

RESOLUTION NO. 2022-022

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PACIFICA CONSIDERING A MODIFICATION TO TEXT AMENDMENT TA-122-22 REGARDING THE ADDITION OF “BAR” AS AN ALLOWABLE USE CATEGORY, AND RECOMMENDING THAT THE CITY COUNCIL ADOPT THE ORDINANCE (TEXT AMENDMENT TA-122-22) AS MODIFIED BY THE CITY COUNCIL TO ENACT A NEW ARTICLE 52 “OUTDOOR COMMERCIAL PERMITS” AND TO AMEND SECTION 9-4.2308 “COMMERCIAL AND INDUSTRIAL USES OUTSIDE STRUCTURES” OF CHAPTER 4 OF TITLE 9 OF THE PACIFICA MUNICIPAL CODE TO CONDUCT COMMERCIAL ACTIVITY OUTSIDE OF AN ENCLOSED STRUCTURE AND FINDING THE TEXT AMENDMENT AS MODIFIED IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) (FILE NO. 2022-017)

Initiated by: City of Pacifica

WHEREAS on June 5, 2020, the City Manager, as Director of Emergency Services, issued an Emergency Order relating to the operation of outdoor commercial activities in the public right of way and on private property during the period of local emergency due to COVID-19. This order, which was ratified by the City Council at the regular City Council meeting on June 8, 2020, enabled many businesses to survive the economic impacts of the pandemic; and

WHEREAS, since June of 2020, approximately 30 businesses have participated in the Temporary COVID-19 Outdoor Activities program, including approximately 20 restaurants and 10 other types of businesses; and

WHEREAS, the Temporary COVID-19 Outdoor Activities program will expire under the Director of Emergency Services’ Emergency Order consistent with the State and County emergency orders and Council directed the City Manager to prioritize consideration of Municipal Code amendments related to commercial outdoor activities; and

WHEREAS, on August 9, 2021 and November 22, 2021, the City Council held study sessions on the continuation of outdoor activities and provided direction to staff relevant to the development of a permanent ordinance to allow outdoor activities; and

WHEREAS, after duly noticing the public hearing for August 15, 2022, the Planning Commission of the City of Pacifica on August 15, 2022, continued the hearing for Text Amendment TA-122-22 to September 6, 2022, in response to staff’s request for additional time to prepare the ordinance; and

WHEREAS, the Planning Commission of the City of Pacifica held a public hearing on the proposed amendments contained in Text Amendment TA-122-22 on September 6, 2022 and adopted Resolution No. 2022-019 recommending that the City Council approve the Outdoor Commercial Permit ordinance (“Ordinance”) and Outdoor Commercial Permit Guidelines by a vote of 6-0 (with one absence); and

WHEREAS, the City Council of the City of Pacifica held a held a duly noticed public hearing on the proposed ordinance on September 26, 2022, and introduced the Ordinance, including the modification to insert “bars” as an eligible commercial use as listed in sec. 9-4.5204(b); and

WHEREAS, the Planning Commission of the City of Pacifica received a staff report on the modification made by City Council on the Ordinance during the regularly scheduled October 3, 2022 Planning Commission meeting in accordance with PMC sec. 9-4.3507.

NOW, THEREFORE BE IT RESOLVED, by the Planning Commission of the City of Pacifica as follows:

1. The above recitals are true and correct and material to this Resolution.
2. In making its finding, the Planning Commission relied upon and hereby incorporates by reference all correspondence, staff reports, and other related materials.
3. The proposed amendments recommended by the Planning Commission are consistent with the City’s General Plan and Local Coastal Land Use Plan.
4. This action is exempt from the California Environmental Quality Act (“CEQA”), pursuant to section 15061(b)(3) of the CEQA Guidelines (14 Cal. Code Regs. 15000 et seq.) because it can be seen with certainty that there is no possibility that adoption of the ordinance may have a significant effect on the environment. Additionally, the text amendment would qualify for a Class 1 Categorical Exemption, CEQA Guidelines Section 15301 “Existing Structures”, Class 3 Categorical Exemption, CEQA Guidelines Section 15303 “New Construction or Conversion of Small Structures”, and Class 4 Categorical Exemption, CEQA Guidelines Section 15304 “Minor Alterations to Land.” The text amendment would consist of the minor alteration of existing public or private developed areas resulting in a negligible expansion of existing use. The text amendment may result in the construction of small structures such as parklets. Furthermore, the text amendment may result in minor temporary use of land having negligible or no permanent effect on the environment.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Pacifica does hereby recommend approval to the City Council of the City of Pacifica the zoning text amendment described in Text Amendment TA-122-22 included as Exhibit A to this Resolution.

* * * * *

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Pacifica, California, held on the 3rd of October, 2022.

AYES, Commissioners: Berman, Hauser, Ferguson, Godwin, Wright

NOES, Commissioners: None

ABSENT, Commissioners: Leal, Wright

ABSTAIN, Commissioners: None



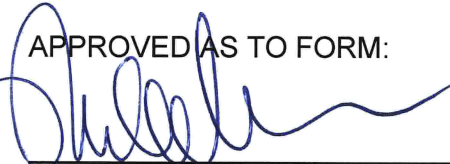
Lauren Berman, Chair

ATTEST:



Christian Murdock, Planning Director

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney

EXHIBIT A

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA TO ENACT A NEW ARTICLE 52 “OUTDOOR COMMERCIAL PERMITS” AND TO AMEND SECTION 9-4.2308 “COMMERCIAL AND INDUSTRIAL USES OUTSIDE STRUCTURES” OF CHAPTER 4 OF TITLE 9 OF THE PACIFICA MUNICIPAL CODE TO CREATE A PROCESS FOR COMMERCIAL BUSINESSES TO CONDUCT COMMERCIAL ACTIVITY OUTSIDE OF AN ENCLOSED STRUCTURE AND FINDING THE TEXT AMENDMENT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) (FILE NO. 2022-017; TEXT AMENDMENT TA-122-22).

WHEREAS, on June 5, 2020, the City Manager, as Director of Emergency Services, issued an Emergency Order relating to the operation of outdoor commercial activities in the public right of way and on private property during the period of local emergency due to COVID-19. This order, which was ratified by the City Council at the regular City Council meeting on June 8, 2020, enabled many businesses to survive the economic impacts of the pandemic; and

WHEREAS, since June of 2020, approximately 30 businesses have participated in the Temporary COVID-19 Outdoor Activities program, including approximately 20 restaurants and 10 other types of businesses; and

WHEREAS, the Temporary COVID-19 Outdoor Activities program will expire under the Director of Emergency Services’ Emergency Order consistent with the State and County emergency orders and Council directed the City Manager to prioritize consideration of Municipal Code amendments related to commercial outdoor activities; and

WHEREAS, on August 9, 2021 and November 22, 2021, the City Council held study sessions on the continuation of outdoor activities and provided direction to staff relevant to the development of a permanent ordinance; and

WHEREAS, on August 15, 2022, the Planning Commission of the City of Pacifica continued the duly noticed public hearing on the proposed amendments contained in Text Amendment TA-122-22 to September 6, 2022; and

WHEREAS, the Planning Commission held a public hearing on the proposed amendments contained in Text Amendment TA-122-22 (File No. 2022-017) on September 6, 2022, and adopted Resolution No. 2022-019 by a vote of 6 to 0 (with one absence) initiating and recommending City Council approval of Text Amendment TA-122-22; and

WHEREAS, the City Council of the City of Pacifica held a duly noticed public hearing on the proposed ordinance on September 26, 2022, and introduced Ordinance No. ### including the modification to insert “bars” as an eligible commercial use as listed in sec. 9-4.5204(b).

WHEREAS, the Planning Commission of the City of Pacifica received a staff report on the modification made by City Council in the introduction of the Ordinance during the regular October 3, 2022 Planning Commission meeting in accordance with PMC sec. 9-4.3507 and adopted Resolution No. XXXX by a vote of X to X to recommend approval of the modification made by City Council.

NOW, THEREFORE, the City Council of the City of Pacifica does ordain as follows:

Section 1. Recitals. The City Council of the City of Pacifica does hereby find that the above referenced recitals are true and correct and material to the adoption of this Ordinance.

Section 2. Enactment. Article 52, “Outdoor Commercial Permits” of Chapter 4, “Zoning” of Title 9, “Planning and Zoning” of the Pacifica Municipal Code is hereby enacted as follows:

“Article 52. Outdoor Commercial Permit

Sec. 9-4.5200 Purpose and Intent

The purpose of this article is to establish regulations to allow outdoor commercial use and non-permanent structures within the public right-of-way or outdoor areas for commercial use on private properties. The intention of this article is to provide a tool for economic development and to encourages a sense of community.

Sec. 9-4.5201 Definitions

- (a) "Administrator" shall mean the Planning Director or designee.
- (b) "Business sponsor" shall mean a single businessowner, a representative of business ownership of an existing commercial business who has submitted an application for an Outdoor Commercial permit on behalf of a single existing commercial business. A "business sponsor" may also include a representative of multiple existing commercial businesses that have submitted a joint application for a single Outdoor Commercial permit. A business shall only be associated with one business sponsor.
- (c) "Existing commercial business" shall mean an active commercial business with all valid and necessary licenses, permits, and approvals. For purposes of this article, a commercial business may also include non-profit and religious organizations.
- (d) "Designated Outdoor Commercial Area" shall mean the area defined for Outdoor Commercial Use under the Outdoor Commercial permit.
- (e) "Furniture" shall mean tables, chairs, benches, and similar non-permanent amenities that facilitate commercial activities related to the existing commercial use.
- (f) "Outdoor Commercial Use" shall mean the conducting of commercial activity outside of an Enclosed Structure.
- (g) "Parking lane" shall mean the area within a public right-of-way where on-street parking is permitted to occur. Parking lane shall not contain any bicycle or pedestrian paths.
- (h) "Parklet" shall mean a platform or similar level surface constructed within an existing paved parking lane that may accommodate furniture.
- (i) "Permittee" shall mean a business sponsor who has been issued an Outdoor Commercial permit. In the instance when a business sponsor is a representative for more than one business, the business sponsor shall be considered the Permittee and shall be responsible for actions of the other businesses identified on the application.
- (j) "Public right-of-way" shall mean a strip of land that contains the public street, sidewalks, and utilities. The edge of the right-of-way is also the property line for the abutting property.
- (k) "Enclosed structure" shall mean any structure having a roof and supported by walls on all elevations of the structure.

Sec. 9-4.5202 Outdoor commercial permit

No person or business shall undertake or establish a Commercial Use outside of an Enclosed Structure without first securing an Outdoor Commercial permit, unless the property has a valid use permit in accordance with Article 33 of this chapter or a development plan in accordance with Article 22 of this chapter or is otherwise permitted by law, and authorizes the specific Commercial Use to occur outside of an Enclosed Structure. An Outdoor Commercial permit may be issued for a Designated Outdoor Commercial Area in one of the following scenarios: (1) Parking lane of a public right-of-way; (2) sidewalk of a public right-of-way; (3) off-street parking space areas on private property; and (4) existing paved or solid surface areas of private property which do not provide off-street parking spaces.

Sec. 9-4.5203 Permit application, term, and renewal.

- (a) The Business Sponsor must complete an application on a form provided by the City, as indicated by the Administrator. Such applications shall be accompanied by a fee as established by resolution of the City Council.
 - (1) Parking Lane of Public Right-of-Way. Applications for an Outdoor Commercial permit in the Parking lane of public right-of-way shall require a Business Sponsor to conduct neighborhood outreach to inform other businesses on the block that the Business Sponsor is seeking an Outdoor Commercial permit in the public right-of-way. The neighborhood outreach shall identify that more than one business can be part of an application and that only one Designated Outdoor Commercial area in the parking lane of a public right-of-way is permitted per block. A final copy of the neighbor outreach material shall be provided to the City. The neighborhood outreach shall be conducted using one or more of the following methods:
 - (i) Written communication via certified mail to all of the businesses on the block. The Business Sponsor shall provide City with certified mail receipts.
 - (ii) A petition with signatures from at least two-thirds of the business owners or their designees on the block. Business Sponsor shall provide City with signed petition.
 - (iii) Hosting one or more open house meetings (virtual or in-person) which is attended by at least two-thirds of the business owners or their designees on the block. Business Sponsor shall provide City with an attendance list for the meeting(s).
- (b) The Administrator shall solicit written comments and recommendations from the City Engineer for applications for the proposed Outdoor Commercial permit in the public right-of-way prior to approving or denying any application submitted pursuant to this article.
- (c) An Outdoor Commercial permit is valid for one year from the date of issuance, unless suspended or revoked by the Administrator in accordance with Section 9-4.5211.
- (d) The Permittee may renew the permit annually, by submitting a renewal application and fee before, but not more than 90 days prior to the expiration of the Outdoor Commercial permit. The City shall consider applications for renewal using the provision in section 9-4.5205 and the Permittee may continue to operate in the Designated Outdoor Commercial Area until such time as the City either grants the renewal or denies the renewal of the Outdoor Commercial permit. If the Permittee does not apply for a renewal of the Outdoor Commercial permit prior to the one-year anniversary of issuance of the Outdoor Commercial permit, the Outdoor Commercial permit shall expire on the one year anniversary without further notice to the Permittee.

Sec. 9-4.5204 Eligibility

The Business Sponsor must demonstrate compliance with the following eligibility standards:

- (a) The Existing Commercial Business must be located in a zoning district that includes the use of the Existing Commercial Business as a permitted use, or a conditional use with a valid use permit. An Existing Commercial Business that is a nonconforming use shall not be eligible for an Outdoor Commercial permit.
- (b) The following commercial uses shall be eligible for an Outdoor Commercial permit: retail, retail restaurant, fast-food restaurant, restaurant, bars, personal services, art galleries and instructional studios for dance and arts or crafts, offices, churches, and health/fitness club. All other commercial uses shall not be eligible for an Outdoor Commercial permit.
- (c) Existing Commercial Businesses which operate within an Enclosed Structure are eligible to apply for Outdoor Commercial permit. Mobile businesses or businesses

- operating without an Enclosed Structure are not eligible for Outdoor Commercial permits. An Outdoor Commercial permit shall not be issued where the Commercial Use is proposed to occur on a vacant parcel.
- (d) Except for Outdoor Commercial permits issued to multiple businesses, the Designated Area of the Outdoor Commercial permit must be within the same parcel where the operation of the Commercial Business occurs within an Enclosed Structure or within adjacent public right-of-way from the parcel where the operation of the business occurs within an Enclosed Structure. When an Outdoor Commercial permit is issued to a Permittee representing multiple businesses, the Designated Outdoor Commercial Area must be within the same parcel or within the public right-of-way adjacent to at least one of the businesses associated with the Outdoor Commercial permit. A public walkway may separate the parcel or public right-of-way from the Designated Outdoor Commercial Area.
 - (e) The proposed Designated Outdoor Commercial Area would comply with all applicable local, County and State permit and license requirements associated with the Outdoor Commercial use. An Existing Commercial Business that is prohibited to conduct business outdoors pursuant state or federal law shall not be eligible for an Outdoor Commercial permit.
 - (f) Proof of commercial general liability (or comprehensive) and property damage insurance including endorsements showing the City of Pacifica as an additional insured on the insurance policy and stating that the insurance is primary with regard to the City of Pacifica. It is the Business Sponsor's responsibility to update insurance prior to permit expiration. Failure to do so will result in revocation of the outdoor commercial permit and/or encroachment permit.

Sec. 9-4.5205 Permit Approval

- (a) The Administrator shall grant an Outdoor Commercial permit only upon determining that the following findings have been made:
 - (1) The Business Sponsor meets the eligibility standards as detailed in section 9-4.5204.
 - (2) The proposed Designated Outdoor Commercial Area for the Outdoor Commercial Use meets the applicable provisions in this Article.
 - (3) The proposed development for the Outdoor Commercial permit is consistent with the City's adopted Outdoor Commercial Guidelines, as may be amended from time to time.
- (b) The Administrator may approve an application for Outdoor Commercial permit if the requirements in subdivision (a) have been met or the Administrator may deny the application for the Outdoor Commercial permit if the requirements in subdivision (a) cannot be met.
- (c) Notice of any Outdoor Commercial permit approval pursuant to this Section shall be mailed to property owners and occupants within 300 feet of the property where the proposed Outdoor Commercial Use will be located.

Appeals filed by any person aggrieved by this decision of the Administrator, shall be taken in the manner set forth in Section 9-4.3804 of Article 38 of this chapter. Basis of the appeal shall be limited to whether the Administrator erred in determining the findings in Section 9-4.5205(a).

- (d) Applications for renewals filed by Permittees shall follow the process detailed in subsection (a) through subsection (d) of this section.

Sec. 9-4.5206 General Provisions Applicable to All Permittees

All Permittees shall comply with the following provisions during the term of the Outdoor Commercial permit:

- (a) A maximum of one Outdoor Commercial permit shall be issued per Business Sponsor. A Permittee may have either a Designated Outdoor Commercial Area in the public right-of-

way or may have a Designated Outdoor Commercial Area on private property. A Permittee may not have an Outdoor Commercial permit that applies to both private property and public right-of-way.

- (b) An Outdoor Commercial permit shall only allow uses which are consistent with the principal business use of the Permittee. When an Outdoor Commercial permit is issued to a Permittee representing multiple businesses, the Outdoor Commercial permit shall allow the use of all the principal uses of the all the businesses associated with the Outdoor Commercial permit.
- (c) Designated Outdoor Commercial Areas may not unduly interfere with access by public employees and utility workers to meters, fire hydrants, fire department connections or valves, emergency shutoff switches associated with a fire or life safety features, manholes, or other objects (street hardware) in the public right-of-way or within public utility easements.
- (d) Designated Outdoor Commercial Areas shall contain ADA accessible features and/or route if ADA access is not available.
- (e) Permittee shall comply with all applicable California Alcoholic Beverage Control (“ABC”) regulations regarding alcohol use within the designated area of the Outdoor Commercial permit. Permittees are solely responsible for securing a valid ABC license to allow/extend business operations within the designated area of the Outdoor Commercial permit. An Outdoor Commercial permit or encroachment permit does not constitute approval by the ABC or City for alcohol use.
- (f) Permittee may offer live entertainment with amplified and non-amplified sound between 4pm and 8pm on Thursday, and 12pm to 8pm on Friday through Sunday and Federal holidays, as part of the Outdoor Commercial permit. All sources of sound generated from a designated outdoor commercial area shall be limited so as not to be audible beyond 175 feet from the limits of the designated outdoor commercial area at all times.
- (g) All of the following are prohibited in within the Designated Outdoor Commercial Areas:
 - (1) Signage which does not comply with Article 29 of this chapter;
 - (2) Smoking and vaping; and
 - (3) Internal combustion generators.
- (h) An Outdoor Commercial permit shall only permit Outdoor Commercial Uses which shall not exceed the normal hours of operation for the Permittee or any of the other businesses identified on the Outdoor Commercial permit, and shall be further limited to the hours of 7am to 10pm.
- (i) No permanent structures shall be erected or constructed in the Designated Outdoor Commercial Area.

Sec. 9-4.5207 Provisions Applicable to Designated Outdoor Commercial Areas in the Public Right-of-Way.

- (a) In addition to the General Provisions in section 9-4.5206, Permittees for Designated Outdoor Commercial Areas in the Public Right-of-Way shall comply with the following additional standards during the term of the Outdoor Commercial permit:
 - (1) Designated Outdoor Commercial areas in the Public Right-of-Way, including sidewalk and parking spaces, requires the issuance of an encroachment permit issued by the City. Each Permittee that obtains an encroachment permit shall be responsible for complying with all requirements in its encroachment permit.
 - (2) Designated Outdoor Commercial Areas in the Public Right-of-Way must be open and accessible to the public at all times and signed accordingly.
 - (3) For businesses on corner lots where commercial zoning abuts the property on one street and residential zoning abuts the property along the intersecting street, the Designated Outdoor Commercial Areas in the Public Right-of-Way shall only be allowed along the street frontage of the property in line with the commercial zoning.

- (4) Designated Outdoor Commercial Areas in the Public Right-of-Way shall not block or interrupt bike lanes.
 - (5) Access to the Public Right-of-Way may be required by the City or utilities for maintenance, repairs, emergency events and/or other purposes. The City shall provide reasonable notice when feasible. The City shall not be responsible for business losses related to the loss of seating or business interruptions due to construction or loss related to removal of any built features. Furthermore, if the City and/or utility companies do need to do maintenance, it shall be the responsibility of the owner to remove any Furniture or other improvements necessary for access.
 - (6) Prior to issuance of the Permit, the Business Sponsor shall execute a License Agreement with the City for use of the Public Right-of-Way.
- (b) In addition to the standards detailed in subsection (a) of this section, designated Outdoor Commercial Areas in the Parking Lane of a Public Right-of-Way shall comply with the following additional standards:
- (1) A maximum of two parallel parking spaces or four perpendicular or angled parking spaces may be used for a Designated Outdoor Commercial Area in the Public Right-of-Way.
 - (2) A maximum of one Designated Outdoor Commercial Area in the Parking Lane of the Public Right-of-Way shall be permitted on a segment of street between the abutting two intersecting streets and shall be issued on a first come, first serve basis.
 - (3) Driveways, red curbs, accessible parking spaces, and accessible paths of travel shall not be blocked or become inaccessible from the Designated Outdoor Commercial Area. The City will consider Designated Outdoor Commercial Area that block or impede access to green or white curbs or inactive driveways on a case-by-case basis.
 - (4) Designated Outdoor Commercial Areas in the Parking Lane of the Public Right-of-Way shall meet the following setbacks:
 - (i) A 4-foot inner buffer is required between edge of Designated Outdoor Commercial Area and abutting parking spaces.
 - (ii) A 2-foot buffer is required when abutting a driveway, motorcycle parking, or a bicycle rack.
 - (iii) A 2-foot buffer is required between the Designated Outdoor Commercial Area and abutting travel lane.
 - (iv) Parklets located adjacent to controlled intersection crosswalks shall provide 25-foot setbacks from the nearest crosswalk. The City Engineer shall review and provide a necessary buffer for Parklets located adjacent to uncontrolled intersection crosswalks on a case-by-case basis.
 - (5) The Designated Outdoor Commercial Area shall be no wider than the actual street frontage of the property of the commercial use unless the Outdoor Commercial permit is for multiple businesses and the Business Sponsor also represents abutting property owner.
- (c) In addition to the standards detailed in subsection (a) of this section, Designated Outdoor Commercial Areas in the sidewalk of the Public Right-of-Way shall meet the following additional standards:
- (1) Designated Outdoor Commercial Areas in the sidewalk shall have adequate space to accommodate Furniture and shall provide adequate safe passage along the sidewalk for pedestrian and wheelchair users of the sidewalk. A minimum width of 4 feet shall be maintained along the sidewalk. No Furniture shall be placed or allowed to remain on any sidewalk that inhibits the minimum 4-foot passage.
 - (2) No structures may be constructed within the sidewalk.

Sec. 9-4.5208 Provisions Applicable to Designated Outdoor Commercial Areas on Private Property.

- (a) In addition to the General Provisions in section 9-4.5206, Permittees for Designated Outdoor Commercial Areas on Private Property shall comply with the following additional standards during the term of the Outdoor Commercial permit:
 - (1) Designated Outdoor Commercial Areas shall be located within outdoor space contiguous to the Business Sponsor's tenant space unless authorized by the property owner to use other space contiguous to commercial structures or walkways immediately adjacent to Enclosed Structures. All Outdoor Commercial Use conducted on private property must be done with consent of property owner.
 - (2) Designated Outdoor Commercial Areas shall be located on an existing level, paved or solid surface area. Business Sponsor may construct a platform or similar level surface which shall meet the standards provided for a Parklet in the Outdoor Commercial Guidelines.
- (b) In addition to the standards detailed in subsection (a) of this section, designated Outdoor Commercial Area on private off-street parking areas shall meet the following standards:
 - (1) Designated Outdoor Commercial Areas on private property shall not make inaccessible or block more than two off-street parking spaces or more than 10 percent of the total onsite parking spaces, whichever is greater.
 - (2) The City shall not be responsible for allocating and distributing off-street parking spaces to Business Sponsors within the provisions of subsection (1) on multi-unit commercial developments, as defined in PMC sec. 9-4.2902(ag).
 - (3) Accessible parking space, accessible paths of travel, and electric vehicle charging stations shall not be blocked or become inaccessible from the establishment of the Designated Outdoor Commercial Area.
 - (4) Development within the Designated Outdoor Commercial Area on private off-street parking areas shall meet the following setbacks:
 - (i) A 2-foot inner buffer is required between edge of Designated Outdoor Commercial Area and abutting parking spaces.
 - (ii) A 2-foot buffer is required between when abutting to a driveway, motorcycle parking, or a bicycle rack.
 - (iii) A 1-foot buffer is required between the Designated Outdoor Commercial Area and abutting travel lane.

Sec. 9-4.5209. Compliance with other regulations.

- (a) A parking exception pursuant to Article 28 of this Chapter shall not be required for any nonconformity created to off-street parking as a result of the approval of the Designated Outdoor Commercial Area for the duration of the Outdoor Commercial permit. Any expansion or alteration of the subject site unrelated to the Outdoor Commercial permit shall be subject to the provisions of Article 28 and Article 30 as applicable.
- (b) Nothing in this article shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Section 30000 et seq. of the Public Resources Code) or the City's certified local coastal program.
- (c) Development shall comply with all local building code requirements based on construction type.
- (d) A Business Sponsor may not apply for a variance or other relief from the standards of this article. Businesses may pursue alternative permit or approval as otherwise provided in this chapter such as a use permit in accordance with section 9-4.2308 or a development plan amendment in accordance with Article 22, as appropriate to support a commercial use outside of a structure beyond the provisions of this article.

Sec. 9-4.5210 Legalization of outdoor commercial.

- (a) Any Outdoor Commercial Uses, which are not allowed or not consistent with an approval of an Outdoor Commercial permit or an approval as otherwise allowed in this chapter shall be considered unlawful and nonconforming.
- (b) Unlawful and nonconforming Outdoor Commercial Uses may be legalized and considered conforming by complying with all provisions of this article.
- (c) Outdoor Commercial Uses authorized pursuant to an executed Temporary COVID-19 Outdoor Activities and Encroachment Agreement as allowed under the City's Emergency Order No. 2020-02, as amended prior to the effective date of this article, shall not be considered unlawful and nonconforming provided that within six (6) months of the effective date of this article the "Outdoor Activities" that were the subject of the Temporary COVID-19 Outdoor Activities and Encroachment Agreement is approved through an Outdoor Commercial permit pursuant to this article.

Sec. 9-4.5211 Permit Amendment, Suspension, Revocation

- (a) The Administrator may suspend, or revoke an Outdoor Commercial permit as follows:
 - (1) For Convenience. The Administrator may revoke the Outdoor Commercial permit for any reason at any time for the City's convenience.
 - (2) Non-Compliance. The Administrator may revoke or suspend the Outdoor Commercial permit due to the Permittee's failure to comply with the terms and conditions of this article or the encroachment permit. In case a permit is suspended or revoked, the Administrator shall send notice to the Permittee of the violations of this article or the encroachment permit and advising of the potential for suspension period or revocation.
 - (3) For Health and Safety. The Administrator may suspend or revoke the Outdoor Commercial permit at any time if the City Manager, or designee, determines that the public health, safety or welfare warrant such action.
- (b) The Administrator may amend the Outdoor Commercial permit, as necessary, during the term of the Outdoor Commercial permit.
- (c) Amendment, suspension, or revocation issued by the Administrator pursuant to this section will be effective ten business (10) days from the date appearing on the notice, unless some other time is identified in the notice.
- (d) Any person aggrieved by the decision of the Administrator to amend, suspend or revoke, may file an appeal along with the deposit of an appeal fee as established by resolution of City Council. Appeals filed by any person aggrieved by this decision of the Administrator shall be taken in the manner set forth in Section 9-4.3804 of Article 38 of this chapter.
- (e) If the Administrator revokes the Outdoor Commercial permit and the decision is not appealed or upheld on appeal, the Permittee shall remove all structures, Parklets or Furniture in the Designated Outdoor Commercial Area within ten (10) business days after the final determination. The Permittee shall pay all costs associated with said removal.

Sec. 9-4.5212 Interruption

- (a) If necessary, for utility repair and maintenance the Permittee shall remove any structures, Parklets, Furniture or other improvements that interfere with the necessary repair and maintenance. The City shall provide reasonable notice of the repair and/or maintenance, when feasible. The Permittee shall be responsible for any and all costs of removing, storing, and re-installing the structures, Parklets, Furniture and/or other improvements from the Designated Outdoor Commercial Area.
- (b) In the case of an emergency, the City may remove the structures, Parklets, Furniture or other improvements from the Designated Outdoor Commercial Area without prior notice to the Permittee. The Permittee shall be responsible for any and all costs of

removing, storing, and re-installing the structures, Parklets, Furniture and/or other improvements from the Designated Outdoor Commercial Area.

Sec. 9-4.5213 No Vested Rights

Nothing in this article shall establish a vested right or ownership interest in the Public Right-of-Way. Approval of an Outdoor Commercial permit does not legalize any use or alter provisions for use permitted by law or contract, including, but not limited to, restrictions imposed by a local, County, or State regulations or licenses or in a lease agreement.

Sec. 9-4.5214. - Enforcement

The City may enforce this article by any means permitted by law, including, but not limited to, those penalty provisions set forth in Chapter 2 of Title 1 of this Code. The City Council may establish fines for violating this article by resolution.”

Section 3. Amendment. Section 9-4.2308 “Commercial and industrial uses outside structures“ of Article 23, “General Provision and Exceptions” of Chapter 4, “Zoning” of Title 9, “Planning and Zoning” of the Pacifica Municipal Code is hereby amended (deletions shown in ~~striketrough~~ and additions shown in underline) as follows:

“Sec. 9-4.2308. Commercial and industrial uses outside structures.

(a) All commercial and industrial uses conducted in any C or M District shall be conducted entirely within an enclosed structure unless a permit is obtained, as set forth in Article 33 ~~of this chapter or Article 52 of this chapter~~, except as otherwise provided in this section.”

Section 4. Compliance with CEQA. This action is exempt from the California Environmental Quality Act (“CEQA”), pursuant to section 15061(b)(3) of the CEQA Guidelines (14 Cal. Code Regs. 15000 et seq.) because it can be seen with certainty that there is no possibility that adoption of the ordinance may have a significant effect on the environment. Additionally, the text amendment would qualify for a Class 1 Categorical Exemption, CEQA Guidelines Section 15301 “Existing Structures”, Class 3 Categorical Exemption, CEQA Guidelines Section 15303 “New Construction or Conversion of Small Structures”, and Class 4 Categorical Exemption, CEQA Guidelines Section 15304 “Minor Alterations to Land.” The text amendment would consist of the minor alteration of existing public or private developed areas resulting in a negligible expansion of existing use. The text amendment may result in the construction of small structures such as parklets. Furthermore, the text amendment may result in minor temporary use of land having negligible or no permanent effect on the environment.

Section 5. Severability. If any section, subsection, sentence, clause or phase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentence, clauses or phrases be declared unconstitutional.

Section 6. Publication. The City Clerk is hereby ordered and directed to certify to the passage of this Ordinance by the City Council of the City of Pacifica, California, and cause the same to be published in accordance with State law.

Section 7. Coastal Act Compliance. The City Council hereby certifies that the zoning text amendment described herein is intended to be carried out in a manner fully in conformity with the California Coastal Act (Public Resources Code 30000 et seq.). The zoning text amendment described herein shall take effect immediately upon certification by the California Coastal Commission (“CCC”) if approved by the CCC as submitted. If the CCC certifies the zoning text

PASSED AND ADOPTED this __ day of _____, 2022 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Mary Bier, Mayor

ATTEST:

APPROVED AS TO FORM:

Sarah Coffey, City Clerk

Michelle Kenyon, City Attorney