



**CORTE MADERA TOWN COUNCIL  
STAFF REPORT**

**REPORT DATE:** June 5, 2020  
**MEETING DATE:** June 9, 2020

**TO:** Honorable Mayor and Members of the Town Council

**FROM:** Adam Wolff, Director, Planning and Building *AW*  
Teresa Stricker, Town Attorney

**SUBJECT:** Consideration and Possible Adoption of Urgency Ordinance No. 996.  
Authorizing Issuance of Temporary Permits to Allow Restaurants and other  
Commercial Businesses to Provide Outdoor Business Operations on Private  
Property and Certain Types of Town-Owned Property



**RECOMMENDED ACTION:**

Introduce and adopt Urgency Ordinance No. 996.

Adoption of this Urgency Ordinance requires at least four affirmative votes by members of the Town Council. If adopted, the Urgency Ordinance takes effect immediately.

**BACKGROUND:**

In response to the COVID 19 pandemic, state and county health officials have issued stay at home orders requiring people to remain in their homes except for limited, specific activities. Many of the businesses that remain open have severely curtailed their operations to reflect health and safety rules. Local businesses have been unable to operate, absent designation as an essential business; restaurants and other facilities that prepare and serve food, have only been able to operate for delivery or carry out. The resulting drop in economic activity threatens the viability of many businesses and the livelihood of their employees. Marin County is beginning to allow certain businesses to resume operations with social distancing protocols in place. To comply with these restrictions, businesses are seeking to temporarily expand into adjacent outdoor spaces, public and private. The proposed Urgency Ordinance would establish a temporary outdoor dining and business activity program to allow businesses to use private and public outdoor spaces pursuant to a temporary permit, with no fees imposed for those permits.

## DISCUSSION:

The State is beginning to relax its stay at home order to allow for gradual re-opening of businesses and return of business activity. On April 28, 2020, the Governor announced a four-phase roadmap for easing the current stay at home order requirements. On May 12, 2020, the Governor issued guidance for the eventual reopening of restaurants in counties certified as meeting state benchmarks for addressing the COVID-19 pandemic. On May 18, 2020, the Governor announced a loosening of rules linking coronavirus infection rates to allowed activities, giving counties more flexibility in making determinations of how to move through Phase 2 of the planned reopening, and indicated that Phase 3 could begin as soon as June 2020.

Following State guidance, the County of Marin has revised its Health Order to allow certain business and other activities to re-open in gradual fashion. However, despite the ability of businesses to gradually re-open in accordance with State and local health requirements, local businesses are limited in their capacity to provide services in their existing facilities due to social distancing requirements and as a result, business activity remains at a fraction of its normal level.

In an effort to continue the gradual re-opening of business activity in a safe way, on June 1, 2020, outdoor in-person dining options and outdoor retail shopping were permitted to operate pursuant to the requirements of the County Health Order and compliance with local regulations. Among other requirements for these activities, the County Health Order requires site specific safety protocols be in place in order for business and other activities to resume. The ability to expand business outdoors is intended to promote social distancing and health safety requirements and potentially increase consumer confidence and create incentives for customers to patronize local business more frequently.

While the revised Health Order permits outdoor dining and other outdoor business activities, many businesses in Corte Madera, and throughout Marin County, do not have existing permitted outdoor space in which to conduct business and would need to engage the Town in a permitting process pursuant to the Town's Zoning Ordinance or regulations governing encroachment on the public right-of-way or public property, pursuant to the Corte Madera Municipal Code.

The proposed Temporary Outdoor Use Permit ("TOU Permit") and Temporary Operations Encroachment Permit ("TOE Permit") programs will allow local restaurants and other businesses authorized under the County Health Order to use outdoor spaces to expand their operations and operate in compliance with social distancing requirements. The permits would, on a short-term basis, authorize the following:

- *TOU Permit.* The proposed Urgency Ordinance would create a temporary outdoor use permit that would allow restaurants and other businesses to temporarily provide or expand outdoor dining seating and other business operations on private outdoor property, such as parking lots and private sidewalks, in addition to the outdoor spaces currently permitted under the Corte Madera Municipal Code or an applicable conditional use permit. This would include temporary relief from minimum parking requirements in

Section 18.20 of the Town's Zoning Ordinance, or other use or development standards specified in the Town's commercial (CMMC 18.12), mixed-use (CMMC 18.13), light industrial (CMMC 18.14), or public use (CMMC 18.16) zoning district regulations or in a previously granted entitlement, for the duration of the term of the Permit. If the applicant intends to use a shared private parking lot for expanded outdoor use, the applicant will need to obtain written consent from other property owners with whom the parking lot is shared.

As an example, a restaurant desiring to utilize outdoor parking areas on their property for additional seating on a temporary basis (until November 16, 2020), would not be required to pay for and obtain an conditional use permit or design review permit, and would not be subject to otherwise applicable minimum parking space requirements.

- *TOE Permit.* The TOE Permit would authorize local restaurants and other businesses to conduct business operations on Town-owned land, such as public sidewalks and public parking spaces in the public right of way adjacent to or near the applicant's businesses. The applicant would have to indemnify, defend and hold the Town harmless from any liability that might arise from exercise of the permit and meet insurance requirements established by the Town Manager. The ordinance would also authorize the Town Manager to require a maximum \$1,000 security deposit to ensure that the subject property is returned to its prior condition after the permitted use terminates.

The ordinance would direct the Town Manager to create applications forms and appropriate conditions of approval for both the TOU Permit and the TOE Permit. The application would require submission of a site plan showing safe and accessible paths of travel and develop appropriate conditions of approval. The permitted use would be subject to with operational and safety provisions provided by the Town Manager, applicable State and County health orders, applicable regulations of the Department of Alcohol and Beverage Control, the Fire Code and other relevant laws like the Americans Disability Act. Staff have been working with the Town Attorney to develop an application form for these permits.

The permits would be approved at the sole discretion of the Town Manager or designee and will be revocable.

The ordinance, and the temporary permits issued under the ordinance, will expire on November 16, 2020 unless revoked sooner by the Town Council by resolution. If revoked by resolution prior to November 16, 2020, the permit holders will be given no fewer than 10 days to revise their operations and remove any improvements authorized by the permits. The Town would not require an application fee for these permits.

#### **FISCAL IMPACT:**

The fiscal impact is difficult to estimate. Town staff will need to devote some hours to create application forms and standard conditions of approval. Staff will also have to review each application to ensure compliance with health and safety and accessibility requirements. These costs should be somewhat offset (and potentially exceeded by) increased sales tax revenue.

### **ENVIRONMENTAL IMPACT:**

The activity is covered by the general rule that CEQA does not apply where it can be seen with certainty that there is no possibility that the activity will have a significant effect on the environment (CEQA, Article 5, Section 15061(b)(3)). Additionally, because the uses authorized by this ordinance are minor public or private alterations in the condition of land which do not involve removal of healthy, mature, scenic trees, the ordinance is exempt from environmental review. (*Id.*, Section 15304(e)).

### **OPTIONS:**

If the Town Council can make the findings set forth in the ordinance by four-fifths vote, it may by motion decide to read the ordinance by title only and after such reading:

1. Introduce and approve the ordinance as presented.
2. Introduce and approve the ordinance with modifications.
3. Take no action at this time.

If the Town Council cannot make the findings set forth in the ordinance, it may:

1. Take no action at this time.
2. Provide staff with other direction with respect to the measures set forth in the ordinance

### **ATTACHMENTS:**

1. Draft Urgency Ordinance

THIS ITEM HAS BEEN REVIEWED AND APPROVED BY THE TOWN MANAGER.

**ATTACHMENT 1**  
**DRAFT URGENCY ORDINANCE 996**

**ORDINANCE NO. 996**

**AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CORTE  
MADERA AUTHORIZING TEMPORARY PERMITS FOR RESTAURANTS AND OTHER  
BUSINESSES TO CONDUCT BUSINESSES OUTDOORS ON PRIVATE PROPERTY AND ON  
PORTIONS OF TOWN PROPERTY**

**WHEREAS**, the Town Council has found that the spread of the novel coronavirus (COVID-19), an infectious disease that causes respiratory illness, globally and within the San Francisco Bay Area, could potentially endanger the public health and safety of the residents of Corte Madera and Marin County, requiring the Town to take actions to slow the spread of the disease and protect the health of the public; and

**WHEREAS**, on March 13, 2020, the Town Manager issued a Proclamation of Local Emergency. The Town Council modified and ratified this proclamation by adopting Resolution No. 13/2020, at its March 17, 2020 Special Town Council meeting; and

**WHEREAS**, on March 16, 2020, the public health officers of Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara counties issued, with the City of Berkeley, a legal order directing their respective residents to shelter at home beginning March 17. The County of Marin has subsequently superseded this order with succeeding stay at home orders, most recently with a stay at home order issued on May 15, 2020, and effective until superseded; and

**WHEREAS**, the existence of State and County stay at home orders have drastically impacted local businesses which have been unable to operate, absent designation as an essential business. Prior to June 1, 2020, restaurants and other facilities that prepare and serve food, were only been able to operate for delivery or carry out. Additionally, retail businesses have been required to cease allowing foot traffic and in-person sales; and

**WHEREAS**, in addition to providing amenities to Town residents and visitors, restaurants and retail businesses generate a significant portion of Town revenues through sales tax collections. If those business activities diminish, the Town's ability to fund vital public services, including public safety services, could be severely impacted; and

**WHEREAS**, the State and County of Marin stay at home orders are beginning to be relaxed to allow for gradual re-opening of businesses and return of business activity. On Tuesday April 28, 2020, the Governor announced a four-phase roadmap for relaxing the current stay at home order requirements. On May 12, 2020, the Governor issued guidance for the eventual reopening of restaurants in counties certified as meeting state benchmarks for addressing the COVID-19 pandemic. On May 18, 2020, the Governor announced a loosening of rules linking coronavirus infection rates to allowed activities, giving counties more flexibility in making determinations of how to move through Phase 2 of the planned reopening, and indicated that Phase 3 could begin as soon as June 2020; and

**WHEREAS**, effective June 1, 2020, the County of Marin revised its regulations to allow dining establishments to offer outdoor seated service and certain other businesses to operate outside, all subject to State, County and local regulations; and

**WHEREAS**, despite the ability of businesses to gradually re-open in accordance with State and local health requirements, businesses located within the Town are limited in their capacity to provide services in their existing facilities due to existing and anticipated social distancing requirements arising from the state of emergency; and

**WHEREAS**, even after the State, County and Town lift their states of emergency and related social distancing, shelter at home and other regulations are lifted, the economic activity within the Town is unlikely to return to previous levels quickly because of the need to modify interior spaces to comply with on-going social distancing requirements and because of continuing public health concerns about COVID-19; and

**WHEREAS**, the Town Council intends to provide assistance to local businesses during this time of public health and economic hardships, by encouraging the patronization of local restaurants and businesses in a safe manner and therefore desires to establish a temporary use permit to allow restaurants and other businesses to temporarily operate in an expanded outdoor capacity in private outdoor spaces including parking lots and Town-owned areas adjacent to business and in public spaces, all as authorized by this Ordinance; and

**WHEREAS**, to further the objectives of this Ordinance, the Town Council intends to authorize the Town Manager or that person's designee to issue temporary use permits to qualified applicants in the Commercial, Mixed Use, Light Industrial, and Public Use zoning districts that would waive all or a portion of the parking requirements in Chapter 18.20 of the Municipal Code and the use and development restrictions of Chapters 18.12, 18.13, 18.14, and 18.16; and

**WHEREAS**, also to further the objectives of this Ordinance, the Town Council intends to authorize the Town Manager or that person's designee to issue temporary operations encroachment permits to qualified applicants waiving certain Town regulations, including, without limitation, portions of Chapter 12.08, 12.48 and section 9.28.020 and allow Town restaurants and other business to expand operations onto outdoor Town property provided that said operations do not obstruct vehicular or pedestrian circulation or otherwise unnecessarily interfere with the public's normal use and enjoyment of said property, as determined by the Town Manager or that person's designee; and

**WHEREAS**, based upon the findings above, the Town Council finds that there is a current and immediate need to allow businesses to use certain public and private outdoor spaces in order to prevent additional harm to small businesses in the Town and to allow the public to patronize Corte Madera businesses while complying with social distance requirements, in order to mitigate the threat to the public health, safety and welfare presented by COVID-19; and

**WHEREAS**, based upon the findings above, the Town Council finds that this urgency Ordinance is necessary for the immediate preservation of the public health, safety, and welfare. The Town Council finds and determines that the immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 36937(b) and take effect immediately upon adoption. As described above, businesses in Corte Madera are facing unprecedented hardships related to COVID-19 and the shelter-in-place orders. This urgency Ordinance is necessary to allow local restaurants and other local businesses currently permitted by State and County health orders to operate their businesses outdoors to do so within the Town. It is anticipated that State and County health orders will permit local restaurants and other local businesses to reopen for limited indoor business operations within a few weeks, and this Ordinance needs to become effective immediately in order to allow the Town to permit such businesses to expand into adjacent open spaces to allow their indoor business operations to comply with necessary social distancing requirements. Therefore, this Ordinance is

necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared; and

**WHEREAS**, also based on the findings above, the Town Council finds that the orders and regulations in this Ordinance are necessary to protect life and property in the Town and authorizes the Town Manager or his designee to implement the provisions therein, all as provided by Sections 8630 and 8634 of the California Government Code and Sections 2.32.050 and 2.32.060 of the Corte Madera Municipal Code.

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF CORTE MADERA DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1. Recitals**

The foregoing recitals are true and correct and are incorporated into the findings herein.

**Section 2. Temporary Outdoor Use Permit.**

- A. The Town Council authorizes the Town Manager or that person’s designee to create a Temporary Outdoor Use Permit (“TOU Permit”) application to allow temporary outdoor use of private property for business operations, to review applications for such a permit, and to issue such permits with necessary conditions of approval as set forth herein.
- B. The Town Council also authorizes the Town Manager or that person’s designee to develop standard conditions of approval to ensure that the permitted use does not create unsafe conditions, public nuisances, or otherwise negatively affect the health and welfare of the public.
- C. Only those restaurants and other commercial business that are allowed to operate under the State and County regulations applicable at the time the application is submitted are eligible to apply for a TOU Permit. Each TOU application shall be accompanied by a site plan and such other materials as the Town Manager may require to demonstrate compliance with this Ordinance.
- D. The TOU permits shall authorize the revocable and limited use of outdoor dining seating for restaurants or support the permitted uses of the applicant commercial business in private parking lots or other private outdoor areas adjacent to restaurants or other businesses, as specified in the Permit. Provided these conditions are met, the applicant shall not be subject to minimum parking or other zoning requirements specified in the Corte Madera Municipal Code or in a previously granted entitlement, for the duration of the term of the Permit, which shall be reasonably related to the requirements of State, County, or local social distancing requirements and the economic impacts of COVID-19. If the applicant intends to use a shared private parking lot or other private area for expanded outdoor dining seating or other permitted commercial business activity, the applicant must obtain written consent from the property owner(s) of the private parking lot with whom the parking lot or other private area is shared, and such consent shall be provided upon submission of the permit application. There shall be no application fee required for a TOU Permit.

**Section 3. Temporary Encroachments.**

- A. The Town Council desires to allow Town business, including but not limited to restaurants, located in the Commercial and Mixed Use Zones to use Town-owned right of way and other Town-owned outdoor property subject to a limited, revocable Temporary Operations Encroachment Permit (“TOE Permit”). Notwithstanding any requirements of Chapter 12.12 and 12.28 and Section 9.28.020 of the Corte Madera Municipal Code, Resolution 06/2019 or other Town regulation governing Town property to the contrary, the Town Manager or that person’s designee is hereby authorized to issue revocable TOE Permits to allow limited use of Town-owned outdoor property, and limited use of those portions of Town-owned property as authorized by the permit. There shall be no application fee required for a TOE Permit.
- B. Each application for a TOE shall include a site plan. Prior to issuance of the permit, the permittee shall deposit of \$1000 as security that the permittee shall restore the subject property to its previous condition after the permit has expired. The Town Manager or that person’s designee shall have discretion to reduce the amount of this deposit if that person finds that the activities authorized by the TOE Permit do not reasonably have the potential to require such restoration.
- C. No TOE Permit shall authorize closure of any Town-owned street. All permits must provide that the permittee indemnify, defend and hold the Town harmless from any costs, claims, damages, losses or liabilities, including, without limitation, attorneys’ fees and other costs of litigation, that may arise from the permittee’s exercise of the TOE Permit. Prior to issuance of the permit, the permittee shall provide evidence of insurance as required by the Town Manager or that person’s designee. The Permit application shall be prepared by and subject to the approval of the Town Manager or that person’s designee as to substance, and by the Town Attorney as to form and legal requirements.

**Section 4. General Provisions.**

- A. The Town Manager or that person’s designee shall develop standard conditions of approval to ensure that the uses and encroachments permitted under this Ordinance do not obstruct pedestrian walkways or vehicular traffic.
- B. All Permits authorized by this Ordinance are subject to compliance with operational and safety provisions established by the Town Manager or that person’s designee, applicable State and County health orders, applicable regulations of the Department of Alcohol and Beverage Control, the Fire Code, all applicable health and safety regulations and in compliance with the Americans Disability Act and State accessibility requirements.
- C. The Town Manager or that person’s designee shall have sole discretion to grant a permit under this Ordinance. No otherwise non-permitted use or encroachment may commence until the Town Manager or that person’s designee has issued a permit. Any permittee’s violation of its permit’s conditions of approval shall be subject to the Code Enforcement provisions of the Corte Madera Municipal Code.

**Section 5. Expiration of Ordinance and Temporary Permits.**

This Ordinance, and the permits authorized herein, shall expire on November 16, 2020 unless revoked sooner by the Town Council by resolution upon a determination by the Town Council that the permits authorized herein are no longer necessary to accomplish the purposes of this Ordinance. Any resolution of the Town Council that revokes this Ordinance before November 16, 2020, must require that the Town

Manager or that person's designee so notify all holders of a TOU Permit and TOE Permit under this Ordinance and provide no fewer than ten days for permittees to revise their operations and remove any improvements authorized by the permits.

**Section 6. CEQA.**

The Town Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance, and the prohibitions established hereby, may have a significant effect on the environment, because the Ordinance only provides for temporary uses of already developed open space. It is therefore not subject to the California Environmental Quality Act review pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations. The Town Council hereby further finds that the uses authorized by this Ordinance are minor public or private alterations in the condition of land which do not involve removal of healthy, mature, scenic trees. Therefore, the Ordinance is exempt from California Environmental Quality Act review pursuant to Title 14, Chapter 3, Section 15304(e) of the California Code of Regulations.

**Section 7. Severability.**

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

**Section 8. Savings Clause.**

Neither the adoption of this Ordinance nor the repeal or amendment by this Ordinance of any ordinance or part or portion of any ordinance previously in effect in the TOWN, or within the territory comprising the TOWN, shall in any manner affect the prosecution for the violation of any ordinance, which violation was committed prior to the effective date of this Ordinance, nor be construed as a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinances.

**Section 9. Effective Date.**

This urgency Ordinance shall go into effect immediately upon adoption by the affirmative votes of at least four members of the Town Council, and shall remain in effect as set forth in Section 5 above. A summary of this ordinance shall, within fifteen (15) days after adoption, be published in accordance with Section 36933 of the Government Code of the State of California with the names of the Town Councilmembers voting for and against it.

**THE FOREGOING URGENCY ORDINANCE** was adopted at a special meeting of the TOWN Council of the TOWN of CORTE MADERA on this on the 9<sup>th</sup> day of June, 2020 by the following vote:

AYES: Councilmembers:  
NOES: Councilmembers:  
ABSENT Councilmembers:  
ABSTAIN: Councilmembers:

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ELI BECKMAN  
MAYOR OF THE TOWN OF CORTE MADERA

ATTEST:

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REBECCA VAUGHN  
TOWN CLERK