

## **ORDINANCE NO. 22-003**

### **An Urgency Ordinance Of The City Council Of The City Of Emeryville Modifying The Expiration Date Of Ordinance No. 20-016 Related To Expedited Permitting For Temporary Outdoor Seating For Restaurants And Bars During COVID-19 Pandemic; CEQA Determination: Exempt Pursuant to California Public Resources Code Section 21080(b)(4) and State CEQA Guidelines 15269(c) and 15061(b)(3)**

**WHEREAS**, on June 16, 2020, in response to State and County orders prohibiting indoor dining due to the COVID-19 pandemic, the City Council passed urgency Ordinance No. 20-014, temporarily waiving or modifying certain provisions of the City's Planning Regulations related to outdoor seating for restaurants and bars during the pandemic, as well as the first reading of regular Ordinance No. 20-016 with the same provisions. On July 7, 2020, the City Council passed Ordinance No. 20-016 on second reading. This ordinance took effect 30 days later, on August 6, 2020, at which point urgency Ordinance No. 20-014 had no further force and effect. Ordinance No. 20-016 was effective for one year, until August 6, 2021; and

**WHEREAS**, at the time Ordinance No. 20-016 was adopted, it was assumed that the pandemic would be over well before its termination date of August 6, 2021. Since the ordinance has now expired, any outdoor dining facilities operating under its prior provisions are nonconforming. However, in light of the ongoing pandemic, staff has not taken action to require them to be removed; and

**WHEREAS**, on May 3, 2022, the City Council held a discussion about making permanent the provisions of Ordinance No. 20-016, and directed that an ordinance be brought back to extend the expiration date of Ordinance No. 20-016 to 180 calendar days after the date of expiration or termination of the City of Emeryville's declared State of Emergency due to the COVID-19 pandemic, as set forth in Resolution No. 20-23, and to declare that any outdoor dining facilities approved under Ordinance No. 20-016 remain valid and conforming; and

**WHEREAS**, the City Council wishes to extend the expiration date of Ordinance No. 20-016, and the declaration that any outdoor dining facilities approved under Ordinance No. 20-016 remain valid and conforming, effective immediately; and

**WHEREAS**, on June 7, 2022, the City Council will consider an Ordinance extending the expiration date of Ordinance No. 20-016, and declaring that any outdoor dining facilities approved under Ordinance No. 20-016 remain valid and conforming, and if ultimately adopted, said Ordinance will be effective on or about July 21, 2022; and

**WHEREAS**, Government Code Section 36937(b) authorizes the City Council to adopt Urgency Ordinances that are effective immediately, when necessary, for the immediate preservation of public peace, health and safety if passed by a four-fifths vote; and

**WHEREAS**, the City Council has determined that, for the immediate preservation of the public peace, health, and safety, it is necessary to adopt this Urgency Ordinance modifying the expiration date of Ordinance No. 20-016, and declare that any outdoor

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dining facilities approved under Ordinance No. 20-016 remain valid and conforming, to take effect immediately;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION ONE. POLICY AND PURPOSES DECLARATION; FINDINGS FOR ADOPTING URGENCY ORDINANCE**

The purposes of this Ordinance are to promote and support the local food service industry during and after the COVID-19 pandemic; to support a safe, clean environment for workers and customers; and to promote economic recovery from the COVID-19 pandemic thereby preserving the public health, safety and welfare.

The City Council of the City of Emeryville makes the following finding for an Urgency Ordinance pursuant to Government Code Section 36937(b):

The City Council finds that, in order to provide for the immediate public peace, health, and safety, it is necessary to extend the expiration date of Ordinance No. 20-016, which waived or modified certain provisions of the Planning Regulations related to outdoor seating for restaurants and bars during the COVID-19 pandemic. Because Ordinance No. 20-016 expired on August 6, 2021, and the Council wishes for its provisions to be reinstated, and for any outdoor dining facilities approved under Ordinance No. 20-016 to be declared valid and conforming, as soon as possible, the adoption of these provisions by an Urgency Ordinance is necessary to protect the public peace, health, and safety until the companion Ordinance takes effect.

**SECTION TWO. MODIFYING THE EXPIRATION DATE OF ORDINANCE NO. 20-016**

The last sentence of Section Seven of Ordinance No. 20-016, "Effective Date and Expiration", shall be modified as follows, with deletions shown by ~~strike-out type~~ and additions shown by double underlined type:

"This Ordinance shall expire ~~one year after its effective date, unless otherwise extended by the City Council by resolution~~ 180 calendar days after the date of expiration or termination of the City of Emeryville declared State of Emergency due to the COVID-19 pandemic confirmed by Resolution No. 20-23."

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### **SECTION THREE. DECLARING THAT OUTDOOR DINING FACILITIES APPROVED UNDER ORDINANCE NO. 20-016 REMAIN VALID AND CONFORMING**

The City Council hereby declares that any outdoor dining facilities approved under Ordinance No. 20-016 remain valid and conforming and may continue to operate under said approvals until the expiration of Ordinance No. 20-016.

### **SECTION FOUR. CEQA DETERMINATION**

The City Council finds that adoption of this Urgency Ordinance is exempt from the California Environmental Quality Act (CEQA) under California Public Resources Code Section 21080(b)(4) and State CEQA Guidelines Section 15269(c), which pertain to actions taken to mitigate an emergency, and the “common sense exemption” at State CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

### **SECTION FIVE. SEVERABILITY**

Every section, paragraph, clause, and phrase of this Urgency Ordinance is hereby declared to be severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses or phrases.

### **SECTION SIX. EFFECTIVE DATE AND EXPIRATION**

Pursuant to Government Code Section 36937, this Urgency Ordinance shall take effect immediately, and shall expire upon the effective date of a substantially identical Ordinance.

### **SECTION SEVEN. CODIFICATION**

This Urgency Ordinance shall NOT be codified.

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This Urgency Ordinance was **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday, June 7, 2022, by the following vote:

AYES:	<u>5</u>	Mayor Bauters, Vice Mayor Medina and Council Members Donahue, Martinez and Welch
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

DocuSigned by:  
*John Bauters*  
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MAYOR

ATTEST:

DocuSigned by:  
*Sheri Hartz*  
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CITY CLERK

APPROVED AS TO FORM:

DocuSigned by:  
*John Kennedy*  
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CITY ATTORNEY