

ORDINANCE NO. 20-026

An 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)

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 November 3, 2020, the World Health Organization ("WHO") has reported more than 1.2 million deaths stemming from over 46.8 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

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

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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 occurrence of COVID-19 within Alameda County and throughout the Bay Area, the Alameda County Health Officer issued updated orders on March 31, 2020, April 29, 2020, May 18, 2020, and June 5, 2020. The most recent order, dated October 21, 2020, has no specified end date, and “continues to maintain restrictions on movement and public and private gatherings set forth in the Health Officer’s June 5, 2020 Shelter in Place Order, and as revised. However, considering the continued progress toward controlling the spread of COVID-19 in the County of Alameda and neighboring jurisdictions, this Order allows certain additional business, recreational, social, and cultural activities to resume”; and

WHEREAS, on June 16, 2020, 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 the COVID-19 pandemic, as well as the first reading of a regular ordinance with the same provisions; and

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WHEREAS, on July 7, 2020, the City Council passed the second reading of Ordinance No. 20-016, mirroring urgency Ordinance No. 20-014. 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; and

WHEREAS, Ordinance No. 20-016, which waives or modifies provisions of the Planning Regulations for Temporary Use Permits (TUPs), Sidewalk Cafes, and Parklets related to outdoor dining, has been quite successful, resulting in eleven TUPs and Sidewalk Café/Parklet permits for outdoor dining to date; and

WHEREAS, the City Council now wishes to temporarily waive or modify provisions of the Planning Regulations for TUPs for all COVID-Related Uses, as defined.

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

SECTION ONE. TITLE

This Ordinance shall be known as the “Temporary Use Permits for COVID-Related Uses Ordinance”.

SECTION TWO. POLICY AND PURPOSES DECLARATION

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

SECTION THREE. WAIVING OR MODIFYING CERTAIN PROVISIONS OF THE PLANNING REGULATIONS IN TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE RELATED TO TEMPORARY USE PERMITS FOR COVID-RELATED USES

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. “COVID-Related Uses” shall mean 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.

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2. "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 COVID-Related Uses 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.

C. General Requirements.

For the duration of this Ordinance, the following general requirements shall apply to all COVID-Related Uses:

1. COVID-Related Uses 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, and executive orders of the Governor of California.
2. COVID-Related Uses 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.

D. Fees.

For the duration of this Ordinance, all application and processing fees for Temporary Use Permits for COVID-Related Uses shall be waived.

E. Expedited Processing.

Staff is hereby directed to expedite the processing of all Temporary Use Permits for COVID-Related Uses to the greatest extent practicable, consistent with other City priorities.

SECTION FIVE. CEQA DETERMINATION

The City Council finds that adoption of this 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 SIX. SEVERABILITY

Every section, paragraph, clause, and phrase of this 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 SEVEN. EFFECTIVE DATE AND EXPIRATION

This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693. This Ordinance shall 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.

SECTION EIGHT. CODIFICATION

This Ordinance shall NOT be codified.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting on Tuesday, November 17, 2020, and **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday, December 1, 2020 by the following vote:

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

DocuSigned by:

Dianne Martinez

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MAYOR

ATTEST:

DocuSigned by:

Sheri Hartz

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CITY CLERK

APPROVED AS TO FORM:

Michael Quinn

CITY ATTORNEY