



TOWN OF FAIRFAX

STAFF REPORT

May 19, 2022

TO: Fairfax Planning Commission

FROM: Linda Neal, Principal Planner
Janet Coleson, Town Attorney

SUBJECT: Review of draft ordinance incorporating Outdoor Dining as a permitted use in the CH Highway Commercial and CC Central Commercial Zone Districts and allowing outdoor dining enclosures with an Encroachment Permit processed ministerially by the Public Works Department

RECOMMENDATION

Adopt attached Resolution No. 2022-11 recommending that the Town Council adopt the attached **ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING TOWN CODE TITLE 12, CHAPTER 12.32 ('TEMPORARY CARPORTS AND OTHER STRUCTURES IN THE PUBLIC RIGHTS-OF-WAY') TO INCLUDE SEPARATE PROCESSES FOR GRANTING ENCROACHMENT PERMITS FOR RESIDENTIAL STRUCTURES FROM COMMERCIAL OUTDOOR DINING STRUCTURES, AMENDING SECTION 12.32.020 TO REGULATE ONLY RESIDENTIAL STRUCTURES AND ADDING SECTION 12.32.025 TO REGULATE COMMERCIAL STRUCTURES AND AMENDING TITLE 17, CHAPTER 17.096 ('CH HIGHWAY COMMERCIAL ZONE'), SECTION 17.096.040 (PRINCIPAL PERMITTED USES AND STRUCTURES) AND CHAPTER 17.100 ('CC CENTRAL COMMERCIAL ZONE'), SECTION 17.100.040 ('PRINCIPAL PERMITTED USES AND STRUCTURES') TO ALLOW OUTDOOR DINING AS A PERMITTED USE AND OUTDOOR DINING ENCLOSURES WITH AN ENCROACHMENT PERMIT ISSUED BY THE PUBLIC WORKS DEPARTMENT FOR COMMERCIALLY DEVELOPED PROPERTIES IN THE CH AND CC ZONE DISTRICTS.**

BACKGROUND

On April 6, 2022, the Town Council directed the staff to prepare a draft outdoor dining ordinance for adoption at a future meeting and amend the Zoning Ordinance to allow outdoor dining on an on-going basis.

DISCUSSION

After reviewing the various commercial zone districts and their locations, staff determined that the only commercial zones that are developed with existing structures fronting on public sidewalks or roads that could be used for outdoor dining are the CH Highway Commercial and CC Central Commercial Zone Districts. After reviewing the Town Code staff determined that in order to incorporate allowing outdoor dining enclosures as a permitted use in the CH Highway Commercial and CC Central Commercial Zones, Town Code Chapter 12.32,

Temporary Carports and Other Structures in the Public Rights-of-way would also have to be amended since the Council direction to staff was to create a process that would allow approval of outdoor dining structures to facilitate outdoor dining.

We have therefore drafted an ordinance amendment that would create a new section in Chapter 12.32, Temporary Carports and Other Structures in The Public Rights-of-way. The new section would allow the Public Works Department to grant encroachment permits for the creation of dining enclosures in the public rights-of-way of the CH and CC Zones and clarifying that encroachment permits for private residential structures in the public rights-of-way, will still require the approval of encroachment permits by the Planning Commission.

The ordinance also amends the CH and CC zones to allow outdoor dining as permitted uses in those zones with the approval of an Outdoor Dining permit by the Public Works Department.

The intent of staff is to also prepare an amendment to the Town Code and Guidelines to be adopted by the Town Council via resolution to create an Outdoor Dining permit process that will include clear specifications for where within the public rights-of-way outdoor dining would be allowed and how dining enclosures must be designed and constructed to be eligible to receive a permit. Design specifications will regulate enclosure size and acceptable fencing materials, location, permitted decking slope, furniture materials, landscaping, outdoor heating units and lighting, requirements to comply with the Americans with Disabilities Act, safety protocols, and height limits to ensure the enclosures will not block sight lines or block the signs of adjacent businesses.

The Commission should review the proposed attached draft ordinance and, if necessary, make recommendations for amendments to the final wording of the ordinance which will be included in the attached Resolution No. 2022-11 recommending the Town Council adopt the draft ordinance.

The attached Resolution No. 2022-11, recommending that the Town Council adopt the draft ordinance includes the CEQA exemptions being used to process the ordinance changes which will begin the process to codify outdoor dining as a permitted use and outdoor dining enclosures with an encroachment permit which is the direction given to staff and the Planning Commission by the Town Council.

ATTACHMENTS

Attachment A – draft Ordinance (changes highlighted in yellow)
Attachment B - Resolution No. 2022-11

ORDINANCE NO. XXX

ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING TOWN CODE TITLE 12, CHAPTER 12.32 ('TEMPORARY CARPORTS AND OTHER STRUCTURES IN THE PUBLIC RIGHTS-OF-WAY') TO INCLUDE SEPARATE PROCESSES FOR GRANTING ENCROACHMENT PERMITS FOR RESIDENTIAL STRUCTURES FROM COMMERCIAL OUTDOOR DINING STRUCTURES, AMENDING SECTION 12.32.020 TO REGULATE ONLY RESIDENTIAL STRUCTURES AND ADDING SECTION 12.32.025 TO REGULATE COMMERCIAL STRUCTURES AND AMENDING TITLE 17, CHAPTER 17.096 ('CH HIGHWAY COMMERCIAL ZONE'), SECTION 17.096.040 ('PRINCIPAL PERMITTED USES AND STRUCTURES') AND CHAPTER 17.100 ('CC CENTRAL COMMERCIAL ZONE'), SECTION 17.100.040 ('PRINCIPAL PERMITTED USES AND STRUCTURES') TO ALLOW OUTDOOR DINING AS A PERMITTED USE AND OUTDOOR DINING ENCLOSURES WITH AN ENCROACHMENT PERMIT ISSUED BY THE PUBLIC WORKS DEPARTMENT FOR COMMERCIALLY DEVELOPED PROPERTIES IN THE CH AND CC ZONE DISTRICTS

WHEREAS, on April 6, 2022, the Fairfax Town Council directed the staff to prepare Ordinance(s) for Planning Commission consideration amending the Town Code to make outdoor dining and outdoor dining enclosures as permitted but regulated uses within the Town of Fairfax; and

WHEREAS, the Council determined that it is necessary to regulate temporary outdoor dining enclosures created by private businesses that use portions of the public rights-of-way so that the enclosures; 1) do not become a nuisance or threaten the public health safety or welfare of neighboring properties; and 2) are designed to ensure safe pedestrian, vehicular and bicycle passage around said outdoor dining enclosures while also maintaining sufficient public parking and visibility for other nearby businesses; and

WHEREAS, the Town Council has found that outdoor dining areas provide an added financial benefit to owners of restaurants and desirable outdoor eating areas for residents and visitors;

The Town Council of the Town of Fairfax Does ordain as follows:

Section 1: Town Code Title 12, Chapter 12.32, ('Temporary Carports and Other Structures in the Public Rights-of-way'), is amended as follows:

§ 12.32.010 PERMITTED WHEN; PERMIT REQUIRED.

(A) Upon certain portions of public streets and public rights-of-way in the town, not being used for vehicular or pedestrian travel, temporary carports and other structures may be erected and maintained by the owners or tenants of adjoining property, upon terms and conditions and for the time prescribed in a permit issued to the property owner by the Planning Commission **or the Public Works Department.**

(B) It is unlawful for any person to erect or maintain any carport or other structure upon any portion of a public street or public right-of-way without a permit having been issued therefor as provided in this chapter.

§ 12.32.020 PERMIT APPLICATION; REQUIREMENTS; PROCESSING PROCEDURE FOR RESIDENTIAL STRUCTURES.

Any property owner contiguous to a public street or right-of-way within the CH Highway Commercial or CC Central Commercial Zones, portions of which are not being used for vehicular or pedestrian traffic, where the owner has no suitable place on his or her own property or entirely on his or her own property for the erection or construction of a carport or other structure, may make application to the Planning Commission for permission to erect and maintain a carport or other structure on the public street or right-of-way, for the time and under the terms and conditions as the Planning Commission will permit. The application shall be accompanied by detailed plans and specifications for the structure, showing the extent to which it encroaches upon any public street or public right-of-way. Upon filing of the application, the same shall be considered by the Planning Commission and acted upon.

§ 12.32.025 PERMIT APPLICATION; REQUIREMENTS; PROCESSING PROCEDURE FOR COMMERCIAL STRUCTURES.

Any property owner or commercial tenant contiguous to a public street or right-of-way, portions of which are not being used for vehicular or pedestrian traffic, where the owner has no suitable place on his or her own property or entirely on his or her own property for the erection or construction of an outdoor dining area and/or enclosure, may make application to the Planning and Building Department for permission to erect and maintain an outdoor dining area and/or enclosure within the public sidewalk or the public street or rights-of-way, for the time and under the terms and conditions as the Public Works Director or Building Official will permit. The application shall be accompanied by detailed plans and specifications for the structure, showing the extent to which it encroaches upon any public street or public right-of-way and that it conforms required specifications. Upon filing of the application, the same shall be processed ministerially by the Public Works Director or the Building Official and issued as long as the outdoor dining enclosure complies with the Commercial Outdoor Dining Specifications attached to this ordinance as Attachment A (these design standards may be periodically revised by Resolution of the Fairfax Planning Commission):

§ 17.096.040(A). Uses within the CH zone shall be conducted entirely within a building, unless an encroachment permit is granted in accordance with Town Code § 12.32.025, and are restricted to the following:

§ 17.100.040(A). Uses within the CC zone shall be conducted entirely within a building, unless an encroachment permit is granted in accordance with Town Code § 12.32.025, and are restricted to the following:

Section 4: The Town Council finds that this ordinance is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to categorical exemption number 15305(b), Minor Alteration in Land Use Limitation.

Section 5: This Ordinance shall be in full force and effect thirty days from and after its final passage and adoption.

Section 6: Copies of the forgoing ordinance shall, within fifteen days after its final passage and adoption, be posted in three public places in the Town of Fairfax which places are designated for that purpose:

- 1. Bulletin Board, Town Hall offices, located at 142 Bolinas Road, Fairfax;
- 2. Bulletin Board, Fairfax Post Office, located at 773 Center Boulevard, Fairfax; and
- 3. Bulletin Board, Fairfax Women’s Club building, located at 46 Park Road, Fairfax.

The foregoing ordinance was duly and regularly introduced at a special meeting of the Fairfax Town Council held in said Town on the first day of June 2022, and thereafter adopted at a regular meeting of the Town Council, held in said Town on the sixth day of July 2022 by the following vote:

AYES:
 NOES:
 ABSTAIN:
 ABSENT:

 Stephanie Hellman, Mayor

Attest:

 Michele Gardner, Town Clerk

 Date

RESOLUTION NO. 2022-11

**A Resolution of The Fairfax Planning Commission
Recommending that the Fairfax Town Council Adopt
ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING
TOWN CODE TITLE 12, CHAPTER 12.32 ('TEMPORARY CARPORTS AND OTHER
STRUCTURES IN THE PUBLIC RIGHTS-OF-WAY') TO INCLUDE SEPARATE
PROCESSES FOR GRANTING ENCROACHMENT PERMITS FOR RESIDENTIAL
STRUCTURES FROM COMMERCIAL OUTDOOR DINING STRUCTURES,
AMENDING SECTION 12.32.020 TO REGULATE ONLY RESIDENTIAL
STRUCTURES AND ADDING SECTION 12.32.025 TO REGULATE COMMERCIAL
STRUCTURES AND AMENDING TITLE 17, CHAPTER 17.096 ('CH HIGHWAY
COMMERCIAL ZONE'), SECTION 17.096.040 (PRINCIPAL PERMITTED USES AND
STRUCTURES') AND CHAPTER 17.100 ('CC CENTRAL COMMERCIAL ZONE'),
SECTION 17.100.040 ('PRINCIPAL PERMITTED USES AND STRUCTURES') TO
ALLOW OUTDOOR DINING AS A PERMITTED USE AND OUTDOOR DINING
ENCLOSURES WITH AN ENCROACHMENT PERMIT ISSUED BY THE PUBLIC
WORKS DEPARTMENT FOR COMMERCIALLY DEVELOPED PROPERTIES IN THE
CH AND CC ZONE DISTRICTS**

WHEREAS, on April 6, 2022, the Fairfax Town Council directed the staff to prepare an Ordinance for Planning Commission consideration to allow outdoor dining and outdoor dining enclosures as permitted uses in the CH Highway Commercial Zones and the CC Central Commercial Zones with the approval of encroachment permits and business permits within the Town of Fairfax; and

WHEREAS, the Town Council's direction was supported by the results of an on-line survey taken from August 2, 2021, through August 25, 2021, which indicated majority support for outdoor dining from property owners, business owners and the public; and

WHEREAS, the Commission held a duly noticed public meeting on May 19, 2022, to consider the proposed ordinance changes and take public testimony; and

WHEREAS, the proposed ordinance is exempt from the California Environmental Quality Act because the proposed Ordinance does not constitute a "project" within the meaning of the California Environmental Quality Act of 1970 (CEQA) Guidelines Section 15060(c)(2) and 15061(b)(3) because there is no potential that the regulations will result in a direct or reasonably foreseeable indirect physical change in the environment, and CEQA Guidelines Section 15305, which exempts minor alterations in land use limitations including issuance of minor encroachment permits in areas with an average slope of less than 20%.

WHEREAS, the proposed ordinance is in conformance with the following 2010-2030 Fairfax General Plan policies:

Policy LU-7.1.4: Amenities and improvements proposed for implementation in the Town Center Area shall be consistent with the criteria for those items outlined in the Town Center Plan, relative to landscaping, lighting, sidewalks, street furniture, public art and ornamentation, and general guidelines pertaining to signs and banners.

Policy C-5.7: Encourage pedestrian friendly design features such as sidewalks, street trees, on-street parking, public spaces, gardens, outdoor furniture, art, and interesting architectural details.

NOW, THEREFORE BE IT RESOLVED, the Planning Commission of the Town of Fairfax finds that this Ordinance is consistent with the Town's General Plan and hereby recommends to the Town Council that it approve the draft **ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING TOWN CODE TITLE 12, CHAPTER 12.32 ('TEMPORARY CARPORTS AND OTHER STRUCTURES IN THE PUBLIC RIGHTS-OF-WAY') TO INCLUDE SEPARATE PROCESSES FOR GRANTING ENCROACHMENT PERMITS FOR RESIDENTIAL STRUCTURES FROM COMMERCIAL OUTDOOR DINING STRUCTURES, AMENDING SECTION 12.32.020 TO REGULATE ONLY RESIDENTIAL STRUCTURES AND ADDING SECTION 12.32.025 TO REGULATE COMMERCIAL STRUCTURES AND AMENDING TITLE 17, CHAPTER 17.096 ('CH HIGHWAY COMMERCIAL ZONE'), SECTION 17.096.040 ('PRINCIPAL PERMITTED USES AND STRUCTURES') AND CHAPTER 17.100 ('CC CENTRAL COMMERCIAL ZONE'), SECTION 17.100.040 ('PRINCIPAL PERMITTED USES AND STRUCTURES') TO ALLOW OUTDOOR DINING AS A PERMITTED USE AND OUTDOOR DINING ENCLOSURES WITH AN ENCROACHMENT PERMIT ISSUED BY THE PUBLIC WORKS DEPARTMENT FOR COMMERCIALLY DEVELOPED PROPERTIES IN THE CH AND CC ZONE DISTRICTS**

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 19th day of May 2022 by the following vote:

AYES:
NOES:
ABSENT:

Chair Norma Fragoso

Attest: _____
Linda Neal, Principal Planner