

ORDINANCE NO. 8.2023

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW
REPEALING ARTICLE III (MERCHANT VENDORS IN DOWNTOWN AREA) OF CHAPTER 15 AND
ADDING A NEW SECTION TO CHAPTER 27 (STREETS AND SIDEWALKS) TO REPEAL THE
SIDEWALK CAFÉ AND MERCHANT VENDOR PROVISIONS AND REPLACE THEM WITH A
NEW OUTDOOR PATIO PROGRAM IN THE DOWNTOWN AREA; AND AMENDING CHAPTER 25
(NEIGHBORHOOD PRESERVATION), CHAPTER 26 (PUBLIC AMUSEMENTS),
AND CHAPTER 27 (STREETS AND SIDEWALKS) FOR CONSISTENCY

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 Sections 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 Sections 11000, *et seq.*, the Pedestrian Mall Law of 1960; and

WHEREAS, on November 1, 2022, the City Council adopted Resolution No. 18726 to allow 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 face of 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, this ordinance repeals Article III of Chapter 15, Merchant Vendors in Downtown Area; replaces 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 the public right-of-way included in Chapter 27 of the City Code (“Outdoor Patio Program”); and makes other amendments to Chapters 25, 26, and 27 for consistency; and

WHEREAS, concurrent with this Ordinance, the City Council will consider an ordinance to repeal Article XV of Chapter 36; amend 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 make other minor amendments to Chapter 36, including amendments for consistency; and

WHEREAS, concurrent with this Ordinance, the City Council will consider an 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 Outdoor Patio Standards/Guidelines, and make other minor amendments; and

WHEREAS, concurrent with this Ordinance, the City Council will consider adoption of a resolution to adopt 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 traffic; and

WHEREAS, the City Council held a public hearing on May 9, 2023 to consider this Ordinance to amend Chapters 15, 25, 26, and 27 related to the repeal of the Merchant Vendor and Sidewalk Café provisions and replacement with the new Outdoor Patio Program;

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

Section 1. Article III, Merchant Vendors in Downtown Area, of Chapter 15, of the Mountain View City Code shall be repealed in its entirety.

Section 2. Chapter 25, Article I, Section 25.5 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. 25.5. - Uses not permitted—Prohibited.

a. Uses and structures which are permitted or allowed on real property within the city are listed in Chapter 36 and elsewhere in this ~~e~~Code. No person shall conduct, allow or construct any use on real property which is not specifically provided for in the code or conducted pursuant to a required permit.

b. **Storage containers.**

1. Storage containers shall not be placed in any zone within the city except as provided in this ~~s~~Section. For purposes of this ~~s~~Section, “storage containers” shall mean prefabricated cargo, shipping and/or containers which are designed for the storage or transportation of goods by sea, air, rail or truck and can include commercial truck bodies, with or without wheels. Storage containers do not include storage sheds which are assembled in place and typically available at retail outlets or storage facilities constructed pursuant to a building permit.

2. **Exception:** Industrial Zones: Commercial storage containers may be utilized in industrial zones provided they are used for storage only, not placed on required parking, meet height and setback requirements, not provided with utility hookups and are not visible from a public thoroughfare, or are approved on a temporary basis not to exceed six (6) months upon the approval of a Temporary Use Permit (TUP).

3. **Exception:** All Zones: Commercial storage containers may be used in all zones in conjunction with an active building permit with placement approved by the building official. Containers which encroach upon the public right-of-way must secure an encroachment permit pursuant to Sec. ~~27.17-27.16~~.”

Section 3. Chapter 26, Article VI, Section 26.78 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. 26.78. - Restricted newsrack locations.

a. No person shall install, stock, use or maintain any newsrack which projects onto, into or over any part of the roadway of any public right-of-way, street, or which rests, wholly or in part, upon, along or over any portion of a roadway.

b. No person shall install, stock, use or maintain any newsrack which, in whole or in part, rests upon, in or over any public sidewalk or parkway, when such installation, use or maintenance endangers the safety of persons or property or when such site or location is used for public facilities purposes, public transportation purposes or other governmental use, or when such newsrack unreasonably interferes with or impedes the flow of pedestrian or vehicle traffic, including access for the disabled, bicycle access, the ingress into or egress from any residence, place of business or the use of poles, posts, traffic signs or signals, hydrants, postal service collection boxes or other objects permitted at or near said location.

c. No newsrack shall be placed, installed, used or maintained:

1. Within five (5) feet of any marked crosswalk or within fifteen (15) feet of any unmarked crosswalk as measured from the curb return or within five (5) feet of any wheelchair curb ramp not in a marked crosswalk.

2. Within five (5) feet of any fire hydrant, fire call box, police call box or other emergency facility.

3. Within five (5) feet of any driveway.

4. Within five (5) feet of any bus bench.

5. Within fifteen (15) feet ahead of, and five (5) feet to the rear of, any sign marking a designated bus stop, relative to the direction of bus travel. Newsracks seven (7) feet from the curb, measured perpendicular to the roadway, are exempt from this limitation.

6. At any location where the clear space or sidewalk space for the passage of pedestrians is reduced to less than four (4) feet.

7. In such a manner as to impede or interfere with the reasonable use of any building, the activity of any business or residence or the use of any commercial window display ~~or sidewalk café.~~

d. **Downtown Precise Plan area.** Due to the unique nature of the downtown area, as defined in the Downtown Precise Plan, the city council finds and declares that additional criteria shall be applied with respect to newsrack locations in the downtown. This criteria is necessary to preserve and enhance both the appearance and the function of Castro Street and other public improvements in the downtown, as well as ensure the ability of businesses to operate without unreasonable impacts from newsracks. Therefore, in addition to the standards prescribed elsewhere in this ordinance:

1. In the 100 through 300 blocks of Castro Street, newsracks may only be located in the breezeways connecting Castro Street to the parking lots. No newsrack may be located within the public right-of-way or on private property abutting the public right-of-way in these blocks. in the flexible zone or the primary sidewalk in these blocks.

2. In the 400 through 900 blocks of Castro Street, newsracks are allowed only if the back of the newsrack is within six (6) inches of where the edge of the sidewalk meets a building facade. No newsrack may be located ~~in the flexible zone or~~ near the curb in these blocks.

3. On other streets within the Downtown Precise Plan area, newsracks are allowed to locate in the same manner as any other street in the city, except with respect to an approved outdoor patio pursuant to Section 27.17 of the City Code sidewalk café and vending operations.

4. To encourage ~~sidewalk café and vending operations in downtown~~ Outdoor Patios in the downtown area pursuant to Section 27.17 of the City Code, while minimizing the potential to block pedestrian areas, ~~café and vending~~ Outdoor Patio operations shall be given priority over the placement of newsracks. No newsrack shall be located within fifteen (15) feet of an approved ~~sidewalk café or vending operation~~ Outdoor Patio. In the public parking lots operated by the Downtown Parking District, the Public Works ~~d~~Director has the discretion to approve an increased height for newsracks and a greater number of modular newsracks than otherwise allowed by this ~~a~~Article, in appropriate locations.

e. **Park areas.** Newsracks in the public right-of-way shall not be located on the sidewalk abutting a city park.

f. **Residential areas.** Newsracks have traditionally not been placed in residential areas. The city council finds and determines that placement of newsracks in residential areas is particularly sensitive because the sidewalks in residential areas are generally narrower than in commercial or industrial areas and are used extensively by residents of the area for child play areas, including riding bikes, rollerskating and similar activities. It is, therefore, appropriate to have special regulations in residential areas and, because ample opportunities typically exist at nearby commercial and industrial venues, greater restrictions in residential areas will not infringe upon the distribution of newsrack items.

1. Except as herein provided, newsracks shall not be located in the public right-of-way adjacent to property developed for residential use. The Public Works ~~d~~Director shall permit

the placement of newsracks adjacent to property developed for residential uses if the Public Works Director finds, based upon information provided in the application by the owner of the newsrack, that the newsrack cannot be alternatively placed in a commercial or industrial area within two thousand (2,000) feet of the proposed residential location and it meets the other requirements of this ~~a~~Article.”

Section 4. Chapter 27, Article I, Section 27.3 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. 27.3 - Use of sidewalks for sale, storage or display of goods, wares, etc.

Except as otherwise permitted by this ~~eCode or by the Downtown Mountain View Flexible Zone Guidelines for Sidewalks and Café Operations, as adopted and amended by the council~~, no person owning or occupying any premises fronting on a public street shall place any goods, wares or merchandise for the purpose of display, exhibition, advertisement or sale thereon; nor any crates, cases, boxes or barrels on any portion of the sidewalk in front of such premises; nor suspend any goods, wares, merchandise or advertising banner or device over any portion thereof; nor suffer any of such things to be or remain thereon; nor thereby restrict the free use of such sidewalk by the public.”

Section 5. Chapter 27, Article I, Section 27.11 of the Mountain View City 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. 27.11. - Obstructions—Prohibited generally—Exceptions.

Except as otherwise permitted by this ~~eCode and the Downtown Mountain View Flexible Zone Guidelines for Sidewalk Cafes and Vending Operations~~, no person shall place anywhere, upon any public way, street or sidewalk, and no person owning, occupying or having control of any premises shall suffer to remain in front thereof, upon the sidewalk of the street or way next to such premises, anything which shall obstruct the free passage of any portion of such street or sidewalk for more than one (1) hour at a time.”

Section 6. Chapter 27, Article I, Section 27.17 of the Mountain View City Code is hereby renumbered as Section 27.16 and 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. 27.~~17~~16. - Encroachment on city property unlawful; Encroachment permits.

No person shall encroach on, in, over or under any real property, including easements, owned by the city, except as authorized by this Code, by any structure or object of any kind or character, temporary or permanent in nature, and whether such encroachment is real, personal

or mixed property, without first obtaining a permit to do so from the public works director. Applications for a permit to encroach on city-owned property shall be made by and in the name of the owner or person lawfully entitled to use the real property in connection with which the permit is sought to be obtained and shall be acknowledged by the applicant. The application shall be filed with the ~~p~~Public ~~w~~Works ~~d~~Director. The ~~P~~ublic ~~W~~orks ~~D~~irector, or authorized designee, is hereby empowered to deny or withhold approval of a permit if exercise of the proposed permit would interfere with public works that are existing or contemplated to be constructed or if the proposed permit would cause public property to be or become in a dangerous or defective condition or unreasonably endanger or interfere with public health, safety or convenience. The ~~P~~ublic ~~W~~orks ~~D~~irector, or designee, may approve the application either as submitted or subject to such terms and conditions as the ~~p~~Public ~~w~~Works ~~d~~Director shall consider necessary for the safeguarding of life, property and ~~t~~he ~~e~~City. As required by the ~~p~~Public ~~w~~Works ~~d~~Director, the applicant shall provide a detailed drawing of the encroachment suitable for recordation and acceptable by the ~~p~~Public ~~w~~Works ~~d~~Director or designee prior to the issuance of an encroachment permit. The cost of processing an encroachment permit shall be set by resolution or ordinance of the ~~e~~City ~~e~~Council and shall be paid by the applicant prior to issuance of the permit.

This ~~s~~Section shall not apply to ~~sidewalk café operations~~ Outdoor Patios in the downtown area licensed ~~pursuant to Chapter 36, Article XV of this Code and the Downtown Mountain View Flexible Zone Guidelines for Sidewalks and Café Operations in accordance with Sec. 27.17;~~ and encroachments in city parks subject to Chapter 38, Article I, Section 38.9 n. of this Code.”

Section 7. Chapter 27, Article I, Section 27.17 of the Mountain View City Code is hereby added as set forth below (section titles are shown in **bold** font and additions are shown in underline).

“SEC. 27.17. - Outdoor patios in the downtown area.

a. Definitions.

“Downtown Area” shall mean properties that have commercial or mixed-use uses located within the Downtown Precise Plan. This includes the Pedestrian Malls established under Article VI of Chapter 27 of this City Code.

“Merchandise Displays” shall mean a display for sale or offer for sale merchandise, goods or wares in the public right-of-way outside of an adjoining business which sells or offers for sale goods and/or services.

“Outdoor Dining” shall mean an outdoor area set up and maintained in the public right-of-way for the purpose of selling, offering for sale and serving food or beverages for immediate consumption on-site by an adjoining restaurant or other business which sells, offers for sale and serves food and/or beverages for immediate consumption.

“Outdoor Patio” shall mean the public right-of-way adjacent to a business in the Downtown Area that may be used for Permitted Activities in accordance with the City’s Outdoor Patio Standards/Guidelines and allow a business to operate outdoors.

“Outdoor Patio License” shall mean the license issued by the Public Works Director or designee authorizing the Permitted Activities at an approved outdoor patio location.

“Outdoor Patio Licensee” shall mean the owner or operator of a business that holds the Outdoor Patio License.

“Outdoor Patio Standards/Guidelines” shall mean the City’s adopted standards and guidelines applicable to Outdoor Patios located in the Downtown Area and Pedestrian Malls.

“Permitted Activities” shall mean Outdoor Dining, Merchandise Displays and other activities as may be approved in the Outdoor Patio Standards/Guidelines.

b. License.

1. No person shall operate an Outdoor Patio upon the public right-of-way in the Downtown Area without first obtaining a city-issued Outdoor Patio License.

2. An Outdoor Patio License shall only be issued for Permitted Activities in the Downtown Area and in conformance with the Outdoor Patio Standards/Guidelines.

3. All Outdoor Patio Licenses shall be conditioned upon the Outdoor Patio Licensee’s obligation to remove or modify the Outdoor Patio at any time and at Outdoor Patio Licensee’s expense as necessary for any special events, city project, street cleaning or maintenance work, which necessity shall be determined solely by the Public Works Director or designee.

4. An Outdoor Patio License may only be obtained by and in the name of the owner or person lawfully entitled to use the real property in connection with which the license is sought to be obtained. The City Council shall have the discretion to adopt and/or establish exceptions to this requirement by resolution upon recommendation of the Public Works Director or their designee.

5. Application requirements.

i. Any person wishing to obtain an Outdoor Patio License shall file an application as required by the Public Works Director or designee. Incomplete applications will not be accepted.

ii. Outdoor Patio License fees, in an amount(s) as set forth by adopted Council resolution, shall be paid upon application submittal.

6. Review and decision.

The Public Works Director or designee may deny an application for an Outdoor Patio License if the proposed Outdoor Patio violates or does not comply with the City Code or Outdoor Patio Standards/Guidelines. The Public Works Director or designee shall issue written notice of their determination to approve or deny a license to the applicant. A notice of denial shall include the reasons for the denial. An applicant may request a hearing on the denial of an application in conformance with Section 27.17(b)(8), Hearing.

7. Suspension or revocation. The Public Works Director or designee may suspend or revoke an Outdoor Patio License for violations of the City Code or Outdoor Patio Standards/Guidelines. The Public Works Director or designee shall issue a written notice of the suspension or revocation to the Outdoor Patio Licensee, which shall include the reasons for the suspension or revocation. An Outdoor Patio Licensee may request a hearing on the suspension or revocation of a license in conformance with Section 27.17(b)(8), Hearing.

8. Hearing.

i. An applicant or Outdoor Patio Licensee may request a hearing before the head of any City department, except the Public Works Department, or their designee ("Hearing Officer"), by filing a written request with the Public Works Department within ten (10) business days of the notice date informing the applicant or outdoor patio licensee of the denial, suspension or revocation.

ii. Upon timely receipt of a written request, the Public Works Department shall set the matter for a hearing before the Hearing Officer at least one (1) week from the date of receipt of the request and not later than thirty (30) business days from date of receipt.

iii. At the hearing, the applicant or Outdoor Patio Licensee may present relevant evidence regarding the basis for the denial, suspension or revocation.

iv. The Hearing Officer shall notify the applicant or Outdoor Patio Licensee of the Hearing Officer's decision on the denial, suspension or revocation in writing no later than two (2) weeks after the hearing. The decision of the Hearing Officer shall be final.

9. Term and renewal.

i. All Outdoor Patio Licenses shall be issued for a one (1) year term beginning July 1 and ending June 30, shall be nontransferable, and shall be renewed annually if the licensee wishes to continue Outdoor Patio operations.

(a) Exception. Any outdoor patio license issued between November 1, 2023 (effective date of outdoor patio program) and June 30, 2024 shall be valid through June 30, 2025.

ii. The Outdoor Patio Licensee must submit an application for renewal of the outdoor patio license no later than thirty (30) days preceding the license expiration to continue Outdoor Patio operations beyond the original term of the outdoor patio license. Failure to timely renew shall require an Outdoor Patio Licensee to file an application for a new license if the licensee wishes to reestablish Outdoor Patio operations.

c. Outdoor patio regulations. Outdoor Patio Licensees shall comply with the City Code, any Outdoor Patio Standards/Guidelines adopted by the City and any applicable state and federal law."

Section 8. The provisions of this ordinance shall be effective November 1, 2023.

Section 9. 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 10. 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.

Section 11. This ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) 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 and Merchant Vendor provisions and replaces it with a new Outdoor Patio Program that continues to allow existing uses in the public right-of-way with some modification thereof.

The foregoing ordinance was regularly introduced at the Regular Meeting of the City Council of the City of Mountain View, duly held on the 9th day of May 2023, and thereafter adopted at the Regular Meeting of said Council, duly held on the 23rd day of May 2023, by the following roll call vote:

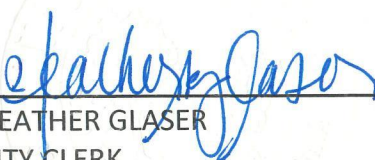
AYES: Councilmembers Abe-Koga, Kamei, Matchak, Ramirez, Ramos, Vice Mayor Showalter, and Mayor Hicks

NOES: None

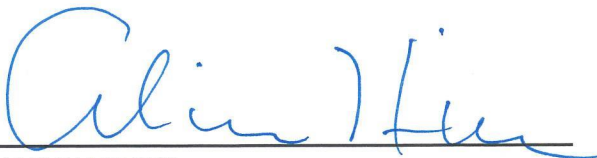
ABSENT: None

ATTEST:

APPROVED:



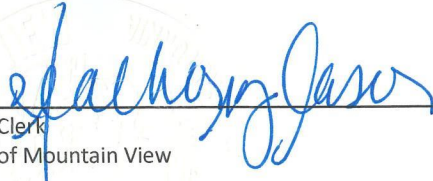
HEATHER GLASER
CITY CLERK



ALISON HICKS
MAYOR

Date of Attestation: May 31, 2023

Pursuant to Mountain View Charter § 709(b), I do hereby certify that the foregoing is an original or a correct copy of the ordinance passed and adopted by the City Council of the City of Mountain View at a Regular Meeting held on the 23rd day of May 2023, by the foregoing vote, and was published in the *Daily Post* by reference on the 19th day of May 2023, and posted in three prominent places in said City.



City Clerk
City of Mountain View

NCW/6/ORD
012-05-09-23o-so