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ORDINANCE NO. 20-014

An Urgency Ordinance Of The City Council Of The City Of Emeryville Temporarily Waiving Or Modifying Certain Provisions Of The Planning Regulations Related To Outdoor Seating For Restaurants And Bars During The 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, the United States of America has confirmed cases of individuals who have a severe acute respiratory illness caused by a novel (new) corona virus ("COVID-19" or "the virus") first detected in Wuhan, Hubei Province, People's Republic of China ("China"). The virus was first reported in China on December 31, 2019. As of June 4, 2020, the World Health Organization ("WHO") has reported more than 380,000 deaths stemming from over 6.4 million confirmed cases of COVID-19 and the virus is present in virtually every country. The number of confirmed cases has continued to escalate dramatically over a short period of time; and

WHEREAS, WHO officials now report that sustained human-to-human transmission of the virus is occurring. Transmission from asymptomatic individuals has been documented. Suspected community transmission of the virus is occurring in the United States. Although the majority of individuals infected with COVID-19 recover from the disease without special treatment, there is significant potential for serious infection and death; and

WHEREAS, on January 30, 2020, WHO declared the COVID-19 outbreak a public health emergency of international concern, and on January 31, 2020, the U.S. Department of Health and Human Services declared a Public Health Emergency for the United States of America; and

WHEREAS, the United States Centers for Disease Control and Prevention (CDC) has determined that the virus presents a serious public health threat, requiring coordination among state and local health departments to ensure readiness for potential health threats associated with the virus; and

WHEREAS, on March 4, 2020, the Governor of California proclaimed a state of emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS, on March 7, 2020, the California Department of Public Health issued its "Mass Gatherings Guidance on Novel Coronavirus or COVID-19" followed by a March 12, 2020 recommendation that certain gatherings in California be postponed or canceled for the remainder of March; and

WHEREAS, on March 12, 2020, the Governor of the State of California issued Executive Order N-25-20 which, among other things, orders that all California residents are to ". . . heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19"; and

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WHEREAS, on March 16, 2016, the California Department of Public Health issued a directive that all individuals who are 65 or older, who have serious chronic medical conditions or who have a compromised immune system should self-isolate during the COVID-19 pandemic as these individuals are particularly at risk of encountering medical complications due to the virus; and

WHEREAS, on March 16, 2020, based on evidence of increasing occurrence of COVID-19 within Alameda County and throughout the Bay Area, the Alameda County Health Officer, along with Health Officers in five other Bay Area counties, issued an order "directing all individuals living in the County to shelter at their place of residence…directing all businesses and governmental agencies to cease non-essential operations at physical locations in the County; prohibiting all non-essential gatherings of any number of individuals; and ordering cessation of all non-essential travel"; and

WHEREAS, on March 16, 2020 the Alameda County Director of Emergency Services declared a local emergency based on conditions of extreme peril to the safety of persons and property within the County from the introduction of COVID-19 in the County; and

WHEREAS, on March 17, 2020, following the directive of the Alameda County Health Officer, the City of Emeryville closed all City facilities and assigned many employees to work remotely if possible, while maintaining public safety and some public works operations as "Essential Governmental Functions"; and

WHEREAS, on March 17, 2020, in light of actual or threatened conditions of disaster or extreme peril to the safety of persons and property that have arisen within the City of Emeryville caused by the introduction COVID-19, as to which there is no known natural immunity and for which there is currently no vaccine, which has become a pandemic, and which is contributing to a shortage of essential health care supplies, pursuant to section 4-2.08(a)(1) of the Emeryville Municipal Code, the City Manager declared an emergency; and

WHEREAS, on March 19, 2020, the City Council of the City of Emeryville adopted Resolution 20-23, ratifying the City Manager's declaration of emergency; and

WHEREAS, based on evidence of continuing and increasing occurrence of COVID-19 within Alameda County and throughout the Bay Area, the Alameda County Health Officer, along with Health Officers in five other Bay Area counties, issued updated orders on March 31, 2020, April 29, 2020, and May 18, 2020. The most recent order, dated May 18, 2020, has no specified end date, and "[directs] all individuals in the County to continue sheltering at their place of residence except for identified needs and activities, in compliance with specified requirements; … [requires] all businesses and recreation facilities that are allowed to operate to implement social distancing, face covering, and cleaning protocols; and [directs] all businesses, facility operators, and governmental

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agencies to continue the temporary closure of all other operations not allowed under [the] Order"; and

WHEREAS, the May 18, 2020 order of the Alameda County Health Officer stipulates that Restaurants and other facilities that prepare and serve food may operate, but only for delivery or carry out. The order further allows certain "Outdoor Businesses" to operate, but explicitly stipulates that such Outdoor Businesses "do not include outdoor restaurants, cafes, or bars"; and

WHEREAS, the State of California has developed a "Resilience Roadmap" for the gradual reopening of businesses and other activities consisting of four stages, and has indicated that the State is now in early Stage 2, where retail, related logistics and manufacturing, office workplaces, limited personal services, outdoor museums, child care, and essential businesses can open with modifications. Early Stage 2 does not include dine-in restaurants. However, local health jurisdictions that meet the criteria set forth by the California Department of Public Health and follow the process in the county guidance may move further ahead in the resilience roadmap to "expanded Stage 2", which does include dine-in restaurants. To be eligible for expanded Stage 2, a county must file an "Attestation" that they have met the readiness criteria specified in the California Department of Public Health COVID-19 County Variance Attestation Form. As of June 3, 2020, Alameda County has not filed a County Variance Attestation Form; and

WHEREAS, for those counties that are allowed to open dine-in restaurants, on May 12, 2020, the California Department of Public Health and Department of Industrial Relations issued "COVID-19 Industry Guidance: Dine-In Restaurants", which provides guidance for dine-in restaurants, brewpubs, craft distilleries, breweries, bars, pubs, and wineries to support a safe, clean environment for workers and customers. The Guidance encourages restaurants to continue to provide takeout, delivery, and drive through options. It also encourages restaurants to "Prioritize outdoor seating and curbside pickup to minimize cross flow of customers in enclosed environments" and stipulates that "restaurants can expand their outdoor seating, and alcohol offerings in those areas, if they comply with local laws and regulations"; and

WHEREAS, dine-in restaurants will be allowed throughout the state in Stage 3, and the City Council wishes to establish an expedited process for outdoor seating for restaurants and bars that will take effect whenever restaurants in Emeryville are allowed to open for dine-in service, whether in expanded Stage 2 or Stage 3 of the State's Resilience Roadmap; and

WHEREAS, the City Council wishes to have said expedited process for outdoor seating available for implementation immediately upon the effective date of an order of the Alameda County Health Officer allowing dine-in restaurants to operate in Emeryville; and

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WHEREAS, on June 16, 2020, the City Council will consider an Ordinance temporarily waiving or modifying certain provisions of the Planning Regulations related to outdoor seating for restaurants and bars during the COVID-19 pandemic for review and adoption by the City Council; and if ultimately adopted, said Ordinance will be effective on or about August 6, 2020; 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; and

WHEREAS, for the immediate preservation of the public peace, health, and safety, in the event an order of the Alameda County Health Officer allowing dine-in restaurants to operate in Emeryville before an Ordinance allowing for outdoor seating for restaurants and bars during the COVID-19 pandemic becomes effective, the City Council has determined that it is necessary to adopt this Urgency Ordinance temporarily waiving or modifying certain provisions of the Planning Regulations related to outdoor seating for restaurants and bars during the COVID-19 pandemic to take effect immediately; and

WHEREAS, Government Code Section 36937(b) requires that urgency ordinances be passed by a four-fifths vote of the City Council.

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

SECTION ONE. TITLE

This Urgency Ordinance shall be known as the "Expedited Process for Outdoor Seating for Restaurants and Bars During the COVID-19 Pandemic," or the "Interim Outdoor Dining Ordinance" for short.

SECTION TWO. 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 put in place provisions waiving or modifying certain

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provisions of the Planning Regulations related to outdoor seating for restaurants and bars during the COVID-19 pandemic that will take effect immediately upon the effective date of an order of the Alameda County Health Officer allowing dine-in restaurants to operate in Emeryville. As such an order may be issued prior to the effective date of the companion ordinance, 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 THREE. WAIVING OR MODIFYING CERTAIN PROVISIONS OF THE PLANNING REGULATIONS IN TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE RELATED TO OUTDOOR SEATING

All references to Chapters, Articles, and Sections refer to the Planning Regulations in Title 9 of the Emeryville Municipal Code.

A. Definitions. For purposes of this Ordinance, the following definitions shall apply.

1. "Bar" shall mean the use defined in Section 9-2.319(a).

2. "Outdoor Seating" shall mean exterior seating, including tables, chairs, and any other necessary furnishings, for customers of Restaurants and Bars, whether on private property or within the public right-of-way or any other publicly-accessible pedestrian area owned or controlled by the City of Emeryville.

3. "Parklet" shall be as defined in Section 9-5.1515(a) for which the review and approval process is established in Article 15 of Chapter 5, with specific provisions in Section 9-5.1514.

4. "Restaurant" shall mean the use defined in Section 9-2.319(b).

5. "Sidewalk café" shall be as defined in Section 9-5.1515(g) for which the review and approval process is established in Article 15 of Chapter 5.

6. "Temporary Use Permit" shall mean a discretionary planning permit as defined in Section 9-8.220(d), for which the review and approval process is established in Article 6 of Chapter 7.

B. Temporary Use Permits.

For the duration of this Ordinance, the provisions for Temporary Use Permits for Outdoor Seating for Restaurants and Bars shall be waived or modified as follows:

1. The 60-day time limit for One-Time Temporary Uses pursuant to Section 9-7.606(a)(2) shall be waived, and shall instead be the duration of this Ordinance.

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C. Sidewalk Cafes.

For the duration of this Ordinance, the provisions for Sidewalk Cafes shall be waived or modified as follows:

1. The provision of Section 9-5.1504(f) requiring that all furniture and equipment be removed from the sidewalk cafe area at the end of each business day, except for semi-permanent barriers such as railings, fences, or planters, is hereby waived as long as such furniture and equipment is adequately secured.

2. The requirement of Section 9-5.1504(g) that at least four feet of clear sidewalk width, or a greater width if deemed appropriate by the City, shall be maintained adjacent to the sidewalk cafe at all times, is hereby modified to be at least six feet of clear sidewalk width.

3. The restriction of Section 9-5.1505(e) prohibiting sidewalk cafes from being associated with Bars is hereby waived, provided that full meal service is available at all times, and that alcohol is only sold in the same transaction as a meal.

D. Parklets.

In addition to the waivers and modifications for sidewalk cafes specified in subsection C above, for the duration of this Ordinance, the provisions for Parklets to be used for Outdoor Seating for Restaurants and Bars shall be waived or modified as follows:

1. The provision of Section 9-5.1514(a) requiring the approval of the City Council, upon the recommendation of the Transportation Committee, prior to the approval of a sidewalk cafe permit for a parklet, is hereby waived.

2. The provision of Section 9-5.1514(b) that a parklet shall be available for use by the general public and shall not be reserved for the exclusive use an adjacent Restaurant or other use, is hereby waived.

3. The provision of Section 9-5.1514(c) that table service shall not be permitted in a parklet, is hereby waived.

4. The provision of Section 9-5.1514(e) that service and consumption of alcoholic beverages shall not be permitted in a parklet, is hereby waived, provided that all requirements of Section 9-5.1505 pertaining to the service and consumption of alcoholic beverages in a sidewalk café are complied with, except the provision in Section 9-5.1505 that prohibits sidewalk cafes

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from being associated with Bars, which is hereby waived with regard to parklets.

E. General Requirements.

For the duration of this Ordinance, the following general requirements shall apply to all Outdoor Seating for Restaurants and Bars:

1. Outdoor Seating shall be in compliance with all applicable local, state, and federal laws and regulations, including, but not limited to, orders of the Alameda County Health Officer, the requirements of the State Department of Public Health, executive orders of the Governor of California, and the State of California "COVID-19 Industry Guidance: Dine-In Restaurants".

2. Outdoor Seating shall be in compliance with the applicable accessibility provisions of the Americans with Disabilities Act (ADA) and the City of Emeryville Building Code, unless explicitly waived or modified.

3. No separate encroachment permit shall be required for a sidewalk café or parklet.

F. Fees.

For the duration of this Ordinance, all application and processing fees for Temporary Use Permits, Sidewalk Cafes, and Parklets related to Outdoor Seating for Restaurants and Bars shall be waived, and all application and processing fees for Temporary Use Permits for outdoor fitness uses shall be waived.

G. Expedited Processing.

Staff is hereby directed to expedite the processing of all required permits and approvals for Outdoor Seating to the greatest extent practicable, consistent with other City priorities.

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.

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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, but shall not be operative until the effective date of an order of the Alameda County Health Officer allowing dine-in restaurants to operate in Emeryville. This Urgency Ordinance shall expire upon the effective date of a substantially identical Ordinance.

SECTION SEVEN. CODIFICATION

This Urgency Ordinance shall NOT be codified.

This Urgency Ordinance was **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday, June 16, 2020 by the following vote:

AYES:	5	Mayor Patz, Vice Mayor Martinez, and Council Members Bauters, Donahue, and Medina
NOES:	0	
ABSTAIN:	0	
ABSENT:	0	

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Christian R. Patz
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MAYOR

ATTEST:

DocuSigned by:
Sheri Hartz
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CITY CLERK

APPROVED AS TO FORM:

Michael Lumier
CITY ATTORNEY