

City of Capitola Council Meeting Agenda



Mayor: Yvette Brooks
Vice Mayor: Sam Storey
Council Members: Jacques Bertrand
Margaux Keiser
Kristen Petersen

WEDNESDAY, DECEMBER 1, 2021

SPECIAL MEETING - 6 PM

THIS MEETING IS BEING HELD TO CONSIDER ITEMS THAT WERE NOT DISCUSSED DURING THE NOVEMBER 23 REGULAR MEETING DUE TO TECHNICAL CONECTIVITY ISSUES

SPECIAL MEETING OF THE CAPITOLA CITY COUNCIL - 6 PM

All correspondences received prior to 5:00 p.m. on the Tuesday preceding a City Council Special Meeting will be distributed to the City Council to review prior to the meeting. Information submitted after 5 p.m. on that Tuesday may not have time to reach the City Council, nor be read by them prior to consideration of an item. All matters listed on the Special Meeting of the City Council Agenda shall be considered as Public Hearings.

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

Council Members Kristen Petersen, Jacques Bertrand, Margaux Keiser, Sam Storey, and Mayor Yvette Brooks

2. ADDITIONAL MATERIALS

Additional information submitted to the City after distribution of the agenda packet.

3. ADDITIONS AND DELETIONS TO THE AGENDA

4. STAFF / CITY COUNCIL COMMENTS

City Council Members/Staff may comment on matters of a general nature or identify issues for staff response or future council consideration. No individual shall speak for more than two minutes.

5. GENERAL GOVERNMENT / PUBLIC HEARINGS

All items listed in "General Government" are intended to provide an opportunity for public discussion of each item listed. The following procedure pertains to each General Government item: 1) Staff explanation; 2) Council questions; 3) Public comment; 4) Council deliberation; 5) Decision.

CAPITOLA CITY COUNCIL SPECIAL MEETING AGENDA
December 1, 2021

- A. Outdoor Dining Ordinance
RECOMMENDED ACTION:
1. Consider Planning Commission recommendations regarding the draft outdoor dining ordinance and either:
 - a. Provide direction on the draft ordinance and consider a schedule for a first reading and adoption, or
 - b. Introduce by title only, waiving further reading of the text, an ordinance of the City Council of the City of Capitola repealing and replacing Municipal Code Sections 17.96.170 and amending Municipal Code Section 17.120.030, related to outdoor dining in the public right of way; or
 2. Consider options to extend, terminate, or modify the temporary outdoor dining program, currently scheduled to end on January 3, 2022.
- B. Mandatory Organics Waste Disposal Reduction Ordinance
RECOMMENDED ACTION: Introduce for first reading, by title only, waiving further reading of the text, an ordinance repealing Capitola Municipal Code Chapter 8.04: Garbage and enacting Chapter 8.04: Solid Waste and Edible Food Recovery.
- C. New State of California Housing Legislation and Community Development Department Housing Workplan
RECOMMENDED ACTION: Accept staff presentation on recent housing legislation and the Community Development Department's workplan.

6. ADJOURNMENT

NOTICE OF REMOTE ACCESS

In accordance with California Senate Bill 361, the City Council meeting is not physically open to the public and in person attendance cannot be accommodated.

To watch:

- Online <http://capitolaca.igam2.com/Citizens/Default.aspx>
- Spectrum Cable Television channel 8

To join Zoom:

- Join the Zoom Meeting by clicking the following link:
<https://us02web.zoom.us/j/85216697460?pwd=bXZVRnNOM2lwUmNPVIJFK21VYIRRZz09>
- If prompted for a passcode, enter **026137**
- **-OR-** With a landline or mobile phone, call one of the following numbers:
 - **1 669 900 6833**
 - **1 408 638 0968**
 - **1 346 248 7799**
- Enter the meeting ID number: **852 1669 7460**
- When prompted for a Participant ID, press #

To submit public comment:

When submitting public comment, one comment (via phone **or** email, not both), per person, per item is allowed. If you send more than one email about the same item, the last received will be read.

- Zoom Meeting (Via Computer or Phone) Link:
 - IF USING COMPUTER:

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- § Use participant option to “raise hand” during the public comment period for the item you wish to speak on. Once unmuted, you will have up to 3 minutes to speak
- IF CALLED IN OVER THE PHONE:
 - § Press *9 on your phone to “raise your hand” when the mayor calls for public comment. Once unmuted, you will have up to 3 minutes to speak
- Send Email:
 - During the meeting, send comments via email to publiccomment@ci.capitola.ca.us
 - § Emailed comments on items will be accepted after the start of the meeting until the Mayor announces that public comment for that item is closed.
 - § Emailed comments should be a maximum of 450 words, which corresponds to approximately 3 minutes of speaking time.
 - § Each emailed comment will be read aloud for up to three minutes and/or displayed on a screen.
 - § Emails received by publiccomment@ci.capitola.ca.us outside of the comment period outlined above will not be included in the record.

Note: Any person seeking to challenge a City Council decision made as a result of a proceeding in which, by law, a hearing is required to be given, evidence is required to be taken, and the discretion in the determination of facts is vested in the City Council, shall be required to commence that court action within ninety (90) days following the date on which the decision becomes final as provided in Code of Civil Procedure §1094.6. Please refer to code of Civil Procedure §1094.6 to determine how to calculate when a decision becomes “final.” Please be advised that in most instances the decision become “final” upon the City Council’s announcement of its decision at the completion of the public hearing. Failure to comply with this 90-day rule will preclude any person from challenging the City Council decision in court.

Notice regarding City Council: The City Council meets on the 2nd and 4th Thursday of each month at 7:00 p.m. (or in no event earlier than 6:00 p.m.), in the City Hall Council Chambers located at 420 Capitola Avenue, Capitola.

Agenda and Agenda Packet Materials: The City Council Agenda and the complete Agenda Packet are available for review on the City’s website at www.cityofcapitola.org and at Capitola City Hall and at the Capitola Branch Library, 2005 Wharf Road, Capitola, prior to the meeting. Agendas are also available at the Capitola Post Office located at 826 Bay Avenue, Capitola. Need more information? Contact the City Clerk’s office at 831-475-7300.

Agenda Materials Distributed after Distribution of the Agenda Packet: Pursuant to Government Code §54957.5, materials related to an agenda item submitted after distribution of the agenda packet are available for public inspection at the Reception Office at City Hall, 420 Capitola Avenue, Capitola, California, during normal business hours.

Americans with Disabilities Act: Disability-related aids or services are available to enable persons with a disability to participate in this meeting consistent with the Federal Americans with Disabilities Act of 1990. Assisted listening devices are available for individuals with hearing impairments at the meeting in the City Council Chambers. Should you require special accommodations to participate in the meeting due to a disability, please contact the City Clerk’s office at least 24-hours in advance of the meeting at 831-475-7300. In an effort to accommodate individuals with environmental sensitivities, attendees are requested to refrain from wearing perfumes and other scented products.

Televised Meetings: City Council meetings are cablecast “Live” on Charter Communications Cable TV Channel 8 and are recorded to be rebroadcasted at 8:00 a.m. on the Wednesday following the

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meetings and at 1:00 p.m. on Saturday following the first rebroadcast on Community Television of Santa Cruz County (Charter Channel 71 and Comcast Channel 25). Meetings are streamed “Live” on the City’s website at www.cityofcapitola.org by clicking on the Home Page link “**Meeting Video.**” Archived meetings can be viewed from the website at any time.



STAFF REPORT

TO: PLANNING COMMISSION
 FROM: COMMUNITY DEVELOPMENT
 DATE: DECEMBER 1, 2021
 SUBJECT: **Outdoor Dining Ordinance**

RECOMMENDED ACTION:

1. Consider Planning Commission recommendations regarding the draft outdoor dining ordinance and either:
 - a. Provide direction on the draft ordinance and consider a schedule for a first reading and adoption, or
 - b. Introduce by title only, waiving further reading of the text, an ordinance of the City Council of the City of Capitola repealing and replacing Municipal Code Sections 17.96.170 and amending Municipal Code Section 17.120.030, related to outdoor dining in the public right of way; or
2. Consider options to extend, terminate, or modify the temporary outdoor dining program, currently scheduled to end on January 3, 2022.

OVERVIEW: The City is considering an update to the zoning code to permanently allow outdoor dining within the public right-of-way and on private property with the appropriate City-issued permit. Currently, outdoor dining is permitted in the public right-of-way pursuant to a temporary policy adopted pursuant to the City's emergency authority. That policy is set to expire on January 3, 2022.

BACKGROUND: In June of 2020, in response to the COVID-19 pandemic and the ensuing social distancing orders, the City issued temporary permits to local restaurants to provide outdoor dining. The existing outdoor dining COVID-19 temporary use permits are valid through January 3, 2022.

On April 22, 2021, City Council directed staff to develop a program for permanent outdoor dining. Over the course of the next several months, the City Council held two additional hearings regarding a permanent outdoor dining program, received results from two public surveys, and provided direction on key elements of a program to staff.

On September 30, 2021, the public review draft of the outdoor dining ordinance was published on the City website.

On October 7, 2021, the Planning Commission reviewed the draft outdoor dining ordinance, provided staff with direction, and continued the public hearing to November 4, 2021. The Planning Commission requested additional public notice beyond the required published notice in a local newspaper. The City sent postcards to all residents and businesses within the Village. The City posted public notice throughout the Village and on the existing temporary outdoor dining decks.

On November 7, 2021, the Planning Commission provided direction on the draft ordinance but ultimately recommend the Council delay adoption of the ordinance until the City has a prototype design in place.

DISCUSSION: At the November 7th meeting, the Planning Commission recommended significant changes to that draft ordinance. Staff has thus brought two draft ordinances to the Council this evening. Draft #1 includes all revisions recommended by the Planning Commission. Draft #2 includes only those recommended changes that staff believes are consistent with the Council's original direction. The following chart summarizes the Council's direction and both draft ordinances.

Program Component	Prior Council Direction	Draft Ordinance #1 (Planning Commission Recommendation)	Draft Ordinance #2 (Prior Council Direction)
Maximum number of street parking spaces	25	25	Same as Draft Ordinance #1
Location of Sidewalk Dining	Monterey Avenue and on the Wharf	Removed all sidewalk dining	Monterey Avenue and the Wharf
Permit for Sidewalk Dining	N/A	Removed all sidewalk dining	Requires design permit from Planning Commission
Location of Street Dining Decks	Esplanade, Monterey Avenue, Capitola Avenue, and San Jose Avenue	Allow on Esplanade and San Jose Avenue. Remove Monterey Avenue and Capitola Avenue	Allow on Esplanade, Monterey Avenue, Capitola Avenue, and San Jose Avenue.
Permit for Street Dining Decks	Prototype – Administrative Permit by staff Custom Design – Design Permit by Planning Commission	Prototype –Administrative Permit by staff Custom Design – Design Permit by Planning Commission	Same as Draft Ordinance #1
Bicycle Parking	Require 2 bicycle parking spaces within the street dining deck design for each automobile parking space removed.	Added in-lieu fee alternative to be used for a central public bicycle parking location in village. If the central parking location is within a vehicle parking spaces, the spaces utilized are counted toward the 25-space maximum	Same as Draft Ordinance #1
Sound	Prohibit amplified sound	Prohibit amplified sound and all music	Same as Draft Ordinance #1
Signs	No additional signs allowed for outdoor dining.	Allow one business identification sign and one menu sign. Size should be determined within the	Allow one business identification sign and one menu sign. Maximum size of two

		prototype design.	square feet for each sign.
Materials	Require high quality, durable materials	Added objective guidance of acceptable and discouraged materials 17.96.170.G Allowed materials include finished or painted wood, glass, ornamental steel or iron, and decorative masonry. Plastic, fabric, woven bamboo, or chain link/wire fencing materials are discouraged.	Same as Draft Ordinance #1
Activated Space	N/A	Require restaurant be open a minimum of five days per week and utilize outdoor dining while open, weather permitting	Same as Draft Ordinance #1
Stormwater Requirements	N/A	Added "Street dining decks shall not block the drainage flow along the gutter line or access into any drain inlet or other drainage or stormwater facility."	Same as Draft Ordinance #1
Utilities		Added "Outdoor dining shall not interfere with utility boxes, water hydrants, storm drains, and all other related facilities"	Same as Draft Ordinance #1
Maintenance	Require the outdoor dining areas be maintained	Added "Trash shall be picked up and properly disposed of; flower boxes and planters shall contain live, healthy vegetation; and all tables, chairs, equipment, and structures must be kept clean and operational."	Same as Draft Ordinance #1
Administrative Policy	Allow City Manager to authorize outdoor dining administrative policy	Require City Council authorization of any changes to the outdoor dining admin policy.	Same as Draft Ordinance #1
Outdoor Dining on Private Property	No direction provided. CUP required for outdoor dining on private property	Remove Section 17.96.175 for outdoor dining on private property	Same as Draft Ordinance #1

Enforcement: The original draft ordinance included a procedure for enforcement. The Planning Commission recommended that portions of the enforcement section be removed from the ordinance, and instead included in the administrative policy. The section on enforcement has been modified to reference applicable sections of code and the administrative policy.

Outdoor Dining on Private Property: The original ordinance added Section 17.96.175 for outdoor dining on private property. The new section required a Conditional Use Permit but did not include specific review criteria for the outdoor dining. The Planning Commission requested the section be removed from the ordinance due to concerns for expanding outdoor dining on private property without the ability to require additional onsite parking and the displacement of existing parking should a property owner suggest having outdoor dining within existing parking spaces.

Business Input: Last May, the City surveyed business owners and the public regarding outdoor dining. Staff presented those results to Council at a hearing on June 24. Based on Council feedback on November 11, Staff will be contacting restaurants on the Esplanade who participate in the temporary outdoor dining program (where City staff surveys have shown low utilization rates) to see if their plans to utilize a potential permanent program have changed since the City's prior business survey. Results of that feedback will be provided at the hearing on November 23.

Blanket Coastal Development Permit: The Coastal Commission allows a blanket coastal development permit (CDP) to act as an overarching permit that can be applied to multiple properties within the coastal zone. Upon Planning Commission approval of a blanket CDP for a prototype design, the blanket CDP would be applicable to any applicant utilizing the prototype design. No additional public hearings will be required for applicants utilizing the prototype design.

Coastal Commission Review and Consistency with the Local Coastal Program (LCP)

The Coastal Commission must certify the outdoor dining ordinance prior to it taking effect in the Coastal Zone. In June, staff began working with Coastal Commission staff to receive early feedback on a future program. The Coastal Commission staff expressed concerns with outdoor dining related to the Coastal Act's goal of maximizing public access and public recreation.

To receive Coastal Commission certification, mitigation for public access concerns raised by Coastal staff should be incorporated into the outdoor dining program. Coastal staff suggested the following measures to help minimize and mitigate the impacts to public access/recreation to the maximum extent feasible:

1. Reduce the overall amount of displaced parking spaces from what was originally permitted under the COVID-19 temporary use permit program.
2. Initiate the program with temporary (i.e., 1-5 year) authorization that requires a Coastal Development Permit (CDP) extension, thereby building in the opportunity to re-evaluate the program once it has been operating, making any changes desired or necessary, and ensuring LCP/Coastal Act consistency.
 - a. Issue one CDP for the entire outdoor dining program as opposed to individual CDPs for each business.
3. Use funds from outdoor dining permits to reinvest in coastal access including the shuttle program, coastal park beautification, coastal access signage, new bike racks, sidewalk improvements, maintenance of existing parking, etc.

The draft ordinance incorporates elements that address all Coastal Commission staff suggestions to mitigate impacts to public access and recreation and ensure the ordinance is consistent with the City's LCP. The number of outdoor dining spaces is capped at 25, which is less than half the number of spaces allowed under the COVID-19 temporary use permit program. As directed by City Council, the maximum encroachment permit term is three years.

This will allow enough time to see how the program is operating and adjust as necessary. The ordinance includes a requirement that no less than 50 percent of revenues received from outdoor dining permit fees be utilized for coastal access programs, maintenance, and improvements. The City currently allocates more than \$800,000 per year for coastal access-related programs. If all 25 spaces are ultimately permitted for outdoor dining, the program would generate \$85,000 per year, and could be used to fund roughly 11% of the City’s annual coastal access-related expenditures.

Administrative Policy I-36

The outdoor dining will be located within the public right-of-way, an area owned and maintained by the City. The ordinance is accompanied by an administrative policy to provide guidance on how the City will utilize the right-of-way in the Village for outdoor dining, allocate parking spaces, and charge fees. The policy also outlines required permits, and terms for a revokable encroachment permit, including enforcement for violations. There is some overlap between the policy and the ordinance, as the policy will be provided to applicants as an overview of the City’s outdoor dining program. The administrative policy for the Village Outdoor Dining Program is included as Attachment 1.

The following table includes key program elements which are included in the policy:

	Administrative Policy Key Program Elements
Overall Cap	<ul style="list-style-type: none"> • Limit number of on street parking spaces allocated to the program to 25 (~50% of existing) • Limit businesses to parking spaces fronting their businesses
Allocation of Parking Spaces	<ul style="list-style-type: none"> • Lottery System for 25 parking spaces.
Fees	<ul style="list-style-type: none"> • Set City permit fees at zero • Provide no construction assistance to businesses • Charge rent space of \$3,400/parking space per year with annual CPI adjustment
Encroachment Permit Term	<ul style="list-style-type: none"> • 3 years
Maintenance	<ul style="list-style-type: none"> • Provisions requiring the outdoor dining decks be maintained and kept clean. • Unmaintained dining decks would first receive courtesy noticing with elevated enforcement, including fines and removal. Cost of removal will be covered by deposit.
Safety	<ul style="list-style-type: none"> • Engineered safety measures will be incorporated into the prototype designs and be a requirement of any custom design developed.

Next Steps: The outdoor dining ordinance requires Planning Commission recommendation, City Council adoption, and Coastal Commission certification. On November 4, 2021, the Planning Commission provided edits to the draft ordinance but ultimately recommended the City Council delay adoption of the ordinance until a prototype design is in place. The Commissioners were interested in seeing a prototype design prior to adoption to ensure the regulations outlined in the ordinance ultimately support the best design. Areas of concern were the impact of angled parking and whether two bicycles per parking space could be accommodated within the dining

deck design. Staff has requested proposals for a prototype design and anticipates having a first draft design to Planning Commission by February/March of 2022.

At this point, the Council's options include:

1. Direct modifications to either draft ordinance. If any modifications go beyond what the Commission has already considered, the ordinance will need to go back to the Commission for further consideration and recommendation.
2. Hold a the first reading of Draft #1 or Draft #2 of the outdoor dining ordinance. The second reading would be scheduled for December 9. Within this timeline, staff anticipates Coastal Commission certification by March, and a blanket CDP approval by April 2022.
3. Delay further consideration of this item until the prototype design is developed and the Commission has had an opportunity to review the design. At that point, the Commission may wish to make further recommendations regarding the ordinance. Under this option, the Commission would likely provide its further recommendation in April, with ordinance adoption hearings by City Council in May, and Coastal Commission certification in August of 2022. Upon certification, the Planning Commission will review an application for a blanket CDP and design permit for the prototype design, likely in September of 2022.

Temporary Covid-19 Outdoor Use Permits

The temporary Covid-19 outdoor use permits are scheduled to expire on January 3, 2022. During the November 10, City Council meeting, the Council requested the discussion on temporary outdoor dining return with the draft ordinance. The City Council may allow the temporary program to expire or could terminate, extend, or modify the temporary outdoor dining program during the November 24, 2021, hearing.

CEQA

Introducing either draft ordinance qualifies for the Categorical Exemption found at CEQA Guidelines pursuant to Section 15305 (Class 5) and 15311 (Class 11) of the California Environmental Quality Act (CEQA). The Class 5 categorical exemption (Minor Alterations in Land Use Limitations) covers projects that consist of minor alterations in land use limitation in areas with an average slope of less than 20%, which do not result in any changes in land use or density. The Class 11 categorical exemption (Accessory Structures) covers projects that consist of construction or placement of minor structures that are accessory to existing commercial, industrial, or institutional facilities. The introduction of either draft ordinance is consistent with these two exemptions, because the requested action will not result in a direct or reasonably foreseeable change in the environment and because there is no possibility that the activity in question may have a significant effect on the environment.

ATTACHMENTS:

1. DRAFT ORDINANCE 1 Planning Commission Recommendation
2. DRAFT ORDINANCE 2
3. Outdoor Dining in Capitola Village Policy
4. Letter from English Ales
5. Capitola Street Frontage Dining Ordinance Noise Memo

Prepared By: Katie Herlihy

Community Development Director

DRAFT ORDINANCE #1: Planning Commission Recommendation

Note, all Planning Commission recommended edits from the October 7, 2021, and November 4, 2021, are in red.

ORDINANCE NO. XXXX

**AN ORDINANCE OF THE CITY OF CAPITOLA
REPEALING AND REPLACING MUNICIPAL CODE SECTIONS 17.96.170, AND
AMENDING MUNICIPAL CODE SECTION 17.120.030,
RELATED TO OUTDOOR DINING IN THE PUBLIC RIGHT OF WAY**

WHEREAS, the State of California and Santa Cruz County established social distancing requirements in response to the COVID-19 pandemic that prohibited indoor dining at restaurants in Capitola; and

WHEREAS, in response to the pandemic and social distancing orders, the City issued temporary use permits to local restaurants to provide outdoor dining; and

WHEREAS, in 2020 and 2021 approximately 24 restaurants in Capitola were granted temporary use permits under this program to provide outdoor dining; and

WHEREAS, on April 22, 2021, the City Council directed staff to develop a program for permanent outdoor dining and to bring the program back to the Council for review and possible adoption;

WHEREAS, Municipal Code Section 17.96.170 contains existing requirements for temporary sidewalk dining in the public right-of-way; and

WHEREAS, the proposed program for permanent outdoor dining would replace existing Municipal Code Section 17.96.170 with new standards to allow for street dining decks in addition to sidewalk dining;

WHEREAS, the City aims to allow for streamlined approval of prototype street dining decks utilizing a design that has been preauthorized by the Planning Commission.

WHEREAS, the City aims to balance the desire for permanent outdoor dining in the public right-of-way with adequate public parking and coastal access;

WHEREAS, City staff consulted with Coastal Commission staff in the preparation of the Zoning Ordinance amendments to ensure that the proposed program and ordinance would comply with the California Coastal Act and Capitola's Local Coastal Program; and

WHEREAS, pursuant to Vehicle Code section 22507(a), cities may, by ordinance or resolution restrict or otherwise remove parking from City streets during all or certain hours of the day; and

WHEREAS, the proposed Zoning Ordinance amendments to allow for permanent outdoor dining in the public right-of-way qualify for the Exemption found at CEQA Guidelines Section 15305 and 15311; and

WHEREAS, the Planning Commission held a duly noticed public hearing on October 7, 2021,

at which time it reviewed the proposed amendments, considered all public comments on the revisions and related CEQA exemption, and provided a unanimous positive recommendation on the proposed ordinance; and

WHEREAS, based upon the Planning Commission recommendation, the City Council determined that the amendments are consistent with the General Plan and that the revisions would be internally consistent with all other provisions of the Municipal Code.

WHEREAS, the amendments would become a component of Implementation Plan of the City’s Local Coastal Program and is intended to be implemented in a manner that is in full conformance with the California Coastal Act.

BE IT ORDAINED By the City of Capitola as follows:

Section 1. The above findings are adopted and incorporated herein.

Section 2. Section 17.96.170 (Temporary Outdoor Dining) of the Capitola Municipal Code is hereby repealed in its entirety and replaced with Outdoor Dining in Public Right of Way with additions shown as underline and deletions shown with ~~strikethrough~~ to read as follows:

~~17.96.170 Temporary Outdoor Dining
This section establishes requirements for temporary outdoor dining areas located on a public sidewalk or other area within the public right-of-way.~~

- ~~A. **Required Permits.** Temporary outdoor dining within the public right-of-way requires an Administrative Permit and an Encroachment Permit. Temporary outdoor dining may require a Coastal Development Permit as specified by Chapter 17.44 (Coastal Overlay Zone) if any part of the site is located in the coastal zone and the proposed development shall conform with the CDP findings for approval as specified in 17.44.130 (Findings for Approval).~~
- ~~B. **Permitted Zoning Districts.** Temporary outdoor dining within the public right of way is allowed in the Commercial Community (C-C), Commercial Regional (C-R), and Mixed Use, Neighborhood (MU-N) zoning districts. Temporary outdoor dining within the public right of way is not permitted in the Mixed Use Village (MU-V) zoning district.~~
- ~~C. **Standards.** Temporary sidewalk dining shall comply with the following standards.~~
 - ~~1. **Location.** Outside dining is permitted on the public sidewalk:

 - ~~a. When incidental to and part of a restaurant; and~~
 - ~~b. Along the restaurant’s frontage.~~~~
 - ~~2. **Number of Dining Areas.** An indoor restaurant may operate only one outside dining area confined to a single location.~~
 - ~~3. **Safe Passage.**
 - ~~a. Temporary sidewalk dining is permitted only where the sidewalk is wide enough to adequately accommodate both the usual pedestrian traffic in the area and the operation of the outside dining area.~~
 - ~~b. The sidewalk immediately adjacent to the restaurant shall have adequate space to accommodate tables and chairs and shall provide adequate safe passage along the~~~~

~~sidewalk for pedestrian and wheelchair users of the sidewalk. Safe and adequate passage of at least 4 feet in width shall be provided along the sidewalk and from the curb to the sidewalk. No tables or chairs or any other objects shall be placed or allowed to remain on any sidewalk that inhibit such passage.~~

4. **~~Furniture and Signage Location.~~**

- ~~a. Tables and chairs in a sidewalk dining area shall be set back at least 2 feet from any curb and from any sidewalk or street barrier, including a bollard, and at least 8 feet from a bus stop.~~
- ~~b. All outdoor dining furniture, including tables, chairs, umbrellas, and planters, shall be movable.~~
- ~~c. All temporary improvements to separate the outdoor dining area from the sidewalk, such as a railing, shall relate to the architectural design of the primary restaurant structure in color, materials, and scale.~~
- ~~d. Umbrellas shall be secured with a minimum base of not less than 60 pounds.~~
- ~~e. All signs are subject to Chapter 17.80.~~

5. **~~Food and Beverages.~~** ~~The service of alcoholic beverages within the sidewalk dining area requires a Conditional Use Permit, and shall comply with the following requirements:~~

- ~~a. The outside dining area shall be situated immediately adjacent to and abutting the indoor restaurant which provides it with food and beverage service.~~
- ~~b. The outside dining area shall be clearly separate and delineated from the areas of the sidewalk which remains open to pedestrian traffic.~~
- ~~c. One or more signs shall be posted during hours of operation stating that alcohol is prohibited outside of the dining area.~~
- ~~d. The outside dining area shall receive all licenses required for on-site consumption of alcoholic beverages from State authorities.~~

6. **~~Trash and Maintenance.~~**

- ~~a. Storage of trash is prohibited within or adjacent to the sidewalk dining area. All trash and litter shall be removed as it accumulates or otherwise becomes a public nuisance.~~
- ~~b. The sidewalk dining area, including the sidewalk surface and furniture, shall be maintained in a clean and safe condition.~~

7. **~~Hours of Operation.~~** ~~Sidewalk dining may occur between 7 a.m. and 10 p.m. seven days a week. Tables, chairs, other outdoor dining furniture, and all other structures and materials associated with the outdoor dining area shall be removed from the sidewalk and stored indoors at night and when the sidewalk dining area is not in operation.~~

17.96.170 Outdoor Dining in Public Right of Way

A. Purpose. This section establishes standards and permit requirements for outdoor dining in the public right-of-way.

B. Definitions.

1. **Outdoor Dining.** "Outdoor dining" means and includes both sidewalk dining and street dining decks.
2. **Sidewalk Dining.** "Sidewalk dining" means the use of an outdoor sidewalk area within the public-right-of-way, by a private business that is an eating and drinking establishment, for eating and drinking activities.
3. **Street Dining Deck.** A street dining deck means a platform or similar level surface within the public right-of-way and extending beyond the curb and into a roadway or on-street parking area for use by a private business that is an eating or drinking establishment.
 - a. **Custom Street Dining Deck.** A custom street dining deck is a street dining deck designed by the applicant.
 - b. **Prototype Street Dining Deck.** A prototype street dining deck is a street dining deck utilizing a design that has been preauthorized by the Planning Commission.

C. Where Allowed.

1. **Sidewalk Dining.**
 - a. Sidewalk dining is allowed in the MU-N, MU-V, C-C, and C-R zoning districts.
 - b. In the MU-V zoning district, sidewalk dining is allowed only on Monterey Avenue and on the Capitola Wharf **immediately adjacent to the restaurant it serves.**
2. **Street Dining Decks.** Street dining decks are allowed only in the MU-V zoning district **and only on the Esplanade, Monterey Avenue, Capitola Avenue, and San Jose Avenue.**

D. Maximum Number of On-Street Parking Spaces. A maximum of 25 total on-street parking spaces may be used for street dining decks. Spaces shall be allocated by the City Manager in accordance with administrative policies issued pursuant to this section. **On-street parking spaces utilized for in-lieu bicycle parking shall count toward the maximum 25 spaces.**

E. Permits and Approvals.

1. **Required Permits.** Table 17.96-2 shows permits required for sidewalk dining and street dining decks.

Table 17.96-2: Permits Required for Outdoor Dining in Public Right-of-way

Type of Outdoor Dining	Permit Required [2] [3]	Zoning Code Chapter
Sidewalk Dining	Administrative Design Permit	17.116
Street Dining Decks		

Prototype Street Dining Deck [1]	Administrative Permit	17.116
Custom Street Dining Deck	Design Permit	17.120

[1] Prototype dining deck designs are identified in the adopted Village Outdoor Dining Program Administrative Policy No. I-36.

[2] Outdoor dining in the public right-of-way also requires an encroachment permit pursuant to Municipal Code Chapter 12.56. Minor encroachment permits for applications for prototype street dining decks may be issued by the Public Works Director and major encroachment permits for custom street dining decks may be issued by the Planning Commission.

[3] A street dining deck or sidewalk dining area located in the coastal zone may require a coastal development permit (CDP) as specified in Chapter 17.44 (Coastal Overlay Zone).

2. **Administrative Permit Standards.** All applications for an Administrative Permit are reviewed and acted on by the Community Development Director and must comply with the following standards:
 - a. ~~Any included~~The street dining deck must be designed consistent with a prototype design approved by the Planning Commission.
 - b. ~~The sidewalk dining area or~~The street dining deck must comply with all applicable requirements of this section, the Zoning Code, and all other applicable laws, administrative policies, rules, and regulations.
 - c. If located in the coastal zone, the ~~sidewalk dining area or~~ street dining deck is consistent with the Local Coastal Program and will not adversely impact coastal resources, coastal access, and coastal views.
 - d. The street dining deck ~~or sidewalk dining area~~ must utilize high-quality, durable materials that are compatible with surrounding development and can withstand inclement weather.
 - e. ~~A prototype~~The street dining decks must use a design authorized by a valid coastal development permit.

3. **Design Permit Findings.** All applications for a Design Permit are viewed and acted on by the Planning Commission. Notwithstanding Municipal Code Section 17.120.080 (Findings for Approval), ~~for Design Permits issued pursuant to this section, the Planning Commission shall make the following findings and need not make those findings set forth in section 17.120.080~~the Planning Commission shall not make the Design Permit findings in Section 17.120.080, and instead shall make the following findings:
 - a. The ~~sidewalk dining area or~~ street dining deck complies with all applicable requirements of this section, the Zoning Code, and all other applicable laws, administrative policies, rules, and regulations.
 - b. If located in the coastal zone, the ~~sidewalk dining area or~~ street dining deck is consistent with the Local Coastal Program and will not adversely impact coastal resources, coastal access, and coastal views.

- c. The design of the **sidewalk dining area** or street dining deck supports a safe, inviting, and lively public realm consistent with the purpose of the MU-V zoning district as provided in Section 17.20.040 (Purpose of the Mixed Use Zoning Districts).
 - d. The **sidewalk dining area** or street dining deck materials include high-quality, durable materials that are compatible with surrounding development and can withstand inclement weather.
4. **Good Standing.** An applicant must be in good standing to apply for a permit for outdoor dining. For purposes of this section, “good standing” shall mean that within the twenty-four months directly preceding submission of a complete application for an **Administrative Permit or Design Permit**, the applicant has not been issued a notice of abatement, violation, or **been subject to any** code enforcement **proceedings** related to an ABC license, entertainment permit, or use permit **by the City or any other regulatory or permitting agency**. Any courtesy code enforcement notices received by the applicant was corrected by the applicant within the date specified on the courtesy notice.
5. **Other Permits and Approvals.**
- a. Sidewalk and street dining decks are subject to all other **applicable** permits, licenses and/or entitlements required by State or local law.
 - b. A street dining deck or sidewalk dining area located in the coastal zone may require a coastal development permit (CDP) as specified in Chapter 17.44 (Coastal Overlay Zone). Approval of a CDP requires conformance with the CDP findings for approval as specified in Section 17.44.130 (Findings for approval).
6. **Use of Permit Fees in Coastal Zone.** For sidewalk dining and street dining decks in the coastal zone, the City shall utilize no less that 50 percent of permit fees received for coastal access programs, maintenance, and improvements.

F. Administrative Policies.

- 1. The City **Council Manager** is authorized to issue administrative policies regarding the administration and leasing of the public right-of-way for sidewalk dining and street dining decks, including but not limited to the application and selection process for applicants, maintenance requirements, and other related policies.
- 2. In the event of any conflict between the provisions of this chapter and the administrative policy, the more restrictive requirement shall control.

G. Operating and Development Standards. **All Sidewalk Dining and Street Dining Decks shall comply with the following standards:**

- 1. **Must Serve Eating and Drinking Establishment.** Outdoor dining in the public right-of-way is allowed only when incidental to and a part of an “eating and drinking establishment” as defined in Chapter 17.160 (Glossary).

2. **One Facility Only.** An eating establishment may have either sidewalk dining or a street dining deck. An eating establishment may not have both sidewalk dining and a street dining deck.
3. **Limited to Eating Establishment Frontage.**
 - a. Sidewalk dining is allowed on the sidewalk directly adjacent to the eating establishment street frontage.
 - b. Street dining decks in the public right-of-way are only allowed on parking spaces that are:
 - (1) Wholly or partially located in the right-of-way; and
 - (2) Directly adjacent to the eating establishment street frontage unless authorized by paragraph (b) below.
 - c. The City may allow an outdoor dining area to extend beyond the eating and drinking establishment frontage if:
 - (1) Due to the road and parking space layout, the outdoor dining ~~eating~~ area cannot be designed without extending the area beyond immediately adjacent parking spaces;
 - (2) Extending the outdoor dining area will not have significant impact on adjoining businesses as determined by the permit review authority; and
 - (3) Extending the outdoor dining area will not adversely impact coastal access.
4. **Sidewalk Width.** Outdoor dining areas in the public right-of-way shall provide a minimum clear width within the sidewalk of at least:
 - a. 5 feet in the MU-V zoning district; and
 - b. 4 feet in all other zoning districts.
5. **Sidewalk Dining Areas.** Sidewalk dining areas shall be limited to the placement of tables and chairs. In addition, design elements required for ABC permit compliance for separation (fences, ropes, planters, etc.), may be included in the design but shall not exceed 36-inches in height.
6. **Signs.**
 - a. Commercial signs are not permitted in or on any portion of the improvements of a sidewalk dining area or street dining deck, except as specified in section b.
 - b. One business identification sign and one menu sign each not to exceed two square feet are allowed.

~~All signs associated with an outdoor dining area in the public right of way must comply with Zoning Code Chapter 17.80 (Signs).~~
7. **Stormwater Drainage.** All street dining decks must allow for adequate stormwater drainage.
 - a. Dining decks shall not block the drainage flow along the gutter line.
 - b. Dining decks shall not block access into any drain inlet or other drainage/stormwater facility.

8. **Utilities.** All outdoor dining shall not interfere with utility boxes, water hydrants, storm drains, and all other related facilities.
9. **Trash and Maintenance.** An outdoor dining area in the public right-of-way shall be maintained in a clean and safe condition as determined by the City, including as follows:
 - a. All trash shall be picked up and properly disposed of.
 - b. All flower boxes and planters shall contain live, healthy vegetation.
 - c. All tables, chairs, equipment, and structures must be kept clean and operational.
10. **Amplified Sound.** Music and amplified sound are is not allowed in an outdoor dining area.
11. **Bicycle Parking for Street Dining Decks.**
 - a. A street dining deck that eliminates an on-street parking space must include a bicycle parking rack integrated in the street dining deck design or within the private property of the eating or drinking establishment.
 - b. The bicycle parking rack must provide a minimum of two bicycle parking spaces for each eliminated vehicle parking space.
 - c. As an alternative to providing the bicycle parking rack, the City may allow an applicant to pay an in-lieu fee which fee shall be deposited into the City's in-lieu bike fund. to create a central bicycle parking location.
12. **Hours of Operation.**
 - a. Outdoor dining in the public right-of-way may occur between 7 a.m. and 10 p.m. seven days a week.
 - b. The City may allow extended hours for street dining decks for special events and holidays.
13. **Open for Use.** All outdoor dining in the public right-of-way must be open for use a minimum of five days per week, except in cases of inclement weather. "Open for use" means that the eating or drinking establishment must allow customers to use the outdoor dining area when the establishment is open for business.
14. **Materials.** Allowed materials include finished or painted wood, glass, ornamental steel or iron, and decorative masonry. Street dining decks where the primary visible material is plastic, fabric, woven bamboo, or chain link/wire fencing are discouraged.

H. Enforcement.

1. **General.**
 - a. The City shall have all enforcement remedies permitted by law, including but not limited to those in **Administrative Policy I-36** and Municipal Code Title 4 (General Municipal Code Enforcement).

b. Any outdoor dining facility may be subject to inspection by the City on an annual basis or as needed to ensure compliance with this section, conditions of approval, and administrative procedures.

~~c. The Community Development Director is authorized to issue administrative citations pursuant to Municipal Code Chapter 4.14 (Administrative Citations), in amounts set forth by separate resolution of the City Council.~~

2. ~~Revocation of Administrative and Design Permits.~~

~~a. After a permit holder is issued a fourth administrative citation, the Community Development Director or Public Works Director may revoke any Administrative Permit and the Planning Commission may revoke any Design Permit.~~

~~b. Grounds for revocation shall be the permit holder's lack of compliance with the requirements in this section or any permit issued pursuant to this section.~~

~~c. The decision regarding revocation is appealable pursuant to the procedures in Chapter 2.52 (Appeals to City Council).~~

Section 3. Section 17.120.030 (Design Permits – When Required) of Chapter 17.120 of the Capitola Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strikethrough~~):

Chapter 17.120 Design Permits

17.120.030 When Required

A. Types of Projects. The types of projects that require a Design Permit, and the type of Design Permit for each project, are listed in Table 17.120-1. If a type of development project or activity is not specifically listed in Table 17.120-1, a Design Permit is not required.

TABLE 17.120-1: PROJECTS REQUIRING DESIGN PERMITS

Type of Project	Type of Permit
Single-Family Residential Projects	
Ground floor additions to existing single-family homes where the addition is visible from a public street and does not exceed 15 ft. in height, except for exempt additions (Section 17.120.030.B)	Minor Design Permit
Accessory structures greater than 10 ft. in height and/or 120 sq. ft. to 300 sq. ft.	Minor Design Permit
Accessory structures greater than 300 sq. ft.	Design Permit
Upper floor decks and balconies on the side or rear of a home that are not adjacent to public open space	Design Permit
All rooftop decks	Design Permit
Upper floor additions to an existing single-family homes	Design Permit
New single-family homes	Design Permit
Multifamily Residential Projects	
Ground-floor additions less than 15% of total floor area of an existing multifamily structure	Minor Design Permit
Upper floor decks and balconies on the side or rear of a structure that are not adjacent to public open space	Design Permit
All rooftop decks	Design Permit
Accessory structures including garbage and recycling enclosures	Minor Design Permit
Ground-floor additions 15% of total floor area or more to an existing multifamily structure	Design Permit
Upper floor additions to an existing multifamily structure	Design Permit
New multifamily residential structures	Design Permit
Non-Residential Projects (Including Mixed-Use)	
Exterior modifications to an existing structure that do not increase the floor area of the structure	Minor Design Permit
Accessory structures 120 sq. ft. to 300 sq. ft. including garbage and recycling enclosures	Minor Design Permit
Accessory structures greater than 300 sq. ft. including garbage and recycling enclosures	Design Permit
Additions less than 15% of the floor area of an existing non-residential structure where the addition is not visible from the primary street frontage	Minor Design Permit
Additions 15% or more of the floor area of an existing non-residential structure where the addition is visible from the primary street frontage	Design Permit
Additions to an existing non-residential structure of 3,000 sq. ft. or more	Design Permit
New non-residential structures	Design Permit
<u>Custom outdoor dining decks and sidewalk dining areas in the public right-of-way</u>	<u>Design Permit</u>

B. Single-Family Exemptions. The following additions to a single-family dwelling are exempt from the Design Permit requirement:

1. Ground-floor single-story additions up to 400 square feet at the rear of the home.
2. Enclosure of an existing recessed entrance up to 25 square feet.
3. Enclosure of an existing open porch up to 50 square feet.
4. Installation of bay windows.
5. A single accessory structures that does not exceed 120 square feet in floor area and 10 feet in height with no connection to water or sewer.
6. Minor exterior modification or replacement of materials on an existing structure including siding, windows, doors, and roof.
7. Other similar minor additions to a single-family dwelling as determined by the Community Development Director.
8. Upper floor decks and balconies immediately adjacent to a street or public open space.

C. Non-Residential Exemptions.

1. Prototype outdoor dining decks that comply with Section 17.96.170 (Outdoor Dining in Public Right of Way) are exempt from the Design Permit requirement.

Section 4: Compliance with California Environmental Quality Act (CEQA)

The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15305 (Class 5) and 15311 (Class 11) of the California Environmental Quality Act (CEQA). The Class 5 categorical exemption (Minor Alterations in Land Use Limitations) covers projects that consist of minor alterations in land use limitation in areas with an average slope of less than 20%, which do not result in any changes in land use or density. The Class 11 categorical exemption (Accessory Structures) covers projects that consist of construction or placement of minor structures that are accessory to existing commercial, industrial, or institutional facilities. The proposed project is consistent with these two exemptions, because the requested action will not result in a direct or reasonably foreseeable change in the environment and because there is no possibility that the activity in question may have a significant effect on the environment.

Section 5: Severability

The City Council hereby declares every section, paragraph, sentence, cause, and phrase of this ordinance is severable. If any section, paragraph, sentence, clause, or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses, or phrases.

Section 6: Effective Date

This Ordinance shall be in full force and effect thirty (30) days from its passage and adoption except that it will not take effect within the coastal zone until certified by the California Coastal Commission. This Ordinance shall be transmitted to the California Coastal Commission and shall take effect in the coastal zone immediately upon certification by the California Coastal Commission or upon the concurrence of the Commission with a determination by the Executive Director that the Ordinance adopted by the City is legally adequate.

This ordinance was introduced on the ___ day of ___, 2021, and passed first reading on the ___ day of ___, 2021, and was adopted by the City Council of the City of Capitola on the ___ day of ___, 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

Yvette Brooks, Mayor

ATTEST:

Chloe Woodmansee, City Clerk

Attachment: DRAFT ORDINANCE 1 Planning Commission Recommendation (Draft Ordinance for Outdoor Dining and Design Permit)

DRAFT ORDINANCE #2

This draft includes Planning Commission recommended edits from the October 7, 2021, and November 4, 2021, in red except the original City Council direction to allow Sidewalk Dining Areas and allow street dining decks on Monterey Avenue and Capitola Avenue are included.

ORDINANCE NO. XXXX

**AN ORDINANCE OF THE CITY OF CAPITOLA
REPEALING AND REPLACING MUNICIPAL CODE SECTIONS 17.96.170, AND
AMENDING MUNICIPAL CODE SECTION 17.120.030,
RELATED TO OUTDOOR DINING IN THE PUBLIC RIGHT OF WAY**

WHEREAS, the State of California and Santa Cruz County established social distancing requirements in response to the COVID-19 pandemic that prohibited indoor dining at restaurants in Capitola; and

WHEREAS, in response to the pandemic and social distancing orders, the City issued temporary use permits to local restaurants to provide outdoor dining; and

WHEREAS, in 2020 and 2021 approximately 24 restaurants in Capitola were granted temporary use permits under this program to provide outdoor dining; and

WHEREAS, on April 22, 2021, the City Council directed staff to develop a program for permanent outdoor dining and to bring the program back to the Council for review and possible adoption;

WHEREAS, Municipal Code Section 17.96.170 contains existing requirements for temporary sidewalk dining in the public right-of-way; and

WHEREAS, the proposed program for permanent outdoor dining would replace existing Municipal Code Section 17.96.170 with new standards to allow for street dining decks in addition to sidewalk dining;

WHEREAS, the City aims to allow for streamlined approval of prototype street dining decks utilizing a design that has been preauthorized by the Planning Commission.

WHEREAS, the City aims to balance the desire for permanent outdoor dining in the public right-of-way with adequate public parking and coastal access;

WHEREAS, City staff consulted with Coastal Commission staff in the preparation of the Zoning Ordinance amendments to ensure that the proposed program and ordinance would comply with the California Coastal Act and Capitola's Local Coastal Program; and

WHEREAS, pursuant to Vehicle Code section 22507(a), cities may, by ordinance or resolution restrict or otherwise remove parking from City streets during all or certain hours of the day; and

WHEREAS, the proposed Zoning Ordinance amendments to allow for permanent outdoor dining in the public right-of-way qualify for the Exemption found at CEQA Guidelines Section

15305 and 15311; and

WHEREAS, the Planning Commission held a duly noticed public hearing on October 7, 2021, at which time it reviewed the proposed amendments, considered all public comments on the revisions and related CEQA exemption, and provided a unanimous positive recommendation on the proposed ordinance; and

WHEREAS, based upon the Planning Commission recommendation, the City Council determined that the amendments are consistent with the General Plan and that the revisions would be internally consistent with all other provisions of the Municipal Code.

WHEREAS, the amendments would become a component of Implementation Plan of the City's Local Coastal Program and is intended to be implemented in a manner that is in full conformance with the California Coastal Act.

BE IT ORDAINED By the City of Capitola as follows:

Section 1. The above findings are adopted and incorporated herein.

Section 2. Section 17.96.170 (Temporary Outdoor Dining) of the Capitola Municipal Code is hereby repealed in its entirety and replaced with Outdoor Dining in Public Right of Way with additions shown as underline and deletions shown with ~~strikethrough~~ to read as follows:

~~17.96.170 Temporary Outdoor Dining~~

~~This section establishes requirements for temporary outdoor dining areas located on a public sidewalk or other area within the public right of way.~~

- ~~A. Required Permits.~~** ~~Temporary outdoor dining within the public right of way requires an Administrative Permit and an Encroachment Permit. Temporary outdoor dining may require a Coastal Development Permit as specified by Chapter 17.44 (Coastal Overlay Zone) if any part of the site is located in the coastal zone and the proposed development shall conform with the CDP findings for approval as specified in 17.44.130 (Findings for Approval).~~
- ~~B. Permitted Zoning Districts.~~** ~~Temporary outdoor dining within the public right of way is allowed in the Commercial Community (C-C), Commercial Regional (C-R), and Mixed Use, Neighborhood (MU-N) zoning districts. Temporary outdoor dining within the public right of way is not permitted in the Mixed Use Village (MU-V) zoning district.~~
- ~~C. Standards.~~** ~~Temporary sidewalk dining shall comply with the following standards.~~
1. **~~Location.~~** ~~Outside dining is permitted on the public sidewalk:~~
 - a. ~~When incidental to and part of a restaurant; and~~
 - b. ~~Along the restaurant's frontage.~~
 2. **~~Number of Dining Areas.~~** ~~An indoor restaurant may operate only one outside dining area confined to a single location.~~
 3. **~~Safe Passage.~~**
 - a. ~~Temporary sidewalk dining is permitted only where the sidewalk is wide enough to adequately accommodate both the usual pedestrian traffic in the area and the operation of the outside dining area.~~

b. ~~The sidewalk immediately adjacent to the restaurant shall have adequate space to accommodate tables and chairs and shall provide adequate safe passage along the sidewalk for pedestrian and wheelchair users of the sidewalk. Safe and adequate passage of at least 4 feet in width shall be provided along the sidewalk and from the curb to the sidewalk. No tables or chairs or any other objects shall be placed or allowed to remain on any sidewalk that inhibit such passage.~~

4. ~~**Furniture and Signage Location.**~~

a. ~~Tables and chairs in a sidewalk dining area shall be set back at least 2 feet from any curb and from any sidewalk or street barrier, including a bollard, and at least 8 feet from a bus stop.~~

b. ~~All outdoor dining furniture, including tables, chairs, umbrellas, and planters, shall be movable.~~

c. ~~All temporary improvements to separate the outdoor dining area from the sidewalk, such as a railing, shall relate to the architectural design of the primary restaurant structure in color, materials, and scale.~~

d. ~~Umbrellas shall be secured with a minimum base of not less than 60 pounds.~~

e. ~~All signs are subject to Chapter 17.80.~~

5. ~~**Food and Beverages.** The service of alcoholic beverages within the sidewalk dining area requires a Conditional Use Permit, and shall comply with the following requirements:~~

a. ~~The outside dining area shall be situated immediately adjacent to and abutting the indoor restaurant which provides it with food and beverage service.~~

b. ~~The outside dining area shall be clearly separate and delineated from the areas of the sidewalk which remains open to pedestrian traffic.~~

c. ~~One or more signs shall be posted during hours of operation stating that alcohol is prohibited outside of the dining area.~~

d. ~~The outside dining area shall receive all licenses required for on-site consumption of alcoholic beverages from State authorities.~~

6. ~~**Trash and Maintenance.**~~

a. ~~Storage of trash is prohibited within or adjacent to the sidewalk dining area. All trash and litter shall be removed as it accumulates or otherwise becomes a public nuisance.~~

b. ~~The sidewalk dining area, including the sidewalk surface and furniture, shall be maintained in a clean and safe condition.~~

7. ~~**Hours of Operation.** Sidewalk dining may occur between 7 a.m. and 10 p.m. seven days a week. Tables, chairs, other outdoor dining furniture, and all other structures and materials associated with the outdoor dining area shall be removed from the sidewalk and stored indoors at night and when the sidewalk dining area is not in operation.~~

17.96.170 Outdoor Dining in Public Right of Way

A. Purpose. This section establishes standards and permit requirements for outdoor dining in the public right-of-way.

B. Definitions.

1. **Outdoor Dining.** "Outdoor dining" means and includes both sidewalk dining and street dining decks.
2. **Sidewalk Dining.** "Sidewalk dining" means the use of an outdoor sidewalk area within the public-right-of-way, by a private business that is an eating and drinking establishment, for eating and drinking activities.
3. **Street Dining Deck.** A street dining deck means a platform or similar level surface within the public right-of-way and extending beyond the curb and into a roadway or on-street parking area for use by a private business that is an eating or drinking establishment.
 - a. **Custom Street Dining Deck.** A custom street dining deck is a street dining deck designed by the applicant.
 - b. **Prototype Street Dining Deck.** A prototype street dining deck is a street dining deck utilizing a design that has been preauthorized by the Planning Commission.

C. Where Allowed.

1. **Sidewalk Dining.**
 - a. Sidewalk dining is allowed in the MU-N, MU-V, C-C, and C-R zoning districts.
 - b. In the MU-V zoning district, sidewalk dining is allowed only on Monterey Avenue and on the Capitola Wharf **immediately adjacent to the restaurant it serves.**
2. **Street Dining Decks.** Street dining decks are allowed only in the MU-V zoning district **and only on the Esplanade, Monterey Avenue, Capitola Avenue, and San Jose Avenue.**

D. Maximum Number of On-Street Parking Spaces. A maximum of 25 total on-street parking spaces may be used for street dining decks. Spaces shall be allocated by the City Manager in accordance with administrative policies issued pursuant to this section. **On-street parking spaces utilized for in-lieu bicycle parking shall count toward the maximum 25 spaces.**

E. Permits and Approvals.

1. **Required Permits.** Table 17.96-2 shows permits required for sidewalk dining and street dining decks.

Table 17.96-2: Permits Required for Outdoor Dining in Public Right-of-way

Type of Outdoor Dining	Permit Required [2] [3]	Zoning Code Chapter
Sidewalk Dining	Administrative Design Permit	17.116

Street Dining Decks		
Prototype Street Dining Deck [1]	Administrative Permit	17.116
Custom Street Dining Deck	Design Permit	17.120

[1] Prototype dining deck designs are identified in the adopted Village Outdoor Dining Program Administrative Policy No. I-36.

[2] Outdoor dining in the public right-of-way also requires an encroachment permit pursuant to Municipal Code Chapter 12.56. Minor encroachment permits for applications for prototype street dining decks may be issued by the Public Works Director and major encroachment permits for custom street dining decks may be issued by the Planning Commission.

[3] A street dining deck or sidewalk dining area located in the coastal zone may require a coastal development permit (CDP) as specified in Chapter 17.44 (Coastal Overlay Zone).

2. **Administrative Permit Standards.** All applications for an Administrative Permit are reviewed and acted on by the Community Development Director and must comply with the following standards:

- a. ~~Any included~~The street dining deck must be designed consistent with a prototype design approved by the Planning Commission.
- b. ~~The sidewalk dining area or~~The street dining deck must comply with all applicable requirements of this section, the Zoning Code, and all other applicable laws, administrative policies, rules, and regulations.
- c. If located in the coastal zone, the ~~sidewalk dining area or~~ street dining deck is consistent with the Local Coastal Program and will not adversely impact coastal resources, coastal access, and coastal views.
- d. The street dining deck ~~or sidewalk dining area~~ must utilize high-quality, durable materials that are compatible with surrounding development and can withstand inclement weather.
- e. ~~A prototype~~The street dining decks must use a design authorized by a valid coastal development permit.

3. **Design Permit Findings.** All applications for a Design Permit are viewed and acted on by the Planning Commission. Notwithstanding Municipal Code Section 17.120.080 (Findings for Approval), ~~for Design Permits issued pursuant to this section, the Planning Commission shall make the following findings and need not make those findings set forth in section 17.120.080~~the Planning Commission shall not make the Design Permit findings in Section 17.120.080, and instead shall make the following findings:

- a. The ~~sidewalk dining area or~~ street dining deck complies with all applicable requirements of this section, the Zoning Code, and all other applicable laws, administrative policies, rules, and regulations.
- b. If located in the coastal zone, the ~~sidewalk dining area or~~ street dining deck is consistent with the Local Coastal Program and will not adversely impact coastal resources, coastal access, and coastal views.

- c. The design of the **sidewalk dining area** or street dining deck supports a safe, inviting, and lively public realm consistent with the purpose of the MU-V zoning district as provided in Section 17.20.040 (Purpose of the Mixed Use Zoning Districts).
 - d. The **sidewalk dining area** or street dining deck materials include high-quality, durable materials that are compatible with surrounding development and can withstand inclement weather.
4. **Good Standing.** An applicant must be in good standing to apply for a permit for outdoor dining. For purposes of this section, “good standing” shall mean that within the twenty-four months directly preceding submission of a complete application for an **Administrative Permit or Design Permit**, the applicant has not been issued a notice of abatement, violation, or **been subject to any** code enforcement **proceedings** related to an ABC license, entertainment permit, or use permit **by the City or any other regulatory or permitting agency**. Any courtesy code enforcement notices received by the applicant was corrected by the applicant within the date specified on the courtesy notice.
5. **Other Permits and Approvals.**
- a. Sidewalk and street dining decks are subject to all other **applicable** permits, licenses and/ or entitlements required by State or local law.
 - b. A street dining deck or sidewalk dining area located in the coastal zone may require a coastal development permit (CDP) as specified in Chapter 17.44 (Coastal Overlay Zone). Approval of a CDP requires conformance with the CDP findings for approval as specified in Section 17.44.130 (Findings for approval).
6. **Use of Permit Fees in Coastal Zone.** For sidewalk dining and street dining decks in the coastal zone, the City shall utilize no less that 50 percent of permit fees received for coastal access programs, maintenance, and improvements.

F. Administrative Policies.

- 1. The City **Council Manager** is authorized to issue administrative policies regarding the administration and leasing of the public right-of-way for sidewalk dining and street dining decks, including but not limited to the application and selection process for applicants, maintenance requirements, and other related policies.
- 2. In the event of any conflict between the provisions of this chapter and the administrative policy, the more restrictive requirement shall control.

G. Operating and Development Standards. **All Sidewalk Dining and Street Dining Decks shall comply with the following standards:**

- 1. **Must Serve Eating and Drinking Establishment.** Outdoor dining in the public right-of-way is allowed only when incidental to and a part of an “eating and drinking establishment” as defined in Chapter 17.160 (Glossary).

2. **One Facility Only.** An eating establishment may have either sidewalk dining or a street dining deck. An eating establishment may not have both sidewalk dining and a street dining deck.
3. **Limited to Eating Establishment Frontage.**
 - a. Sidewalk dining is allowed on the sidewalk directly adjacent to the eating establishment street frontage.
 - b. Street dining decks in the public right-of-way are only allowed on parking spaces that are:
 - (1) Wholly or partially located in the right-of-way; and
 - (2) Directly adjacent to the eating establishment street frontage unless authorized by paragraph (b) below.
 - c. The City may allow an outdoor dining area to extend beyond the eating and drinking establishment frontage if:
 - (1) Due to the road and parking space layout, the outdoor dining ~~eating~~ area cannot be designed without extending the area beyond immediately adjacent parking spaces;
 - (2) Extending the outdoor dining area will not have significant impact on adjoining businesses as determined by the permit review authority; and
 - (3) Extending the outdoor dining area will not adversely impact coastal access.
4. **Sidewalk Width.** Outdoor dining areas in the public right-of-way shall provide a minimum clear width within the sidewalk of at least:
 - a. 5 feet in the MU-V zoning district; and
 - b. 4 feet in all other zoning districts.
5. **Sidewalk Dining Areas.** Sidewalk dining areas shall be limited to the placement of tables and chairs. In addition, design elements required for ABC permit compliance for separation (fences, ropes, planters, etc.), may be included in the design but shall not exceed 36-inches in height.
6. **Signs.**
 - a. Commercial signs are not permitted in or on any portion of the improvements of a sidewalk dining area or street dining deck, except as specified in section b.
 - b. One business identification sign and one menu sign each not to exceed two square feet are allowed.

~~All signs associated with an outdoor dining area in the public right of way must comply with Zoning Code Chapter 17.80 (Signs).~~
7. **Stormwater Drainage.** All street dining decks must allow for adequate stormwater drainage.
 - a. Dining decks shall not block the drainage flow along the gutter line.

- b. Dining decks shall not block access into any drain inlet or other drainage/stormwater facility.
- 8. **Utilities.** All outdoor dining shall not interfere with utility boxes, water hydrants, storm drains, and all other related facilities.
- 9. **Trash and Maintenance.** An outdoor dining area in the public right-of-way shall be maintained in a clean and safe condition as determined by the City, including as follows:
 - a. All trash shall be picked up and properly disposed of.
 - b. All flower boxes and planters shall contain live, healthy vegetation.
 - c. All tables, chairs, equipment, and structures must be kept clean and operational.
- 10. **Amplified Sound.** Music and amplified sound are ~~is~~ not allowed in an outdoor dining area.
- 11. **Bicycle Parking for Street Dining Decks.**
 - a. A street dining deck that eliminates an on-street parking space must include a bicycle parking rack integrated in the street dining deck design or within the private property of the eating or drinking establishment.
 - b. The bicycle parking rack must provide a minimum of two bicycle parking spaces for each eliminated vehicle parking space.
 - c. As an alternative to providing the bicycle parking rack, the City may allow an applicant to pay an in-lieu fee which fee shall be deposited into the City's in-lieu bike fund. to create a central bicycle parking location.
- 12. **Hours of Operation.**
 - a. Outdoor dining in the public right-of-way may occur between 7 a.m. and 10 p.m. seven days a week.
 - b. The City may allow extended hours for street dining decks for special events and holidays.
- 13. **Open for Use.** All outdoor dining in the public right-of-way must be open for use a minimum of five days per week, except in cases of inclement weather. "Open for use" means that the eating or drinking establishment must allow customers to use the outdoor dining area when the establishment is open for business.
- 14. **Materials.** Allowed materials include finished or painted wood, glass, ornamental steel or iron, and decorative masonry. Street dining decks where the primary visible material is plastic, fabric, woven bamboo, or chain link/wire fencing are discouraged.

H. Enforcement.

- 1. **General.**

- a. The City shall have all enforcement remedies permitted by law, including but not limited to those in **Administrative Policy I-36** in Municipal Code Title 4 (General Municipal Code Enforcement).
- b. Any outdoor dining facility may be subject to inspection by the City on an annual basis or as needed to ensure compliance with this section, conditions of approval, and administrative procedures.
- ~~c. The Community Development Director is authorized to issue administrative citations pursuant to Municipal Code Chapter 4.14 (Administrative Citations), in amounts set forth by separate resolution of the City Council.~~

2. **Revocation of Administrative and Design Permits.**

- ~~a. After a permit holder is issued a fourth administrative citation, the Community Development Director or Public Works Director may revoke any Administrative Permit and the Planning Commission may revoke any Design Permit.~~
- ~~b. Grounds for revocation shall be the permit holder's lack of compliance with the requirements in this section or any permit issued pursuant to this section.~~
- ~~c. The decision regarding revocation is appealable pursuant to the procedures in Chapter 2.52 (Appeals to City Council).~~

Section 3. Section 17.120.030 (Design Permits – When Required) of Chapter 17.120 of the Capitola Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~striketrough~~):

Chapter 17.120 Design Permits

17.120.030 When Required

A. Types of Projects. The types of projects that require a Design Permit, and the type of Design Permit for each project, are listed in Table 17.120-1. If a type of development project or activity is not specifically listed in Table 17.120-1, a Design Permit is not required.

TABLE 17.120-1: PROJECTS REQUIRING DESIGN PERMITS

Type of Project	Type of Permit
Single-Family Residential Projects	
Ground floor additions to existing single-family homes where the addition is visible from a public street and does not exceed 15 ft. in height, except for exempt additions (Section 17.120.030.B)	Minor Design Permit
Accessory structures greater than 10 ft. in height and/or 120 sq. ft. to 300 sq. ft.	Minor Design Permit
Accessory structures greater than 300 sq. ft.	Design Permit
Upper floor decks and balconies on the side or rear of a home that are not adjacent to public open space	Design Permit
All rooftop decks	Design Permit
Upper floor additions to an existing single-family homes	Design Permit
New single-family homes	Design Permit
Multifamily Residential Projects	
Ground-floor additions less than 15% of total floor area of an existing multifamily structure	Minor Design Permit
Upper floor decks and balconies on the side or rear of a structure that are not adjacent to public open space	Design Permit
All rooftop decks	Design Permit
Accessory structures including garbage and recycling enclosures	Minor Design Permit
Ground-floor additions 15% of total floor area or more to an existing multifamily structure	Design Permit
Upper floor additions to an existing multifamily structure	Design Permit
New multifamily residential structures	Design Permit
Non-Residential Projects (Including Mixed-Use)	
Exterior modifications to an existing structure that do not increase the floor area of the structure	Minor Design Permit
Accessory structures 120 sq. ft. to 300 sq. ft. including garbage and recycling enclosures	Minor Design Permit
Accessory structures greater than 300 sq. ft. including garbage and recycling enclosures	Design Permit
Additions less than 15% of the floor area of an existing non-residential structure where the addition is not visible from the primary street frontage	Minor Design Permit
Additions 15% or more of the floor area of an existing non-residential structure where the addition is visible from the primary street frontage	Design Permit
Additions to an existing non-residential structure of 3,000 sq. ft. or more	Design Permit
New non-residential structures	Design Permit
<u>Custom outdoor dining decks and sidewalk dining areas in the public right-of-way</u>	<u>Design Permit</u>

B. Single-Family Exemptions. The following additions to a single-family dwelling are exempt from the Design Permit requirement:

1. Ground-floor single-story additions up to 400 square feet at the rear of the home.
2. Enclosure of an existing recessed entrance up to 25 square feet.
3. Enclosure of an existing open porch up to 50 square feet.
4. Installation of bay windows.
5. A single accessory structures that does not exceed 120 square feet in floor area and 10 feet in height with no connection to water or sewer.
6. Minor exterior modification or replacement of materials on an existing structure including siding, windows, doors, and roof.
7. Other similar minor additions to a single-family dwelling as determined by the Community Development Director.
8. Upper floor decks and balconies immediately adjacent to a street or public open space.

C. Non-Residential Exemptions.

1. Prototype outdoor dining decks that comply with Section 17.96.170 (Outdoor Dining in Public Right of Way) are exempt from the Design Permit requirement.

Section 4: Compliance with California Environmental Quality Act (CEQA)

The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15305 (Class 5) and 15311 (Class 11) of the California Environmental Quality Act (CEQA). The Class 5 categorical exemption (Minor Alterations in Land Use Limitations) covers projects that consist of minor alterations in land use limitation in areas with an average slope of less than 20%, which do not result in any changes in land use or density. The Class 11 categorical exemption (Accessory Structures) covers projects that consist of construction or placement of minor structures that are accessory to existing commercial, industrial, or institutional facilities. The proposed project is consistent with these two exemptions, because the requested action will not result in a direct or reasonably foreseeable change in the environment and because there is no possibility that the activity in question may have a significant effect on the environment.

Section 5: Severability

The City Council hereby declares every section, paragraph, sentence, cause, and phrase of this ordinance is severable. If any section, paragraph, sentence, clause, or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses, or phrases.

Section 6: Effective Date

This Ordinance shall be in full force and effect thirty (30) days from its passage and adoption except that it will not take effect within the coastal zone until certified by the California Coastal Commission. This Ordinance shall be transmitted to the California Coastal Commission and shall take effect in the coastal zone immediately upon certification by the California Coastal Commission or upon the concurrence of the Commission with a determination by the Executive Director that the Ordinance adopted by the City is legally adequate.

This ordinance was introduced on the ___ day of ___, 2021, and passed first reading on the ___ day of ___, 2021, and was adopted by the City Council of the City of Capitola on the ___ day of ___, 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

Yvette Brooks, Mayor

ATTEST:

Chloe Woodmansee, City Clerk

ATTACHMENTS:

- 1. Capitola Street Frontage Dining Ordinance Noise Memo

Prepared By: Katie Herlihy
Community Development Dire

Attachment: DRAFT ORDINANCE 2 (Draft Ordinance for Outdoor Dining and Design Permit)



DRAFT ADMINISTRATIVE POLICY

Number: I-36
 Issued:
 Jurisdiction: City Council

VILLAGE OUTDOOR DINING PROGRAM

I. PURPOSE

The purpose of this policy is to define the rules, regulations and conditions of an outdoor dining program on City right of way in the Central Village (MU-V Zoning District). The program allows eligible Village eating and drinking establishments to construct, operate, and maintain outdoor dining areas within on-street parking spaces, designated sidewalk areas, and specific areas on the Capitola Wharf.

This Administrative Policy is authorized under Capitola Municipal Code Section 17.96.170.F

II. POLICY

General Requirements. All outdoor dining areas shall be operated in conformance with the regulatory requirements of the Americans with Disability Act (ADA), California Building Code, California Department of Alcoholic Beverage Control, Santa Cruz County Environmental Health Department and all other applicable City, County, State and Federal laws. Capitola Municipal Code Section 17.96.170 Outdoor Dining in the Public Right of Way establishes the standards and permit requirements for outdoor dining within the public right of way. Section III of this policy is an overview of the municipal code requirements.

Authorized Streets & Sidewalk Areas. In Capitola Village (MU-V Zoning District), outdoor dining in the public right of way is permitted in the following areas:

Public Parking Spaces: Esplanade, Monterey Avenue, ~~Capitola Avenue~~, San Jose Avenue

Sidewalk Areas: Monterey Avenue

Capitola Wharf: Immediately adjacent to the restaurant (Code section 17.96.170.C)

Maximum Number of On-Street Parking Space. The maximum number of public parking spaces that can be utilized for outdoor dining is 25. (Code section 17.96.170.D)

Size Limitation of Individual Outdoor Dining Areas. No outdoor dining area shall occupy more than five public parking spaces or 900 square feet of street, sidewalk, or area on Capitola Wharf.

Good Standing. An applicant must be in good standing to apply for a permit for outdoor dining. For purposes of this section, "good standing" shall mean that within the twenty-four months directly preceding submission of a complete application for an Administrative Permit or Design Permit, the applicant has not been issued a notice of abatement, violation, or been subject to any code enforcement proceedings related to an ABC license, entertainment permit, or use

permit by the City or any other regulatory or permitting agency. Any courtesy code enforcement notices received by the applicant was corrected by the applicant within the date specified on the courtesy notice. (Code section 17.96.170.E.4)

Space Allocation Lottery. If applications for outdoor dining located in public parking spaces exceeds the 25 maximum allocation, the City will hold a lottery to allocate the spaces, using the following procedures.

- Step 1. Open application period for 45 days, with a required \$500 deposit per space (credited towards maintenance deposit).
- Step 2. If the total requests are less than 25, award the spaces to the applicants.
- Step 3. If the total requests exceed 25, evenly distribute one to two spaces per business.
 - If there are less than twelve applicants, assign up to two spaces to each applicant, then proceed to step 4.
 - If there are more than twelve applicants, hold a lottery assigning up to two spaces to each applicant until all 25 spaces have been allocated.
- Step 4. Hold a lottery for the remainder of the spaces for those requesting additional spaces. All applicants that are not allocated their requested number of spaces in Step 3 above, will be given one ticket in the lottery.
- Step 5. The lottery will be held in rounds. If an applicant's ticket is chosen and they receive their requested number of spaces, their ticket will be removed prior to the next round. If the applicant has not reached their requested number of parking spaces, their ticket will be replaced into the hopper for the next round.
- Step 6. Rounds will continue until 25 parking spaces have been allocated.

Permits. Applicants must obtain all necessary permits to construct and operate an outdoor dining area. Necessary permits include but are not limited to:

1. A revokable encroachment permit;
2. An administrative permit or design permit pursuant to Capitola Municipal Code Section 17.96.170;
3. A coastal development permit; and
4. A building permit.

Revokable Encroachment Permit. Per Capitola Municipal Code 12.56, applicants must receive a revokable encroachment permit from the City of Capitola prior to construction of an outdoor dining area. The revokable encroachment will include, but not limited to, the following terms and conditions:

- 3-year term
- Inspection - City staff shall have the authority to enter the outdoor dining area for any purposes, including to inspect the condition, safety, and compliance with all City issued permits.
- Deposit - Each applicant shall pay a deposit to ensure the dining area is maintained as follows
 - Sidewalk dining - \$500 deposit
 - 1-2 spaces - \$1000 deposit
 - 3-5 spaces - \$1,500 deposit
- Maintenance Standards - All dining areas shall be maintained, including but not limited to the following:
 - All trash must be picked up and properly disposed.

- All flower boxes or planter must contain live, healthy vegetation.
- All tables, chairs, equipment, and structures must be kept clean and operational.
- Applicants shall provide proof of insurance as specified by the City application form.
- Parking space payment – All tenants must pay \$3,400 per parking space, which is approximately \$18 per square foot, per year. This amount shall be adjusted upward annually by increases of the CPI. All rent must be paid in advance. Initial rents must be paid prior to the beginning of construction. The rent in subsequent years is due by January 10th for the calendar year. Any partial years rent amounts will be prorated.
- No-subletting - Outdoor dining spaces are for the use of the permit holder only and may not be sublet to any other vendor or business.
- Violations - Violations of the revokable encroachment permit shall be enforced as follows:
 - Upon a first violation by a permit holder, the city manager, or designee, shall mail a written warning to the eating and drinking establishment. The warning shall recite the violation, and advise that future violations may result in fines.
 - Upon a second or subsequent violation by the eating or drinking establishment, the following penalties will apply:
 - § A fine not exceeding one hundred dollars for the first violation after the first warning.
 - § A fine not exceeding two hundred dollars for the second violation.
 - § A fine not exceeding five hundred dollars for the third violation.
 - § A permit holder with more than three violations during the lease term may have their permit revoked and be required to remove any improvements associated with the outdoor dining area.
 - § Permit holders whose permit is revoked may not receive another encroachment permit for outdoor dining for a period of two years, and only if there are available parking spaces under the 25 space cap. The revoked spaces will be placed back in the lottery system and available for allocation.

Revokable Encroachment Permit Term Expiration. All revokable encroachment permits issued for outdoor dining will have a term of three years. Six months prior to expiration the City and permit holder shall review past performance and use of the outdoor dining area. Upon review, either extension or termination may be possible. Extension of the program and any lease shall be at the sole discretion of the Capitola City Council.

Authorization to Proceed. Construction of an outdoor dining area may not begin until all required permits have been issued. Starting construction prior to receiving all permits may result in revocation of any applicable permits.

Construction Timing. Applicants with assigned parking spaces through the lottery, are required to acquire City permits and complete construction of their street dining deck within six months of the award. After six month, the spaces will be placed back in the lottery system and available for allocation.

III. ADMINISTRATIVE POLICY RELATIVE TO CAPITOLA MUNICIPAL CODE SECTION 17.96.170 OUTDOOR DINING IN THE PUBLIC RIGHT OF WAY

Capitola Municipal Code Section 17.96.170 establishes the standards and permit requirements for outdoor dining within the public right of way. The following is an overview of the municipal code requirements:

A. Permits and Approvals.

The following table shows permits required for sidewalk dining and street dining decks.

Type of Outdoor Dining	Permit Required	Zoning Code Chapter
Sidewalk Dining	Design Permit	17.120
Street Dining Decks		
Prototype Street Dining Deck	Administrative Permit	17.116
Custom Street Dining Deck	Design Permit	17.120

B. Operating and Development Standards. All Sidewalk Dining and Street Dining Decks shall comply with the following standards:

1. **Must Serve Eating and Drinking Establishment.** Outdoor dining in the public right-of-way is allowed only when incidental to and a part of an “eating and drinking establishment” as defined in Chapter 17.160 (Glossary).
2. **One Facility Only.** An eating establishment may have either sidewalk dining or a street dining deck. An eating establishment may not have both sidewalk dining and a street dining deck.
3. **Limited to Eating Establishment Frontage.**
 - a. Sidewalk dining is allowed on the sidewalk directly adjacent to the eating establishment street frontage.
 - b. Street dining decks in the public right-of-way are only allowed on parking spaces that are:
 - (1) Wholly or partially located in the right-of-way; and
 - (2) Directly adjacent to the eating establishment street frontage unless authorized by paragraph (b) below.
 - c. The City may allow an outdoor dining area to extend beyond the eating and drinking establishment frontage if:
 - (1) Due to the road and parking space layout, the outdoor dining area cannot be designed without extending the area beyond immediately adjacent parking spaces;
 - (2) Extending the outdoor dining area will not have significant impact on adjoining businesses as determined by the permit review authority; and
 - (3) Extending the outdoor dining area will not adversely impact coastal access.
4. **Sidewalk Width.** Outdoor dining areas in the public right-of-way shall provide a minimum clear width within the sidewalk of at least:
 - a. 5 feet in the MU-V zoning district; and
5. **Sidewalk Dining Areas.** Sidewalk dining areas shall be limited to the placement of tables and chairs. In addition, design elements required for ABC permit compliance for separation

(fences, ropes, planters, etc.), may be included in the design but shall not exceed 36-inches in height.

6. **Signs.**

- a. Commercial signs, including business identification signs are not permitted in or on any portion of the improvements of a sidewalk dining area or street dining deck.
- b. One informational sign not to exceed two square feet providing information such as “watch your step” or “for paying customers only” is allowed.

7. **Stormwater Drainage.** All street dining decks must allow for adequate stormwater drainage.

- a. Dining decks shall not block the drainage flow along the gutter line.
- b. Dining decks shall not block access into any drain inlet or other drainage/stormwater facility.

8. **Utilities.** All outdoor dining shall not interfere with utility boxes, water hydrants, storm drains, and all other related facilities.

9. **Trash and Maintenance.** An outdoor dining area in the public right-of-way shall be maintained in a clean and safe condition as determined by the City, including as follows:

- a. All trash must be picked up and properly disposed of.
- b. All flower boxes and planters must contain live, healthy vegetation.
- c. All tables, chairs, equipment, and structures must be kept clean and operational.

10. **Sound.** Music and amplified sound are not allowed in an outdoor dining area.

11. **Bicycle Parking for Street Dining Decks.**

- a. A street dining deck that eliminates an on-street parking space must include a bicycle parking rack integrated in the street dining deck design or within the private property of the eating or drinking establishment.
- b. The bicycle parking rack must provide a minimum of two bicycle parking spaces for each eliminated vehicle parking space.
- c. As an alternative to providing the bicycle parking rack, the City may allow an applicant to pay an in-lieu fee which fee shall be deposited into the City’s in-lieu bike fund. to create a central bicycle parking location.

12. **Hours of Operation.**

- a. Outdoor dining in the public right-of-way may occur between 7 a.m. and 10 p.m. seven days a week.
- b. The City may allow extended hours for street dining decks for special events and holidays.

13. **Open for Use.** All outdoor dining in the public right-of-way must be open for use a minimum of five days per week, except in cases of inclement weather. “Open for use” means that the eating or drinking establishment must allow customers to use the outdoor dining area when the establishment is open for business.

14. **Materials.** Allowed materials include finished or painted wood, glass, ornamental steel or iron, and decorative masonry. Street dining decks where the primary visible material is plastic, fabric, woven bamboo, or chain link/wire fencing are not allowed.



223 A. Reindollar Avenue
 Marina, Ca. 93933
 831 384 1253
 englishales@sbcglobal.net

The City of Capitola
 Planning Commission
 October, 20th. 2021
 Dear Commissioners,

As you consider the continuation of the parklet program, please consider allowing our business to continue to operate our parklet, as we have done, without incident, for the past 16 months or so.

We have owned and operated several hospitality facilities over the past 37 years, and we have witnessed many changes to the manner in which the industry functions, but perhaps none have had such profound influences as has the Covid 19 pandemic, and maybe the most profound change has been to the emphasis now placed upon outdoor seating. There are still many citizens who are very wary of any indoor activities and so parklets are the ideal solution.

Governor Newsome has recognized the damage which our industry has suffered to date, and he has extended the parklet program for several years, as a means to help the industry recover. To exclude our business from the program, would be to place us at a significant disadvantage to similar businesses, making an already difficult situation, more difficult.

As to traffic , we are on one side of Capitola Avenue and we do not think that there is any great difference in the numbers of vehicles which pass us than those which pass through the esplanade corridor. In addition, as we have parallel parking outside of our business, the reduction of parking spaces is much less than is true with all other parklets, where the parking is diagonal. Also, we are no more exposed than any other parklet.

In previous letters to The City of Capitola, we have been fully supportive of the program in general and specifically with regard to the costs. We originally suggested that the fees for the parking spaces be equal to the lost parking revenue and that the business owners should be responsible for all construction costs.

In closing, we respectfully ask for a fair consideration of our request.

Sincerely

Peter and Rosemary Blackwell.

MEMORANDUM

To: Ms. Katie Herlihy, City of Capitola

From: Jonathan V. Leech, INCE

Subject: Noise Assessment
Proposed Outdoor Dining in Public Right of Way
New Municipal Code Section 17.96.170

Date: September 22, 2021

cc: Stephanie Strelow, Dudek

Attachment(s): DRAFT Municipal Code Section 17.96.170

Introduction

This memorandum presents the results of an assessment regarding the potential for impacts to existing noise-sensitive land uses from the proposed allowance of outdoor dining areas associated with restaurant uses in the MU-N, MU-V, C-C, and C-R zoning districts of Capitola.

Ordinance Overview

The ordinance would allow a restaurant or café to offer an outdoor dining space to customers that would be located within the sidewalk area in front of the building or on a deck constructed to occupy the on-street parking spaces in front of the building. Such outdoor dining area may not extend beyond the street frontage of the restaurant building, and a maximum of one option would be allowed per restaurant (i.e., either sidewalk area or parking space dining deck). With respect to dining decks, an applicant would have the option to propose a custom design or to employ a prototype design that has been preauthorized by the Planning Commission.

Outdoor dining as described above would only be allowed in the MU-N, MU-V, C-C, and C-R zoning districts of the City of Capitola. Further, a maximum of 25 on-street parking spaces would be permitted in the City for conversion to restaurant dining decks. The permit process for a dining deck of custom design would require approval by the Planning Commission, whereas a proposal employing a prototype dining deck could be approved administratively.

Under the proposed ordinance, outdoor dining in the public right of way would be limited to the hours between 7 a.m. and 10 p.m.; extended hours may be allowed by the City for occasional special events and during holidays. Amplified sound would be prohibited in public right of way dining areas, including amplified music.

Please refer to the complete draft version of Municipal Code Section 17.96.170 for additional details regarding the proposed outdoor dining allowance in the public right of way.

MEMORANDUM

Noise Assessment of Proposed Municipal Code Section 17.170.19 - Outdoor Dining in Public Right of Way

September 22, 2021

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Fundamentals of Sound

Although the terms may be used interchangeably in the right context, “sound” is defined as any gas or fluid pressure variation detected by the human ear, and “noise” is unwanted sound. A sound source generates an increase in the air pressure adjacent to the source, and the pressure travels through the air in all directions from the source as a wave; the ear then detects the pressure of the arriving wave, and this pressure is experienced as a sound level. The preferred unit for measuring sound is the decibel (dB), which by way of expressing the ratio of sound pressures to a reference value logarithmically enables a wide range of audible sound to be evaluated and discussed conveniently. On the low end of this range, zero dB is not the absence of sound energy, but instead corresponds approximately to the threshold of average healthy human hearing; and, on the upper end, 120–140 dB corresponds to an average person’s threshold of pain.

The human ear is not equally responsive to all frequencies of the audible sound spectrum. An electronic filter is normally used when taking noise measurements that de-emphasizes certain frequencies in a manner that mimics the human ear’s response to sound; this method is referred to as A-weighting. Sound levels expressed under the A-weighted system are sometimes designated dBA. All sound levels discussed in this report are A-weighted.

The equivalent continuous sound level (L_{eq}) is a single dB value which, if held constant during the specified time period, would represent the same total acoustical energy of a fluctuating noise level over that same time period. L_{eq} values are commonly expressed for periods of one hour, but longer or shorter time periods may be specified. Another descriptor is the Day Night Average Noise Level (L_{dn}), which is a 24-hour weighted average often referenced for community noise management. The L_{dn} average is based upon the measured hourly L_{eq} values for each hour between 7 a.m. and 10 p.m., and to account for increased sensitivity to noise in the overnight period, 10 dB is added to the average hourly sound levels for each of the hours in this overnight period. CNEL is another 24-hour weighted average, which is similar to L_{dn} except that 5 dB is also added to each of the hourly average noise levels between 7 p.m. and 10 p.m. For comparison, a noise source of 58 dBA L_{eq} that is constant throughout the day and night would result in a CNEL or L_{dn} of 65 dBA.

In the outdoor environment, noise from a stationary source lessens (or attenuates) by 6 dB with each doubling of distance from the source. This occurs because the energy in the sound wave is depleted as it travels through the air. By way of example, noise measured to be 66 dBA at 5 feet from the source outdoors would reduce to 60 dBA at 10 feet from the sound source.

Because sound levels are based on a logarithmic scale, the addition, subtraction, and averaging of sound levels must employ logarithmic based formulas rather than arithmetic equations. For example, 60 dBA + 60 dBA = 63 dBA (not 120 dBA). For outdoor noise levels in the community, 3 dBA is the threshold for a new source to be barely noticeable above ambient levels by a person with health hearing, while a 5 dBA increase would be clearly noticeable. For instance, a new noise source of 65 dBA would be barely noticeable where background levels are 62 dBA; a new noise source of 67 dBA would be clearly noticeable where ambient levels are only 62 dBA.

Noise Regulation in Capitola

The City of Capitola General Plan Noise Element establishes an exterior noise exposure limit for single-family residential uses of 60 dBA L_{dn} and a limit of 65 dBA L_{dn} for multi-family residences and lodging facilities.

MEMORANDUM

Noise Assessment of Proposed Municipal Code Section 17.170.19 - Outdoor Dining in Public Right of Way

September 22, 2021

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The Capitola noise ordinance (Municipal Code Chapter 9.12) prohibits the generation of loud, irritating or boisterous noise within 200 feet of any residence or lodging facility; no noise level limit is identified in connection with such restrictions.

Commercial Dining Sound Levels

The proposed allowance of outdoor dining areas would only be associated with an existing restaurant or café, as an incidental or accessory use to the main establishment. As such, cooking and food preparation activities would be restricted to the existing indoor areas of the restaurant or café associated with the outdoor dining area. In addition, amplified sound would not be permitted in the outdoor dining area. Consequently, noise generating activity in the outdoor dining areas would consist of eating and conversation between diners.

The Noise Navigator Sound Level Database (Version 1.8 2016) provides several sound level references for restaurant dining areas. Sound levels vary from 50 dBA L_{eq} for an elegant bistro, to 60 dBA L_{eq} for an average family style restaurant, to 65 dBA L_{eq} for a half-full casual dining restaurant. These measurements are indoors, and no distance is specified from the measurement point to the closest table or to the center of the dining area. One sound level reference is provided for an outdoor dining area, with 52 dBA L_{eq} identified for “people eating and talking” at 45 feet from the edge of the dining area. Using the standard formula for sound attenuation outdoors, this would equate to a sound level of approximately 76 dBA L_{eq} at 3 feet from the edge of the dining area.

A common sound level reference is 60 dBA L_{eq} for normal conversation between 2 people at a distance of 3 feet (*Physics*, Paul A. Tipler, 1976). Doubling the number of people in the conversation, the sound level would be approximately 63 dBA L_{eq} at 3 feet. Assuming 32 diners in an outdoor dining area, all engaged in conversation, the sound level would be approximately 72 dBA at 3 feet. This compares favorably to the sound level reference derived for people eating and speaking in an outdoor dining area, converted to a distance of 3 feet.

Based upon the above, this assessment uses a reference sound level of 76 dBA L_{eq} at 3 feet to represent the sound level from outdoor dining areas with a capacity of up to 32 persons.

Potential Public Right of Way Dining Areas in C-R and C-C Zones

Within the C-R zone, there is only one area where a residential property is adjacent to a location where street frontage dining could be introduced under the proposed ordinance. This location is at the northeast corner of 41st Street and Capitola Road. The closest residence to street frontage adjacent to Whole Foods Market/Cafe on Capitola Road is at approximately 50 feet. Dining noise at this distance would be no more than 48 dBA L_{eq} compared to a traffic noise level of approximately 58 dBA L_{eq} (converted from CNEL, Capitola General Plan 2019, Figure SN-6).

Within the C-C zone south of Capitola Road, residences exist across 49th Street east of the C-C zone boundary, but there are no restaurants in this vicinity. Residences also exist on the north and south side of Reposa Avenue adjacent to the C-C zone boundary, but there are also no existing restaurants in this area. For the C-C zone centered along Bay Avenue, residences are located along the south side of Center Street, but existing commercial development extends to the north side of the right of way, and space to establish outdoor dining does not exist. Residences are also on the north and south sides of Hill Street, adjacent to the east side of the C-C zone, but there are no existing restaurants in this vicinity.

MEMORANDUM

Noise Assessment of Proposed Municipal Code Section 17.170.19 - Outdoor Dining in Public Right of Way

September 22, 2021

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Consequently, the potential creation and operation of sidewalk or parking area dining decks associated with restaurants in the C-C and C-R zone districts would not be anticipated to result in noticeable noise levels at existing nearby residences.

Potential Public Right of Way Dining Areas in MU-N Zone

The MU-N zone is characterized chiefly by a single row of parcels aligned along an arterial roadway. Residences are typically located on the parcels “behind” the MU-N boundary, where the MU-N use separates the residences from the busy street frontage. Because the outdoor dining areas contemplated under the proposed ordinance would only be allowed on the sidewalk or street frontage in front of an existing restaurant building, the restaurant building would provide an effective barrier to prevent dining noise from reaching the adjacent residences.

Consequently, the potential creation and operation of sidewalk or parking area dining decks associated with restaurants in the MU-N zone district would not be anticipated to result in noticeable noise levels at existing nearby residences.

Potential Public Right of Way Dining Areas in MU-V Zone

In the MU-V zone, there are residences both “behind” restaurants and across the street from restaurants. Residences behind an existing restaurant would be shielded from dining noise associated with an allowed outdoor dining area in the front of an existing restaurant, by virtue of the restaurant building itself providing a noise barrier. Residences located across the street from an existing restaurant would not be located closer than approximately 25 feet from the potential dining area, given the width of streets in the MU-V zone.

At a distance of 25 feet, outdoor dining noise from a group of 32 diners would be approximately 54 dBA L_{eq} . This noise level would be generally equivalent to the noise associated with traffic along Capitola Avenue, Stockton Avenue, and Monterey Avenue within the MU-V zone (interpreted to be 53 dBA L_{eq} as converted from CNEL, Capitola General Plan 2019, Figure SN-6). During periods of very light traffic on roadways in the MU-V, dining conversation noise may be audible at nearby residences, but should not constitute a loud, irritating or boisterous noise.

In addition, based upon a constant noise level of 54 dBA L_{eq} - outdoor dining noise levels at the closest residences in the MU-V zone would result in a CNEL of 54 dBA, based on the proposed operating schedule limitation to the hours between 7 a.m. to 10 p.m.

Consequently, the potential creation and operation of sidewalk or parking area dining decks associated with restaurants in the MU-V zone district would not be anticipated to result in substantial increases in noise levels at existing nearby residences.

Conclusion Regarding Noise Impacts

While the Capitola noise ordinance (Municipal Code Chapter 9.12) prohibits the generation of loud, irritating or boisterous noise within 200 feet of any residence or lodging facility; no noise level limit is identified in connection with such restrictions. Based on the analysis discussed above, the potential creation and operation of sidewalk or parking area dining decks associated with restaurants in the C-C and C-R and MU-N zone districts would not be anticipated to result

MEMORANDUM

Noise Assessment of Proposed Municipal Code Section 17.170.19 - Outdoor Dining in Public Right of Way

September 22, 2021

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in noticeable noise levels at existing nearby residences or lodging facilities due to limited noise generation from dining and given existing ambient noise levels in these areas. In the MU-V zone district, the potential creation and operation of sidewalk or parking area dining decks associated with restaurants would not be anticipated to result in substantial increases in noise levels at existing nearby residences or lodging facilities (i.e., dining noise levels experienced at residences or lodging facilities would not be anticipated to exceed 3 dBA over ambient levels). Consequently noise impacts upon noise-sensitive land uses from adoption of the proposed ordinance are anticipated to be less than significant.

17.96.170 Outdoor Dining in Public Right of Way

- A. Purpose.** This section establishes standards and permit requirements for outdoor dining in the public right-of-way.
- B. Definitions.**
1. **Outdoor Dining.** “Outdoor dining” means and includes both sidewalk dining and street dining decks.
 2. **Sidewalk Dining.** “Sidewalk dining” means the use of an outdoor sidewalk area within the public-right-of-way, by a private business that is an eating and drinking establishment, for eating and drinking activities.
 3. **Street Dining Deck.** A street dining deck means a platform or similar level surface within the public right-of-way and extending beyond the curb and into a roadway or on-street parking area for use by a private business that is an eating or drinking establishment.
 - a. **Custom Street Dining Deck.** A custom street dining deck is a street dining deck designed by the applicant.
 - b. **Prototype Street Dining Deck.** A prototype street dining deck is a street dining deck utilizing a design that has been preauthorized by the Planning Commission.
- C. Where Allowed.**
1. **Sidewalk Dining.**
 - a. Sidewalk dining is allowed in the MU-N, MU-V, C-C, and C-R zoning districts.
 - b. In the MU-V zoning district, sidewalk dining is allowed only on Monterey Avenue and on the Capitola Wharf.
 2. **Street Dining Decks.** Street dining decks are allowed only in the MU-V zoning district.
- D. Maximum Number of On-Street Parking Spaces.** A maximum of 25 total on-street parking spaces may be used for street dining decks. Spaces shall be allocated by the City Manager in accordance with administrative policies issued pursuant to this section.
- E. Permits and Approvals.**
1. **Required Permits.** Table 17.96-2 shows permits required for sidewalk dining and street dining decks.

Table 17.96-2: Permits Required for Outdoor Dining in Public Right-of-way

Type of Outdoor Dining	Permit Required [2] [3]	Zoning Code Chapter
Sidewalk Dining	Administrative Permit	17.116
Street Dining Decks		
Prototype Street Dining Deck [1]	Administrative Permit	17.116
Custom Street Dining Deck	Design Permit	17.120

[1] Prototype dining deck designs are identified in the adopted Village Outdoor Dining Program Administrative Policy No. I-36.

[2] Outdoor dining in the public right-of-way also requires an encroachment permit pursuant to Municipal Code Chapter 12.56. Minor encroachment permits for applications for prototype street dining decks may be issued by the Public Works Director and major encroachment permits for custom street dining decks may be issued by the Planning Commission.

[3] A street dining deck or sidewalk dining area located in the coastal zone may require a coastal development permit (CDP) as specified in Chapter 17.44 (Coastal Overlay Zone).

2. **Administrative Permit Standards.** All applications for an Administrative Permit are reviewed and acted on by the Community Development Director and must comply with the following standards:
 - a. Any included street dining deck must be designed consistent with a prototype design approved by the Planning Commission.
 - b. The sidewalk dining area or street dining deck must comply with all applicable requirements of this section, the Zoning Code, , and all other applicable laws, administrative policies, rules, and regulations.
 - c. If located in the coastal zone, the sidewalk dining area or street dining deck is consistent with the Local Coastal Program and will not adversely impact coastal resources, coastal access, and coastal views.
 - d. The street dining deck or sidewalk dining area must utilize high-quality, durable materials that are compatible with surrounding development and can withstand inclement weather.
 - e. A prototype street dining decks must use a design authorized by a valid coastal development permit.

3. **Design Permit Findings.** All applications for a Design Permit are viewed and acted on by the Planning Commission. Notwithstanding Municipal Code Section 17.120.080 (Findings for Approval), the Planning Commission shall not make the Design Permit findings in Section 17.120.080, and instead shall make the following findings:
 - a. The street dining deck complies with all applicable requirements of this section, the Zoning Code, and all other applicable laws, administrative policies, rules, and regulations.

- b. If located in the coastal zone, the street dining deck is consistent with the Local Coastal Program and will not adversely impact coastal resources, coastal access, and coastal views.
 - c. The design of the street dining deck supports a safe, inviting, and lively public realm consistent with the purpose of the MU-V zoning district as provided in Section 17.20.040 (Purpose of the Mixed Use Zoning Districts).
 - d. The street dining deck materials include high-quality, durable materials that are compatible with surrounding development and can withstand inclement weather.
4. **Good Standing.** In the past twenty-four months, the applicant has not been issued a notice of abatement, violation, or code enforcement related to an ABC license, entertainment permit, or use permit. Any courtesy code enforcement notices received by the applicant was corrected by the applicant within the date specified on the courtesy notice.
5. **Other Permits and Approvals.**
- a. Sidewalk and street dining decks are subject to all other permits, licenses and/ or entitlements required by State or local law.
 - b. A street dining deck or sidewalk dining area located in the coastal zone may require a coastal development permit (CDP) as specified in Chapter 17.44 (Coastal Overlay Zone). Approval of a CDP requires conformance with the CDP findings for approval as specified in Section 17.44.130 (Findings for approval).
6. **Use of Permit Fees in Coastal Zone.** For sidewalk dining and street dining decks in the coastal zone, the City shall utilize no less than 50 percent of permit fees received for coastal access programs, maintenance, and improvements.

F. Administrative Policies.

- 1. The City Manager is authorized to issue administrative policies regarding the administration and leasing of the public right-of-way for sidewalk dining and street dining decks, including but not limited to the application and selection process for applicants, maintenance requirements, and other related policies.
- 2. In the event of any conflict between the provisions of this chapter and the administrative policy, the more restrictive requirement shall control.

G. Operating and Development Standards.

- 1. **Must Serve Eating and Drinking Establishment.** Outdoor dining in the public right-of-way is allowed only when incidental to and a part of an “eating and drinking establishment” as defined in Chapter 17.160 (Glossary).
- 2. **One Facility Only.** An eating establishment may have either sidewalk dining or a street dining deck. An eating establishment may not have both sidewalk dining and a street dining deck.
- 3. **Limited to Eating Establishment Frontage.**

- a. Sidewalk dining is allowed on the sidewalk directly adjacent to the eating establishment street frontage.
 - b. Street dining decks in the public right-of-way are only allowed on parking spaces that are:
 - (1) Wholly or partially located in the right-of-way; and
 - (2) Directly adjacent to the eating establishment street frontage unless authorized by paragraph (b) below.
 - c. The City may allow an outdoor dining area to extend beyond the eating and drinking establishment frontage if:
 - (1) Due to the road and parking space layout, the outdoor eating area cannot be designed without extending the area beyond immediately adjacent parking spaces;
 - (2) Extending the outdoor dining area will not have significant impact on adjoining businesses as determined by the permit review authority; and
 - (3) Extending the outdoor dining area will not adversely impact coastal access.
4. **Sidewalk Width.** Outdoor dining areas in the public right-of-way shall provide a minimum clear width within the sidewalk of at least:
 - a. 5 feet in the MU-V zoning district; and
 - b. 4 feet in all other zoning districts.
 5. **Signs.** All signs associated with an outdoor dining area in the public right-of-way must comply with Zoning Code Chapter 17.80 (Signs).
 6. **Trash and Maintenance.** An outdoor dining area in the public right-of-way shall be maintained in a clean and safe condition as determined by the City.
 7. **Amplified Sound.** Amplified sound, including amplified music, is not allowed in an outdoor dining area.
 8. **Bicycle Parking for Street Dining Decks.**
 - a. A street dining deck that eliminates an on-street parking space must include a bicycle parking rack integrated in the street dining deck design or within the private property of the eating or drinking establishment.
 - b. The bicycle parking rack must provide a minimum of two bicycle parking spaces for each eliminated vehicle parking space.
 9. **Hours of Operation.**
 - a. Outdoor dining in the public right-of-way may occur between 7 a.m. and 10 p.m. seven days a week.
 - b. The City may allow extended hours for street dining decks for special events and holidays.

H. Enforcement.

1. **General.**

- a. The City shall have all enforcement remedies permitted by law, including but not limited to those in Municipal Code Title 4 (General Municipal Code Enforcement).
 - b. Any outdoor dining facility may be subject to inspection by the City on an annual basis or as needed to ensure compliance with this section, conditions of approval, and administrative procedures.
 - c. The Community Development Director is authorized to issue administrative citations pursuant to Municipal Code Chapter 4.14 (Administrative Citations), in amounts set forth by separate resolution of the City Council.
2. **Revocation of Permit.** After a permit holder is issued a fourth administrative citation, the Community Development Director or Public Works Director may revoke any Administrative Permit and the Planning Commission may revoke any Design Permit. Grounds for revocation shall be the permit-holder's lack of compliance with the requirements in this section or any permit issued pursuant to this section. The decision regarding revocation is appealable pursuant to the procedures in Chapter 2.52 (Appeals to City Council).

17.96.175 Outdoor Dining on Private Property

- A. Conditional Use Permit.** An eating establishment may provide outdoor dining on private property with a Conditional Use Permit and consent of private property owner that such use is permitted on the property.
- B. Coastal Development Permit.** Outdoor dining on private property in the coastal zone may require a Coastal Development Permit pursuant to Chapter 17.44 (Coastal Overlay Zone) independent of and in addition to any other required permit or approval.

Chapter 17.120 Design Permits

17.120.030 When Required

- C. Types of Projects.** The types of projects that require a Design Permit, and the type of Design Permit for each project, are listed in Table 17.120-1. If a type of development project or activity is not specifically listed in Table 17.120-1, a Design Permit is not required.

TABLE 17.120-1: PROJECTS REQUIRING DESIGN PERMITS

Type of Project	Type of Permit
Single-Family Residential Projects	
Ground floor additions to existing single-family homes where the addition is visible from a public street and does not exceed 15 ft. in height, except for exempt additions (Section 17.120.030.B)	Minor Design Permit
Accessory structures greater than 10 ft. in height and/or 120 sq. ft. to 300 sq. ft.	Minor Design Permit
Accessory structures greater than 300 sq. ft.	Design Permit
Upper floor decks and balconies on the side or rear of a home that are not adjacent to public open space	Design Permit
All rooftop decks	Design Permit
Upper floor additions to an existing single-family homes	Design Permit
New single-family homes	Design Permit
Multifamily Residential Projects	
Ground-floor additions less than 15% of total floor area of an existing multifamily structure	Minor Design Permit
Upper floor decks and balconies on the side or rear of a structure that are not adjacent to public open space	Design Permit
All rooftop decks	Design Permit
Accessory structures including garbage and recycling enclosures	Minor Design Permit
Ground-floor additions 15% of total floor area or more to an existing multifamily structure	Design Permit
Upper floor additions to an existing multifamily structure	Design Permit
New multifamily residential structures	Design Permit
Non-Residential Projects (Including Mixed-Use)	
Exterior modifications to an existing structure that do not increase the floor area of the structure	Minor Design Permit
Accessory structures 120 sq. ft. to 300 sq. ft. including garbage and recycling enclosures	Minor Design Permit
Accessory structures greater than 300 sq. ft. including garbage and recycling enclosures	Design Permit
Additions less than 15% of the floor area of an existing non-residential structure where the addition is not visible from the primary street frontage	Minor Design Permit
Additions 15% or more of the floor area of an existing non-residential structure where the addition is visible from the primary street frontage	Design Permit
Additions to an existing non-residential structure of 3,000 sq. ft. or more	Design Permit
New non-residential structures	Design Permit
Custom outdoor dining decks	Design Permit

D. Single-Family Exemptions. The following additions to a single-family dwelling are exempt from the Design Permit requirement:

1. Ground-floor single-story additions up to 400 square feet at the rear of the home.
2. Enclosure of an existing recessed entrance up to 25 square feet.
3. Enclosure of an existing open porch up to 50 square feet.
4. Installation of bay windows.
5. A single accessory structures that does not exceed 120 square feet in floor area and 10 feet in height with no connection to water or sewer.
6. Minor exterior modification or replacement of materials on an existing structure including siding, windows, doors, and roof.
7. Other similar minor additions to a single-family dwelling as determined by the Community Development Director.
8. Upper floor decks and balconies immediately adjacent to a street or public open space.

E. Non-Residential Exemptions.

1. Prototype outdoor dining decks that comply with Section 17.96.170 (Outdoor Dining in Public Right of Way) are exempt from the Design Permit requirement.



CAPITOLA CITY COUNCIL SPECIAL MEETING AGENDA REPORT

MEETING OF DECEMBER 1, 2021

FROM: City Manager Department

SUBJECT: Mandatory Organics Waste Disposal Reduction Ordinance

RECOMMENDED ACTION: Introduce for first reading, by title only, waiving further reading of the text, an ordinance repealing Capitola Municipal Code Chapter 8.04: Garbage and enacting Chapter 8.04: Solid Waste and Edible Food Recovery.

BACKGROUND: In September of 2016, Governor Brown signed into law State Senate Bill 1383 ("SB 1383"). SB 1383 establishes a methane emission reduction target of 75% (from 2014 levels) by 2025. The law also seeks to rescue at least 20% of currently disposed edible food by 2025 and redistribute this food to people in need. These reduction targets are designed to support the State's effort to reduce emissions of short-lived climate pollutants in California and to support the recovery of edible food waste to reduce food insecurity.

In November 2020, the California Department of Resources, Recycling and Recovery ("CalRecycle") finalized regulations to achieve the goals of SB 1383. The regulations require all local jurisdictions in the State to adopt a mandatory organic recycling ordinance, or other enforceable mechanism, to comply with SB 1383 by January 1, 2022. CalRecycle has provided model implementation tools, including a model ordinance, to assist jurisdictions in complying with SB 1383.

The regulations place requirements on multiple entities, including the City of Capitola, residential households, commercial businesses and business owners, commercial edible food generators, self-haulers, food recovery organizations, and food recovery services to help achieve Statewide organic waste disposal reduction goals.

DISCUSSION: Pursuant to SB 1383 and the regulations established by CalRecycle, the City of Capitola is required to implement the following practices and procedures to be considered compliant:

- Require the source-separation and collection of food waste from all organic waste generators, including residential, multi-family, commercial properties, and City facilities;
- Development of a program for monitoring compliance, including inspections and enforcement, identifying violations, establishing penalties for non-compliance, and tracking activities for annual reporting to CalRecycle;

Mandatory Organics Waste Disposal Reduction Ordinance
December 1, 2021

- Development of an edible-food recovery program, including diversion of material from certain commercial generators (including public events), partnerships with edible food recovery services and organizations, and determining edible food recovery infrastructure capacity gaps;
- Conduct outreach and education to all residents, businesses, haulers, solid waste facilities, local food banks, and other food recovery organizations regarding relevant requirements under SB 1383;
- Procure and track purchases of recycled paper and recycled organic waste products including mulch, compost, renewable gas and/or electricity from biomass conversion; and
- Maintain accurate and timely records of SB 1383 compliance.

To meet the SB 1383 regulations, jurisdictions throughout the State are required to adopt an ordinance or other similarly enforceable mechanism by January 1, 2022.

Repealing chapter 8.04: Garbage and enacting a Chapter 8.04: Solid Waste and Edible Food Recovery in Capitola Municipal Code will allow the City to meet this requirement.

The ordinance will require that organic waste generators, haulers, and other entities subject to the requirements of SB 1383 regulations and subject to the jurisdiction's authority, comply with SB 1383 regulatory requirements.

FISCAL IMPACT: The Fiscal Year fiscal impacts of new ordinance should be limited to staff time. As the City and its franchise hauler further develop the compliance programs, additional costs will be included in future budgets.

ATTACHMENTS:

1. Capitola Ordinance Chapter 8.04 (PDF)

Report Prepared By: Larry Laurent
Assistant to the City Manager

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

11/24/2021

ORDINANCE NO. ____
**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA REPEALING
 CHAPTER 8.04 (GARBAGE) AND ENACTING CHAPTER 8.04 (SOLID WASTE AND
 EDIBLE FOOD RECOVERY) OF THE CAPITOLA MUNICIPAL CODE TO ADDRESS
 ORGANIC WASTE DISPOSAL REDUCTION**

WHEREAS, the California Integrated Waste Management Act of 1989, requires cities and counties to reduce, reuse, and recycle (including composting) solid waste generated in their jurisdictions to the maximum extent feasible before any incineration or landfill disposal of waste, in order to conserve water, energy, and other natural resources, and to protect the environment, and

WHEREAS, Assembly Bill 341 of 2011 placed requirements on businesses and multi-family property owners that generate a specified threshold amounts of solid waste to arrange for recycling services and required jurisdictions to implement commercial recycling programs, and

WHEREAS, Assembly Bill 1826 of 2014 required businesses and multi-family property owners that generate a specified threshold amount of solid waste, recycling, and organic waste per week to arrange for recycling services for that waste, required jurisdictions to implement recycling programs to divert organic waste from businesses subject to the law, and required jurisdictions to implement a commercial organics recycling program, and

WHEREAS, SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, required CalRecycle to develop regulations to reduce organics in landfills as a source of methane. CalRecycle's regulations place requirements on multiple entities including local jurisdictions, residential households, commercial businesses, commercial edible food generators, haulers, and others in order to support achievement of organic waste disposal reduction targets, reduce greenhouse gas emissions, and reduce food insecurity by requiring commercial edible food generators to arrange to have edible food be recovered for human consumption, and

WHEREAS, SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires jurisdictions to adopt an ordinance and other enforceable mechanisms to implement relevant provisions of CalRecycle's SB 1383 regulations, and

WHEREAS, CalRecycle's SB1383 regulations specifically mandate that the City adopt an ordinance for enforcement of provisions of section 492.6 of the Department of Water Resource's Model Water Efficient Landscape Ordinance, Title 23 California Code of Regulations Chapter 2.7, related to composting, notwithstanding that the entirety of the Model Water Efficient Landscape Ordinance applies in Capitola pursuant to Government Code section 65595(d),

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

SECTION 1. Repeal and Replacement. Chapter 8.04 (Garbage) of the Capitola Municipal Code is hereby repealed and Chapter 8.04 (Solid Waste and Edible Food Recovery) is enacted, set forth in its entirety as follows:

Chapter 8.04
SOLID WASTE AND EDIBLE FOOD RECOVERY

- 8.04.010 Definitions.
- 8.04.020 Accumulation of Solid Waste.
- 8.04.030 Prohibited Disposal.
- 8.04.040 Collection – Exclusive right.
- 8.04.050 Collection – Interference prohibited.
- 8.04.060 Right to Divert Recyclables and Organic Materials.
- 8.04.070 Collection Service Requirements
- 8.04.080 Commercial business requirements.
- 8.04.090 Waivers for Commercial Businesses.
- 8.04.100 Self-hauler requirements.
- 8.04.110 Franchised haulers and facility operators.
- 8.04.120 Commercial edible food generator requirements.
- 8.04.130 Food Recovery Organization and Food Recovery Services requirements.
- 8.04.140 Enforcement and Penalties.

8.04.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings set forth herein:

- A. “Authorized collector” means such persons, firms or corporations collecting and delivering for disposal, recycling or processing solid waste (other than solid waste generated by a permitted building project) originating in the City and doing so under a contract or franchise agreement with the City.
- B. “Back-haul” means generating and transporting organic materials to a destination owned and operated by the generator using the generator’s own employees and equipment, as defined in 14 CCR section 189881(a)(66)(A).
- C. “CCR” means the California Code of Regulations.
- D. “City Manager” means the City Manager of the City of City of Capitola, or their designee.
- E. “Commercial Business” or “Commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a multifamily dwelling consisting of five or more units, or as further defined in 14 CCR Section 18982(a)(6). A multi-family dwelling that consists of fewer than five (5) units is not a commercial business for purposes of implementing this chapter.

- F. "Commercial Edible Food Generator" means a tier one or tier two commercial edible food generator as defined in 14 CCR Section 18982(a)(73) and (a)(74). Food recovery organizations and food recovery services are not commercial edible food generators.
- G. "Community Composting" means any activity that composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and compost on-site at any one time does not exceed 100 cubic yards and 750 square feet, as specified in 14 CCR Section 17855(a)(4).
- H. "Compost" means the product resulting from the controlled biological decomposition of organic waste.
- I. "Construction and demolition debris" or "C&D" means used or discarded materials resulting from construction, renovation, remodeling, repair, demolition, excavation or construction clean-up operations on any pavement or structure.
- J. "Disposal" means the final disposition of solid waste at a solid waste facility permitted for disposal.
- K. "Diversion" means activities reducing or eliminating the amount of solid waste from solid waste disposal, and which return these materials to use in the form of raw materials for new, reused, or reconstituted products, which meet the quality standards necessary for commercial use, or for other purposes of reuse.
- L. "Dwelling unit" means one (1) or more rooms with internal access between all rooms, which provide complete independent living facilities for at least one (1) family, including provisions for living, sleeping, eating, cooking, bathing, and sanitary facilities.
 "Edible food" means food intended for human consumption, as further defined in 14 CCR section 18982(a)(18). For the purposes of this chapter, edible food is not solid waste if it is recovered and not discarded. Nothing in this chapter requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code.
- M. "Excluded Waste" means biohazardous or biomedical waste, hazardous waste, medical waste, regulated radioactive waste, waste that is volatile, corrosive, or infectious, waste treatment or processing sludge, contaminated soil and dirt, contaminated concrete, contaminated asphalt, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, any matter or materials which are not acceptable for disposal at a solid waste landfill as defined in California Integrated Waste Management Act as may be amended, and those wastes under the regulatory control of the Nuclear Regulatory Commission.
- N. "Food recovery organization" means an entity that engages in the collection or receipt of edible food from commercial edible food generators and distributes that edible food as part of food recovery either directly or through other entities as further defined in 14 CCR section 18982(a)(25), including, but not limited to:
1. A food bank as defined in Section 113783 of the Health and Safety Code;
 2. A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,
 3. A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.
- O. "Food recovery service" means a person or entity that collects and transports edible food from a commercial edible food generator to a food recovery organization or other entities for food

recovery, as further defined in 14 CCR section 18982(a)(26). A food recovery service is not a commercial edible food generator for the purposes of this chapter.

- P. "Food scraps" means food scraps and trimmings and other putrescible waste that result from food production, preparation, cooking, storage, consumption or handling. Food scraps includes but is not limited to meat, fish and dairy waste, fruit and vegetable waste and grain waste. Food scraps does not include excluded waste.
- Q. "Garbage" means all solid waste attributed to normal activities of a dwelling unit or commercial business. Garbage does not include recyclable materials, organic materials, debris from construction and demolition, e-waste, universal waste, hazardous waste, household hazardous waste or excluded waste.
- R. "Generators," for the purpose of this chapter, means a person or entity, including commercial generators and residential generators, that is responsible for the initial creation of solid waste or organic materials at any premises, and includes "organic waste generator" as defined in 14 CCR Section 18982(a)(48).
- S. "Organic materials" or "organic waste" means solid waste containing material originated from living organisms and their metabolic waste products, including but not limited to food scraps, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, as further defined in 14 CCR section 18982(a)(46).
- T. "Prohibited container contaminants" means (1) discarded materials placed in the designated Recyclables container that are not identified as acceptable source separated recyclables for the authorized collector's designated recyclables collection container; (2) discarded materials placed in the designated organic materials collection container that are not identified as acceptable source separated organic materials for the authorized collector's designated organic materials collection container; and (3) discarded materials placed in the garbage container that are acceptable source separated recyclables and/or source separated organic materials to be placed in authorized collector's designated organic materials collection container and/or designated recyclables collection container, and (4) excluded waste placed in any container.
- U. "Recyclable materials" and "Recyclables" means any material designated to be separated from the waste stream for purposes of recycling by the authorized collector in accordance with applicable law.
- V. "Recycling" means the process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise become garbage and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the marketplace. Recycling does not include transformation as defined in Public Resources Code § 40201.
- W. "Residential" means, for the purposes of this chapter, any premises consisting of between one (1) and four (4) dwelling units, and onsite domestic uses accessory to these dwelling units. A multi-family dwelling that consists of fewer than (5) dwelling units is a residential premises, for the purposes of this chapter.
- X. "Self-haul" means the act of hauling solid waste, organic waste or recovered materials that a person has themselves generated to another person for purposes of recovery or disposal. A "self-hauler" is any person who self-hauls waste that they have generated to another person for disposal or recovery, and also includes a person who back-hauls waste.

- Y. "Solid waste" has the same meaning as defined in Public Resources Code Section 40191, which defines solid waste as all putrescible and nonputrescible solid and semisolid wastes, including garbage, recyclable materials, organic materials, construction and demolition wastes, bulky waste, discarded home and industrial appliances, manure, vegetable or animal solid or semisolid wastes, and other discarded solid and semisolid wastes with the exception that solid waste does not include any of the following wastes: (1) hazardous waste, as defined in the Public Resources Code Section 40141, (2) radioactive waste regulated pursuant to the State Radiation Control Law and (3) Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code).
- Z. "Source separate" means the process of removing recyclable materials and organic materials from solid waste at the place of generation, prior to collection or self-hauling, as further defined in 14 CCR section 17402.5(b)(4).
- AA. "Tier one commercial edible food generator" means a commercial edible food generator that is one of the following as defined in 14 CCR section 18982(a):
1. Supermarkets with gross annual sales of \$2,000,000 or more
 2. Grocery store with a total facility size equal to or greater than 10,000 square feet.
 3. Food service provider, which means an entity primarily engaged in providing food services to institutional, governmental, commercial, or industrial locations of others based on contractual arrangements with these types of organizations.
 4. Wholesale food vendor, which means a business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination.
 5. Food distributor, which means a company that distributes food to entities including, but not limited to, supermarkets and grocery stores.
- BB. "Tier two commercial edible food generator" means a commercial edible food generator that is one of the following as defined in 14 CCR section 18982(a):
1. Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
 2. Hotel with an on-site food facility and 200 or more rooms.
 3. Health facility with an on-site food facility and 100 or more beds.
 4. Large venue, which means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of this ordinance, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12, a site under common ownership or control that includes more than one large venue that is contiguous with other large venues in the site, is a single large venue.
 5. Large event, which means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park,

parking lot, golf course, street system, or other open space when being used for an event.

8.04.020 Accumulation of Solid Waste.

- A. It is unlawful for any person to deposit, keep or accumulate, or permit, cause or suffer, any solid waste to be deposited, kept or accumulated upon any lot or parcel of land, or public or private place, street, lane, alley or drive, unless the same is kept, deposited or allowed to accumulate as provided for in this chapter.
- B. It is unlawful for the owner, occupant or person in charge of any premises to suffer, permit or allow any solid waste to remain in, on, or under such premises for a period of more than seven days, except as expressly provided for in this chapter.
- C. It is unlawful for any person owning or controlling any dwelling, flat, boardinghouse, lodginghouse, restaurant, hotel, apartment or eating house, store, shop, office or office buildings to keep, accumulate, or permit to be kept or accumulated, any solid waste on or upon any lot or parcel of land, or upon any public or private place, street, lane, alley, or drive, unless the same is kept in watertight containers or receptacles constructed and maintained in a manner as provided in this chapter. Such containers shall either be provided by the authorized collector or commercially manufactured for such purpose.
- D. It shall be the duty of every person in possession, charge or control of any premises upon which solid waste is produced to provide one or more containers of sufficient capacity to hold the accumulation of solid waste between the times for the collection of garbage and rubbish or self-hauling of such solid waste for disposal.

8.04.030 Prohibited Disposal.

- A. It is unlawful for any person to place, deposit, keep or bury any solid waste on, in, or under any premises, except in containers as provided in this chapter.
- B. It is unlawful for any person to take any solid waste generated from a residence or commercial establishment and deposit such solid waste in any public refuse container, or in any privately owned container for collection of solid waste without the express consent of the person who owns the container or is paying for collection service pertaining to such container. A public refuse can is any container authorized or maintained by the city for the use of the general public and located upon any street, sidewalk, park or right-of-way within the city.
- C. No person may dispose of waste matter in any dumpster without the express permission of the person or entity responsible for paying the charges for disposal of the contents of the dumpster. For purposes of this section: "waste matter," is defined in Penal Code Section 374(b); "dumpster" means any container, primarily made of metal, with a capacity of one cubic yard or greater and designed or used as a receptacle for the disposal of waste.
- D. It is unlawful to burn any solid waste on any sidewalk, street, alley, public way or public property.
- E. No person shall kindle or maintain any bonfire or garbage fire and no person in possession, charge or control of any premises shall authorize or permit any such fire to be kindled or maintained on said

premises unless such fire is contained in a waste burner approved by the state and county air pollution control board.

8.04.040 Collection – Exclusive right.

A. Except as set forth elsewhere in this chapter, the city, in order to more effectually promote and protect the public health and safety and reduce the danger and hazards of fire and conflagrations, reserves unto itself the right to collect, transport, haul and dispose of or cause to be collected, transported, hauled and disposed of, all solid waste produced or found within the corporate limits of the city. The city may, upon terms and conditions deemed to be in the public interest, authorize the award of a contract for collection and disposal of solid waste within the city. At all times where such contract is in force, it shall be unlawful for any person, firm or corporation, other than the authorized collector, to collect, transport, haul or dispose of any solid waste within or from the city except as expressly set forth elsewhere in this chapter.

B. No person other than the authorized collector shall place or service drop boxes, dumpsters, or debris boxes, or containers for collection and disposal of solid waste, anywhere within the jurisdictional limits of the city. Drop boxes, dumpsters and debris boxes may only be placed or serviced in the city by the city's authorized collector.

C. The provisions of this section shall not apply to any person conveying solid waste collected outside the City nor to prohibit a person from exercising rights to self-haul solid waste to solid waste or other appropriate disposal facilities, and nor the right to divert recyclable material or organic materials so long as the diversion otherwise complies with this chapter.

8.04.050 Collection – Interference prohibited.

It is unlawful for any person, firm, or corporation, in any manner, to interfere with the collection, removal, or disposal of refuse or commercial rubbish by the authorized collector or city employees.

8.04.060 Right to Divert Recyclables and Organic Materials.

A. Nothing in this chapter limits the right of any person to donate, sell, or otherwise recover their recyclable materials so long as the removal otherwise complies with this chapter.

B. Organic materials may be fed to animals on the premises where such organic materials is produced, provided that the premises are always kept in a sanitary condition to the satisfaction of the City Manager; and provided further that the keeping and feeding of such animals shall at all times conform to the applicable regulations of those entities governing the same now in force or which thereafter may be enacted or promulgated.

C. Organic materials may be used in on-site composting or community composting, pursuant to 14 CCR Section 18984.9(c), provided that such operation conforms to the applicable regulations of those entities governing the same now in force or which thereafter may be enacted or promulgated.

8.04.070 Collection Service Requirements

A. Except for premises where the owners or occupants regularly self-haul all waste generated on the premises in accordance with section 8.04.100, each owner and tenant of any premises, including all

residential premises and commercial businesses, shall ensure that such premises is subscribed to solid waste collection service with the authorized collector as set forth herein.

B. Each person occupying any premises in the city shall arrange for a size, quantity and collection frequency of collection containers to adequately store all solid waste generated in connection with the premises between the times designated for collection service. Generators shall adjust service levels for their collection services as requested by the City in order to meet the requirements to dispose of all solid waste generated on the premises at least weekly.

C. Each occupant of each premises shall source separate the solid waste generated and shall place source separated organic materials, including food scraps, in the organic materials collection container; and shall place source separated recyclable materials, as established by the authorized collector, in the recyclable material collection container; and shall place garbage in the garbage collection container.

D. No person shall place any prohibited container contaminant into any collection container serviced by the authorized collector.

E. The authorized collector shall give written notice to the City Manager of the address of any occupied premises within the City which is not subscribing to the solid waste collection service provided by the authorized collector.

8.04.080 Commercial business requirements.

A. Each owner, operator, or manager of a commercial business shall ensure the proper separation of solid waste generated on such premises, as required by the authorized collector, by placing each type of material in designated collection containers, and ensure that employees, contractors, volunteers, customers, visitors, and other persons on-site follow source separation requirements related to solid waste as required by the authorized collector. Each owner, operator, or manager of a commercial business, except for multifamily dwellings, shall prohibit employees from placing materials in a container not designated for those materials, and shall periodically inspect containers for organic waste and inform employees of requirements to ensure such containers are only used for organic waste.

B. Each owner, operator, or manager of a commercial business shall supply an adequate number, size, and location of collection containers with sufficient labels or colors designating the appropriate material for deposit in accordance with source separation requirements of the authorized collector for the employees, contractors, tenants, and customers of the commercial business.

C. Each owner, operator, or manager of a commercial business shall annually provide information to employees, contractors, tenants, and customers about organic materials recovery requirements and about proper sorting of solid waste.

D. Each owner, operator, or manager of a commercial business shall provide educational information within fourteen (14) days of occupation of the premises to any new tenants that describes requirements to keep source separated organic materials and source separated recyclable materials separate from garbage and the location of collection containers and the rules governing their use at each property.

E. Each owner, operator, or manager of a commercial business shall cooperate with the authorized collector's monitoring program for inspection of the contents of containers for prohibited container contaminants.

F. Each owner, operator, or manager of a commercial business, except for multifamily dwellings, shall provide containers meeting the requirements of 14 CCR section 18984.9 for the collection of source separated organic materials and source separated recyclable materials in all indoor and outdoor areas where garbage disposal containers are provided for customers, for materials generated onsite. Such containers do not need to be provided in restrooms. If a commercial generator does not generate any of the materials that would be collected in one type of collection container, then it is not required to provide that type of container in all areas where disposal collection containers are provided for customers.

G. If a commercial generator self-hauls, the commercial generator shall meet the self-haul requirements in section 8.04.100.

8.04.090 Waivers for Commercial Businesses.

A. The City Manager may grant waivers to commercial business for physical space limitations and/or de minimis volumes. Commercial businesses seeking a waiver shall submit their request in a form specified by the City Manager. After reviewing the waiver request, and after an on-site review, if applicable, the City Manager may either approve or deny the following waiver requests. Anyone granted a waiver shall provide written verification of eligibility for a waiver at least every five years, and shall notify the City if circumstances change such that they are no longer eligible for such waiver, in which case waiver will be rescinded.

B. De Minimis Waivers: The City Manager may waive obligations of a commercial business to comply with the collection service and source separation requirements of section 8.04.080 if the commercial business meets the following requirements:

1. Submits an application specifying the type of waiver requested and provide documentation as described below.
2. Provides documentation that either:
 - i. The commercial business receives two or more cubic yards of weekly solid waste collection service and disposed organic materials subject to collection comprises less than 20 gallons per week of the business' total weekly solid waste collection service volume; or
 - ii. The commercial business receives less than two cubic yards of weekly solid waste collection service and disposed organic materials subject to collection comprises less than 10 gallons per week of the business' total weekly solid waste collection service volume.
3. For the purposes of subsections (i) and (ii) above, total weekly solid waste collection service shall be the sum of weekly garbage collection container volume, recyclable material collection container volume and organic materials collection container volume, measured in cubic yards.

C. Physical Space Waivers: The City may waive a property owner's obligations to comply with the collection service and source separation requirements of section 8.04.080 if presented evidence from its

own staff, authorized collector, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with collection service requirements. A property owner may request a physical space waiver through the following process:

1. Submit an application form specifying the type(s) of collection services for which they are requesting a waiver from mandatory collection service.
2. Provide documentation that the premises lacks adequate space for the recyclable materials collection containers and/or organic materials collection containers including documentation from its authorized collector, licensed architect, or licensed engineer.

8.04.100 Self-hauler requirements.

A. Any generator of solid waste may personally haul the same in a vehicle owned by, or in the lawful possession of, the generator of such solid waste, to a lawful disposal facility outside of the City limits, subject to the following requirements:

1. Self-haulers, including back-haulers, must source separate and transport organic materials to a solid waste facility, operation, activity, or property that processes or recovers source separated organic materials.
2. Self-haulers, including back-haulers, must source separate and transport recyclable materials to a solid waste facility, operation, activity, or property that processes or recovers those materials.
3. Self-haulers may avoid the obligation to source separate all organic materials and recyclables only if they haul organic waste to a high diversion organic waste processing facility as specified in 14 CCR Section 18984.3.
4. Self-haulers that are commercial businesses shall keep a record of the amount of organic materials delivered to each solid waste facility, operation, activity, or property that processes or recovers organic materials; this record shall be subject to inspection by the City. The records shall include the following information:
 - i. Delivery receipts and weight tickets from the entity accepting the waste. If the material is transported to an entity that does not have scales on-site or employs scales incapable of weighing the self-hauler's vehicle in a manner that allows it to determine the weight of materials received, the self-hauler is not required to record the weight of material but shall keep a record of the entities that received the organic materials.
 - ii. The amount of material in cubic yards or tons transported by the generator to each entity.

B. Self-haulers must complete and retain on-site a self-hauling form certifying that all self-hauling activities will be completed in accordance with this chapter or any other applicable law or regulation. A copy of such form shall be completed and remitted annually to the City Manager.

C. This section is permissive and does not relieve any owner or occupants of property of the requirements of compliance with regular and routine disposal of all solid waste generated on the premises at least once per week as set forth in section 8.04.020. Nothing in this chapter shall prohibit any generator from regularly disposing of garbage, recyclable material, or organic materials at an appropriate disposal or recovery facility, by self-hauling in a manner conforming to this section.

8.04.110 Franchised haulers and facility operators.

A. Any authorized collector providing residential, commercial, or industrial organic materials collection services to generators within the City's boundaries shall:

1. Provide written notice to the City annually on or before April 1 identify the facilities to which they will transport solid waste including facilities for source separated recyclable materials and source separated organic materials.
2. Transport source separated recyclable materials and source separated organic materials to a facility, operation, activity, or property that recovers organic materials as defined in 14 CCR, Division 7, Chapter 12, Article 2.
3. Obtain approval from the city to haul organic materials, unless it is transporting source separated organic materials to a community composting site or lawfully transporting construction and demolition debris in a manner that complies with 14 CCR Section 18989.1.
4. Comply with other requirements contained within its franchise agreement.

B. Owners of facilities, operations, and activities that recover organic waste, including, but not limited to, compost facilities, in-vessel digestion facilities, and publicly-owned treatment works shall, upon the city's request, provide information within 60 days regarding available and potential new or expanded capacity at their facilities, operations, and activities, including information about throughput and permitted capacity necessary for planning purposes.

C. Any person owning, managing, or otherwise responsible for a parcel upon which there is a community composting operation, shall within 60 days of a request by the city, provide information to the city as may be deemed necessary by the city to support organic waste capacity planning, including, but not limited to, an estimate of the amount of organic waste anticipated to be handled at the community composting operation.

8.04.120 Commercial edible food generator requirements.

- A. Tier one commercial edible food generators must comply with the requirements of this section January 1, 2022, and tier two commercial edible food generators must comply commencing January 1, 2024.
- B. Large venue or large event operators not providing food services, but allowing for food to be provided by others, shall require food facilities operating at the large venue or large event to comply with the requirements of this section, commencing January 1, 2024.
- C. Commercial edible food generators shall comply with the following requirements:
 1. Arrange to recover the maximum amount of edible food that would otherwise be disposed.
 2. Contract with or enter into a written agreement with food recovery organizations or food recovery services for: (a) the collection of edible food for food recovery; or (b) acceptance of the edible food that the commercial edible food generators self-hauls to the food recovery organization for food recovery.
 3. Shall not intentionally spoil edible food that is capable of being recovered by a food recovery organization or a food recovery service.

4. Allow the City's enforcement officer to access the premises and review records required to be kept under 14 CCR Section 18991.4.
5. Keep records that include the following information as specified in 14 CCR Section 18991.4:
 - a. A list of each food recovery service or organization that collects or receives its edible food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).
 - b. A copy of all contracts or written agreements established under 14 CCR Section 18991.3(b).
 - c. A record of the following information for each of those food recovery services or food recovery organizations:
 - i. The name, address and contact information of the food recovery service or food recovery organization.
 - ii. The types of food that will be collected by or self-hauled to the food recovery service or food recovery organization.
 - iii. The established frequency that food will be collected or self-hauled.
 - iv. The quantity of food, measured in pounds recovered per month, collected or self-hauled to a food recovery service or food recovery organization for food recovery.
- D. Nothing in this Chapter shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 [commencing with Section 49580] to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

8.04.130 Food Recovery Organization and Food Recovery Services requirements.

- A. Food recovery services collecting or receiving edible food directly from commercial edible food generators shall maintain the following records, as required by 14 CCR Section 18991.5(a)(1):
 1. The name, address, and contact information for each commercial edible food generator from which the service collects edible food.
 2. The quantity in pounds of edible food collected from each commercial edible food generator per month.
 3. The quantity in pounds of edible food transported to each food recovery organization per month.
 4. The name, address, and contact information for each food recovery organization that the food recovery service transports edible food to for food recovery.
- B. Food recovery organizations collecting or receiving edible food directly from commercial edible food generators shall maintain the following records as required by 14 CCR Section 18991.5(a)(2):

1. The name, address, and contact information for each commercial edible food generator from which the organization receives edible food.
 2. The quantity in pounds of edible food received from each commercial edible food generator per month.
 3. The name, address, and contact information for each food recovery service that the organization receives edible food from for food recovery.
- C. Food recovery organizations and food recovery services that have their primary address physically located in the City and contract with one or more commercial edible food generators pursuant to 14 CCR Section 18991.3(b) shall annually report to the city the total pounds of edible food recovered in the previous calendar year from tier one and tier two commercial edible food generators no later than April 1.

In order to support edible food recovery capacity planning assessments or other studies, food recovery services and food recovery organizations operating in the city shall provide information and consultation to the city upon request, regarding existing or proposed food recovery capacity that could be accessed by the city and its commercial edible food generators. A food recovery service or food recovery organization contacted by the city shall respond to such request for information within 60 days unless a shorter timeframe is otherwise specified by the city.

8.04.140 Enforcement and Penalties.

A. Any enforcement officer as defined in section 4.02.021 shall have the duty and authority to enforce the provisions of this chapter.

B. No person shall deny or obstruct the making of any inspection or collection or removal.

C. Any person violating the provisions of this chapter shall be deemed to be guilty of an infraction. Any violation of this chapter shall be public nuisance and may be punished or enforced in accordance with the provisions of chapter 4.16 and chapter 4.18 of this code. Three or more subsequent violations of this chapter by the same person or persons within a 12-month period may be charged and prosecuted as a misdemeanor. Any violation shall be subject to administrative citation and imposition of civil penalties under chapter 4.14 in the following amounts:

1. A fine not exceeding one hundred dollars for a first violation;
2. A fine not exceeding two hundred dollars for a second violation of the same provision of this code within any twelve consecutive month period;
3. A fine not exceeding five hundred dollars for each additional violation of the same provision of this code within any twelve consecutive-month period.

Section 2. Environmental Review. The City Council finds the adoption of this ordinance is exempt under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this ordinance may have a significant effect on the environment. In the alternative, the City Council determines that the basic purpose of this ordinance is to strengthen requirements for the handling and disposal of solid waste generated within the City, and that the requirements in this ordinance to divert organic materials away from disposal into landfills that is likely to reduce the generation of short-term climate pollutants, and therefore the adoption of this ordinance is an action for the protection of the environment and natural resources, and is categorically exempt

pursuant to CEQA Guidelines section 15307 (actions by regulatory agencies for the protection of natural resources) and 15308 (actions by regulatory agencies for the protection of environment).

Section 5. Severability. The City Council hereby declares that every section, paragraph, sentence, clause, and phrase of this ordinance is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses, or phrases.

Section 6. Effective Date. This ordinance shall be in full force and effective 30 days after its adoption.

Section 7. Publication. The City Clerk is directed to cause this ordinance or a summary thereof to be published in the manner required by law.

This Ordinance was introduced at a regular meeting of the Capitola City Council on the 23rd day of November 2021, and was adopted at a regular meeting of the Capitola City Council on the ___ day of December 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Chloe Woodmansee, City Clerk



CAPITOLA CITY COUNCIL SPECIAL MEETING AGENDA REPORT

MEETING OF DECEMBER 1, 2021

FROM: Community Development

SUBJECT: New State of California Housing Legislation and Community Development
Department Housing Workplan

RECOMMENDED ACTION: Accept staff presentation on recent housing legislation and the Community Development Department's workplan.

BACKGROUND: This fall, new State legislation to expand housing production passed. The new legislation is broad ranging with impacts to housing element updates, the subdivision map act, land use development, density bonus law, and more. Overall, the goal of the new legislation is to increase housing production with new opportunities related to permit streamlining, increased development potential, and long range planning.

DISCUSSION: During the November 23, 2021, City Council meeting, the City's legal team will provide an overview of the new state legislation related to housing. A summary of Senate Bills 8, 9, and 10 and a summary of the 29 additional new housing legislation bills are included as attachments 1 and 2, respectively.

Following the legislative update, the Community Development Director will present a workplan relative to the new laws for 2022 and 2023, including both action items and timelines.

FISCAL IMPACT: No fiscal impact.

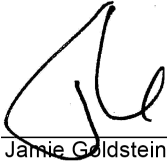
ATTACHMENTS:

1. Capitola SB 8 9 10 Legislative Summary
2. Capitola - 2021 Housing Legislation Summary

Report Prepared By: Katie Herlihy
Community Development Director

New State of California Housing Legislation and Community Development Housing Workplan
December 1, 2021

Reviewed and Forwarded by:



Jamie Goldstein, City Manager

11/24/2021

Direct No.: 415.655.8113
szutler@bwslaw.com

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Samantha W. Zutler, City Attorney
cc: Jamie Goldstein, City Manager
Katie Herilhy, Community Development Director
DATE: September 22, 2021
RE: Legislative Update (SB 8, 9, 10)

Governor Newsom’s approval last week of SB 8, 9, and 10 greenlights continued efforts to streamline the housing development process and provide for additional housing, including affordable housing, in California.

Senate Bill 8

Bottom Line: SB 8 extends the sunset of, broadens the types of projects covered by, and clarifies portions of the Housing Crisis Act of 2019 (SB 330), making it easier for more housing projects to be approved more quickly in California.

Analysis

SB 8 extends the sunset of SB 330 from January 1, 2025 to January 1, 2030, in an effort to encourage the construction of more housing throughout California. Most significantly, the bill redefines “housing development project” to include single dwelling units and ministerial approvals, making these types of projects eligible for the hearing limitations, Permit Streamlining Act requirements, preliminary application process, and other protections adopted under SB 330 in 2019.

The bill also gives developers of affordable housing projects more time to begin construction while still being able to rely on the ordinances, policies and standards that were in effect upon submission of the affordable housing project’s preliminary application. Previously, all housing development projects had a 2.5 year “statutory freeze” period from the time of final project approval to the start of construction. Now, until January 1, 2034, developers of affordable housing projects will have an additional year to start construction, for a total of 3.5 years from the date of final project approval, provided the preliminary application is submitted prior to January 1, 2030. All other housing development projects will still have the 2.5 year period in which to begin construction.

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 Re: Legislative Update (SB 8, 9, 10)
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The bill also makes clarifying changes to the hearing requirements for housing development projects under the Permit Streamlining Act, and expands requirements for reductions in land use intensity that result in reduced opportunities for housing.

SB 330 prohibited downzoning of residential areas unless other areas were concurrently upzoned to ensure no net loss of residential development capacity. SB 8 redefines “concurrently” to mean no longer than within 180 days of the downzoning.

SB 8 adds provisions to Government Code Section 66300 that prohibit demolition of multiple units that would be replaced with just a single residential unit. SB 8 also modifies tenant relocation assistance and right of first return provisions to be available only to lower income tenants, and SB 330’s requirement to replace protected units with affordable housing or rent controlled units would no longer apply to rent controlled units that are occupied by persons or families above lower income.

Finally, SB 8 excludes development projects that consist of a single residential unit that is replacing a single protected unit that is being demolished, as well as units in a housing development where 100% of the units, aside from the manager’s unit(s), are reserved for lower income households, from right of first return requirements.

Implications

SB 8 primarily provides clarifying edits that may already consistent with the City’s interpretation and application of SB 330, although the City should make sure that its policies, particularly around unit replacement and tenant protections, are consistent with the latest revisions. Since the bill primarily extends SB 330, we recommend that cities review their current approval timelines and procedures for affordable housing projects and ensure they are consistent with SB 330. We also recommend that the City review and update its Permit Streamlining Act procedures to ensure that they include the expanded definition of housing development projects.

Senate Bill 9

Bottom Line: SB 9, decried as the “end of single family zoning,” requires ministerial approval of 2 units per parcel in residential zones, and allows owners to subdivide existing single-family residential lots, resulting in the potential to build up to 4 units on existing single unit lots. There are some exceptions to these requirements, but they are minor.

Analysis

SB 9 creates a framework similar to recent ADU legislation, in that it requires ministerial approval of applications for 2 to 4 units (with a qualifying lot split) for projects that meet

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minimum criteria defined by the state or local standards that further facilitate housing approvals.

Specifically, the City must approve an application to develop up to two units on nearly all lots in zones that are zoned for single-family housing (including via partial or full teardown of an existing unit), so long as: 1) the parcel is within an unincorporated urbanized area or in a city with an urbanized area¹; 2) the parcel is not located on or within farmland, wetlands, very high fire hazard severity zones, hazardous waste sites, earthquake fault zones, special flood hazard areas, regulatory floodways, lands identified for conservation, habitats for protected species, government or historic properties, or where the owner withdrew accommodations for rent or lease in the last 15 years (prohibited sites); 3) the development does not require the demolition of affordable housing, rent controlled housing, or housing occupied by a tenant for the last 3 years; and 4) the development will not require the demolition of more than 25% of existing walls, unless allowed by ordinance or a tenant has not occupied the unit in the last 3 years.

Local governments may impose local development standards, such as requiring setbacks of up to 4 feet from side and rear lot lines, but they cannot preclude developments of 2 units per lot or require setbacks of an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure. Only 1 parking space per unit may be required, unless the unit is within a half mile of public transit or within a block of a car share vehicle, in which case, no parking may be required.

In addition, SB 9 requires ministerial approval of an application to split a lot in order to create not more than 2 new parcels. The 2 new parcels must be of approximately equal size, and 1 parcel cannot be smaller than 40 percent of the lot area of the original parcel being subdivided; neither lot may be smaller than 1,200 square feet (subject to the local jurisdiction's ability to adopt a smaller minimum lot size by ordinance), subject to similar provisions as noted above. Also similar to the above, the agency may adopt objective standards applicable to SB 9 projects, but the standards cannot preclude the construction of 2 units on either parcel, result in a unit smaller than 800 square feet, or require setbacks of more than 4 feet from rear and side lot lines.

An applicant may develop up to 4 units on a lot that has been split into two parcels. An applicant must agree to occupy one of the housing units as their principal residence for at least 3 years from the date of approval of the lot split.

¹ As least 50,000 or more people in a particular area or cluster of census tracts as defined by the US Census Bureau. An **Urban Cluster** is comprised of between 2,500 and 50,000 people. Each Census, the Bureau creates a list of Urbanized Areas, as well as Urban Clusters, which together constitute the two types of Urban Areas (>2,500 people).

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Approvals of up to 2 units and lot splits are ministerial, meaning they are not subject to CEQA review. Projects that would otherwise require a coastal development permit still do, but the City cannot require a public hearing for the permit.

SB 9 does not require a local jurisdiction to amend its zoning ordinance to be consistent with the legislation, although the bill authorizes the local jurisdiction to adopt an ordinance to implement the law, and exempts the adoption of such an ordinance from the CEQA process.

Whether the local jurisdiction amends its zoning code or not, SB 9 prohibits the denial of a project that conforms to the specified requirements in the bill and those allowed to be adopted by the local jurisdiction.

Implications

SB 9 allows modest-scaled multifamily development in areas that are exclusively zoned for single unit development, with only one unit more than is already allowed under ADU laws. The lot split provisions would create a new opportunity for ownership development, while ADU laws and other streamlining bills focus on rental projects.

Single unit zoning has an exclusionary history and has contributed to both California's housing shortage and the inability of racial and ethnic minorities to secure housing in high opportunity areas. SB 9 could help promote development at "missing middle" densities, and automatic upzoning could help comply with new Housing Element requirements applicable during the Sixth Cycle.

Senate Bill 10

Bottom Line: SB 10 allows local jurisdictions to adopt an ordinance upzoning urbanized areas close to transit, allowing up to 10 units per parcel without CEQA review. SB 10 allows local governmental bodies to override, by a supermajority, zoning restrictions established by local initiative.

Analysis

Until January 1, 2029, SB 10 allows, but does not require, local jurisdictions to adopt an ordinance authorizing housing development projects of up to 10 residential units per parcel in transit-rich areas or urban infill sites, subject to limited exceptions. A "transit-rich area" is a parcel on a fixed-route bus line that meets service interval requirements, or within a half-mile of a major transit stop. An "urban infill site" is a site that is partially or wholly located within an urbanized area, adjoins at least 75% of its perimeter with parcels developed with urban uses (including parcels separated by a street or highway), and is

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zoned for residential or mixed-residential use or has a general plan designation allowing such use with at least two-thirds of the project's square footage designated for residential use.

Ordinances adopted pursuant to SB10 are exempt from CEQA. However, subsequent projects that propose more than 10 units on a parcel upzoned under SB 10 are prohibited from ministerial or by right approval and are ineligible for any CEQA exemptions.

If the zoning ordinance supersedes any zoning restriction established by local initiative, the ordinance requires a two-thirds vote of the members of the legislative body. SB 10 prohibits rezoning certain open-space and park land designated by local initiative.

SB 10 cannot be used to implement downzoning and, once parcels have been upzoned under SB 10, the local government is prohibited from later reducing the density of those parcels.

Implications

SB 10 is most useful in jurisdictions where there are voter-approved restrictions on zoning that the City Council would not otherwise be able to modify directly.

The ability to adopt an upzoning ordinance that is exempt from CEQA has some value, especially to accelerate upzoning necessary to comply with RHNA obligations for moderate and above moderate housing. However, this value is reduced by the fact that most subsequent projects would be subject to CEQA. To streamline development, the City may be better served to adopt an upzoning ordinance outside of SB 10 and comply with CEQA, which would allow future zoning-compliant projects to qualify for CEQA exemptions as applicable

2021 Housing Legislation Summary
(action items noted in green)

<u>Bill</u>	<u>Title</u>	<u>Quick Summary</u>	<u>Action Required?</u>
AB 68	California Statewide Housing Plan: annual reports.	HCD must develop and publish on its website an annual report on land use oversight actions related to housing taken against local agencies.	No.
AB 215	Planning and Zoning Law: housing element: violations.	Requires the local jurisdiction to make the first draft revision of a housing element available for public comment for at least 30 days and take at least 10 additional business days to incorporate comments. The subsequent draft must then be posted on the local jurisdiction’s website and to email a link to those who have requested notice. Expands the attorney general's authority to independently seek action and grants HCD the ability to hire or appoint other counsel if the attorney general does not pursue action against a local jurisdiction that has violated certain housing laws.	Yes. You should review current noticing and posting procedures for first draft housing element revisions and adjust as necessary to meet these requirements.
AB 345	Accessory dwelling units: separate conveyance.	A local jurisdiction is no longer required to adopt an ordinance before allowing the conveyance of an ADU separately from a primary residence. A local jurisdiction must allow an ADU to be sold or conveyed separately from the primary residence to a qualified buyer (low- and moderate-income) and if certain conditions are met, including that the primary residence or ADU was built by a qualified nonprofit corporation and that the property is held pursuant to a recorded tenancy in common agreement. Beginning 1/1/22, the	Yes. The City no longer needs to adopt an ordinance for the conveyance of an ADU separately from a primary residence, and must now allow for the conveyance by right if the provided conditions are met.

		tenancy in common agreement must include a delineation of areas of the property that are for exclusive use of a cotenant, delineation of each cotenant's responsibility for taxes, insurance, utilities and repair, and procedures for dispute resolution.	
AB 447	Debt Limit Allocation Committee: income taxes: low-income housing tax credits.	Establishes the provision of additional tax credits and debt limits for low income housing.	No.
AB 491	Housing: affordable and market rate units.	Any residential structure with five or more residential dwelling units that include both affordable housing units and market-rate housing units must provide the same access to common entrances, areas and amenities for both types of units. The structure "shall not isolate the affordable housing units within that structure to a specific floor or an area on a specific floor."	Yes. Ensure, as part of the building review process, that structures provide equal access for both affordable housing and market-rate units.
AB 571	Planning and zoning: density bonuses: affordable housing.	Establishes that affordable housing impact fees, including inclusionary zoning fees and in-lieu fees cannot be imposed on a housing development's affordable units.	No. The City does not appear to currently charge inclusionary zoning or affordable housing impact fees. If the City were to begin charging these fees, then they could not be imposed on affordable units.

AB 602	Development fees: impact fee nexus study.	Updates nexus study requirements. A local jurisdiction must identify an existing level of service for each public facility and information supporting any fee increase. Mitigation fees on a housing development must be proportional to the square footage of the development, unless another methodology can be justified with findings. Nexus studies must be adopted at a public hearing with at least 30 days' notice. Agencies must update nexus fee studies at least every eight years from the period beginning on Jan. 1, 2022. Agencies must also post the current impact fee schedule and update at least twice a year.	Yes. The City will need to review and update as necessary the current housing development mitigation fees, and update its procedure for nexus study adoption accordingly.
AB 634	Density Bonus Law: affordability restrictions.	A local jurisdiction may require an affordability period of longer than 55 years for any units that qualified for a density bonus.	No.
AB 721	Covenants and restrictions: affordable housing.	Makes any recorded CC&Rs that restrict the number, size or location of residences that may be built on a property, or that restrict the number of persons or families who may reside on a property, unenforceable against the owner of a 100% BMR housing development that is affordable to lower-income households.	Yes. Monitor CC&R applications to ensure compliance.
AB 787	Planning and zoning: housing element: converted affordable housing units.	Allows the City to take RHNA credit on its Housing Element Annual Progress Report when deed restrictions are added to existing multifamily buildings to create new affordability covenants.	No. Just updates calculation of RHNA numbers, incentivizes housing preservation and rehabilitation.

AB 838	Housing Law: enforcement response to complaints.	Requires a local jurisdiction that receives a resident's complaint of a substandard building or a lead hazard violation to inspect the building, document the lead hazard violations and identify substandard conditions, as applicable. Requires the local jurisdiction to advise of each violation and action necessary to remedy the violation, and schedule re-inspection to confirm correction. Requires the provision of free, certified copies of an inspection report and citations issued, if any, to the complaining resident. The local jurisdiction cannot collect a fee for this service unless the inspection reveals lead hazard violations or substandard conditions. (Goes into effect July 1, 2022).	Yes. Review and update as necessary current procedures for responding to resident complaints about substandard conditions.
AB 948	Bureau of Real Estate Appraisers: disclosures: demographic information: reporting: continuing education.	Implements additional requirements for real estate appraisers regarding disclosures as to demographic information and reporting.	No.
AB 1029	Housing elements: pro-housing local policies.	Permits HCD to add the preservation of affordable housing units to a list of pro-housing, local policies that allow cities and counties to qualify for extra points or preference when scoring program applications for certain state programs.	No.
AB 1043	Housing programs: rental housing developments: affordable rent.	Adds a new subset of lower income households as "acutely low income" households, who earn 15% of AMI and whose rents can be no greater than 30% of the 15% AMI level.	No.

AB 1095	Affordable rental and owner-occupied housing: equity in state and local programs.	Revises laws governing the Affordable Housing and Sustainable Communities Program (AHSC) and the Strategic Growth Council (SGC) to specify that both programs aim to promote affordable rental units and owner-occupied units.	No.
AB 1297	California Infrastructure and Economic Development Bank: public and economic development facilities: housing.	Amends the requirements for housing financed pursuant to the California Infrastructure and Economic Development Bank.	No.
AB 1304	Affirmatively further fair housing: housing element: inventory of land.	Adds a new subset of "lower income households": "Acutely Low Income" households, who earn 15 percent of AMI and whose rents can be no greater than 30 percent of the 15 percent AMI level.	No.
AB 1398	Planning and zoning: housing element: rezoning of sites: pro-housing local policies.	Accelerates the rezoning requirement to allow "by right" development of 20% BMR projects from 3 years to 1 year if a city fails to adopt a substantially compliant Housing Element within 120 days of the statutory deadline, as determined by HCD.	Yes. Ensure that you adopt an approved Housing Element within 120 days of the statutory deadline, or be prepared to identify rezoning areas.
AB 1466	Real property: discriminatory restrictions.	Identifies and removes historic documents that include unlawfully discriminatory covenants from public records.	No.
AB 1584	Housing Omnibus.	Any CC&R that prohibits or restricts the construction or use of an ADU on a lot zoned for single-family use is unenforceable.	No.
SB 263	Real estate applicants and licensees: education requirements: fair housing and implicit bias training.	Requires additional education for real estate professionals in the areas of fair housing and implicit bias.	No.

SB 290	Density Bonus Law: qualifications for incentives or concessions: student housing for lower income students: moderate-income persons and families: local government constraints.	Expands Density Bonus Law to provide additional benefits to projects that include student housing and would allow all ownership projects, not just common interest developments, to use Density Bonus Law.	Yes. These are mainly clarifying edits that the City is already implementing. However, you should ensure that you allow moderate income projects near transit to qualify for reduced parking ratios of 0.5 spaces per bedroom.
SB 381	Surplus residential property: priorities, procedures, price, and fund: City of South Pasadena.	Identifies procedures for the disposition of surplus property in South Pasadena.	No.
SB 478	Planning and Zoning Law: Minimum FAR/Lot Coverage Standards and Prohibition on CC&R Restrictions of FAR for Missing Middle Multifamily Housing.	Prohibits agencies from imposing a FAR of less than 1.0 for a housing development project consisting of three to seven units and a FAR of less than 1.25 for housing development project consisting of eight to 10 units.	Yes. Review current FAR standards for housing and adjust if necessary.
SB 591	Senior citizens: intergenerational housing developments.	Creates a policy that encourages intergenerational housing for senior citizens, caregivers, and transition age youth, and permits developers in receipt of local or state funds or tax credits designated for affordable rental housing to restrict occupancy to these same groups.	No.
SB 728	Density Bonus Law: purchase of density bonus units by nonprofit housing organizations.	Expands Density Bonus Law to allow for the purchase of the density bonus unit by a qualified nonprofit organization receiving a property tax welfare exemption	No.

SB 791	California Surplus Land Unit.	Establishes within HCD the California Surplus Land Unit to provide technical assistance to local agencies and developers to "facilitate the development and construction of residential housing on local surplus land."	No.
AB 1174	Planning and zoning: Housing: development application modifications, approvals, and subsequent permits.	The three-year time period during which an SB 35 permit remains valid is paused when a project is sued and while modifications are considered. Subsequent permit applications must only meet the objective standards that were in place when the original development application was submitted.	No. Already in effect since 9/17/2021.