



TOWN OF FAIRFAX

STAFF REPORT

July 6, 2022

TO: Mayor and Town Council

FROM: Heather Abrams, Town Manager

SUBJECT: Adopt a Resolution extending the current terms for Temporary Outdoor Use Permits and Temporary Encroachment Permits to December 15, 2022

RECOMMENDATION

Staff recommends that the Council adopt the attached resolution extending the current outdoor dining permits, in order to allow time for an updated ordinance to return to Council, per Council direction in June 2022.

At a future meeting Council will be asked to:

- A. Adopt the zoning change to allow outdoor dining and outdoor retail on an on-going basis.
- B. Adopt an ordinance permitting long-term outdoor dining and outdoor retail structures, including establishing design regulations of the structures, and permitting fees.

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. On June 15, 2022 staff returned with an updated and expanded ordinance for on-going TEPs and TUPs, including a zoning change to allow outdoor dining on an on-going basis. The Council directed staff to expand the program to include retail and to incorporate roofs and other features. In order to allow time for a revised ordinance to return to Council, Council directed that staff also return in July with an extension of the current TEPs and TUPs.

DISCUSSION

The attached resolution is an extension needed to allow for the full program to be crafted according to the Council's direction on June 15, 2022. Updated draft structure guidelines for construction of outdoor dining structures are being prepared. A chart of proposed permit and space rental fees is being drafted. Several of the existing structures will still need to be removed and/or significantly remodeled to meet the new requirements, as they may not meet traffic safety or ADA requirements. The new outdoor dining ordinance and zoning update do not contemplate vehicle delivery/pick up zones.

FISCAL IMPACT

None at this time.

ATTACHMENT

Resolution

RESOLUTION 22-__

**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 AND TEMPORARY OUTDOOR USE PERMITS TO
ALLOW RESTAURANTS AND OTHER BUSINESSES TO PROVIDE OUTDOOR
DINING, OTHER RETAIL/COMMERCIAL USES, AND CURBSIDE PICKUP TO
DECEMBER 15, 2022**

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, 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, on May 5, 2021 the Town Council adopted Resolution 21-13 “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 8, 2021”; and

WHEREAS, also on May 5, 2021, the Town Council adopted Resolution 21-12 “A Resolution of the Town Council of the Town of Fairfax Extending the Expiration Date to May 8, 2022, of Temporary Outdoor Use Permits to Allow Restaurants and Other Businesses to Provide Outdoor Dining, Other Retail/Commercial Uses, and Curbside Pickup”; and

WHEREAS, on April 6, 2022 the Town Council adopted Resolution 22-26 “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 November 1, 2022”; and

WHEREAS, the conditions and concerns that led the Town Council to adopt Resolution 20-19 still exist; 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 wishes to modify and extend the expiration terms of the Right-of-Way Use Agreements for Temporary Outdoor Uses and Temporary Outdoor Use Permits authorized by Resolution 22-26; and

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 December 15, 2022.

3. Terms. The initial term of the Temporary Outdoor Use Permits 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 Temporary Outdoor Use Permits shall expire by December 15, 2022.

4. Terms. There shall be a midterm deadline of 5:00 p.m. on Friday, September 30, 2022, unless extended by the Building Official for no more than 30 days, for the Right-of-Way Agreement for Temporary Outdoor Uses and the Temporary Outdoor Use Permits for the following: temporary outdoor structures that extend in front of the adjacent business(es) shall be shortened unless there is a written agreement to approve such extension, and all critical safety issues shall be remediated.

5. 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.

6. 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.

7. Conflicts. This Resolution rescinds and replaces Resolution 22-26, and shall be governing over any claimed or actual conflicts with Resolution Nos. 21-12 and 21-13.

8. Effective Period. This Resolution shall take effect immediately upon adoption.

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 6th day of July 2022, by the following vote, to wit:

AYES:

NOES:

ABSENT:

Stephanie Hellman, Mayor

Attest: _____
Michele Gardner, Town Clerk