



## Agenda Report

20-595

Agenda Date: 6/9/2020

### REPORT TO COUNCIL

#### **SUBJECT**

Adopt a Resolution of the Council Suspending Enforcement of Specific City Code Requirements Related to Outdoor Dining and Directing the City Manager to Use Her Authority as Director of Emergency Services to Make and Issue Rules and Regulations on Matters Reasonably Related to the Protection of Life and Property as Affected by the Emergency for the Operation of Outdoor Restaurant Dining [Council Pillar: Promote and Enhance Economic, Housing and Transportation Development]

#### **BACKGROUND**

The City of Santa Clara Zoning Code (Santa Clara City Code, SCCC Title 18) currently allows outdoor restaurant dining as a permitted use within the City's Very High Density Mixed Use District (SCCC §18.22.230), the Lawrence Station Zoning District (SCCC §18.23.30), and the Transit Neighborhood District (SCCC §18.25.030).

In the City's commercial zoning districts, outdoor seating for up to 12 seats within 250 square feet is permitted with Architectural Review approval, which costs approximately \$2,000 in permitting fees and requires two months of City review and approval at the Development Review Hearing.

For proposals in commercial zoning districts with more than 12 seats or proposals located in General Office and Light and Heavy Industrial zoning districts, the operation of outdoor restaurant dining requires issuance of a Conditional Use Permit. Obtainment of a Conditional Use Permit requires several months of City review, including a Planning Commission approval process, and per the City's cost-recovery permit program requirements will cost the applicant approximately \$6,000 in permit processing fees.

The Zoning Code also requires a minimum number of parking spaces be provided for restaurants based on the number of customer seats or the business's gross square floor area. Some restaurants may be able to place outdoor dining in areas currently designated for parking; however, by doing so, it would reduce the number of parking spaces available.

With the advent of the COVID-19 pandemic and the Santa Clara County Health Official issued a "Shelter In Place" Order ("SIPO"), requiring County residents to shelter in place and restricting non-essential commercial activities. At the time of drafting this report, the most recent SIPO, issued on May 18, 2020, directs all persons within the County of Santa Clara to strictly comply with social distancing requirements, including but not limited to maintaining at least a 6-foot distance from individuals who are not a part of the same household or living unit. In addition, the May 18 SIPO restricts the operation of restaurants to take-out service and does not allow eat-in dining. It is anticipated, however, that future iterations of the SIPO will progressively allow increased commercial

activity, including eat-in dining at restaurants, but with limitations that continue to require strict “social distancing” between restaurant patrons. A June 1, 2020 update to the SIPO allows that restaurants may reopen for outdoor dining beginning on Friday, June 5, 2020.

On March 11, 2020, in response to the very serious public health threat posed by the ongoing pandemic, the City Manager issued a Proclamation of a Local Emergency in the City of Santa Clara. As the City’s Director of Emergency Services, the City Manager has authority under SCCC § 2.140.060(f)(1) to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by the emergency.

## **DISCUSSION**

Restaurant owners and operators within Santa Clara have expressed a dire need to resume operations as soon as permissible in order to maintain, to the extent possible, the viability of their businesses. In other parts of the country as local health officials have relaxed restrictions upon non-essential services, restaurants have reopened but with new health safety precautions that significantly alter traditional restaurant practices. Within Santa Clara County some other jurisdictions have begun taking actions to facilitate the reopening of restaurants once that is allowed by the County Health Official. The County Health Official has announced that restaurants may reopen for outdoor dining beginning June 5, provided that they comply with social distancing requirements.

The City Council can quickly take action to support local businesses within Santa Clara by directing the City Manager to exercise her authority under the provisions of the Declared Emergency to suspend the City’s enforcement of Zoning Code regulations that require issuance of a Conditional Use Permit for the conduct of outdoor dining and adherence to parking standards for restaurants established in the Zoning Code under the following conditions:

1. The operator of the outdoor dining area will submit an Outdoor Dining compliance form (Permit) to the City to verify adherence to the following criteria, including authorization from the property owner. There is no fee for this process.
2. Outdoor dining shall be associated with a legally established/permitted food service venue (restaurant or café) located in close proximity to the proposed outdoor dining area.
3. The outdoor dining area shall displace no more than 50% of existing on-site parking spaces.
4. The outdoor dining area will be operated in conformance with other regulatory requirements including the Building Code, the city business tax certificate, the Department of Alcoholic Beverage Control, and Santa Clara County Health Department.
5. The outdoor dining area is not located within 40 feet of a single-family residential use, except on the ground floor of mixed use multifamily residential projects, where outdoor dining can be located adjacent to the restaurant uses.
6. The outdoor dining area may encroach into the public right-of-way (but not including roadways), provided that a minimum clear sidewalk width of 48" is maintained. A separate Encroachment Permit is not required for such outdoor dining area encroachments.
7. A minimum clear exit width of 48" from all building exits to the public right-of-way must be maintained.
8. All required driveways and vehicular circulation must be kept clear.
9. Access is maintained for utility boxes, water hydrants, and any other equipment per City standards.
10. Any chairs, tables, umbrellas, etc. placed within the public right-of-way must be removed from the sidewalk at the end of each business day.

11. Any new structures, plumbing, mechanical, or electrical work will be subject to Building Permit requirements.
12. All outdoor dining areas must be maintained and kept clean of litter.
13. The application form will require restaurants to acknowledge that the permit for outdoor dining is issued pursuant to the City Manager's authority as Director of Emergency Services and is intended only to respond to the local emergency, and that as such, the authorization is temporary, and may be revised or revoked at any time without further notice.
14. Proof of insurance will need to be provided to the satisfaction of the City's Risk Manager for any case where dining will occur on public property including the public right-of-way.

Adherence to these criteria will provide significant flexibility to the operators of dining establishments to conduct outdoor dining while also providing protection for life/safety and land use compatibility concerns. Given the unique circumstances of the current pandemic, it is an appropriate use of the City Manager's authority to make, on an emergency basis, rules and regulations governing the safe operation of food service businesses. The City Manager may under this authority make further adjustments to rules and regulations for the duration of the Declared Emergency.

No fee is proposed at this time for the outdoor dining review process. The proposed process is important in that it allows the City to document that an operator will conform with the specified criteria. Since this is a new service, it doesn't have an identified fee in the City's fee schedule. Given that the City's intent is to offset economic losses for restaurants, staff recommends a free (subsidized) service as appropriate. Planning staff time and other program costs, including Public Works staff time, will be absorbed into the General Fund funded portion of those programs. Impacts to other programs are expected to be insignificant.

The City is in the process of a comprehensive update of the City's Zoning Code. The comprehensive update under preparation includes modification of the permitting procedures for outdoor dining from a Conditional Use Permit to an administrative review. The City can accomplish a longer-term streamlined permitting for outdoor dining beyond the time frame of the Declared Emergency through the comprehensive update, anticipated for Council consideration at the end of the calendar year. Alternatively, staff can prepare a regular ordinance to implement the above provisions for Council consideration in the late summer/fall.

While some jurisdictions have discussed the potential use of public parks and/or street roadway closures to provide additional outdoor dining areas, based upon the location and typology of restaurant uses within Santa Clara, there are minimal potential benefits from such an approach for Santa Clara relative to the potential impacts and the complexity of review required to minimize or mitigate those impacts. Accordingly, the current proposal does not include provisions for the use of such areas.

### **FISCAL IMPACT**

There is no cost to the City other than administrative staff time and expense.

### **COORDINATION**

This report has been coordinated with the Finance Department and City Attorney's Office.

### **ENVIRONMENTAL REVIEW**

The project is categorically exempt from the California Environmental Quality Act per Section 15305

(a), Minor Alterations in Land Use Limitations in that the allowance for outdoor dining with the limitations as described above are not reasonably expected to result in a potential impact to the environment.

**PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>>.

**RECOMMENDATION**

1. Adopt the resolution Suspending Enforcement of Specific City Code Requirements Related to Outdoor Dining and directing the City Manager to Use Her authority as Director of Emergency Services to Make and Issue Rules and Regulations on Matters Reasonably Related to the Protection of Life and Property as Affected by the Emergency for the Operation of Outdoor Restaurant Dining.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Resolution
2. Outdoor Dining Permit Application