

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 ~~strike through~~ 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 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 authorized by the City and has received all necessary permits and authorizations.

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, Capitola 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	Design Permit	17.120

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 and as specified by an approved coastal development permit.

[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 also 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. The street dining deck must be designed consistent with a prototype design approved by the City and received all necessary permits and authorizations.
- b. 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 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 must utilize high-quality, durable materials that are compatible with surrounding development and can withstand inclement weather.
- e. The street dining decks must use the prototype street dining deck design authorized by a valid coastal development permit and shall be subject to the prototype street dining deck coastal development permit findings and conditions.

3. **Design Permit Findings.** All applications for a Design Permit (and any required coastal development 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

- 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, will not adversely impact coastal resources, coastal access, and coastal views, and has been authorized through a valid coastal development permit.

- 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 retains the applicants good standing.
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), as well as conformance with the requirements specified in this chapter (Chapter 17.96.170).
 - c. A street dining deck or sidewalk dining area located in the coastal zone shall 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), as well as conformance with the requirements specified in this chapter (Chapter 17.96.170).
 - d. **CDP Recertification Requirement.** All CDPs issued for outdoor dining permits shall require recertification by the City Council no later than three years after the CDP is issued, and every five years thereafter. Recertification shall require a public hearing before the City Council. City staff will initiate the recertification process by providing notice to the Applicant of the hearing date, at least thirty (30) days in advance of the public hearing.

For a CDP to be recertified, the City Council must find that the subject project is operating in compliance with the findings and conditions of the CDP and in compliance with the LCP. The City Council may recertify, modify, or revoke the CDP. The City Council’s decision shall be a final action.

The project applicant, any aggrieved person, or any two members of the Coastal Commission may appeal the City Council decision. Appeal procedures for coastal development permits shall be as specified in Section 17.44.150.

F. Administrative Policies.

1. The City Council 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 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.
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. **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 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.

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. Section 17.44.150(B)(3) of the Capitola Municipal Code is modified to read as follows:

Section 17.44.150(B)(3) The following types of projects may be appealed to the Coastal Commission: [...]

- d. All other projects for which appeals to the Coastal Commission are expressly permitted elsewhere in this Title 7.