

**Draft Ordinance No. 20-XXXX**

**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**

**WHEREAS**, on February 3, 2020, and pursuant to Section 101080 of the California Health and Safety Code, the Santa Clara County Health Officer (the “Health Officer”) declared a local health emergency throughout Santa Clara County (the “County”) related to the novel coronavirus (“COVID-19”); and

**WHEREAS**, on February 3, 2020, and pursuant to Section 8630 of the California Government Code, the Santa Clara County Director of Emergency Services proclaimed a local emergency throughout the County related to COVID-19; and

**WHEREAS**, on March 4, 2020, California Governor Gavin Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for a broader spread of COVID-19; and

**WHEREAS**, on March 4, 2020, the County issued updated guidance for workplaces and businesses, stating that employers should take steps to make it more feasible for their employees to work in ways that minimize close contact with large numbers of people, including: 1) suspend nonessential employee travel; and 2) minimize the number of employees working within arm’s length of one another, including minimizing or canceling large in-person meetings and conferences. The County also recommended that persons at higher risk of severe illness should stay home and away from crowded social gatherings of people as much as possible such as parades, conferences, sporting events, and concerts where large numbers of people are within arm’s length of one another; and

**WHEREAS**, as of March 9, 2020, the County reported that there were 43 cases of persons testing positive for COVID-19 in the County, an increase of 23 in five days. In response, the County, pursuant to its authority under California Health and Safety Codes sections 101040, 101085, and 120175, ordered that private mass gatherings attended by one thousand persons are prohibited until March 31, 2020 (the “First Mass Gathering Order”). This First Mass Gathering Order was based upon evidence of increasing transmission of COVID-19 within the County, scientific evidence regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as currently known and available to protect vulnerable members of the public from avoidable risk of serious illness or death resulting from exposure to COVID-19; and

**WHEREAS**, on March 11, 2020, the City Manager for the City of Cupertino ("City") declared a local emergency throughout the City related to COVID-19; and

**WHEREAS**, on March 17, 2020, the Council ratified and continued the City Manager's declaration of a local emergency; and

**WHEREAS**, on March 13, 2020, the County issued an order mandating a countywide moratorium on gatherings of more than 100 persons and a conditional countywide moratorium on gatherings of between 35-100 persons; and

**WHEREAS**, on March 16, 2020, the County, along with five other Bay Area counties, issued a sweeping "Shelter-in-Place" order (the "March 16 County Shelter-in-Place Order") that included limitations on non-essential work and operations, including but not limited to prohibitions on most residential and almost all commercial construction; and

**WHEREAS**, on March 19, 2020, Governor Newsom issued a "Shelter-in-Place" order (the "State Shelter-in-Place Executive Order" or "Executive Order") directing all individuals living in the State of California to stay home or at their place of residence, with limited exceptions, to stop the spread of COVID-19 until further notice; and

**WHEREAS**, on March 31, 2020, the public health officers for the six Bay Area counties, including Santa Clara County, issued an updated "Shelter-in-Place" order effective from April 1, 2020 through May 3, 2020, and on April 29, 2020 issued an updated "Shelter-in-Place" order effective from May 4, 2020 through May 31, 2020 (the "April 29 County Shelter-in-Place Order"); and

**WHEREAS**, the April 29 County Shelter-in-Place Order continues to require most residents, businesses, and employees to stay at home to limit the transmission of the COVID-19 virus and limits the types of work that may be performed; and

**WHEREAS**, businesses that serve food and beverages have been prohibited from serving customers on-site, limiting them to take-out only; and

**WHEREAS**, on May 4, 2020, the Governor 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; and

**WHEREAS**, on May 7, 2020, the State issued guidelines that businesses that reopen during the "Stage 2" modification of the Executive Order must follow; and

**WHEREAS**, during the COVID-19 emergency, businesses that serve food or beverages onsite and indoors increase the risk of COVID-19 transmission, endangering public health and safety; and

**WHEREAS**, restaurants, wineries, breweries, and bars can serve food or beverages onsite and reduce the risk of COVID-19 transmission by serving food or beverages in compliance with State and County reopening guidelines; and

**WHEREAS**, food and beverage service establishments constitute an important segment of the Cupertino economy and sales tax base for the City; and

**WHEREAS**, the City Council finds that the service of food and beverages in an outdoor, well-regulated setting, in accordance with the guidelines from the State during the COVID-19 pandemic and operative County Shelter-in-Place Order and any subsequent orders will allow these businesses to begin operations on-site in a manner that protects the public health and safety;

**NOW, THEREFORE, THE CITY COUNCIL OF THE OF CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** For purposes of this ordinance, a qualifying establishment means any restaurant, winery, brewery, or bar that will be allowed to operate in compliance with reopening protocols of the State of California and Santa Clara County.

**SECTION 2.** Cupertino Municipal Code (“CMC”) Section 19.60.050, Land Use Activity, permits restaurants to provide 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 and the restaurant is otherwise in compliance with CMC Chapter 19.124, Parking Regulations. However, in order to allow qualifying establishments serving meals and accompanying beverages onsite to continue to operate in a safe manner during the COVID-19 pandemic, the City Council hereby temporarily suspends this requirement, provided the operator obtains a Special Temporary Outdoor Dining Permit and complies with the following requirements:

- A. The guidelines as published by the California Department of Health (“DoH”) in its *COVID-19 Industry Guidance: Dine-In Restaurants*, as may be amended from time to time or any updated guidelines published by the DoH.
- B. Any guiding document related to requirements from the Santa Clara County Public Health Department.
- C. 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.
- D. All seating shall be spaced to allow adequate social distancing.
- E. A 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.
- F. 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.
- G. No food preparation shall be allowed outside.
- H. No permanent fixtures are allowed.
1. Temporary barriers, not affixed into the ground or other objects for support, are allowed if required by Alcoholic Beverage Control ("ABC") for the consumption of alcoholic beverages outside.
  2. Temporary umbrellas not affixed into the ground or other objects are allowed. No signage is allowed on the umbrellas.
- I. No seating or service is allowed within the public right-of-way without first obtaining an encroachment permit from the Department of Public Works.
- J. 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/divisions conflict, the Director of Community Development shall decide which ones to attach to the application.
- K. City of Cupertino Business License.
- L. A property manager of a shopping center may apply for a permit for their tenants as a joint application subject to the requirements as outlined above.

**SECTION 3.** A qualifying establishment may apply for a Special Temporary Outdoor Dining Permit by applying to the Director of Community Development, on a form prepared by the City. The application shall be accompanied by any additional information required by the Director of Community Development to ensure compliance with the adopted requirements. No application fee shall be charged for such application. The permit is non-transferable, and only the qualifying establishment for which the temporary outdoor operations permit was issued shall be permitted to operate under the permit.

The Special Temporary Outdoor Dining Permit may be approved, conditionally approved, or denied at the discretion of the City. Approval of the permit is contingent upon the operation of the qualifying establishment following the reopening protocols of the State of California and Santa Clara County, and a determination that public health and safety of the City will not be threatened. The Director of Community Development may impose any conditions to ensure the above. A Special Temporary Outdoor Dining Permit does not create any property interest, and the Director of Community Development may revoke a Special Temporary Outdoor Dining Permit issued pursuant to this ordinance at any time and for any reason. The Special Temporary Outdoor Dining Permit shall terminate upon the expiration of the Shelter in Place orders.

**SECTION 4.** The City Council hereby finds, determines, and declares that this urgency ordinance is adopted by at least four-fifths of the City Council pursuant to California Government Code Section 36937 and CMC Section 2.12.050 and is necessary because there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency measure, which finding is based upon the facts stated in the recitals above, all of which are deemed true and correct, as well any oral and written testimony at the June 2, 2020 City Council meeting.

**SECTION 5.** The City Council of the City of Cupertino held a duly noticed public meeting on June 5, 2020, and after considering all testimony and written materials provided in connection with that meeting introduced this ordinance and waived the reading thereof.

**SECTION 6.** 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 7.** The City Council finds that adoption of this Ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3), because it can be seen with certainty that temporarily extending certain permit approvals and application processing timelines for a limited period of time will not have a significant effect on the environment.

**SECTION 8: *Severability.***

Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other

provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

**SECTION 9: *Effective Date.***

This urgency Ordinance shall take effect immediately upon adoption as provided by Government Code Section 36937 and CMC Section 2.12.050 and shall remain in effect until the County's Shelter-in-Place Order is lifted and the State has entered Stage 4 of reopening, unless the Ordinance is otherwise terminated or extended by the City Council.

**SECTION 10: *Certification.***

The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

**SECTION 11: *Continuity.***

To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as amendments of the earlier provisions.

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**INTRODUCED** and **ADOPTED** as an urgency ordinance of the City of Cupertino at a special meeting of the City Council held on June 5, 2020, by the following vote:

**Members of the City Council**

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:  _____ Steven Scharf, Mayor City of Cupertino	  _____ Date
ATTEST:  _____	  _____

Kirsten Squarcia, City Clerk	Date
APPROVED AS TO FORM:	
<hr/> Heather Minner, City Attorney	<hr/> Date