

**CITY OF ALAMEDA  
PLANNING, BUILDING AND TRANSPORTATION DEPARTMENT**

**ADMINISTRATIVE USE PERMIT**

**ITEM NO:** 3-A

**PROJECT DESCRIPTION:** **PLN20-0215 -- Conditional Use Permit Amendment for Alameda Commercially Zoned Properties – Applicant: City of Alameda.** Public hearing to consider an Amendment to Use Permit PLN20-0215 to modify conditions and extend the term of the use permit to November 1, 2021 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 economic recovery from the COVID-19 Health Emergency.

**GENERAL PLAN:** Community Commercial

**ZONING:** Commercial Districts citywide, including CC, C-1 Neighborhood Business District, C-2 Central Business District, CC-Community Commercial District, NP North Park Street Gateway and Workplace Districts, AP-Alameda Point, and the M-X Mixed Use District.

**ENVIRONMENTAL DETERMINATION:** The project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15301 – Minor Alteration of Existing Facilities, 15304(e) – Minor Temporary Use of Land, and 15305 – Minor Alterations to Land Use Limitations

**PROJECT PLANNER:** Brian McGuire, Project Planner

**PUBLIC NOTICE:** A notice for this hearing was published in local newspapers and posted in public areas near the subject property. At the time of this report staff has received one public comment on this proposed project.

**RECOMMENDATION:** Approve amendments to PLN20-0215.

**BACKGROUND/PROPOSAL SUMMARY:**

On June 22, 2020, in an effort to assist in slowing the spread of COVID-19 while supporting the economic recovery of local businesses, the City of Alameda Planning Board adopted Resolution PB-20-13 approving a citywide temporary use permit (PLN20-0215) for

commercial and retail uses in outdoor spaces located in certain commercially zoned districts. The Alameda Municipal Code (AMC) requires a business to apply for and receive a conditional use permit for “any permitted use... which is not conducted within an enclosed structure”.

On October 26, 2020, the Planning Board adopted Resolution PB-20-24 which amended the Use Permit to apply to additional zoning districts, including Alameda Point. It also amended the conditions of the Use Permit to address outdoor performances, music, and the use of tents.

The use permit will expire with expiration of the County Health Order requirements for social distancing in response to the COVID-19 pandemic. At the request of the business districts, staff is recommending that the term of the use permit be extended beyond the termination of County Health Order social distancing requirements to allow time for retailers and restaurants to recover from the COVID-19 pandemic and allow for the continued use of outdoor space for outdoor restaurant seating and retail sales. The new expiration date of this Use Permit will be November 1, 2021.

#### **FINDINGS:**

- 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. This use permit amendment extends the expiration date to November 1, 2021 to allow time for retailers and restaurants to recover from the COVID-19 pandemic and allow for the continued use of outdoor space for outdoor restaurant seating and retail sales.

- 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. The activities permitted under this use permit commenced in 2020 and there have been no issues regarding transportation deficiencies. The extension of the term of the use permit to November 1, 2021 does not impact transportation 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. This use permit amendment extends the expiration date to November 1, 2021 to allow time for retailers and restaurants to recover from the COVID-19 pandemic and allow for the continued use of outdoor space for outdoor restaurant seating and retail sales.

**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. This use permit amendment extends the expiration date to November 1, 2021 to allow time for retailers and restaurants to recover from the COVID-19 pandemic and allow for the continued use of outdoor space for outdoor restaurant seating and retail sales.

**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.
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. Tents and Umbrellas: 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.
8. 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.
9. 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.
10. Termination. This use permit shall terminate ~~on November 1, 2021 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 in part or in whole 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. 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 with site specific compatibility concerns or that violates the requirements, without the need to modify and/or revoke the use permit for all other properties.

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.

#### **DECISION:**

##### Environmental Determination

The Zoning Administrator has determined that this project qualifies for a Class 1 Categorical Exemption and no additional environmental review is necessary pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15301 - Existing Facilities because the project consists of operation, permitting or leasing of existing private structures involving negligible or no expansion of use beyond that which exists. The project is also exempt from CEQA pursuant to CEQA Guidelines 15304(e) – Minor Temporary Use of Land and 15305 – Minor Alterations to Land Use Limitations, each on its own independent and separate basis.

##### Use Permit

The Zoning Administrator hereby approves the Use Permit modification.

The decision of the Zoning Administrator shall be final unless appealed to the Planning Board, in writing and within ten (10) days of the decision.



Approved by: \_\_\_\_\_ Date: June 14, 2021

Allen Tai, Zoning Administrator