

***DOCKET ITEM #6******Zoning Text Amendment #2022-00001******Extension of Temporary Program for Business Relief and to Address Public Need Related to COVID-19 and to Delete Language Related to Existing City Ordinances***

Issue: Extension of Temporary Program for Business Relief and to Address Public Need Related to COVID-19 and to Delete Language Related to Existing City Ordinances	Planning Commission Hearing:	March 1, 2022
	City Council Hearing:	March 12, 2022
Description: Extension of Temporary Program for Business Relief and to Address Public Need Related to COVID-19 to June 30, 2022. (A) Initiation of a Text Amendment; and (B) Public Hearing and consideration of a Text Amendment to extend the expiration of an existing temporary program for business relief from April 1, 2022 to June 30, 2022 and to delete language related to existing City ordinances.		
Staff: Karl Moritz, Director, Department of Planning & Zoning Christina Zechman Brown, Deputy City Attorney Katie North, Division Chief, Department of Transportation and Environmental Services Ann Horowitz, Principal Planner, Department of Planning & Zoning		
Staff recommendation: Staff recommends that the Planning Commission INITIATE and recommends APPROVAL of the text amendment.		

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ORDINANCE BACKGROUND

In October 2020, The Planning Commission initiated and recommended approval of Zoning Text Amendment #2020-00008 – *Temporary Program for Business Relief and to Address Public Need Related to COVID-19*. The City Council approved Zoning Text Amendment #2021-00008 in September 2021 to extend the expiration date from January 1, 2022 to April 1, 2022.

The text amendment codified emergency initiatives put into place to support small businesses during the pandemic. The initiatives included:

- Allowing all restaurants to provide delivery service and pick-up service. Delivery vehicles and customer pick-ups may use on-street parking subject to posted parking requirements.
- Hours-of-operation regulations have been suspended for restaurants, convenience stores, catering operations and automobile service stations (gasoline stations).
- Allowing restaurants and retail establishments to vend on adjacent sidewalks or parking lots.
- Suspension of local restrictions on alcohol sales, including off-premises alcohol sales and delivery restrictions.
- In addition to the current program, which allows participants in the King Street Outdoor Dining program to have outdoor dining on sidewalks under certain guidelines, participants will also be permitted to set up outdoor dining in parking spaces outside of their businesses.
- In all other areas of the City, outdoor dining is permitted on restaurant property and in the public right-of-way (sidewalks, parking spaces, parking lots) where it will not detrimentally impact adjacent uses.
- Restaurant operators may use off-street spaces located on the same property for outdoor dining where it will not detrimentally impact adjacent uses.
- Retail businesses may request the use of sidewalks, on-street parking spaces, and privately-owned parking lots and spaces to display their products and conduct sales, where it will not detrimentally impact adjacent uses.
- Health and fitness business operators may use sidewalks, privately-owned parking lots and spaces and on-street parking spaces to offer classes and provide access to fitness equipment, where it will not detrimentally impact adjacent uses.

The approved ordinance number 5372 is attached and provides the exact language of each provision.

ORDINANCES FOR PERMANENT BUSINESS PROGRAMS

The City Council approved a series of ordinances between 2020 and 2021 to make permanent several of the emergency business measures allowed on a temporary basis through regulatory waivers in ordinance number 5313 and extended under 5372. It recognized, in its support of a

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September 2020 Zoning Text Amendment for Business Practical Updates, the economic benefits for businesses and the low potential for neighborhood impacts associated with easing certain Special Use Permit restrictions for restaurants, such as allowing off-premises alcohol sales and an unlimited number of delivery vehicles through SUP administrative approval. In response to widespread community and business support for the continuation of outdoor dining and retail in on-street parking spaces and on sidewalks, City Council approved a series of Zoning Ordinance and City Code text amendments in October 2021 to permanently close the 100 block of King Street and allow for the uses to operate similarly as permitted through the temporary outdoor programs. Requirements for permanent business use of on-street parking spaces, renamed as commercial parklets, were approved by the Traffic and Parking Board on November 15, 2021. The process for parklet approval includes an application, meeting with City staff, notification to neighboring businesses and property owners, and construction of decking which is flush with the sidewalk and curb.

PROPOSED TEXT AMENDMENT

As the April 1 temporary program expiration drew near, staff learned from the business community that it could use more time to transition from the temporary business programs to the permanent ones, especially as it expended added effort and financial resources to stay viable during the onset of the Omicron variant. The proposed extension in this ordinance to June 30 aligns with the recently extended date of the City's declaration of local emergency and would provide restaurants and retailers the benefit of more time to submit applications for commercial parklets and construct the necessary decking for those who choose to continue use of on-street parking spaces. Restaurants that availed themselves of more dining on sidewalks or in private parking lots may find they need to apply for amendments to their SUPs, requiring an application and a minimum 30-day turnaround for administrative approval.

In addition to the request for an extension of the business relief expiration date, staff proposes amendments to the ordinance related to waivers of certain City regulations that are no longer required due to the 2020-2021 ordinances, which changed regulatory requirements in the City Code and Zoning Ordinance and made several temporary business relief programs permanently available.

As outlined, staff is proposing changes to the existing ordinance to amend:

- Section 1 Change the expiration date from April 1, 2022 to June 30, 2022;
- Section 2 Delete the waiver allowing restaurants to operate delivery services without amendments to SUPs given that City ordinance permits restaurants to permanently use delivery vehicles without an SUP amendment;
- Section 4(b) Delete the waiver allowing retail establishments to vend on adjacent sidewalks as the City code permits a by-right encroachment for sidewalk retail use;

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- Section 5: Delete the waiver allowing restaurants to offer off-premises alcohol sales as City ordinance allows restaurants to offer the service without an SUP amendment;
- Section 6(c): Amend the waiver to recognize that retail vending on sidewalks is a permitted encroachment and to acknowledge that restaurants and retail establishments may encroach in public parking spaces during the temporary program for business relief;
- Section 6(e) Amend the waiver for temporary outdoor programs for retail uses by deleting reference to sidewalks as City ordinance allows retail displays and sales on a sidewalk as a by-right use and a permitted encroachment. In addition, delete reference to previous social distancing requirements and maintaining a five-foot continuous sidewalk width, which is required in the Zoning Ordinance;
- Section 6(f): Given that fitness uses did not actively participate in the temporary outdoor business expansion program, delete the waiver of City regulations to allow these businesses to operate on sidewalks, in on-street parking spaces and in private parking lots. Further, the permanent commercial parklet program includes only restaurant and retail uses for the permanent use of parking spaces as fitness businesses did not demonstrate an interest; and
- Section 10: Delete the waiver to allow the temporary closure of the 100 block of King Street as City Council approved an ordinance to permanently close the block to traffic.

Attachments:

Attachment #1: Approved Ordinance #5372 with markup showing proposed amendments of Sections 1, 2, 4(b), 5, 6(c), 6(e), 6(f), 10.

ATTACHMENT 1

ORDINANCE NO. 5372

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. The regulations herein are temporary and are being put in place to address the extraordinary circumstances caused by the COVID 19 pandemic on local businesses. The ordinance will expire on ~~April 1~~ June 30, 2022, except for Sections 6(g) and 7 as indicated therein.

Section 2. *Restaurant Deliveries and Pick-up.* ~~Notwithstanding the requirements of Section 11-500 of the Zoning Ordinance, restaurants may provide delivery service and pick-up service without amending current special use permits or obtaining new special use permits. Delivery vehicles and customer pick-ups may use on-street parking subject to posted parking requirements.~~

Section 3. *Hours of Operation.* Notwithstanding the requirements of Section 11-500 of the Zoning Ordinance, the hours-of-operation for restaurants, convenience and grocery stores, catering operations and automobile service stations (gasoline stations) may be modified without amending current special use permits or obtaining new special use permits.

Section 4. *Sidewalk/Parking Lot Vending.*

(a) Notwithstanding the requirements of Section 7-1500 of the Zoning Ordinance, restaurants and retail establishments are permitted to vend on adjacent sidewalks or parking lots. Vending is limited to the placement of orders and customer pick-up. To the extent required, establishments must put in place limitations in compliance with the most current health and safety standards.

(b) A temporary exception to Section 5-2-29 of the City Code is hereby authorized to allow restaurants ~~and retail establishments~~ to vend on adjacent sidewalks pursuant to Section 4(a) above.

~~**Section 5.** *Off Premises Alcohol Sales.* Notwithstanding the requirements of Section 11-500 of the Zoning Ordinance, local restrictions on alcohol sales are suspended, including off premises alcohol sales and delivery restrictions without having the amend a current special use permit or obtain a new special use permit. Businesses remain subject to all VABC licensure requirements.~~

Section 6. *Alexandria Outdoor Business Expansion Program.*

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(a) Within the King Street Outdoor Dining (KSOD) area

Restaurants within the KSOD may continue to utilize the KSOD program in Section 6-800 of the Zoning Ordinance and comply with the applicable guidelines therein.

In addition to the program in Section 6-800 of the Zoning Ordinance, restaurants may set up outdoor dining in parking spaces outside of their businesses if:

- All current health and safety standards are complied with;
- A current certificate of insurance is submitted to the Department of Planning and Zoning (P&Z);
- For a restaurant without a current permit for the KSOD program, an application must be submitted to and approved by P&Z;
- Participants comply with modified guidelines of the Parklet Program, including the location of parking spaces for outdoor dining away from corners or not on streets with a high traffic volume; and
- The year-round outdoor storage of dining furniture will also be permitted whether the restaurant is open or closed.

There are no fees for this approval.

(b) All areas outside the KSOD boundaries

Notwithstanding the requirements of Section 11-513 of the Zoning Ordinance, outdoor dining is permitted on restaurant property and in the public right-of-way (sidewalks, parking spaces, parking lots) where it will not detrimentally impact adjacent uses. Use will be allowed upon review and approval by staff from the P&Z, Transportation and Environmental Services (T&ES), Health, Fire and Police departments of an application.

An application must be submitted to P&Z including:

- The proposed locations and square footage for outdoor dining
- number of seats;
- If the public right of way will be used, a current certificate of insurance must be submitted to P&Z to be eligible;
- If on private land not controlled by the operator, the operator must indicate permission of the property owner; and
- An explanation of compliance with specific criteria outlined below;

Approval Criteria:

- Restaurants may use parking spaces in front of their business, adhering to the modified guidelines of the Parklet Program, including the location of parking spaces for outdoor dining away from corners or not on streets with a high traffic volume.
- Restaurant seating must be arranged in accordance with current health and safety standards.

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- Restaurant operators must request that T&ES install traffic safety measures such as wheel stops and flex posts for outdoor dining areas in parking spaces in the public right-of-way.
- Outdoor dining on sidewalks must allow for at least five feet of continuous pedestrian access.
- Outdoor dining hours must be the same as approved in the restaurant's special use permit.
- Live entertainment is not permitted.
- Liability insurance certificate required for use of public right-of-way.

There are no fees for this approval.

(c) A temporary exception to Section 5-2-29 of the City Code is hereby authorized to allow restaurants ~~and retail establishments~~ to have outdoor dining on adjacent sidewalks and restaurants and retail establishments to use public parking spaces pursuant to Section 6(b) above.

(d) Outdoor dining in off-street parking spaces on private property
Notwithstanding the requirements of Section 8-200(A)(17) and 11-513 of the Zoning Ordinance, restaurant operators may use off-street spaces located on the same property for outdoor dining where it will not detrimentally impact adjacent uses. Use will be allowed upon review and approval by staff from the P&Z, T&ES, Health, Fire and Police departments of the letter agreement.

A letter agreement must be submitted to P&Z with the following information:

- Proposed locations for outdoor dining,
- Number of seats,
- Number of parking spaces used, and
- Compliance with specific criteria outlined below.

Approval Criteria:

- Restaurant seating must be arranged in accordance with current health and safety standards.
- Outdoor dining hours must be the same as approved in the restaurant's special use permit.
- Live entertainment is not permitted.

There are no fees for this approval.

(e) Retail Uses

Notwithstanding the requirements of Sections 5-2-29, 5-8-3(f), and 10-2-24 of the City Code and Sections 7-1500 and 8-200(A)(16) of the Zoning Ordinance, retail businesses may request the use ~~of sidewalks, on-street parking spaces, and privately-owned parking lots and spaces to~~

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display their products and conduct sales, where it will not detrimentally impact adjacent uses. Use will be allowed upon review and approval by staff from the P&Z, T&ES, Health, Fire and Police departments of the required information.

The following must be submitted to P&Z:

- Proposed locations and square footage for outdoor space;
- A current certificate of insurance; and
- A letter of agreement with conditions ensuring compliance with the specific criteria outlined below.

Approval Criteria:

- Retail operators may use parking spaces in front of their business, adhering to the modified guidelines of the Parklet Program, including the location of parking spaces for outdoor retail away from corners or not on streets with a high traffic volume.
- Retail operators must request that T&ES install traffic safety measures such as wheel stops and flex posts for outdoor retail areas in parking spaces in the public right-of-way.
- ~~Social distancing requirements must be met.~~
- ~~Outdoor display on sidewalks must allow for at least five feet of continuous pedestrian access.~~
- Live entertainment is not permitted.
- Liability insurance certificate is required for use of public right-of-way.
- If on private land not controlled by the operator, the operator must indicate permission of the property owner.

There are no fees for this approval.

~~(f) Health and fitness uses on sidewalks, in off street parking spaces on private property and in on street parking spaces~~

~~Notwithstanding the requirements of Sections 8-200(A)(16), 8-200(A)(18), and 11-513 of the Zoning Ordinance, health and fitness business operators may request the use of sidewalks, privately owned parking lots and spaces and on street parking spaces to offer classes and provide access to fitness equipment, where it will not detrimentally impact adjacent uses. Use will be allowed upon review and approval by staff from the P&Z, T&ES, Health, Fire and Police departments of the required information.~~

~~The following must be submitted to P&Z:~~

- ~~• Proposed locations and square footage for outdoor space;~~
- ~~• A current certificate of insurance; and~~
- ~~• A letter of agreement with conditions ensuring compliance with the specific criteria outlined below.~~

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Approval Criteria:

- ~~Health and fitness use operators may use sidewalks and parking spaces in front of their business, adhering to the modified guidelines of the Parklet Program, including the location of parking spaces for fitness uses away from corners or not on streets with a high traffic volume.~~
- ~~Business operators must request that T&ES install traffic safety measures such as wheel stops and flex posts for outdoor fitness areas in parking spaces in the public right of way.~~
- ~~Current health and safety standards must be met.~~
- ~~Outdoor activities on sidewalks must allow for at least five feet of continuous pedestrian access.~~
- ~~Live entertainment is not permitted.~~
- ~~Liability insurance certificate is required for use of public right of way.~~
- ~~If private land is not controlled by the operator, the operator must indicate permission of the property owner.~~

~~There are no fees for this approval.~~

(g) Retractable Awnings in the Old and Historic Alexandria District and in the Parker Gray-Historic District

Notwithstanding Section 10-103(A) and 10-203(A), retractable awnings may be administratively approved and are subject to the criteria listed in the Old and Historic Alexandria District and Parker-Gray Historic District Design Guidelines awning chapter. Permits issued pursuant to this section will expire on or before November 1, 2023, unless an extension is approved by the Board of Architectural Review.

(h) Building Permit Fees

Notwithstanding Resolution Number 2769, building permit fees are not being charged for proposals associated with the outdoor business operations of restaurants, retail stores and fitness uses. Businesses are eligible with P&Z approval for temporary outdoor business expansions or the KSOD program or City Council approval of a special use permit for outdoor dining.

(i) Fire Prevention Permit Fees

Notwithstanding Ordinance Number 5150, fire prevention permit fees are not being charged for proposals associated with the outdoor business operations of restaurants, retail stores and fitness uses. Businesses are eligible with P&Z approval for temporary outdoor business expansions or the KSOD program or City Council approval of a special use permit for outdoor dining.

Section 7. Tolling of Validity Periods for Certain Land Use Permits.

Notwithstanding Sections 10-206, 11-418 and 11-506 of the Zoning Ordinance, the validity period for development site plans, special use permits, development special use permits,

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certificate of appropriateness, and permits to demolish shall be extended for the number of months as follows:

- For applications approved prior to March 14, 2020: 12 months or the number of months that the City's Declaration of Local Emergency is in place, whichever is longer
- For applications approved March 14, 2020 or after: the number of months beginning on the approval date through the expiration of the City's Declaration of Local Emergency.

Section 8. *Transportation Management Plan (TMP) Survey.* The annual survey required by Section 11-707(B) will not be required until the termination of this temporary ordinance.

Section 9. *Designation of Parking Spaces for curbside pick up.* Notwithstanding Section 5-8-3(f) of the City Code, the City staff will continue to designate public parking spaces as curbside pick-up areas. Spaces will be chosen based on proximity to restaurants and retail uses and will minimize impacts on surrounding properties.

~~**Section 10.** *Closure of 100 block of King Street.* Notwithstanding Section 5-8-3(f), the closure of the 100 block of King Street to vehicular traffic will continue.~~

Section 11. *City Emergency Use.* Notwithstanding the definition of public building in Section 1-125 of the Zoning Ordinance, any special use permit issued for the use of a city building, park or facility, or any Zoning Ordinance section or current special use permit that limits uses on private property, the City is authorized to use its facilities and those it obtains permission from private property owners to utilize to address public needs in response to the COVID-19 emergency. Such uses will be deemed permitted uses in that zone related to the public use. Locations will be chosen to minimize impacts on surrounding properties.