



City of Palo Alto
City Council Staff Report

(ID # 12365)

Report Type: Consent Calendar

Meeting Date: 6/21/2021

Summary Title: Second Reading: Temporarily Continuing the Expansion of Outdoor Dining, Retail and Other Activities

Title: SECOND READING: Adoption of an Interim Ordinance of the Council Temporarily Continuing the Expansion of Outdoor Dining, Retail and Other Activities on Public and Private Property and Relaxing Regulations Regarding Onsite Parking, On-site Sale of Alcohol, Design/Architectural Review, Permit Fees, and Alcohol Consumption in Public Places, All to Facilitate Such Outdoor use (FIRST READING: June 7, 2021 PASSED: 5-2 DuBois, Kou no)

From: City Manager

Lead Department: City Clerk

This was heard by the City Council on June 7, 2021 for a first reading. No changes were made to the Ordinance; it is now before you for a second reading.

Attachments:

- Attachment A: Ordinance Continuing Expansion of Outdoor Dining

Ordinance No. _____

Interim Ordinance of the Council of the City of Palo Alto Temporarily Continuing the Expansion of Outdoor Dining, Retail and Other Activities on Public and Private Property and Relaxing Regulations Regarding Onsite Parking, On-Sale of Alcohol, Design/Architectural Review, Permit Fees, and Alcohol Consumption in Public Places, All to Facilitate Such Outdoor Use

The Council of the City of Palo Alto ORDAINS as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

A. On June 23, 2020, the City Council adopted Ordinance 5500, an emergency ordinance, in response to COVID-19 and its effects on local businesses. At that time and since then, county and state regulations related to COVID-19 have limited or curtailed many indoor activities, including dining, bars, retail, performances, and other recreational uses.

B. Ordinance 5500 will sunset at the same time the City’s declaration of local emergency due to COVID-19 is rescinded. (See section 14 of Ordinance 5500).

C. The State of California has indicated that its COVID-19 related regulations for most businesses may end in June 2021 with the end of the state’s “Blueprint for a Safer Economy,” also known as the four-tiered system of regulations for businesses based on several COVID-19 public health metrics. In recent months, the County of Santa Clara has progressed from the highest level of restrictions, the purple tier, to the lowest yellow tier within the state’s Blueprint for a Safer Economy.

D. Through this Ordinance, the City Council desires to temporarily continue the provisions of Ordinance 5500 even if state, county, and/or City regulations related to COVID-19 become less restrictive or are rescinded completely.

SECTION 2. City Manager Authorization

The City Manager or his or her designee(s) may promulgate guidelines and implementing regulations for the uses and programs described in this Ordinance as long as such regulations do not conflict with this Ordinance.

SECTION 3. Fee Waivers for Encroachment Permits and Parking Space Closures

A. The permit fees set forth in the Municipal Fee Schedule are temporarily waived for applications for encroachment permits under Palo Alto Municipal Code Section 12.12.010 and Section 12.12.020, as modified by this Ordinance, to place structures and equipment

in the public right-of-way (including closed streets and sidewalks) for purposes of outdoor dining and outdoor retail sales and display of wares.

- B. The parking space closure fee in the Municipal Fee Schedule collected by the Department of Planning and Development Services is temporarily waived for the use of a parking space(s) on-street or in a parking lot for purposes of outdoor dining and outdoor retail sales and display of wares as authorized through an encroachment permit, license, or agreement with the City.

SECTION 4. Modified Review Process for Commercial Sidewalk Encroachment Permits

Notwithstanding contrary provisions of PAMC Section 12.12.020, permits may be granted for commercial sidewalk encroachments for outdoor retail sales and display areas and outdoor eating areas. Permits for these purposes shall not be required to undergo and complete design review by the Planning Department described in subsection (d) of Section 12.12.020. Except as expressly modified herein, the provisions of Section 12.12.020 shall apply to commercial sidewalk encroachments.

SECTION 5. Eating and Drinking Establishments

Eating establishments, and drinking establishments may temporarily relocate some or all of their existing indoor seating capacity to outdoor seating capacity, as follows:

- A. Location. Outdoor eating areas may be placed in one or more of the following areas:
 1. Public streets temporarily closed by the City of Palo Alto, through issuance of an encroachment permit under PAMC Section 12.12.010;
 2. Sidewalks through issuance of an encroachment permit under PAMC Section 12.12.020, as modified by Section 4 of this Ordinance;
 3. In on-street parking spaces approved for use as temporary parklets, in accordance with the Pilot Parklet Demonstration Project as first approved by Council Resolution No. 9909 and continued by subsequent resolutions;
 4. Surface parking lots that currently provide required onsite parking for the eating/drinking establishment, through issuance of an approval by the Director of Planning, or his or her designee, as described in subsections C and D of this Section, below;
 5. Other outdoor areas on the eating/drinking establishment site not originally permitted for outdoor seating in the establishment's approved site plan or planning entitlement (such as landscaped areas), through issuance of an approval by the

Director of Planning, or his or her designee, in accordance with subsections C and D of this Section, below; and

6. In other areas that the Council identifies by resolution or ordinance.

B. Use of Private Parking Lots – Temporary Reduction of Parking Requirements.

1. Notwithstanding the parking requirements applicable to eating/drinking establishments in Title 18 (Zoning) of the PAMC or in individual planning entitlements or approvals for eating/drinking establishments, an eating/drinking establishment may place outdoor eating areas in its parking lot, so long as at least half of the parking spaces on the subject site remain available for use by vehicles. If the establishment's parking lot has ten or fewer parking spaces, up to 100 percent of the parking lot may be used for outdoor eating, subject to review and approval of the Planning Director or his or her designee.
2. Notwithstanding the parking requirements applicable to shopping centers and their tenant businesses in Title 18 (Zoning) of the PAMC or in individual planning entitlements or approvals for shopping centers or their tenant businesses, a shopping center with an eating/drinking establishment tenant(s) may place outdoor eating areas for such tenant business(es) in the shopping center parking lot, so long as at least half of the parking spaces on the subject site remain available for use by vehicles.

C. Application. An application in a form approved by the Director of Planning shall be submitted to the Planning and Development Services Department to relocate some or all of an eating/drinking establishment's permitted indoor restaurant seating to outdoor seating in privately-owned areas on the eating/drinking establishment site not originally permitted for outdoor eating. The Director of Planning is authorized to establish submittal requirements and procedures. Temporary Use Permits (TUP) under PAMC Section 18.42.050 may be utilized for this purpose. A TUP issued for this purpose may be valid for a specified period longer than 45 days, notwithstanding subsection (d) of Section 18.42.050. The Planning Director may extend a TUP issued prior to the effective date of this Ordinance to be valid beyond 45 days.

D. Seating Layout Review. A Seating Layout Review is required to relocate some or all of an eating/drinking establishment's permitted indoor seating to outdoor seating in privately-owned areas on the eating/drinking establishment site not originally permitted for outdoor eating. The Seating Layout Review shall be conducted by a transportation planner, planner, and/or fire inspector who will review and either approve or require modifications to the proposed outdoor seating layout based on the following criteria:

1. Seating layout does not create a safety risk and adequate pedestrian and vehicular separation is maintained, including with movable barriers as appropriate where

outdoor seating is to be placed in parking lots or on-street parking spaces.

2. Seating layout accommodates appropriate vehicle and pedestrian circulation and maintains adequate paths of travel and complies with accessibility requirements of the Americans with Disabilities Act.
 3. Any tents must comply with fire codes and Palo Alto Fire Department issued standards for tents, and safety standards set forth by the National Fire Protection Association for fire-resistant tents and must include an affixed manufacturer's label stating the tent meets NFPA requirements. A State Fire Marshal seal on the tent or a certificate is needed to prove treatment.
 4. Any heaters must comply with fire codes.
 5. An adequate and visible barrier is placed that clearly separates the retail area from the parking area and provides sufficient protection for patrons. Adequacy shall be defined in standards and guidelines issued by the Director of Planning.
 6. Other requirements established in the standards and guidelines issued by the Director of Planning.
- E. Fee. No fee will be charged for submittal and review of the Application and for conducting a Seating Layout Review.
- F. Occupancy. Total seating occupancy (including all indoor and outdoor seating) shall not exceed the overall occupancy for which the restaurant is permitted.
- G. Alcohol Service. Establishments that are allowed by the City to serve alcohol for onsite consumption by issuance of a conditional use permit ("CUP") as required by PAMC Section 18.42.090 or as a legal nonconforming use, and that both have an on-sale license from the Department of Alcoholic Beverage Control ("ABC") and are duly authorized by ABC to serve alcohol in outdoor areas, shall be allowed to serve alcohol for onsite consumption in such outdoor areas, notwithstanding any prohibition on outdoor alcohol service or consumption in the PAMC or planning entitlement issued under Title 18 (Zoning) of the PAMC. During the effective period of this Ordinance, establishments that meet the preceding requirements may expand their footprint to outdoor areas without an amendment of the CUP, notwithstanding PAMC Section 18.42.090(c). Outdoor alcohol service shall be in full compliance with ABC regulations, as amended.
- H. No Architectural Review. Notwithstanding PAMC Sections 18.77.077 and 18.76.020, architectural review shall not be required for proposed outdoor eating areas or signage related to such areas during the effective period of this Ordinance.

SECTION 6. Retail Establishments

Retail establishments may temporarily relocate some or all of their existing customer-accessible square footage to outdoor spaces as follows:

- A. Location. Outdoor retail sales and display areas and outdoor eating areas may be placed in one or more of the following areas:
1. Public streets temporarily closed by the City of Palo Alto, through issuance of an encroachment permit under PAMC Section 12.12.010;
 2. Sidewalks through issuance of an encroachment permit under PAMC Section 12.12.020, as modified by Section 4 of this Ordinance;
 3. Surface parking lots that currently provide required onsite parking for the retail establishment, through issuance of an approval by the Director of Planning, or his or her designee, as described in subsections C and D of this Section, below;
 4. Other outdoor areas on the retail establishment site not originally permitted for retail sales and display or dining in the retail establishment's approved site plan or planning entitlement (such as landscaped areas), through issuance of an approval by the Director of Planning or his or her designee in accordance with subsections C and D of this Section, below; and
 5. In other areas that the Council identifies by resolution or ordinance.
- B. Use of Private Parking Lots – Temporary Reduction of Parking Requirements.
1. Notwithstanding the parking requirements applicable to retail establishments in Title 18 (Zoning) of the PAMC or in individual planning entitlements or approvals for retail establishments, a retail establishment may conduct outdoor retail sales and display and may place outdoor eating areas in its parking lot, so long as at least half of the parking spaces on the subject site remain available for use by vehicles. If the establishment's parking lot has ten or fewer parking spaces, up to 100 percent of the parking lot may be used for outdoor dining/retail, subject to review and approval of the Planning Director or his or her designee.
 2. Notwithstanding the parking requirements applicable to shopping centers and their tenant businesses in Title 18 (Zoning) of the PAMC or in individual planning entitlements or approvals for shopping centers or their tenant businesses, a shopping center with a retail establishment tenant(s) may place outdoor retail sales and display areas and outdoor eating areas for such tenant business(es) in the shopping center parking lot, so long as at least half of the parking spaces on the subject site remain available for use by vehicles.

- C. Application. An application in a form approved by the Director of Planning shall be submitted to the Planning and Development Services Department to relocate some or all of a retail establishment's customer-accessible square footage to outdoor retail sales and display in privately-owned areas on the retail establishment site not originally permitted for outdoor retail sales and display. The Director of Planning is authorized to establish submittal requirements and procedures. Temporary Use Permits (TUP) under PAMC Section 18.42.050 may be utilized for this purpose. A TUP issued for this purpose may be valid for a specified period longer than 45 days, notwithstanding subsection (d) of Section 18.42.050. The Planning Director may extend a TUP issued prior to the effective date of this Ordinance to be valid beyond 45 days.
- D. Merchandise or Seating Layout Review. A Layout Review is required to relocate some or all of an retail establishment's permitted indoor customer-accessible square footage to privately-owned areas on the retail establishment site not originally permitted for retail. The Layout Review shall be conducted by a transportation planner, planner, and/or fire inspector who will review and either approve or require modifications to the proposed retail layout based on the following criteria:
1. The placement of the merchandise, displays, or other items does not create a safety risk and adequate pedestrian and vehicular separation is maintained, including with movable barriers as appropriate where outdoor seating is to be placed in parking lots or on-street parking spaces.
 2. The layout accommodates appropriate vehicle and pedestrian circulation and maintains adequate paths of travel and complies with accessibility requirements of the Americans with Disabilities Act.
 3. Any tents must comply with fire codes and Palo Alto Fire Department issued standards for tents, and safety standards set forth by the National Fire Protection Association for fire-resistant tents and must include an affixed manufacturer's label stating the tent meets NFPA requirements. A State Fire Marshal seal on the tent or a certificate is needed to prove treatment.
 4. Any heaters must comply with fire codes.
 5. An adequate and visible barrier is placed that clearly separates the retail area from the parking area and provides sufficient protection for patrons. Adequacy shall be defined in standards and guidelines issued by the Director of Planning.
 6. Other requirements established in the standards and guidelines issued by the Director of Planning.

- E. Fee. No fee will be charged for submittal and review of the Application and for conducting a Layout Review.
- F. No Architectural Review. Notwithstanding PAMC Sections 18.77.077 and 18.76.020, architectural review shall not be required for proposed outdoor retail areas or signage related to such areas during the effective period of this Ordinance.

SECTION 7. Compliance with Other Regulations, Orders and Approvals

The uses of public and private property allowed in this Ordinance shall be conducted in compliance with any applicable state or county mandate (including executive orders and health orders), this Ordinance, Resolution No. 9909 and its successors, and all other local and state regulations, orders, and approvals, as applicable (collectively, “Applicable Law”). Any approval, allowance or permit to conduct such temporary outdoor use(s) shall be subject to revocation by the issuing City official if the use is conducted in violation of Applicable Law, or poses a threat to public health, safety or welfare.

SECTION 8. No Vested Rights

The outdoor uses of public and private property allowed in this Ordinance are temporary and shall be terminated upon the earlier of the date stated in the applicable permit/approval or the expiration of this interim Ordinance, unless earlier revoked by the City Manager or other authorized official (or their designee) or terminated by action of the City Council. The City may discontinue one or more, or all, of the allowed outdoor uses at any time if the City Manager or designee determines that the public health, safety or welfare warrant such action. Nothing in this Ordinance shall establish a vested right.

SECTION 9. Suspension of Prohibition on Alcohol Consumption in Lytton Plaza and Cogswell Plaza

Notwithstanding PAMC Sections 22.04.330 and 22.04.331, the City Manager is authorized to suspend the prohibition on consumption of alcoholic beverages in the parking lots adjacent to Lytton Plaza and Cogswell Plaza.

SECTION 10. Use of City Parking Lots for Reopening Activities

- A. The City Manager, or his or her designee (“City Manager”), is authorized to permit outdoor dining, retail and other activities necessary to facilitate the reopening of businesses, in public parking lots owned by the City, subject to the City Manager’s adoption of rules, regulations, guidelines, and standards for such use (“Regulations”), and publication of such Regulations on the City’s website. Use of parking lots, or portions thereof, by a business shall require a license or other agreement, including an agreement to indemnify and hold harmless the City, and provision of insurance.

- B. The City Manager is authorized to waive any fee in the Municipal Fee Schedule associated with the temporary use of parking areas for the purposes identified in Section A above.
- C. Notwithstanding PAMC Section 9.04.020, the City Manager is authorized to suspend the prohibition on consumption of alcoholic beverages in any City owned parking lot.

SECTION 11. Personal Services, Indoor Recreation and Other Uses

The authorized outdoor uses of public and private spaces authorized in this Ordinance may be applied to personal services, indoor recreation and other uses. Prior to authorizing these additional activities to occur, the City Manager, or his or her designee (“City Manager”), shall adopt rules, regulations, guidelines, and standards for these uses, and publish them on the City’s website.

SECTION 12. Severability

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 13. Environmental Review

The Council finds that the Ordinance is categorically exempt from CEQA under CEQA Guidelines Sections 15301 (existing facilities) and 15304(e) (minor temporary use of land having negligible or no permanent effects on the environment).

SECTION 14. Effective Date

This Ordinance shall be effective 31 days after adoption and shall remain in effect until December 31, 2021 unless otherwise modified, repealed or extended by the City Council.

//

//

//

//

//

SECTION 15. Uncodified

This Ordinance shall not be codified.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

NOT PARTICIPATING:

ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

Mayor

APPROVED:

City Manager

Director of Public Works

Director of Planning & Development
Services