



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** November 17, 2020

**TO:** Christine Daniel, City Manager

**FROM:** Charles S. Bryant, Community Development Director

**SUBJECT:** COVID-Related Temporary Use Permits

**An Urgency Ordinance Of The City Council Of The City Of Emeryville Temporarily Waiving Or Modifying Certain Provisions Of The Planning Regulations Related To Temporary Use Permits For COVID-Related Uses; CEQA Determination: Exempt Pursuant to California Public Resources Code Section 21080(b)(4) and State CEQA Guidelines 15269(c) and 15061(b)(3)**

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### RECOMMENDATION

Staff recommends that the City Council adopt the above-referenced urgency ordinance, temporarily waiving certain provisions of the Planning Regulations related to Temporary Use Permits for COVID-Related Uses, which will take effect immediately if adopted by a 4/5 vote of the entire Council. Staff also recommends that the City Council adopt the first reading of the companion regular ordinance.

### BACKGROUND

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 Planning Regulations related to outdoor seating for restaurants and bars during pandemic, as well as the first reading of a regular ordinance with the same provisions. On July 7, 2020, the City Council passed the second reading of Ordinance No. 20-016, mirroring the urgency ordinance. The regular ordinance took effect 30 days later, on August 6, 2020, at which point the urgency ordinance ceased to be effective. The regular ordinance is effective for one year, until August 6, 2021.

Ordinance No. 20-016 waives or modifies provisions of the Planning Regulations for Temporary Use Permits (TUPs), Sidewalk Cafes, and Parklets related to outdoor dining. For TUPs, the ordinance waives the time limit of 60 days for one-time uses, and instead limits them to the duration of the ordinance. For Sidewalk Cafes, the ordinance waives

the requirement to remove furniture at end of each day and the restriction on bars having sidewalk cafes, as long as full meals are served. For Parklets, the ordinance waives the restrictions on exclusive use by restaurants, table service, and alcohol service, and allows bars to have Parklets with full meal service, similar to Sidewalk Cafes. For both Sidewalk Cafes and Parklets, the ordinance waives the requirement for Transportation Committee and City Council review and approval. The ordinance also waives application fees for all three types of permits.

## **DISCUSSION**

The expedited permitting process created by Ordinance No. 20-106 has been quite successful. So far, staff has approved eleven TUPs and Sidewalk Café/Parklet permits for outdoor dining.

Meanwhile, staff has received inquiries about TUPs for other types of outdoor activities prompted by the COVID-19 pandemic, including a proposal by the Oaks Club for outdoor gaming in their parking lot. Ordinance 20-016 does not make provisions for any uses other than outdoor dining. Thus, TUPs for these other uses would be limited to 60 days as provided by the Planning Regulations and would be subject to the current application fee of \$566. (Please see Attachment 1 for provisions for Temporary Use Permits in Article 6 of Chapter 7 of the Planning Regulations.) In response, staff now proposes to waive the 60-day time limit and the application fee for all TUPs for COVID-Related Uses for the duration of the pandemic emergency. "COVID-Related Uses" are defined as "uses that have modified their normal operations because of the COVID-19 pandemic, and uses that conduct COVID-19 related activities". Uses that have modified their normal operations include, but are not limited to, those that, in response to the pandemic, have moved operations outdoors that would normally be conducted indoors. Uses that conduct COVID-19 related activities include, but are not limited to, COVID testing, treatment, and research facilities.

It should be noted that, if such COVID-Related Uses are already permitted under the Planning Regulations, no TUP would be required. Similarly, a TUP for a business that is not a COVID-Related Use, such as a pumpkin patch, Christmas tree lot, or farmer's market, would continue to be subject to the existing TUP provisions of the Planning Regulations and would pay the normal application fee.

Under the proposed ordinance, all COVID-related temporary uses would be required to comply with any and all COVID-19 protocols established by Alameda County and the State of California, as well as all other applicable local, state, and federal laws and regulations. In addition, all COVID-related temporary uses would be required to comply with the accessibility provisions of the California Building Code and/or the Americans with Disabilities Act.

The proposed urgency ordinance will take effect immediately and will cease to be effective when the regular ordinance takes effect. The regular ordinance will take effect 30 days following its final passage and will expire 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.

## **ENVIRONMENTAL REVIEW**

Adoption of the two proposed ordinances 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.

## **FISCAL IMPACT**

Aside from the recommended fee waivers, which are negligible, these ordinances will have no fiscal impact on the City.

## **STAFF COMMUNICATION WITH THE PUBLIC**

Staff has fielded several inquiries from the public concerning permitting for COVID-related activities during the pandemic.

## **CONCLUSION**

Staff recommends that the City Council take the following actions on the urgency ordinance:

1. Introduce the proposed urgency ordinance after a motion to read by title only.
2. Take public testimony regarding the proposed urgency ordinance.
3. Adopt the proposed urgency ordinance by at least a 4/5 vote of the entire Council.

Staff further recommends that the City Council take the following actions on the ordinance:

1. Introduce the proposed ordinance after a motion to read by title only.
2. Take public testimony regarding the proposed ordinance.
3. Adopt the first reading of the proposed ordinance.

## **APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Christine Daniel, City Manager

## **ATTACHMENTS**

- Attachment 1 – Planning Regulations provisions for Temporary Use Permits
- Proposed Urgency Ordinance
- Proposed Regular Ordinance

## **ARTICLE 6. TEMPORARY USE PERMITS**

### **9-7.601 Purpose.**

This Article establishes a process for review and approval of uses that are intended to have a limited duration and will not permanently alter the character or physical facilities of the property where they occur.

### **9-7.602 Applicability.**

Except as specified in Section 9-7.603, all temporary uses, as defined in Section 9-2.104(b), require the approval of a Temporary Use Permit, including, but not limited to, carnivals, Halloween pumpkin lots, Christmas tree lots, farmers markets on private or public property, mobile food vendors on private or public property, and other vendors, peddlers, solicitors, or events on private or public property.

### **9-7.603 Exemptions.**

The following temporary uses shall be exempt from the requirement for a Temporary Use Permit:

- (a) On-site temporary construction offices and on-site contractors' storage yards, including debris containers.
- (b) On-site offices for real estate sales or rental.
- (c) Garage and yard sales operated by a resident of the premises where such sales operate for a period of less than two days per quarter per year.
- (d) Any use operating on a public street or sidewalk, including, but not limited to, farmers markets as regulated by Chapter 35 of Title 5, and mobile food vendors and other vendors, peddlers, and solicitors as regulated by Chapter 27 of Title 5.
- (e) Any other temporary uses otherwise regulated by the Emeryville Municipal Code, including, but not limited to, community events regulated by Chapter 23 of Title 5.

### **9-7.604 Procedures.**

An application for a temporary use permit shall be filed and processed in accordance with the provisions of Article 2, Common Procedures. Applications for temporary use permits shall be considered by the Planning and Building Director, in consultation with the Public Works Director, Chief Building Official, Fire Marshal, Police Chief, and other City staff as deemed appropriate. The application shall be submitted at least 14 days before the temporary use is intended to begin. It shall include a site plan of the proposed use that shows any electrical or plumbing connections, the relation of the temporary use to existing buildings, parking spaces, landscaping, and other features of the site; a description of operating characteristics, including dates, hours, number of employees, expected visitors, and security if appropriate; and any other information deemed necessary by the Director. The Director, at his or her discretion, may give such notice as is deemed appropriate to adjacent property owners or other interested parties. The Director may approve or disapprove an application or require changes or conditions of approval which, in his or her judgment, are necessary to ensure conformity with the provisions of this Article. The Director's decision may be appealed to the Planning Commission.

#### **9-7.605 Findings.**

To grant a temporary use permit, all of the following findings must be made:

- (a) The proposed use will not adversely affect adjacent properties, their owners and occupants, or the surrounding neighborhood.
- (b) The proposed use will not interfere with pedestrian or vehicular traffic or circulation in the area surrounding the proposed use.
- (c) The proposed use will not create a demand for additional parking that cannot be safely and efficiently accommodated by existing parking areas.
- (d) The proposed use will not conflict with the intent or requirements of any design review permit, conditional use permit, variance, or planned unit development applicable to the subject property.
- (e) Appropriate controls are in place that will ensure that the premises will be kept clean, sanitary, and free of litter.

#### **9-7.606 Duration.**

Temporary use permits shall be approved for no longer than the following initial time periods and may be renewed for subsequent time periods of the same duration or less. Each renewal shall require a new application and fee.

- (a) **One Time Temporary Uses** (as defined in Section 9-2.104(b)(1)):
  - (1) Mobile Food Vendors located on private or public property (i.e. not on a public sidewalk or public street): one year.
  - (2) All other One-Time Temporary Uses: 60 days.
- (b) **Recurring Temporary Uses** (as defined in Section 9-2.104(b)(2)): one year.

#### **9-7.607 Conditions of Approval.**

Unless waived by the Director, the following conditions of approval shall apply to all temporary use permits. In approving a temporary use permit, the Director may impose any additional conditions that are deemed necessary to make the findings required by Section 9-7.605.

- (a) Any construction or other work shall conform to all applicable codes.
- (b) Fire protection and access for fire vehicles shall be maintained, as specified by the Fire Marshal.
- (c) All signage shall comply with the Sign Regulations in Article 16 of Chapter 5.
- (d) The site of the temporary use shall be maintained free of weeds, litter, and debris for the duration of the temporary use.
- (e) The site of the temporary use shall be completely cleaned and all trash, debris, signs, sign supports, and temporary structures and electrical and/or plumbing service shall be removed, within three days following the date specified for termination of the temporary use.

**9-7.608            Revocation.**

A temporary use permit issued pursuant to this Article shall be subject to suspension, revocation, or modification for the violation of any provisions of this code or for any grounds which would warrant the denial of the issuance of such original permit. The Director may issue a notice of violation for any failure to comply with any requirement of this Article or any condition of the permit. Such notice shall set forth the action necessary to come into compliance and a time frame for compliance. If the noncompliance is not abated, corrected, or rectified within the time specified by the Director in said notice, the Director may revoke, suspend, or modify the permit, upon 30 days' notice. If the Director decides to revoke or suspend the permit, the temporary use shall be removed within 30 days of the Director's decision unless appealed pursuant to Section 9-7.609.

**9-7.609            Appeals.**

The Director's decision on a temporary use permit application or revocation may be appealed to the Planning Commission pursuant to Article 14.

#### **9-2.104 Permanent and Temporary Uses.**

Except as otherwise provided in this Title, any use may be permanent or temporary, as defined in this Section. Temporary uses shall be subject to the applicable provisions for Temporary Use Permits in Article 6 of Chapter 7.

- (a) **Permanent Use.** A use that is intended to be continuously ongoing at the same location for more than 60 days.
- (b) **Temporary Use.** A use that is either not intended to be ongoing for more than 60 days, or that is not intended to be continuously ongoing.
  - (1) **One-Time Temporary Use.** A use that is intended to be ongoing at the same location for 60 days or less. Typical uses include carnivals, Halloween pumpkin lots, and Christmas tree lots.
  - (2) **Recurring Temporary Use.** A use that is intended to recur at the same location at regular or irregular intervals, where each occurrence lasts for seven days or less, the interval between occurrences is at least twice the length of each occurrence, and the total number of occurrences may or may not be limited. The lengths of individual occurrences and the intervals between them shall be measured in whole days. Typical uses include farmers markets and similar recurring events. If an occurrence lasts for more than seven days, each such occurrence shall be considered a separate One-Time Temporary Use pursuant to subsection (b)(1) above. If the interval between occurrences is less than twice the length of each occurrence, the use shall be considered a Permanent Use pursuant to subsection (a) above.

#### **9-2.105 Regulations and Standards for Specific Uses and Activities.**

The descriptions of use classifications in this Chapter do not include any regulatory provisions. See Chapter 5 for regulations and standards that apply to specific uses and activities. Regulatory provisions are referenced as appropriate following various use classification descriptions in this Chapter.