

CITY OF ALAMEDA PLANNING BOARD
DRAFT RESOLUTION

AMENDING USE PERMIT PLN20-0215 TO ALLOW THE TEMPORARY USE OF PRIVATELY OWNED OUTDOOR SPACE AND PARKING LOTS AND CITY OWNED SIDEWALKS AND ON-STREET PARKING SPACES IN CERTAIN COMMERCIAL ZONED DISTRICTS FOR RETAIL AND COMMERCIAL PURPOSES DURING THE COVID-19 HEALTH EMERGENCY

WHEREAS, on March 17, 2020, following emergency declarations by the federal, state and county governments, and a shelter in place order issued by the Health Officer of the County of Alameda, the Alameda City Council adopted an urgency ordinance (Ordinance No. 3267) declaring the existence of a local emergency in response to the COVID-19 pandemic (as amended and extended by Ordinance No. 3272, City Emergency Declaration); and

WHEREAS, due to the shelter in place and related COVID-19 orders, many of Alameda's small businesses and restaurants have seen dramatic declines in revenue. Some have temporarily closed, while others have reduced businesses hours and/or limited their operations to delivery and take out; and

WHEREAS, according a recent Alameda Chamber of Commerce online survey of 68 businesses, 35 businesses (51 percent) have temporarily closed while another 21 businesses (31 percent) have reduced hours or cut back operations; and

WHEREAS, the County Health Officer has issued a number of updated shelter in place orders (most recently Order 20-14c from June 5, 2020, revised on August 20, 2020) that direct all individuals in the County to comply with social distancing measures and other restrictions necessary to control the spread of COVID-19. The COVID-19 pandemic and the restrictions imposed by the shelter in place orders, including social distancing requirements, have had a devastating impact on the local economy; and

WHEREAS, many economists anticipate steep job losses, particularly in sectors supported by consumer spending. The retail, hospitality and food service industries are considered the most vulnerable sectors; and

WHEREAS, the City of Alameda wishes to assist in slowing the spread of COVID-19 while supporting the economic recovery of local businesses as they begin to re-open after months of extended closures and limited operations resulting from the COVID-19 pandemic and restrictions imposed by the shelter in place orders; and

WHEREAS, local businesses that rely on customers visiting their establishments (e.g. restaurants, retail stores, personal service businesses, etc.) will need additional space to accommodate social distancing requirements; and

WHEREAS, on June 22, 2020, following a duly noticed public hearing, the Planning Board adopted Resolution PB-20-13 approving Use Permit PLN20-0215 to allow the temporary use of privately owned outdoor space and parking lots and City owned sidewalks and on-street parking spaces in certain commercially zoned districts for retail and commercial purposes during the COVID-19 health emergency; and

WHEREAS, on October 26, 2020, the Planning Board conducted a duly noticed public hearing and approved amendments to Use Permit PLN20-0215 to expand its applicability to additional zoning districts, including Alameda Point zoning districts, that were inadvertently excluded, and to address certain conditions of the Use Permit related to outdoor performances, music, and tents.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board finds that the following findings can be made in support of the Use Permit approval:

- 1. The location of the proposed use is compatible with other land uses in the general neighborhood area, and the project design and size is architecturally, aesthetically, and operationally harmonious with the community and surrounding development.**

The proposed use of outdoor space for customer serving commercial purposes in commercial districts is compatible with the commercial land uses in the area, and the expansion of the existing businesses into outdoor space is aesthetically and operationally harmonious with the community and surrounding development. No architectural changes are being proposed, and any future physical structures will require design review.

- 2. The proposed use will be served by adequate transportation and service facilities including pedestrian, bicycle, and transit facilities.**

The project sites are located in commercial districts and will be served by adequate transportation and service facilities including existing transit, pedestrian and bicycle facilities.

- 3. The proposed use, if it complies with all conditions upon which approval is made contingent, will not adversely affect other property in the vicinity and will not have substantial deleterious effects on existing business districts or the local economy.**

The proposed use, with the limitation on noise and existing AMC limitations on hours of operation and other AMC requirements, will not adversely affect other property in the vicinity. The purpose of the proposed use permit is to have a beneficial effect on existing business districts and the local economy.

- 4. The proposed use relates favorably to the General Plan.**

Programs and actions to support the local economy relate favorably to General Plan Policy 2.5.a, which calls for providing enough retail business and services to provide Alameda residents with a full range of services; and

BE IT FURTHER RESOLVED, that the Planning Board finds this project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15301 Existing Facilities, 15304(e) Minor Temporary Use of Land, and 15305 Minor Alterations to Land Use Limitations, and none of the exceptions apply; and

BE IT FURTHER RESOLVED, that the Planning Board hereby amends Use Permit PLN20-0215, subject to the following conditions:

- 1. Applicability.** The use permit shall only apply to commercial properties in the C-1 Neighborhood Business District, C-2 Central Business District, CC-Community Commercial District, NP North Park Street Gateway and Workplace Districts, M-X Mixed Use District, AP-AR Adaptive Reuse, AP-E1 Enterprise-1 through -4, AP-MS Main Street Neighborhood and AP-TC Town Center, and commercial properties within a PD, Planned Development Combining District.

2. Existing Use Permits. Businesses with existing use permits for outdoor use shall comply with the requirements of both the existing use permit and this temporary use permit. In the event of conflicting provisions, the provisions of this temporary use permit shall govern.
3. Compliance with County Health Order and City Requirements. The use of privately owned outdoor space and parking lots and City owned sidewalks and on-street parking spaces must be conducted in compliance with all applicable County Health Orders and City requirements related to COVID-19 as well as laws and regulations of applicable agencies such as the County Environmental Health Department and State Department of Alcoholic Beverage Control. Businesses serving food and beverages shall maintain all necessary food and beverage permits, licenses, and approvals that are required to serve food and beverages within the new or expanded outdoor area. In addition, if a business wishes to serve alcohol in the new or expanded outdoor area, it must obtain and maintain the required state alcoholic beverage license approvals. In addition, businesses shall comply and further shall cause its employees, agents, guests, invitees, and contractors to comply with all conditions within this use permit, and any other rules or regulations established by the City of Alameda concerning this use permit for temporary use of outdoor areas, which the City may modify or supplement from time to time in order to protect and promote the public health, safety, and welfare.
4. Use of Privately Owned Outdoor Spaces. Any business with an active business license and up-to-date Business Improvement Area assessments, if applicable, may use privately owned outdoor (un-enclosed open air) space and parking lot(s) on the subject property for retail and commercial uses, including customer services, customer seating, and/or display and sale of retail products. Permission to establish an outdoor area under this use permit does not authorize a business to physically modify, alter, or demolish existing structures and site improvements or to erect new structures or site improvements; provided, however, a business may install temporary barriers or separations, re-stripe parking lots, and make use of temporary ramps to ensure accessibility, promote health and safety, and otherwise accommodate the establishment or expansion of outdoor dining into parking areas. The construction, modification, alteration, and demolition of structures and site improvements will require the issuance of separate permits.
5. Use of Privately owned Off-street Parking Areas. Use of privately owned off-street parking spaces must be in conformance with all Alameda Fire Department requirements for building accessibility. Among other ADA requirements, a business shall maintain an accessible path of travel to, from, and within the outdoor area to all points adjacent to the outdoor area. No parking for disabled persons or required landscape areas may be repurposed for restaurant or retail use. Tents and umbrellas that are under 400 square feet in size may be erected in private off street parking lots to provide shade provided that heaters of any kind shall not be used under tents or umbrellas, and the use of tent walls shall allow for open air flow and meet the current County Health Orders.
6. Encroachment Permit Required for Use of City-owned Property. Any business with an active, current encroachment permit authorizing the use of public right of way may use City-owned sidewalk space and/or on-street public parking spaces for retail and commercial uses, including customer services, customer seating, and/or display and sale of retail products.
7. Noise. All outdoor activities, music, amplified sound, live music and performances, or other entertainment events whether live or recorded, within the outdoor areas shall be in conformance with the current County Health Orders in effect at the time and in conformance with the noise limits established by the City's Noise Ordinance, AMC Section 4-10.

8. Hours of Operation. Outdoor commercial activity consistent with this use permit may occur between the hours of 7AM to 10PM Sunday through Thursday and 7 AM to Midnight on Friday and Saturday.
9. City's Right to Modify/Revoke. The use of privately owned outdoor space and parking lots and City-owned sidewalks and on-street parking spaces may be modified and/or revoked by the Zoning Administrator, Planning Board, and/or City Council for any individual property that violates the requirements, without the need to modify and/or revoke the use permit for all other properties.
10. Termination. This use permit shall terminate with expiration of the County Health Order requirements for social distancing in response to the COVID-19 pandemic, unless revoked or extended by the Zoning Administrator, Planning Board and/or City Council at an earlier date.
11. Compliance with Conditions. Failure to comply with any conditions stated herein may result in issuance of a citation and/or modification, suspension, or revocation of the Use Permit for any specific property or group of properties.
12. Revocation. This Use Permit may be modified or revoked by the Zoning Administrator, Planning Board, and/or City Council, after notice and hearing, if one of the following findings is made: 1) the use or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity; 2) the property is operated or maintained so as to constitute a public nuisance; or 3) the use is operated in violation of the conditions of the Use Permit.
13. INDEMNIFICATION. Any business (or successor in interest) exercising the privileges granted under this use permit shall, to the maximum extent permitted by law, defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Alameda, its City Council, City Planning Board, officials, employees, agents and volunteers (collectively, "Indemnitees") from and against any and all claims, actions, or proceedings against Indemnitees to attack, set aside, void or annul an approval by Indemnitees relating to this use permit. This indemnification shall include, but is not limited to, all damages, losses, and expenses (including, without limitation, legal costs and attorney's fees) that may be awarded to the prevailing party arising out of or in connection with an approval by the Indemnitees relating to this use permit. The City shall promptly notify the business of any claim, action or proceeding and the City shall cooperate in the defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding and the business (or its successor in interest) shall reimburse the City for its reasonable legal costs and attorneys' fees.

NOTICE. The conditions of project approval set forth herein include certain fees and other exactions. Pursuant to Government Code section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and exactions. The applicant is hereby further notified that the 90-day appeal period, in which the applicant may protest these fees and other exactions, pursuant to Government Code section 66020(a) has begun. If the applicant fails to file a protest within this 90-day period complying with all requirements of section 66020, the applicant will be legally barred from later challenging such fees or exactions.

The decision of the Planning Board shall be final unless appealed to the City Council, in writing and within ten (10) days of the decision, by filing with the Planning, Building and Transportation Department a written notice of appeal stating the basis of appeal and paying the required fees.