

Ordinance No. 5500

Interim Ordinance of the Council of the City of Palo Alto Temporarily Allowing 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 During the COVID-19 State of Emergency, and Declaring the Ordinance to be an Emergency Measure to Take Effect Immediately Upon Adoption

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 March 4, 2020, California Governor Gavin Newsom declared a State of Emergency due to the threat of the novel coronavirus disease 2019 (“COVID-19”).

B. On March 12, 2020, due to the escalating local and regional increase in cases and community spread of COVID-19, City Manager Ed Shikada, acting as the Director of Emergency Services, issued a Proclamation of Local Emergency. The City Council ratified the issuance of the proclamation on March 16, 2020.

C. On March 16, 2020, March 31, 2020, and April 29, 2020, the Santa Clara County Health Officer issued orders directing all individuals living in the County to continue to shelter in their place of residence subject to certain exceptions. The original and subsequent orders limited activity, travel, and business functions to only the most essential needs, and required all businesses other than “essential businesses”, as defined, to cease activities at facilities located in the County, impacting the revenue and economic stability of many Palo Alto businesses.

D. The directives from the State and the County necessary to contain the spread of COVID-19 have drastically affected the local economy and resulted in serious negative impacts to local businesses, including substantial loss of business income and compensable work hours and wages for individual workers.

E. On June 1, 2020, the Santa Clara County Health Officer issued an order effective June 5, 2020 authorizing outdoor dining at restaurants and in-store retail, with the implementation of and adherence to specified public health protocols.

F. The State, through the California Department of Public Health and Cal OSHA, has issued COVID-19 Industry Guidance: Dine-In Restaurants, which prioritizes outdoor seating and curbside pick-up to minimize the cross-flow of air for people in enclosed environments.

G. Many businesses have already closed permanently, and others are barely surviving. Vibrant commercial centers are essential to Palo Alto. These businesses themselves are an essential part of the community: they provide jobs for Palo Alto workers, provide goods and services to residents and the larger community; they are part of the backbone to the fiscal health of individuals, the city, county and the region.

H. It is vital to create opportunities to help our community rebuild and emerge, to resume some aspects of daily life, to the extent feasible and consistent with health and safety, during this continuing public health emergency. Temporary measures to reduce regulatory requirements and facilitate business activity in outdoor areas will provide critical assistance to businesses to allow them to reopen and help mitigate the potential public health impacts of reopening.

I. Epidemiologists have warned that COVID-19 may be present in our communities for many months or even years, requiring ongoing adjustments to daily life and economic activity. The need for physical distancing will likely persist into 2021, and possibly beyond that.

J. An urgency ordinance that is effective immediately is necessary to address the immediate threat to public peace, health, safety and welfare of residents, workers and local businesses related to the significant economic impacts of the COVID-19 pandemic, to support businesses to be successful in their reopening in compliance with public health criteria, and to support compliance with public health orders and criteria related to COVID-19 to mitigate the spread of COVID-19 in Palo Alto and the broader community.

K. Under Palo Alto Municipal Code Section 2.04.270(d), a four-fifths vote of the Council members present is required to pass this Ordinance.

SECTION 2. City Manager Authorization

The City Manager is hereby authorized to use his or her authority as Director of Emergency Services under Palo Alto Municipal Code (“PAMC”) Section 2.12.060 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 expanded operation of outdoor eating areas by eating, drinking and retail establishments (sometimes referred to as “outdoor dining”) and outdoor retail sales and display of wares, as described at the City Council meetings on June 8, 2020 and June 23, 2020, not in conflict with this Ordinance. This authorization includes the authority vested in the City Manager or his or her designee(s) to promulgate guidelines and implementing regulations for the uses and programs described in 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 when allowed by the County Health Order to operate outdoors, 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 approved by Council Resolution No. 9909;
 - 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 a 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 outdoor uses of public and private property allowed in this Ordinance shall be conducted in compliance with the Order of the Health Officer of the County of Santa Clara in effect (“County Health Order”), this Ordinance, Resolution No. 9909, 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 Lytton Plaza and Cogswell Plaza, and adjacent City surface parking lots.

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 as allowed by the County Health Order and reasonably 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

When allowed by the County Health Order, 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 statutorily exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 20180(b)(4) (specific actions necessary to mitigate or prevent an emergency) and 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 immediately upon adoption by at least four-fifths vote of the City Council members present, pursuant to subsection (a)(4) of Palo Alto Municipal Code Section 2.04.330, and shall remain in effect for the duration of the Local Emergency or until December 31, 2020, whichever is later, unless earlier modified, repealed or extended by the City Council.

SECTION 15. Uncodified

This Ordinance shall not be codified.

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SECTION 16. Emergency Declaration

The Council declares this Ordinance to be an emergency measure, to take effect immediately upon adoption pursuant to Palo Alto Municipal Code Section 2.04.270(d). The facts constituting the emergency are stated in Section 1 of this Ordinance.

INTRODUCED: June 23, 2020

PASSED: June 23, 2020

AYES: CORMACK, DUBOIS, FILSETH, FINE, KNISS, KOU, TANAKA

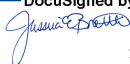
NOES:


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ABSTENTIONS:


NOT PARTICIPATING:

ATTEST:


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for Beth Minor
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Mayor


APPROVED AS TO FORM:

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City Manager

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Director of Planning & Development Services

Certificate Of Completion

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Certificate Pages: 2	Initials: 0
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Time Zone: (UTC-08:00) Pacific Time (US & Canada)	250 Hamilton Ave
	Palo Alto , CA 94301
	kimberly.lunt@cityofpaloalto.org
	IP Address: 199.33.32.254


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Signer Events

Sandra Lee
Sandra.Lee@CityofPaloAlto.org
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Signature


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Jonathan Lait
Jonathan.Lait@CityofPaloAlto.org
Interim Director Planning and Community Environment
City of Palo Alto
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Brad Eggleston
brad.eggleston@cityofpaloalto.org
Director of Public Works
City of Palo Alto
Security Level: Email, Account Authentication (None)

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Ed Shikada
ed.shikada@cityofpaloalto.org
Ed Shikada, City Manager
City of Palo Alto
Security Level: Email, Account Authentication (None)

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Jessica Brettle for Beth Minor
 jessica.brettle@cityofpaloalto.org
 Assistant City Clerk
 City of Palo Alto
 Security Level: Email, Account Authentication (None)



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