) to allow outdoor dining and business uses in the public right-of-way such as parks and parking spaces and 2) an urgency ordinance to establish a temporary use permit (TUP) process to allow businesses to apply to use their outdoor private spaces (e.g., parking lots) for their business activities. There is no fee for the TEP or TUP. Both permits are approved administratively by staff.

In November 2020, the Council adopted: 1) a regular ordinance establishing TUP's and adopted a resolution setting an expiration date of May 31, 2021 for TUP's; and 2) adopted a resolution extending the expiration date for TEP's from November 30, 2020 to May 31, 2021. The Council granted a six-month extension due to the uncertainty regarding COVID-19 restrictions and the initial capital investment by businesses to build outdoor structures.

Many of the TEP improvements consist of platforms with railings in the public spaces. There are six (6) businesses with structures in the public right of way (e.g., parking spaces), two (2) businesses using the sidewalks, and one primarily using the Mono parking lot. To date, eight (8) TUP's and 8 TEP's have been issued.

DISCUSSION

At its April 21st meeting, the Council discussed the extensions of the expiration date for TEP's and TUP's. The Council directed staff to return to this meeting with the two required resolutions to allow for the extension from May 31st to September 7th (approximately 3 months) the day after Labor Day.

The proposed extension would run through the remainder of spring and the majority of summer. Presumably, all K-12 schools would be in session by then and represent a return to normalcy. Furthermore, the Governor announced the elimination of a statewide color tier system and “fully opening” the California economy as early as June 15th, if the current statewide trends continue and certain conditions are met. However, it is unclear what “fully reopen” means and the possibility exists the June 15th date will be pushed back. The extension accounts for the possibility that the State does not fully reopen by June 15th.

The extensions will allow us to better evaluate the use of the outdoor spaces when indoor space restrictions are presumably lifted, as well as any impact to parking in the downtown area. In addition, the Council will have more time to conduct a more robust discussion with the community and businesses regarding the use of the outdoor spaces. Approximately 20 public parking spaces are impacted by the TEP’s and the closure of a portion of the Mono parking lot. Also, the Ross Valley Fire Department has reiterated its position that use of the public parking spaces for outdoor business uses is the same as a vehicle parking in the space and does not pose any additional concerns regarding evacuations.

As part of the process, staff would prepare a community-wide online questionnaire to solicit input from the community regarding the uses of the outdoor public spaces. Typically, staff relies on the Chamber of Commerce to reach out to the local business community. However, we will now be assuming this responsibility and emailing businesses directly using the Chamber’s and the Town’s email lists to inform businesses of the questionnaire. We will also be marketing the questionnaire in the Town newsletters and website. We anticipate the questionnaire being available May 10th on the website and closing May 31st. The survey results would be made available at the Council’s June 2nd and/or June 16th meetings for discussion.

At this evening’s meeting, the Council may want to continue to discuss the uses of the public spaces. Specifically, there are two key policy issues to be discussed: 1) should the closure of a portion of the Mono parking lot be continued if 100% indoor dining is allowed, and 2) should businesses be required to open part of their outdoor dining areas in the public parking spaces to other members of the public (i.e., parklets)? Staff is not recommending any decisions be made until after the questionnaire results are available regarding the key topics. It should be noted that new businesses are allowed to apply for TEP’s and TUP’s during the extension period. We have modified the application to formally require businesses to consult with adjacent businesses regarding the use of outdoor public space.

FISCAL IMPACT

N/a

ATTACHMENTS

- A. Resolution Extending Expiration Date of Temporary Outdoor Uses Permits
- B. Resolution Extending the Terms of Certain Right-of-Way Agreements for Temporary Outdoor Uses

RESOLUTION 21-__

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX EXTENDING THE TERMS OF CERTAIN RIGHT-OF-WAY USE AGREEMENTS FOR TEMPORARY OUTDOOR USES TO SEPTEMBER 7, 2021

WHEREAS, on June 3, 2020 the Town Council adopted Resolution 20-19 “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;” and

WHEREAS, on November 4, 2020, the Town Council adopted Resolution 20-36 “A Resolution of the Town Council of the Town of Fairfax Extending the Terms of Certain Right-of-Way Use Agreements for Temporary Outdoor Uses to May 31, 2021”; and

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

WHEREAS, the conditions and concerns that led the Town Council to adopt Resolution 20-19 still exist; and

WHEREAS, the Town Council wishes to modify and extend the expiration terms of the Right-of-Way Use Agreements for Temporary Outdoor Uses authorized by Resolution 20-36;

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. Terms. The initial term of the Right-of-Way Agreement for Temporary Outdoor Uses shall be no longer than 120 days, but may be renewed in periods lasting up to 90-days at the sole discretion of the Town Manager or his or her designee. All Right-of-Way Agreements shall expire by September 7, 2021, 2021.

3. 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.

4. 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.

5. Conflicts. This Resolution takes precedent over any conflicts with Resolutions 20-19 and 20-36.

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

The foregoing Resolution was duly passed and adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town on the 5th day of May 2021, by the following vote, to wit:

AYES:
NOES:
ABSENT:

BRUCE ACKERMAN, Mayor

Attest: _____
Michele Gardner, Town Clerk

RESOLUTION 21-__

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
EXTENDING THE EXPIRATION DATE TO SEPTEMBER 7, 2021, OF TEMPORARY OUTDOOR
USE PERMITS TO ALLOW RESTAURANTS AND OTHER BUSINESSES TO PROVIDE
OUTDOOR DINING, OTHER RETAIL/COMMERCIAL USES, AND CURBSIDE PICKUP**

WHEREAS, on November 4, 2020 the Town Council adopted Ordinance No. 849 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 of Fairfax's review process; and

WHEREAS, Ordinance No. 849 provides that the Temporary Outdoor Use Permits shall be valid for an initial 120 days and may be renewed administratively in periods lasting up to 90 days; and

WHEREAS, Ordinance No. 849 requires the Town Council to set the expiration dates for all Temporary Outdoor Use Permits by resolution; and,

WHEREAS, the Town Council adopted Resolution No. 20-35 setting the expiration date of May 31, 2021 for all Temporary Outdoor Use Permits; and

WHEREAS, the Town Council now wishes to extend the expiration date for all Temporary Outdoor Use Permits to September 7, 2021;

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

Section 1. Incorporation of Recitals.

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

Section 2. Expiration Date of Temporary Outdoor Use Permits.

All Temporary Outdoor Use Permits shall be extended to expire by September 7, 2021.

The foregoing Resolution was duly passed and adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town on the 5th day of May 2021, by the following vote, to wit:

AYES:
NOES:
ABSENT:

BRUCE ACKERMAN, Mayor

Attest: _____
Michele Gardner, Town Clerk