

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW
REPEALING ARTICLE XV OF CHAPTER 36 (ZONING) OF THE MOUNTAIN VIEW CITY CODE
TO REPEAL SIDEWALK CAFÉS IN THE DOWNTOWN AREA, AMENDING
SECTION 36.44.65 (DEVELOPMENT REVIEW PROCEDURES) RELATED TO
OUTDOOR DINING AND MERCHANDISE DISPLAYS, AND
AMENDING OTHER SECTIONS OF CHAPTER 36 FOR CONSISTENCY AND MINOR AMENDMENTS

WHEREAS, the City allows for sidewalk cafés to be located in the downtown area pursuant to the Sidewalk Café Program, as set forth in Mountain View City Code Article XV of Chapter 36; and

WHEREAS, on June 9, 2020, the City Council adopted Mountain View Resolution No. 18470 in response to the COVID-19 pandemic to temporarily close Castro Street to vehicular traffic between West Evelyn Avenue and Villa Street, Villa Street and West Dana Street, West Dana Street and California Street, and California Street and Mercy Street (“Castro Street Closure”) to facilitate a temporary outdoor dining program (“Castro StrEATs”); and

WHEREAS, the City Council amended Resolution No. 18470 multiple times since its adoption to, among other things, extend the effective date of the Castro Street closure; remove the segment of Castro Street between California Street and Mercy Street from the Castro Street Closure; and authorize the Public Works Director and Community Development Director to modify the Castro StrEATs outdoor dining program to preserve the public health, safety, or general welfare, notwithstanding any City of Mountain View requirements or regulations that conflict with these requirements; and

WHEREAS, on April 13, 2021, the City Council adopted Resolution No. 18546 to temporarily suspend Sidewalk Café Program license renewal requirements, as outlined in Mountain View City Code Section 36.42, *et seq.*, subject to compliance with the Castro StrEATs outdoor dining program requirements, and waived Sidewalk Café License renewal fee payments, payable May 1, 2020 through April 30, 2022, to facilitate a consistent outdoor dining program in the downtown area; and

WHEREAS, the City Council has amended Resolution No. 18546 three times since its adoption to clarify and extend suspension of the Sidewalk Café Program requirements through January 3, 2024 and waive the Sidewalk Café license renewal fees payable through April 30, 2024; and

WHEREAS, on October 25, 2022, the City Council adopted Mountain View Ordinance No. 14.22 to establish Pedestrian Malls on Castro Street between the east leg of West Evelyn Avenue and Villa Street, Villa Street and West Dana Street, and West Dana Street and California

Street (collectively “Pedestrian Malls”), which took effect on November 24, 2022, and resulted in the permanent closure of these street segments to vehicular traffic, pursuant to the California Streets and Highways Code Section 11000, *et seq.*, the Pedestrian Mall Law of 1960; and

WHEREAS, on November 1, 2022, the City Council adopted Resolution No. 18726 that, among other things, allowed outdoor dining to operate in the Pedestrian Malls pursuant to the Castro StrEATs program requirements; and

WHEREAS, the current Sidewalk Café Program applies to the commercial districts in the Downtown Precise Plan and includes private property and public right-of-way from the face of the building to the edge of the step curb of the sidewalk, and, along Castro Street, extends to the edge of the paved area adjacent to the street; and

WHEREAS, a majority of the existing sidewalk cafés are located within the established Pedestrian Malls, resulting in a need to revise the Sidewalk Café Program in order to continue to provide a consistent outdoor program throughout downtown, which includes the newly established Pedestrian Malls; and

WHEREAS, concurrent with this Ordinance, the City Council will consider adoption of an ordinance to repeal Article III of Chapter 15, Merchant Vendors in the Downtown Area; replace the Sidewalk Café Program with a new outdoor patio program in the Downtown Precise Plan area for outdoor patio operation adjacent to commercial/mixed-use uses on public right-of-way included in Chapter 27 of the City Code (“Outdoor Patio Program”); and make other amendments to Chapters 25, 26, and 27 of the City Code for consistency; and

WHEREAS, concurrent with this Ordinance, the City Council will consider adoption of a resolution to adopt Downtown Mountain View Outdoor Patio Standards/Guidelines that will regulate outdoor patios in the public right-of-way, including design elements for the Pedestrian Malls to achieve a more pedestrian-friendly plaza area, and for the public sidewalk, to protect outdoor patio areas from ongoing pedestrian traffic; and

WHEREAS, concurrent with this Ordinance, the City Council will consider amendment to the Downtown Precise Plan to continue to authorize outdoor dining and merchandise displays on private property adjacent to commercial/mixed-use uses in the Downtown Precise Plan area pursuant to a Development Review Permit and in conformance with the design guidelines of the Downtown Mountain View Outdoor Patio Standards/Guidelines, and make other minor amendments; and

WHEREAS, this Ordinance repeals Article XV, Sidewalk Cafés in the Downtown Area, of Chapter 36; amends Section 36.44.65 of Chapter 36 related to Development Review Procedures to clarify the permit procedure for outdoor dining and merchandise displays on private property, and makes other minor amendments to Chapter 36, including amendments for consistency; and

WHEREAS, the City Council held a public hearing on May 9, 2023 on this Ordinance and received and considered all information, documents, and comments presented at said hearing regarding amendments to Chapter 36, including the recommendation from the Environmental Planning Commission, the City Council report, and project materials;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council hereby makes the findings for text amendments to Chapter 36 (Zoning) pursuant to Section 36.52.70 of the City Code:

a. The proposed amendments are consistent with the General Plan because the proposed amendments will continue to promote General Plan Goal LUD-7 as the changes continue to permit outdoor activities that support a vibrant downtown that serves as the center for Mountain View social life;

b. The proposed amendments would not be detrimental to the public interest, health, safety, convenience, or welfare of the City because the outdoor activities require a design review process to ensure outdoor dining and merchandise displays on private property are well-designed and compliant with building and fire codes;

c. The proposed amendments are internally consistent with Chapter 36 of the Mountain View City Code; and

d. The proposed amendments are in compliance with the provisions of the California Environmental Quality Act (CEQA) because the amendments are exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3). The activity is covered by the general rule (“common-sense” exemption) that exempts activities that can be seen with certainty to have no possibility for causing a significant effect on the environment. No physical development is proposed as part of this project. The Ordinance repeals the Sidewalk Café Program and modifies the procedures for implementing outdoor dining and merchandise displays, with reference to revised design guidelines, which would not alter existing uses.

Section 2. Article XV, Sidewalk Cafes in the Downtown Area, of Chapter 36 of the Mountain View City Code is hereby repealed in its entirety.

Section 3. Section 36.36.85 of Division 7 of Article XII of Chapter 36 of the Mountain View City Code is hereby amended to add, delete, or modify its provisions as set forth below (section titles are shown in **bold** font, deletions are shown by ~~strikethrough~~, and additions are shown in underline).

“SEC. 36.36.85. - Special signs.

a. **Flags.** Customized graphic flags that convey a message through the use of a pictorial or graphic image and which complement the building design are permitted. Customized flags should be mounted on a decorative bracket attached perpendicular to the building face. Maximum size shall not exceed six (6) feet by ten (10) feet, and the lowest point of the flag must be at least eight (8) feet above the surface of any sidewalk or pedestrian way.

b. **Trompe l’oeil.** Life-size trompe l’oeil art painted on the wall surface of a building may be permitted in addition to the signs allowed in the downtown precise plan area. Such proposed art shall be reviewed at the zoning administrator design review level to ensure that it does not constitute a sign otherwise allowed or prohibited by this Article and to ensure the art complements the design of the building in color, shape and location on the building.

c. **Menu holders.** A menu holder is permitted on the exterior storefront of a restaurant. The menu holder shall be limited to the size of two (2) pages of the menu utilized by the establishment. The menu holder shall be located so that it does not impede pedestrians on the public sidewalk. The menu holder shall not be used for additional business identification signage and lettering shall not exceed one (1) inch in height.

d. **Off-site signs.** Off-site directional signs painted on buildings at the alley intersections to direct pedestrians to businesses down side-streets and/or alleys are permitted with the permission of the building owner. Signs shall be professionally designed and constructed and must complement the color and materials of the building on which they are painted.

e. ~~Sidewalk-café~~ Outdoor patio signage on private property in the downtown.~~In accordance with the sidewalk-café guidelines, a sidewalk-café~~ Outdoor patios may be permitted signs on the café patio umbrella(s) in addition to the main occupancy frontage signs. Said sign(s) shall be limited to the name of the café patio business in maximum six (6) inch letter height, and a business logo is not to exceed one (1) square foot in area. No generic advertising, such as a product name, shall be permitted. The total signage on an umbrella shall not exceed ten (10) percent of the area of the umbrella. ~~Any such signs must be as approved in the sidewalk-café license.”~~

Section 4. Section 36.44.65 of Division 2 of Article XVI of Chapter 36 of the Mountain View City Code is hereby amended to add, delete, or modify its provisions as set forth below (section titles are shown in **bold** font, deletions are shown by ~~strikethrough~~, and additions are shown in underline).

“SEC. 36.44.65. - Development review procedures.

Preliminary development review through a preapplication conference (see Sec. 36.44.40) is encouraged prior to the formal submittal of an application. This informal review provides guidance to project proponents prior to preparation of detailed building designs and site plans for formal application submittal.

Formal development review is initiated when the department receives a complete application for development review. Development review can be a separate permit application or part of a larger permit application as described in this Section. The zoning administrator shall have the overall authority to conduct development review, subject to appeal to the city council, but may refer applications to other community development department staff for review and issuance of permits. The development review process is administered at three (3) levels of evaluation: administrative, zoning administrator public hearings and council public hearings.

The zoning administrator or community development director may require that any application be reviewed through the more formal development review committee process.

a. **Administrative procedures.** Applications with complete materials for simple requests, in full compliance with this Chapter or applicable precise plans, requiring no site visits or review by other departments may be approved administratively without public notice or hearing. The zoning administrator may refer any administrative application to the development review committee for comment and recommendations. Typical projects that may qualify include the following:

1. New signs and change of copy on existing signs, which conform to a previously approved sign program;
2. New or amended sign programs;
3. Change of use in nonresidential zoning districts where the proposed use is principally permitted and the proposed parking is in compliance with this Chapter;
4. Temporary use permit for the sale of seasonal items, including Christmas trees and pumpkins, seasonal or temporary recreation uses, such as day camps, construction yards in conjunction with an approved construction project, mobile home(s) as part of a temporary work site for employees, homeless shelter for up to twenty-nine (29) people and not exceeding thirty-five (35) days, food kitchens and relief services and similar type uses;

5. Minor facade modifications, including: adding or removing door(s), automated teller machines (ATMs) at an existing bank, handicapped-accessible ramps, roof equipment with screens, additions to single-family structures with nonconforming setbacks and minor architectural enhancements to multi-family structures which conform to approved plans;

6. Minor site plan modifications, including adding or changing: trash enclosures, bicycle lockers, utilities with minimal aboveground structures, satellite dish antennas, fences, landscaping and landscaping structures, such as arbors or gazebos and parking lots striping;

7. Fences which exceed six (6) feet in height but do not exceed seven (7) feet in a residential zoning district and where the applicant can provide letters of agreement from all adjacent property owners;

8. Facade modifications to multi-family, commercial and industrial structures where less than one thousand (1,000) square feet of additional floor area is proposed;

9. Modification or minor additions to existing site plans and/or structures located in the planned community zoning district as provided by Subsection 36.50.30.b. or where the precise plan allows for minor modifications;

10. Development review associated with consideration of any new use, new construction or modifications within the neighborhood design (ND) and special design (SD) overlay zoning districts;

11. Development on sites with existing nonconforming structures (see Sec. 36.06.60);

12. Modifications to residential structures for reasonable accommodations (see Sec. 36.08.40);

13. Multi-family accessory structure(s); and

14. ~~Permits for a street vendor or a sidewalk café within the downtown precise plan.~~ New or modified outdoor dining located on private property. This includes outdoor dining located within the downtown precise plan.

15. New or modified merchandise displays located on private property within the downtown precise plan.

b. **Zoning administrator procedures.** In addition to the authority to take final action on variances, conditional use permits and other special property development permits, the zoning administrator is responsible for making development review recommendations to the city council

on planned community permits when specified by a precise plan, overseeing the development review committee and making final decisions on applications for the following:

1. New construction and/or major remodeling or site plan modifications when in full compliance with the provisions of this Chapter;
2. Single-family structures and additions where a floor area ratio exception is requested;
3. Minor adjustment to design/site consideration of an approved permit from a public hearing which does not result in a reduction from any standard outlined in this Chapter or change any special conditions adopted by the city council, including, but not limited to:
 - (a) On-site circulation and parking, loading and landscaping;
 - (b) Placement and/or height of walls, fences and structures; and
 - (c) Minor changes to architectural features and/or modification of finished materials and colors that do not alter or compromise the previously approved theme.
4. Development review associated with applications for variances, conditional use permits, temporary use permits and planned unit developments, including general plan mixed-use village center developments;
5. Changes of use in commercial, office and industrial zoning districts which are in compliance with this Chapter but may impact adjacent properties, including, but not limited to, proposals for outdoor storage adjacent to a residential zoning district; outdoor seating at an existing restaurant or changes in parking lot lighting which may generate off-site glare;
6. Fences which exceed six (6) feet in height but do not exceed seven (7) feet in a residential zoning district where the applicant cannot provide the community development department with letters of agreement from all adjacent property owners;
7. Antenna or communication facilities in all zoning districts, including public right-of-way; and
8. Public projects involving permanent new buildings.

c. **City council.** The city council shall make a final development review determination on a planned community permit when the precise plan requires council approval and a planned unit development when it is accompanied by a tentative map. The city council is the final appeal body of zoning administrator determinations.”

Section 4. Section 36.60.33 of Division 1 of Article XVII of Chapter 36 of the Mountain View City Code is hereby amended to add, delete, or modify its provisions as set forth below (section titles are shown in **bold** font, deletions are shown by ~~strikethrough~~, and additions are shown in underline).

“SEC. 36.60.33. - Definitions - “O.”

Occupancy. That portion of a building occupied by one (1) tenant.

Offices. A facility used for business or personal services involving information processing, clerical work, consulting and record-keeping rather than sale or manufacturing of goods. The term “office” shall include, but not be limited to, general business offices and personal service offices such as tax preparation offices and real estate office, but does not include banks and other financial offices, medical, dental or related health-care services, administrative offices or research and development uses (see definition “research and development”).

Offices, administrative and executive. Offices and service facilities performing headquarters, regional or other organizations management and administrative services for firms and institutions.

Offices, research and development. A specific type of office use devoted to scientific and engineering research and the design, development and testing of new technology and products; usually includes some laboratory space or other small-scale manufacturing operations. This definition includes software and Internet companies and other similar uses.

One and one-half (1½) story residential structure. A residential structure where a top second floor is housed within a gable or hip roof structure, with a maximum vertical distance of twenty (20) feet from sidewalk grade to the highest ridge line of the roof.

Open area. The land area within a developed site that is not covered by buildings, paving dedicated to auto use, or garbage and refuse facilities. Open area is intended for active and passive recreational use and to provide access to the natural environment. Landscaping is the primary and preferred use of open area, but it may also include hard surfaces such as patios, decks, balconies, walkways, game courts, bicycle parking areas, swimming pools and associated structures that are not fully enclosed that are consistent with these purposes.

Open automobile dedicated area. That land reserved for the ingress, egress or parking of motor vehicles on any parcel. This does not include the land considered as aggregate floor area.

Outdoor commercial recreation. Facilities for various outdoor participant sports and types of recreation where a fee is charged for use, including: amusement, theme and kiddie parks; drive-in theaters; golf driving ranges independent from golf courses; miniature golf courses (golf courses are considered a separate land use); skateboard parks and water slides; go-cart and miniature auto race tracks; recreation equipment rental (e.g., nonhighway motor vehicles, roller

skates); health and athletic clubs with predominantly outdoor facilities; tennis courts, swim and tennis clubs; and zoos. May also include commercial facilities customarily associated with the above outdoor commercial recreational uses, including, but not limited to, bars and restaurants, fast-food restaurants, video game arcades, etc.

Outdoor retail sales and activities. Permanent outdoor sales and rental establishments, including autos, other vehicles and equipment, and other uses where the business is not conducted entirely within a structure.

Outdoor retail sales, temporary. Temporary outdoor retail operations, including: farmer’s markets; seasonal sales of Christmas trees, pumpkins or other seasonal items; semiannual sales of art or handcrafted items in conjunction with community festivals or art shows; sidewalk or parking lot sales; and retail sales of various products from individual vehicles in temporary locations outside the public right-of-way. ~~Mobile vendors~~ operating within the public right-of-way ~~and sidewalk cafés~~ are subject to the provisions of ~~Article II of Divisions III and IV and Chapter 15 of the City Code.~~ Outdoor patios operating within the public right-of-way are subject to the provisions of Section 27.17 of Article I of Chapter 27 of the City Code.”

Section 5. The provisions of this ordinance shall be effective on November 1, 2023.

Section 6. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 7. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.
