



TOWN OF FAIRFAX

STAFF REPORT

June 15, 2022

TO: Mayor and Town Council

FROM: Heather Abrams, Town Manager
Mark Lockaby, Building Official
Janet Coleson, Town Attorney

SUBJECT: Introduce an ordinance of the Town of Fairfax adding Chapter 5.58 entitled “Outdoor Dining” to Title 5 of the Fairfax Town Code; introduce an ordinance of the Town of Fairfax amending Town Code 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 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; and adopt a resolution of the Town of Fairfax adopting “Outdoor Dining Standards” and find it exempt from CEQA pursuant to Sections 15060(c)(2) and 15060(c)(3) of Title 14 of the California Code of Regulations.

THIS ITEM WAS CONTINUED FROM THE JUNE 1, 2022 TOWN COUNCIL MEETING

RECOMMENDATION

- 1) Introduce, waive first reading, and read by title only “An Ordinance of the Town Council of the Town of Fairfax Establishing an Outdoor Dining Program and Adding a New Chapter 5.58, ‘Outdoor Dining’, to Title 5 of the Fairfax Town Code”; and
- 2) Introduce, waive first reading, and read by title only “An Ordinance of the Town of Fairfax Amending Town Code 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 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”; and
- 3) Adopt a Resolution Adopting “Outdoor Dining Standards.”

BACKGROUND

In June 2020, Fairfax began allowing outdoor dining in response to COVID-19 restrictions via temporary encroachment permits (TEPs) to use the public right-of-way, and temporary use permits (TUPs) for private outdoor spaces. On May 5, 2021, Council extended the term for TEPs and TUPs to May 8, 2022. On April 6, 2022 Council provided direction on the new requirements for outdoor dining structures, and the Council extended the current TEPs and TUPs to November 1, 2022, with a July 29, 2022 deadline for checking in with current TEP and TUP holders on their progress toward complying with the Council's direction. The Council also directed staff to return with (1) an ordinance detailing the permitting and regulatory structure for long-term outdoor dining solutions, (2) an ordinance creating a zoning change to allow outdoor dining on an ongoing basis, and (3) a resolution adopting a set of Outdoor Dining Safety Standards for businesses wishing to participate in the new permitting program. The Planning Commission has reviewed the proposed zoning changes, and that ordinance is attached as Attachment B.

The Council's direction regarding the requirements of outdoor dining structures going forward has been communicated with the public and the businesses via Town Council Meetings, newspaper articles, the Town Newsletter, and letters directed to the businesses that currently have outdoor dining.

DISCUSSION

At the April 6, 2022 Council Meeting, Council directed the following requirements be implemented for outdoor dining:

1. No fixed overhead coverings, i.e. roofs and sunshades. Movable umbrellas allowed and may have branding or business names printed on the umbrellas.
2. No gas outdoor heaters. Electric heaters are allowed with proper safety measures for cords and fire danger.
3. Electric lighting and reflective tape along the outside edge of the structure is required.
4. No signage on the outside of the outdoor dining structure
5. Annually, Town will charge permit fees and rental/license fees for use of the Town's space, and an annual inspection may be required. Permits can be approved ministerially and do not require further approval by Planning Commission nor Town Council.
6. Do not allow new outdoor dining structures until after November 1, 2022 extension has expired and new ordinance and zoning regulations are in place.
7. Outdoor dining only allowed along the length or width of the business, not in front of another business, unless both share the space via written agreement
8. Minimum four feet of unobstructed sidewalk adjacent to the outdoor dining
9. Maximum of two parallel spaces or four diagonal spaces can be used for outdoor dining per business
10. Outdoor dining structures must be constructed to safeguard public safety, including:
 - a. Sightlines for corners and driveways
 - b. Set back one foot from lane of travel
 - c. Set back needed for adjacent parking
 - d. Do not obstruct fire hydrants nor storm drainage, and provide easy access to in-street utilities

- e. Outdoor dining only allowed in commercial zones with speed limit 25 miles per hour or less
- f. Meet ADA requirements (platform flush with sidewalk, etc.)

Accordingly, the attached ordinance adopts a series of definitions applicable to the outdoor dining program, sets forth a permitting requirement and the mandatory application materials and steps for obtaining such a permit, and discusses enforcement for violations of the ordinance. Another ordinance revises the current Zoning Code to permit outdoor dining. A resolution adopting fees for the permitting program will follow at a forthcoming Council meeting, in advance of the TEPs and TUPs expiring in November, to give staff time to study and develop adequate bases for the fee amounts.

The attached resolution adopts a series of safety-focused standards that will be applicable to permitted outdoor dining uses, including prohibitions of fixed overhead coverings and gas-powered outdoor heaters, and imposing barrier, spacing, and other requirements.

Since the Council discussion in April, a number of residents and businesses have provided feedback, in particular regarding roofs and heaters. The Council has the option to make changes to the ordinance at the meeting, if needed. In addition, the Council could act at a later date if the Council wishes to consider other forms of outdoor commerce, such as retail merchandise.

FISCAL IMPACT

None at this time.

ATTACHMENTS

- A. Ordinance Establishing an Outdoor Dining Program
- B. Ordinance Amending the Zoning Code to Allow Outdoor Dining (with Planning Commission Resolution 2022-11 recommending the ordinance)
- C. Resolution Adopting Outdoor Dining Standards

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
ESTABLISHING AN OUTDOOR DINING PROGRAM AND ADDING A NEW
CHAPTER 5.58, "OUTDOOR DINING," TO TITLE 5 OF THE FAIRFAX MUNICIPAL
CODE**

WHEREAS, the Town of Fairfax, California (Town) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, in June of 2020, the Town began allowing outdoor dining uses in response to COVID-19 restrictions, via temporary encroachment permits (TEPs) for businesses needing to use the public right of way, and temporary use permits (TUPs) for businesses using their own outdoor private spaces; and

WHEREAS, due to the interim nature of these TEPs and TUPs, requirements for businesses engaging in outdoor dining uses were minimal and variable, and there was no fee associated with the program; and

WHEREAS, on April 6, 2022, the Town Council adopted Resolution No. 22-26, extending the expiration date for all outdoor dining TEPs and TUPs to January 1, 2023; and

WHEREAS, members of the Town, including many local business owners, have expressed support for making permanent the Town's outdoor dining program, with additional guidelines and permitting requirements to clarify and simplify the standards for authorized outdoor dining uses; 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.

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DOES
ORDAIN AS FOLLOWS:**

SECTION 1. Recitals.

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

SECTION 2. Chapter 5.58 Added.

A new Chapter 5.58, "Outdoor Dining," is added to the Fairfax Municipal Code to read in full as follows:

“CHAPTER 5.58: OUTDOOR DINING

Section

5.58.010	Purpose and Intent
5.58.020	Definitions
5.58.030	Criteria
5.58.040	Outdoor Dining Permits Required
5.58.050	Outdoor Dining in the Public Right of Way; Requirements
5.58.060	Reviewing Authority
5.58.070	Standard of Review
5.58.080	Outdoor Dining Permit; Conditions
5.58.090	Bonding and Insurance
5.58.100	Decision and Appeals
5.58.110	Outdoor Dining Permit; Suspension and Revocation

5.58.010 PURPOSE AND INTENT.

It is the purpose and intent of this chapter to regulate commercial outdoor dining activities located within the Town of Fairfax in order to promote the health, safety, and general welfare of residents and businesses within the Town, and encourage development of a pedestrian-friendly urban environment. Commercial outdoor dining uses shall comply with all provisions of the Fairfax Town Code, state law, and all other applicable local codes and regulations, including all applicable land use and zoning regulations imposed on commercial dining activities.

5.58.020 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DINING ESTABLISHMENT. A restaurant, bar, or other commercial establishment operating an outdoor dining area.

IMMEDIATELY ADJACENT. Adjoining, abutting, or fronting.

INTOXICATING BEVERAGES. A beverage containing alcohol, including beer, wine, or spirits.

LICENSED ESTABLISHMENT. An establishment in which intoxicating beverages are permitted by the California Department of Alcoholic Beverage Control to be served and consumed.

OUTDOOR DINING AREA. Portions of the public sidewalk or public right-of-way within a commercially zoned district in the Town which are used by a dining establishment for the serving and consuming of food and beverages, including licensed establishments for the serving and consuming of intoxicating beverages.

5.58.030 CRITERIA.

In order for outdoor dining areas to be permitted, the following criteria shall be met, in addition to all other applicable land use and development standards in this Code:

(A) The outdoor dining area shall be managed, operated, and maintained as an integral part of the underlying dining establishment.

(B) The outdoor dining area shall be designed in accordance with the Fairfax Outdoor Dining Standards.

(C) The proposed hours of operation for the outdoor dining area shall be complementary to the business district in which the use is located, and shall not negatively impact residential uses.

(D) There shall be no cooking or food preparation done outside the building supporting the outdoor dining area.

(E) Only licensed establishments may serve alcoholic beverages in the outdoor dining area.

5.58.040 OUTDOOR DINING PERMITS REQUIRED.

(A) No dining establishment may operate an outdoor dining area in the public right-of-way or on private property unless an outdoor dining permit is approved pursuant to this chapter.

(B) An application for an outdoor dining permit shall be filed with the Planning and Building Department, in a form prescribed by that Department.

(C) If approved, an outdoor dining permit shall be valid for a period of one (1) year and may be renewed for additional one (1) year periods on the same terms and conditions as set forth in the original permit.

(D) The Town Council may establish by resolution fees for the review of such applications.

5.58.050 OUTDOOR DINING IN THE PUBLIC RIGHT OF WAY; REQUIREMENTS.

(A) Any outdoor dining area proposed to be located in the public right-of-way shall comply with all of the following requirements:

(1) Areas used for outdoor dining shall not extend beyond the immediately adjacent building frontage for the associated restaurant space, and not in

front of another business, unless said business operators share the space by written agreement.

(2) A minimum distance of not less than a four foot (4') wide pedestrian travel aisle shall be maintained at all times.

(3) No fixed or permanent overhead coverings are permitted. Dining establishments may use moveable umbrellas, but such umbrellas shall have a minimum seven foot (7') clearance from the ground to the lowest element of the umbrella or covering, and shall be located completely within the outdoor dining area's permitted boundaries.

(4) Portable electric heaters may be used (gas heaters are not permitted), but shall be located a minimum of three feet (3') from any combustible material, and completely within the outdoor dining area's permitted boundaries.

(5) All fixtures and furniture used in an outdoor dining area shall be removed from the public right-of-way and stored out of public view during nonbusiness hours. As set forth in the Fairfax Outdoor Dining Standards, outdoor dining areas may be required to provide a permanent barrier delineating the usable outdoor dining area from the remaining area of the public right-of-way.

(6) The outdoor dining area must be clearly delineated by use of reflective tape, and all outdoor dining areas must provide adequate outdoor-appropriate electric lighting as set forth in the Fairfax Outdoor Dining Standards.

(7) No business signage may be attached or affixed to any portion of the outdoor dining area, but branding is permitted as to the umbrellas permitted by this section.

(8) If located on publicly owned property, an encroachment permit allowing establishment of an outdoor dining area shall be obtained from the Public Works Department.

(9) A maximum of two (2) parallel spaces of four (4) diagonal spaces may be allotted for outdoor dining uses by the associated business.

(10) Areas used for outdoor dining in the public right-of-way shall comply with all applicable provisions of the Building and Fire Codes, including, without limitation, maintaining proper building egress and ingress at all times, observing maximum seating capacities, providing proper circulation, and providing appropriate access to persons with disabilities.

5.58.060 REVIEWING AUTHORITY.

Unless otherwise specified, the reviewing authority for an outdoor dining permit shall be the Town Building Official.

5.58.070 STANDARD OF REVIEW.

The reviewing authority shall approve an outdoor dining permit application if all of the following findings can be made:

(A) The proposed outdoor dining use is consistent with the general plan for the area, and any specific plan that may be adopted for the area.

(B) The proposed outdoor dining use will not adversely affect existing and anticipated development in the vicinity and will promote the harmonious development of the area.

(C) The nature, configuration, location, density, and manner of operation of any proposed outdoor dining use will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property.

(D) The proposed outdoor dining use will not create any significant traffic impacts, traffic safety hazards, pedestrian/vehicle conflicts, or pedestrian safety hazards, and will not impede the safe and orderly flow of pedestrians along the public right-of-way.

(E) The proposed outdoor dining use will not create any significantly adverse parking impacts as a result of employee or patron parking demand.

(F) The proposed outdoor dining use will not create any significantly adverse impacts on neighboring properties as a result of:

(1) The accumulation of garbage, trash or other waste;

(2) Noise created by operation of the restaurant or by employees or visitors entering or exiting the restaurant;

(3) Light and glare; or

(4) Odors and noxious fumes.

(G) The proposed outdoor dining use will not be detrimental to the public health, safety, or general welfare.

5.58.080 OUTDOOR DINING PERMIT; CONDITIONS.

In approving an outdoor dining permit, the reviewing authority may impose such conditions as may be reasonably necessary to protect the public health, safety, and general welfare, and to ensure that the proposed outdoor dining use is established and conducted in a manner which is consistent with this chapter and the development standards for the underlying zone. The conditions imposed by the reviewing authority may include, but shall not be limited to, the following:

- (A) The appropriate setback for the proposed outdoor dining use;
- (B) Pedestrian access and safety;
- (C) Parking requirements;
- (D) Barrier requirements;
- (E) Lighting requirements;
- (F) The time limit for the permit;

(G) An obligation to indemnify the Town against any and all claims, liability, and damages arising from or in any way connected to the Town's issuance of an outdoor dining permit to the dining establishment.

5.58.090 BONDING AND INSURANCE.

(A) Upon issuance of an outdoor dining permit in the public right-of-way pursuant to this chapter, the permittee shall post, and maintain at all times while the permit is effective, a security bond and insurance. The security bond and proof of insurance, when required, shall be deposited with the Town Clerk before the permit is issued.

(B) The amount and form of the bond shall be designated by the reviewing authority at the time of approval of the outdoor dining permit, and shall be in an amount which is determined to be sufficient for removal of the outdoor dining area in the event the permittee fails to comply with the conditions of the permit. The form and content of the bond shall be satisfactory to the Town Attorney. The bond may be waived where it is determined that the potential for any injury to the Town from the existence of the outdoor dining area is minimal. Any security bond required by this section may be cash, or cash equivalent security approved by the Town Attorney and the Town Clerk.

(C) The amount of insurance shall be designated by the reviewing authority, after discussion with the Town Attorney, at the time of approval of the outdoor dining permit, and shall be in an amount which is determined to be sufficient to adequately protect the Town, persons, and property from injuries or damages which may be caused

by the use or operation of the outdoor dining area authorized by the permit. The certificate(s) of insurance deposited by the applicant with the Town Clerk shall name the Town of Fairfax as additional insured and provide the minimum coverage amount required by the Town.

5.58.100 SUSPENSION AND REVOCATION OF OUTDOOR DINING PERMIT.

(A) If the Building Official determines that evidence could be presented to the Planning Commission which may provide grounds for revocation or suspension of an outdoor dining permit, and the Building Official believes that the Planning Commission may find that such evidence is adequate to support revocation or suspension, the Building Official may initiate a revocation or suspension proceeding before the Planning Commission.

(B) Upon initiation of a revocation or suspension proceeding, the Planning Commission shall hold a public hearing regarding the possible revocation or modification of the outdoor dining permit. Notice of such hearing shall be provided in the same manner as the notice required for issuance of the original permit. The Planning Commission, after such hearing, may revoke or suspend the outdoor dining permit if it determines that one or more of the following conditions exists:

- (1) The permittee has violated any condition imposed on the permit approval, or violated any provision of this Code that governs, in whole or in part, the activity for which the permit was granted or the land on which it is located; or
- (2) The permit was obtained in a fraudulent manner; or
- (3) The operation of the outdoor dining use constitutes or creates a “nuisance.”

SECTION 3. Compliance with CEQA. This ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the Town. The Town Council hereby finds that this ordinance is not subject to CEQA because the adoption of this ordinance is not a “project” pursuant to Sections 15060(c)(2) and 15060(c)(3) of Title 14 of the California Code of Regulations. Specifically, this ordinance only makes permanent the ability for the Town to issue permits for outdoor business uses, which will not result in a direct or reasonably foreseeable indirect physical change in the environment.

SECTION 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The Town Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective

of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. Effective Date and Posting. This ordinance shall take effect November 1, 2022. Copies of this ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women’s Club Building, located at 46 Park Road.

The foregoing Ordinance was introduced at a special meeting of the Town Council on the 15th day of June, 2022, and duly adopted at the next regular meeting of the Town Council on the ___day of _____ 2022, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Stephanie Hellman, Mayor

Attest:

Michele Gardner, Town Clerk

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, 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 contained in Town Code Title 5.

§ 17.096.040(A). Uses within the CH zone shall be conducted entirely within a building (unless a business permit and encroachment permit are granted in accordance with Town Code § 5.57.XXXX and § 12.32.025 for outdoor dining uses and/or outdoor dining enclosures) and are restricted to the following:

§ 17.100.040(A). Uses within the CC zone shall be conducted entirely within a building, (unless a business permit and encroachment permit are granted in accordance with Town Code § 5.57.XXXX and § 12.32.025 for outdoor dining uses and/or outdoor dining enclosures) and are restricted to the following:

Section 2: 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 3: This Ordinance shall be in full force and effect thirty days from and after its final passage and adoption.

Section 4: 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 fifteenth day of June 2022, and thereafter adopted at a regular meeting of the Town Council, held in said Town on the _____ day of _____ 2022 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Stephanie Hellman, Mayor

Attest:

Michele Gardner, Town Clerk

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 following comments and recommendations were made by the Commission and the public and have been incorporated into the meeting record as follows:

1. There needs to be a review process by the utility companies so that the outdoor spaces do not block access to underground utility maintenance.
2. A member of the public noted that that public safety should be a priority in a permanent outdoor dining ordinance. Bolinas Road is the only north/south road in the Federal secondary evacuation system for 3,000 people to evacuate during an emergency from the Deer Park, Porteous, and southeast Manor Hills areas. Outdoor dining enclosures should be prohibited either entirely on Bolinas Road, or at least at the corner of Bolinas and Broadway because the large flatbed

trucks required to transport the earthmoving caterpillars necessary to fight wildland fires. The trucks will have to make the turn from Broadway to Bolinas Road since Bolinas Road is the main entrance and egress route for the residential neighborhoods west of Sir Francis Drake Boulevard.

3. The ordinance or the specifications resolution should incorporate requirements for fast and easy removal of the outdoor dining enclosures during emergencies and the what the business with the permit will be responsible for.
4. Outdoor music and live entertainment should be prohibited in the dining spaces.
5. The Commission was unanimous in its opinion that the Commission should be included in the review of the outdoor dining specifications since the code gives the responsibility for the appearance of the downtown commercial zones to the Commission with all new construction in the downtown requiring Planning Commission approval of a design review permit by said Commission.
6. Town Code § 17.096.040(A) and § 17.100.040(A) are misleading and seem to imply that all permitted uses in these sections can be approved for encroachment permits, and not just restaurants or other.

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 Ordinance XXX, is consistent with the Town’s General Plan and if the Town Code and/or the Resolution setting forth the Outdoor Dining Standards are amended to address the comments of the Commission and the public described above, hereby recommends to the Town Council that it approve an 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

RESOLUTION 22-__

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
ADOPTING OUTDOOR DINING STANDARDS**

WHEREAS, the Town of Fairfax, California (Town) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, in June of 2020, the Town began allowing outdoor dining uses in response to COVID-19 restrictions, via temporary encroachment permits (TEPs) for businesses needing to use the public right of way, and temporary use permits (TUPs) for businesses using their own outdoor private spaces; and

WHEREAS, due to the interim nature of these TEPs and TUPs, requirements for businesses engaging in outdoor dining uses were minimal and variable, and there was no fee associated with the program; and

WHEREAS, on April 6, 2022, the Town Council adopted Resolution No. 22-26, extending the expiration date for all outdoor dining TEPs and TUPs to January 1, 2023; and

WHEREAS, members of the Town, including many local business owners, have expressed support for making permanent the Town’s outdoor dining program, with additional guidelines and permitting requirements to clarify and simplify the standards for authorized outdoor dining uses; 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;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Fairfax that the Town Council hereby adopts the following Outdoor Dining Standards (“Standards”) for the administration of the Outdoor Dining Program (“Program”):

SECTION 1. Recitals.

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

SECTION 2. Purpose and Intent.

It is the purpose and intent of the Standards to set forth certain safety guidelines, applicable to commercial outdoor dining activities located within the Town of Fairfax, in order to promote the health, safety, and general welfare of residents and businesses within the Town, and encourage development of a pedestrian-friendly urban environment.

SECTION 3. Applicability.

The provisions of the Standards shall apply to all outdoor dining uses within the Fairfax town limits, regardless of whether such outdoor dining use is in the public right-of-way or on private property.

SECTION 4. Standards Adopted.

The Town Council hereby adopts the safety standards established herein as the “Fairfax Outdoor Dining Standards,” attached hereto as **Exhibit A.**

SECTION 5. Compliance with CEQA.

This resolution was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the Town. The Town Council hereby finds that this resolution is not subject to CEQA because its adoption not a “project” pursuant to Sections 15060(c)(2) and 15060(c)(3) of Title 14 of the California Code of Regulations. Specifically, this resolution only sets forth safety standards applicable to permitted outdoor business uses, which will not result in a direct or reasonably foreseeable indirect physical change in the environment.

BE IT FURTHER RESOLVED that any and all amendments to the Standards, as deemed necessary from time-to-time, shall be adopted by resolution of the Town Council.

The foregoing Resolution was duly passed and adopted at a Special Meeting of the Town Council of the Town of Fairfax held in said Town on the 15th day of June 2022, by the following vote:

AYES:

NOES:

ABSENT:

Stephanie Hellman, Mayor

Attest:

Michele Gardner, Town Clerk

EXHIBIT A

Fairfax

Outdoor Dining

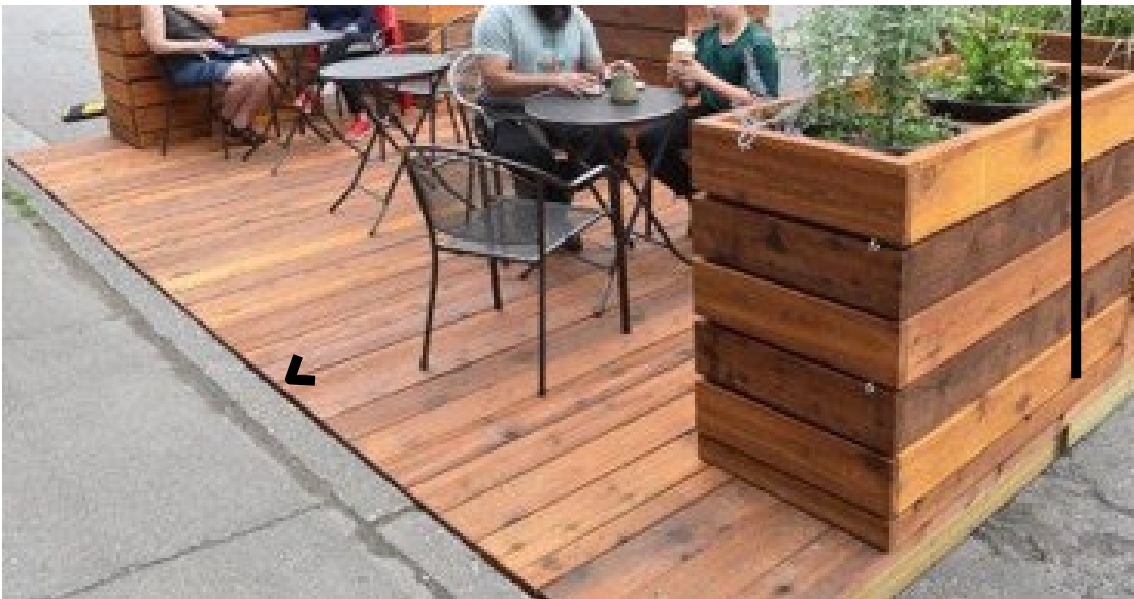
STANDARDS

June 15, 2022

AREA SURFACE



Deck flush with sidewalk
compliant with accessibility requirements



Deck Surface

- Must install a deck flush with sidewalk surface
 - If no raised curb exists, Outdoor Dining Structure may be located on asphalt/concrete Deck surface shall be constructed of a composite decking product of blended wood and plastic fibers, with a stain and texture to match any wood planters or railings.
- Structural wood (posts and joists) shall be constructed of Stress-Grade Structural Joists & Planks No. 1-3 softwood lumber

AREA SURFACE

Outdoor Dining Access & Maintenance

- Outdoor Dining area must be accessible for all patrons.
- Maximum vertical and horizontal difference between deck surface and curb/sidewalk shall not exceed 1/4"
- Cross-slope not to exceed $\pm 1.5\%$ in any direction
- Deck surface shall be constructed of a composite decking product of blended wood and plastic fibers, with a stain and texture to match any wood planters or railings.
 - Removable access panels on 3 sides that face traffic and parking for maintenance and cleaning
 - Deck sides running across drainage or gutter pathways must provide continuous open pathway for water, screened with 1/4" mesh
 - Openings shall be minimized and no larger than necessary.
 - Mesh screens must be cleaned and maintained to facilitate proper drainage.
- Deck surface installed in Tree Wells shall provide access to any planter areas supporting trees to ensure access to lighting, electrical outlets & boxes, and tree irrigation.
- All exposed wood surfaces shall be treated with waterproofing deck sealer not less than every 12 months

AREA DELIMITER SITE PLAN



- Structures shall not block visibility of pedestrians and vehicles from the street to the buildings and vice versa.
- Materials on each outside corner at edge of vehicle traffic lane shall have California Type Q object markers on outside edges facing traffic lanes and parking stalls
- If applicable, barrier height and spacing subject to California Alcohol Beverage Control rules and regulations.

SHADE STRUCTURE



Umbrella Specifications

- Umbrellas permitted
 - Overhangs, pergolas, or other structures prohibited
- Umbrellas must be fastened/secured in concrete base and removed from flexible space outside of business hours
- Printing, graphics or text on umbrella shall identify only the business holding the Outdoor Dining Structure license

FURNITURE



Furniture Specifications

- Restaurant-quality wrought iron, wood, steel, or cast aluminum permitted Plastic or composite material prohibited.
- Seat covers, cushions, tablecloths, or other cloth material shall be removed outside of business hours.
- Furniture and covers/cushions must be matching/consistent within the structure
- Vinyl tablecloths are prohibited.
- Printing, graphics or text on furniture or items may only identify the business holding the outdoor dining permit

LIGHTING



Hanging lights or banners affixed only to poles or other structures that are anchored to Outdoor Dining Structure frame - not to street trees or street lights.



Lighting & Pole Specifications

- Hanging lights, self-standing lamps, or lights on tables permitted
 - Hanging lights/banners must be hung so that there is a minimum height of 8 feet above the deck surface
 - Hanging lights shall not be affixed to street trees, street lights, street signs, or other public infrastructure
 - Fluorescent or high-pressure sodium lights prohibited

HEATING & CLIMATE CONTROL

Heater

- Gas and Propane heaters are prohibited.
- Electric heaters are allowed and must comply with all safety requirements.
- Top of heaters must maintain minimum clearance, as required for safety, below any street tree canopy and/or branches.
 - Trees may not be pruned by applicant.

Other Climate Control

- Tents, collapsible shade canopies, and misters prohibited Self-standing fans permitted