

Interim Policy for Zoning Ordinance Implementation to Accommodate Physical Distancing in Commercial Zones

Purpose

The purpose of this Policy is to support the safe reopening and operation of local business operations in commercial zoning designations during the COVID-19 pandemic. These policies and administrative guidance on implementing Sonoma County Code (“SCC”) Chapter 26 (“Zoning Code”) are intended to guide temporary business modifications and expansions undertaken to comply with the State of California’s Shelter in Place and Public Health Orders (E.O. N-33-20 and E.O. N-60-20) (“State Shelter Order”), Order of the Health Officer of the County of Sonoma (No. C19-014 and future amendments) (“County Health Order”), physical distancing requirements, and any federal health order in order to reduce the risk of transmission of COVID-19.

Effective Period

The Director intends to present a more comprehensive policy to the Board of Supervisors to further accommodate and regulate temporary modifications during the COVID-19 pandemic. This Policy to implement the existing code will remain in effect until the Board of Supervisors adopts a new ordinance or policy superseding it, or until 1 August 2020, whichever occurs first.

Definitions

1. “Business area” means an existing indoor or outdoor area that the business is legally entitled to use for any business purpose, such as employee areas, customer service areas, offices, kitchens, storage, etc.
2. “Temporary indoor area” means a repurposed area inside an existing building that is used or remodeled to comply with a federal health order, State Shelter Order, County Health Order, or physical distancing requirements, and that was not previously entitled for that use.
3. “Temporary modification” means a temporary indoor area, temporary outdoor area, structure, or activity that is used or developed to comply with a federal health order, State Shelter Order, County Health Order, or physical distancing requirements.
4. “Temporary outdoor area” means a new or repurposed outdoor area that is used or developed to comply with a federal health order, State Shelter Order, County Health Order, or physical distancing requirements, and that was not previously entitled for that use.

Temporary Modifications of Permitted and Conditional Uses

For conditional uses, the Director finds that temporary modifications are consistent with the conditions of approval of the use permit. To the extent a temporary modification may be inconsistent with the conditions of approval, the Director finds that any changes to conditions necessitated to allow physical distancing under this Policy would be minor and appropriate due to the unforeseen circumstances of and constraints caused by COVID-19. Permitted uses may already modify or expand into existing spaces in accordance with the Zoning Code.

Temporary modifications are allowed in accordance with the following:

1. **Temporary Indoor Areas.** A business area can be expanded into temporary indoor areas, including into an existing nearby space or building.
2. **Temporary Outdoor Areas.** A business area can be expanded into temporary outdoor areas, such as parking lots, sidewalks, and streets.
3. **New Structures and Modifications.** A business may erect a new temporary structure or make a minor modification to an existing structure as part of a temporary modification.
4. **Visitor and Occupancy Limits.** The total number of customers, employees, and events cannot exceed existing legal entitlements or prior occupancy.
5. **Compliance with Other Laws.** All temporary modifications must comply with all applicable state and local laws, including building, grading, fire, and health code requirements and the California Disabled Persons Act.
6. **No Property Rights Conferred.** Use or development of a temporary modification does not confer a property interest, vested right, or entitlement to continue through the Policy's effective period or receive a future entitlement for use of the temporary modification.

Additional Requirements for Temporary Outdoor Areas

Businesses must comply with the following when establishing and using temporary outdoor areas:

1. No amplified sound, loud equipment, or loud musical instruments, such as horns, drums, or cymbals, are allowed in temporary outdoor areas.
2. Noise must be controlled in accordance with Table NE-2 (or an adjusted Table NE-2 with respect to ambient noise as described in General Plan 2020 Policy NE-1c) as measured at the exterior property line of an affected residential or sensitive land use.
3. A temporary outdoor area can only be located in a previously disturbed area, such as a parking lot, hardscape, decomposed granite, existing landscaped area, or other similar area.
4. A temporary outdoor area must comply with the Riparian Corridor Combining Zone (SCC Section 26-65) and cannot be located in the Biotic Habitat Combining Zone (SCC Section 26-66).

Parking

Parking requirements are governed by SCC Section 26-86 and for commercial uses are generally set based on floor area. Required parking may be reduced when, among other circumstances, the Director determines that fewer spaces will adequately serve the use or where existing buildings in urban service areas or unincorporated communities are being reused without intensifying the existing use. (SCC Section 26-86-010(i) and (l).) It has been shown that even as businesses are able to reopen, patronage during the pandemic is greatly reduced. As a result, the Director has determined that fewer parking spaces will adequately serve temporary indoor and outdoor areas. Further, temporary indoor and outdoor areas consist of reusing existing buildings in commercial zones without intensifying the use and thus qualify for an exception to parking requirements.

Temporary modifications are subject to the following parking provisions:

1. Conversion of Existing Parking. Use of existing parking spaces for temporary outdoor areas does not create a violation under Section 26-86 for existing businesses to which the parking spaces were assigned.
2. Parking Regulations Exemption. A temporary modification is exempt from additional parking regulations.

Design Review

Design Review is governed by SCC Section 26-82. Design review approval may be issued administratively for use of existing buildings, modifications to uses that have previously undergone design review, and any other projects that should qualify for administrative design review based on the small scale and nature of the development. (SCC Section 26-82-050(c) and (d).) The Director finds that any temporary modifications under this Policy qualify for administrative design review, and that temporary modifications are deemed approved so long as the provisions of this Policy are met.

Encroachments

A temporary modification that involves placing objects or conducting activities in the public right-of-way requires an encroachment permit, such as placing tables and chairs and serving customers on a sidewalk or in a street. Encroachments into the County Right-of-Way are governed by SCC Section 15-8. Encroachment permit approval may be issued administratively to place, change, or renew an encroachment. New or modified encroachments must obtain a notice of acknowledgement from the County. Recognizing the importance to public health and the economy, the County is working to streamline this process. To obtain an encroachment permit, contact the Department Director Tennis.Wick@sonoma-county.org, who administers encroachment permits on behalf of the Road Commissioner/Director of the Department of Transportation and Public Works. The County Road Commissioner is granted the authority to enforce the terms of any recorded notice of acknowledgement (SCC Section 15-8.1(e)).

Compliance

1. **Complaints.** Each business with a temporary modification must designate an employee to receive and address complaints that a temporary modification is a nuisance or does not comply with this Ordinance or applicable provision of the county code. If the Department receives complaints about a temporary modification, the Department will first verify whether the complaint is valid, and then route a valid complaint to the designated business representative. The business must investigate complaints within 24 hours of receiving notification from the Department and diligently make necessary adjustments to address a valid complaint.
2. **Suspension, Termination, and Modification.** If the Department determines that a temporary modification is a nuisance or does not comply with this Policy or applicable provision of the county code, it may, at the Director's discretion, require changes to the temporary modification, suspend use of the temporary modification, or require that the temporary modification cease.