



COMMUNITY DEVELOPMENT DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting Date: June 5, 2020

Subject

An Urgency Ordinance authorizing the outdoor operations of qualifying establishments (restaurants, wineries, breweries, and bars) pursuant to a Special Temporary Outdoor Dining Permit.

Recommended Action

That the City Council:

1. Find that the proposed actions are exempt from CEQA; and,
2. Enact Urgency Ordinance No. 20-XXX – “An urgency ordinance of the City Council of the City of Cupertino authorizing the outdoor operations of qualifying establishments (restaurants, wineries, breweries, and bars) pursuant to a special temporary outdoor dining permit.”

Discussion

There have been several local, regional and state orders regarding Sheltering in Place in response to the COVID-19 pandemic.

- March 11, 2020: Cupertino City Manager declared a local emergency related to COVID-19, which was ratified by the City Council on March 17, 2020.
- March 16, 2020: Santa Clara County issued a Shelter-in-Place Order including limitations on non-essential work and operations, including prohibitions on most residential and almost all commercial construction.
- March 19, 2020: Governor Newsom issued a statewide Shelter-in-Place Order directing all California residents to stay home until further notice, with limited exceptions, to stop the spread of COVID-19.
- March 31, 2020: Santa Clara County issued an updated Shelter-in-Place Order effective from April 1, 2020 through May 3, 2020.
- April 29, 2020: Santa Clara County issued an updated Shelter-in-Place Order effective from May 3, 2020 through May 31, 2020.
- May 4, 2020: Governor Newsom announced that the State will move to a "Stage 2" modification of the Executive Order, allowing for businesses identified as having a lower risk of COVID-19 transmission to reopen in accordance with State guidelines that were issued on May 7, 2020.

Restaurants, wineries, breweries, or bars are not authorized to serve food or beverages on site until the later phase of Stage 2. Currently, only counties that have a local variance attestation approved may advance to the later phase of Stage 2. Santa Clara County on June 5 will allow outdoor dining. The proposed Ordinance establishes a permit framework for qualifying establishments to operate in conformance with the updated County Shelter-in-Place Order. The County has released the following guidelines (Refer to Attachment C *Appendix C-1: Additional Businesses Allowed to Operate* of The County Shelter-in-Place Order):

- Outdoor seating arrangements shall limit the number of patrons at a single table to no more than six (6) individuals, all of whom must be from the same household or living unit. Members of separate households or living units are not allowed to dine at the same table.
- All tables must be separated to ensure that the six-foot minimum social distance can be easily maintained between all members of separate households or living units at all times. For clarity, patrons who are members of the same household or living unit and seated together at a table do not need to be six feet apart.
- Alcohol may be sold to patrons in conjunction with a meal, but it may not be sold independently.
- Bar areas must remain closed to customers.
- Entertainment events are not allowed at this time.
- Outdoor dining, placement of outdoor seating arrangements, and food service must be in compliance with local laws, regulations, and permitting requirements.
- Facilities that open for outdoor dining must offer curbside pickup, takeaway, and/or delivery service alternatives.

Further, any qualifying business would need to operate in compliance with the State guidelines. Please refer to Attachment D for the California Department of Health's *COVID-19 Industry Guidance: Dine-In Restaurants*. To limit the spread of COVID-19, the Guidance allows restaurants, wineries, breweries, or bars that serve food and beverages on site to provide service at a reduced capacity in compliance with State and County guidelines. To allow Cupertino's dining establishments to operate safely, a Special Temporary Outdoor Dining Permit program would allow qualifying establishments to add outdoor seating.

Special Temporary Outdoor Dining Permit: The Cupertino Municipal Code ("CMC") 19.60.050, Land Use Activity, limits outdoor seating outside of a closed atrium or patio without a use permit, if such seating is limited to 20 percent of the indoor seating capacity unless a use permit is applied for. The Ordinance will temporarily suspend this requirement and allow establishments to serve food and beverages outdoors, while ensuring compliance with State and County guidelines. The

Ordinance will require these businesses to apply for and obtain a Special Temporary Outdoor Dining Permit (Attachment B) from the Director of Community Development.

All businesses must be in full compliance with all State and County Orders regarding reopening. Individual businesses must be able to present proof of compliance with the applicable State and County orders upon request by the enforcement official as authorized in the Ordinance. In addition to having a Cupertino Business License, the applicants must comply with the following requirements:

- A. The total amount of seating for each establishment shall be limited to the occupant load permitted under the original certificate of occupancy for the tenant space.
- B. All seating shall be spaced to allow adequate social distancing.
- C. A site/floor plan will be required to verify outdoor seating areas are configured in a manner to:
 - 1. Only be located along the frontage of the qualifying establishment.
 - 2. Provide an accessible path of travel to the new outdoor seating area(s) compliant with the latest adopted edition of the California Building Code.
 - 3. Not encroach into any existing egress and/or accessible paths of travel to allow for comfortable flow of pedestrian traffic.
 - 4. Not be located within six feet of crosswalks or within the required staging area in front of fire hydrants.
- D. If the applicant is requesting to utilize privately owned parking spaces for outdoor seating, the number of spaces used shall not be more than 50% of the maximum occupant load of the establishment. Utilized parking spaces shall be adjacent to the business.
- E. No food preparation shall be allowed outside.
- F. No permanent fixtures are allowed.
 - 1. Temporary barriers, not affixed into the ground or other objects for support, are allowed.
 - 2. Temporary umbrellas not affixed into the ground or other objects are allowed. No signage is allowed on the umbrellas.
- G. Operations must comply with any requirements imposed by the Building Division of the Community Development Department, Santa Clara County Fire Department, Environmental Services Division, and Public Works Department. If conditions proposed by various departments and divisions conflict, the Director of Community Development shall decide which ones to attach to the application.

In addition, a property manager for a shopping center may submit for a permit for the tenants as part of a joint permit, subject to the submission requirements outlined above.

Any restaurant, winery, brewery, or bar that requests to use any portion of the public right-of-way to serve food and drinks may file an application for an Encroachment Permit through the City's Public Works Department.

Permit Limitations: The Special Temporary Outdoor Dining Permit may be approved, conditionally approved or denied by the Director of Community Development. The Director of Community Development may impose any conditions deemed necessary to ensure compliance with the reopening protocol of the State of California and Santa Clara County and to protect the public health and safety of the City. The permit would be non-transferable and only the establishment for which the temporary permit is issued would be permitted to operate.

In order to encourage compliance and to support businesses during the Pandemic, it is proposed that no application fee be required in order to obtain this permit.

Since the Special Temporary Outdoor Dining Permit does not create any property interest, a Special Temporary Outdoor Dining Permit issued pursuant to this ordinance may be revoked at any time and for any reason.

Noticing and Public Comment

Since this is an Urgency Ordinance, no notice is required pursuant to the California Government Code. No public comment has been received with regard to this Ordinance as of the date of this staff report.

Environmental Impact (CEQA)

The proposed Ordinance is not a project as defined by section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately. If the Ordinance is found to be a project under CEQA, the Ordinance is considered exempt via CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of significant effect on the environment.

Sustainability Impact

No sustainability impacts.

Fiscal Impact

No fiscal impact other than a potential revival in sales tax revenue from an increased operation of food and beverage service businesses.

Prepared by: Gian Martire, Senior Planner

Reviewed by: Piu Ghosh, Planning Manager

Approved for Submission by: Dianne Thompson, City Manager

Attachments:

A – Draft Urgency Ordinance No. 20-XXXX

B - Draft Special Temporary Outdoor Dining Permit application

C - Appendix C-1: Additional Businesses Allowed to Operate of The County Shelter-in-Place Order

D - California Department of Health *COVID-19 Industry Guidance: Dine-In Restaurants.*