

TAHOE REGIONAL PLANNING AGENCY
REGIONAL PLAN IMPLEMENTATION COMMITTEE

GoToWebinar

November 18, 2020

Meeting Minutes

I. CALL TO ORDER AND DETERMINATION OF QUORUM

Chair Mr. Yeates called the meeting to order at 8:32 a.m.

Members present: Ms. Aldean, Mr. Bruce, Ms. Gustafson, Ms. Laine, Mr. Lawrence, Mr. Yeates

II. APPROVAL OF AGENDA

Mr. Yeates deemed the agenda approved as posted.

III. APPROVAL OF MINUTES

Mr. Yeates said staff has made some minor clerical edits to Agenda Item No. 4, Draft Tourist Core Area Plan Amendments in the City of South Lake Tahoe and are requesting approval of the September 30, 2020 minutes as amended.

Ms. Aldean moved approval.
Motion carried.

IV. Item No. 4: Discussion and possible direction to staff for Amendments to Chapters 2, 50, and 90 of the TRPA Code of Ordinances to address outdoor dining and outdoor seating uses

TRPA team member Mr. Conger provided the presentation.

Mr. Hester said in May when staff presented on the Main Street Management Plan Report, they identified that we needed to address outdoor dining sometime after the Main Street Management Plan was approved. Because of the Covid-19 pandemic, temporary guidance was issued to allow businesses to expand the distance between tables which led to outdoor dining. The board supported staff's idea of working on some quick code amendments to address that. Today, Mr. Conger will present two tiers: One is a straightforward response to those two items of the Main Street Management Plan and the pandemic. But there are some longer term bigger changes that probably need to be made but aren't part of this, but the committee will have the option to provide direction on.

Mr. Conger said this is an informational item for discussion and direction to staff. Dining is an important component of creating active and vibrant streetscapes. At the same time, there's a lot of uncertainty as to how TRPA regulates these uses. Staff will provide some background on TRPA's regulation of outdoor dining and discuss a set of potential code amendments that start to address that uncertainty.

The 2012 Regional Plan Update marked a major paradigm shift for planning in the Lake Tahoe region. One of the key strategies in the Regional Plan is to direct development towards designated town centers. Redevelopment efforts within those town centers in turn would focus on creating pedestrian friendly environments. This strategy helps to reduce the frequency and length of vehicle trips while also enhancing environmental and economic opportunities. Outdoor dining is one of the many tools that can be used to activate the streetscape by creating visual interest and by helping transition adjacent development down to the pedestrian scale.

Commercial floor area is a concept that was originally established in the 1987 Regional Plan. While the Regional Plan does promote active streetscapes, it also regulates growth using commercial floor area (CFA). Under this system, commercial uses including outdoor commercial uses require CFA before they can be established. The 2012 Regional Plan Update maintained that 1987 development right system, therefore, having both strategies in place. There's a growth control strategy and then a strategy around activating the town centers. With regards to outdoor dining there's a lot of uncertainty around the regulatory requirements. Much of this stems from a lack of written code provisions addressing outdoor dining uses. Specific areas of uncertainty include permitting, coverage, and CFA. The lack of written rules has made it difficult to communicate clear requirements to the public, business owners, and to the Memorandum of Understanding partners. Right now, the line is often hazy. As these uses increase and intensify the need to draw clear distinctions on permitting, coverage, and CFA grows. The uncertainty around outdoor dining came to head this year as a result of the Covid-19 pandemic. Under public health orders, restaurants have been required to reduce their indoor capacity which has led to an increase demand for creating additional outdoor capacity.

To address this uncertainty, TRPA released a memo in May 2020 to provide guidance for bars and restaurants looking to shift some of their existing capacity outdoors. At the same time, the Main Street Management Plan process was paused for work on parking management. As part of the Governing Board update in May, staff indicated that they would change direction and start focusing on addressing the outdoor dining requirements to help facilitate implementation of the Main Street Management Plan.

The way TRPA currently administers outdoor dining stems from the need for addition commercial floor area (CFA). Under the Regional Plan commercial growth is regulated using the growth control tool of commercial floor area. All new commercial activities and new structures require CFA. Over the years, code interpretations have resulted in creation of a narrow class of outdoor uses that do not require CFA. Those outdoor uses do not require CFA when they're no commercial activities occurring outdoors, for example, no wait staff service and when there are no enclosed structures involved. In all other circumstances, CFA is required. An example of when CFA isn't required is for takeout style dining with no enclosed structures.

The approach staff used in scoping a potential amendment package was largely an effort in balancing the Regional Plan strategy of growth control and creating active streets as envisioned through the Main Street Management Plan. While this is not a silver bullet solution, the package is meant to be a first step in addressing uncertainty around permitting, coverage, and commercial floor area by codifying current practices. The potential amendments that they considered are divided into those that would allow quick action and those that would require amendments to the Regional Plan or additional substantial environmental analysis.

In following that approach they identified three policy solutions that address outdoor dining and reduce uncertainty while allowing quick action by the Governing Board. The first is formalizing the unwritten standard for when commercial floor area is required and when it is not. Secondly, the proposal would introduce a new qualified permit exemption. This establishes parameters by which a project can be exempted from TRPA permits. The third component is making the Covid-19 memo permanent by allowing restaurants to shift existing indoor capacities outdoors under a qualified exemption without requiring CFA. In addition to the code amendments staff is preparing a guidance manual to advise restaurant owners on the qualified exemption process.

The proposal has a few different benefits. First, it reduces uncertainty by establishing clear standards. Having clear standards is important to making sure that we and our Memorandum of Understanding partners are administering the requirements consistently. It's also important for business owners to know what they can and can't do before they invest in costly improvements. To help in this effort, staff proposes to develop a guidance manual that would accompany the ordinance. Secondly, the qualified exemption process provides us with a record that helps to track and monitor the permitted level of development. At present, it's difficult to discern what uses were properly permitted. Lastly, the ordinance would provide additional flexibility to restaurants seeking to shift their existing indoor capacity outside on a more permanent basis.

In reviewing the full spectrum of amendments, staff considered a wide range of potential solutions to encourage outdoor dining use. The first three solutions are included in the package just outlined. The last four could be pursued but would require substantial additional environmental analysis which is not budgeted. To focus on these solutions, they would need to allocate additional staff time, fund the environmental analysis, and extend the adoption schedule. Some of the policy solutions they're recommending deferring at this time include creating a full permit exemption, creating coverage exemptions, creating a new CFA exclusion, and establishing a pool of CFA for outdoor dining.

Staff recommends with moving forward with the amendment package as described as this can be acted on right away without requiring additional analysis and resources and provides some clarity and reduces the uncertainty and incrementally moves us in the right direction. Alternatives that the committee may pursue include taking no action, expanding the scope, or pursuing a second phase when necessary resources are available.

Presentation can be found at:

[RPIC-Item-No.-3-Outdoor-Dining-Amendments.pdf](#)

Board Comments & Questions

Ms. Aldean said thank you for undertaking this effort. It's important under the current circumstances to do everything in our power to assist local businesses to enable them to survive the restrictions that are in place in connection to the pandemic. In Chapter 90, Definitions, she finds the distinction between outdoor dining and outdoor seating somewhat confusing. She made a proposal that might provide clarity and might be more easily interpreted for the people who are relying on this provision to enable them to move some of their outdoor dining outside. We're talking about dining rather than seating. A person can eat food on their lap and technically they would just be sitting, or they could eat their food from a table in a chair. She suggested that there are two types of outdoor dining; one would be commercial outdoor dining

which would be defined using much of the existing terminology. “As the commercial use of an outside area by an eating or drinking place for the same activities that occur within the establishment, commercial dining and outdoor or temporarily enclosed areas is commercial outdoor dining.” In regard to non-commercial outdoor dining which she believes what we’re trying to accomplish here so we can avoid requiring that vendors get additional commercial floor area, she suggested “The non-commercial use of unenclosed outdoor areas for seating, picnicking, or informal consumption of food brought from home or obtained from a nearby business. An unenclosed facility not served by waitstaff and where no commercial transactions occur is non-commercial outdoor dining.” She believes that we’re focused on dining and moving some of the activities that would normally be contained inside an establishment outdoors so businesses can continue to survive the pandemic.

Mr. Conger said that’s something the committee could consider. Staff struggled with coming up with a term and landed on outdoor seating. He doesn’t see an issue with changing that terminology to non-commercial outdoor dining.

Ms. Aldean said it may be easier for people to interpret to determine whether or not what they’re proposing to do is permissible and falls within the exemption category.

Mr. Lawrence said this is critical for these businesses to survive during this time and commends staff for taking this on. In regard to “outdoor”, is the focus just dining? Because when he thinks about outdoor seating and thinking about some of the businesses in Reno such as hair stylist that have put seating outside in order to meet standards. He doesn’t have a huge thought between Ms. Aldean’s suggestion and staff’s suggestion, but he doesn’t want those other outdoor retail establishments to be forgotten about. Regarding point number three in the staff report which is allowing restaurants to shift existing capacity outdoors without triggering commercial floor area. Is it contemplated that there’s going to be a time frame associated with this? The direction memo that TRPA provided earlier this year, tied it to the Covid restrictions. Going through the qualified exempt activity there needs to be a high level of communication between the expectations of the Agency and the retail establishment. Is the qualified exempt open ended or is there a time period on it?

Mr. Conger said as proposed, it would be an ongoing use and wouldn’t be a time limited use. A restaurant could regularly as the seasons permit expand outdoors and then reduce their indoor capacity at a similar amount.

Mr. Marshall asked Mr. Conger to comment on how the temporary activities section also might play into this.

Mr. Conger said there are temporary activities that are exempt under TRPA’s Code of Ordinances but it’s very limited as to what someone could do under an exempt temporary activity. Beyond that, someone could get a temporary use permit which can create temporary coverage and temporary commercial floor area without triggering the need for additional CFA or coverage. Those permits are issued for a six month period and can get up to one six month extension. Theoretically, is someone was doing it for winter use, they could do it for two winters under a temporary use permit.

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Mr. Marshall said what staff was trying to do was shift away from that exemption to allowing this kind of activity in non-Covid times. If there's a way to expand to enliven the streetscape to allow that to happen indefinitely, essentially if the criteria within the qualified exempt is followed. Staff is trying to look further out, and this would allow these types of commercial businesses to move outside without having to rely on the temporary qualified exempt.

Mr. Lawrence said he would like to see some sort of time frame. Open ended is going to put an enforcement and monitoring burden in the long run. Other types of qualified exempts activities are largely repairs of a permanent nature so there's not much on going enforcement or compliance. Shifting capacity in and out of an indoor establishment could be problematic as the years go on regarding the development caps which is a foundation of the 2012 Regional Plan. We need to think about having some side boards so there's a clear expectation between the Agency and the establishments.

Mr. Marshall said that's a great point. We don't want to get into a situation where we're having to constantly monitor the inside business areas. That's one of the major topics for the next phase which would be how should we be regulating commercial floor area generally within areas where we want to enliven the streetscape without generating these kind of potential enforcement issues.

Mr. Lawrence said he agreed with that concept and goal. Trying to figure out how to do that and having some side boards would be ideal.

Ms. Aldean said there's a reference in the Main Street Management Plan about pop up shops for local vendors. She would assume those are seasonal and asked if they would file under the qualified exempt category. Although, these wouldn't be a pop up shop but is similar in that you're moving the vending of merchandise onto the sidewalk. What is the plan for permitting those sorts of activities?

Mr. Conger said there are a couple of different ways that could be handled. Outdoor retail sales are a separate use in the Code of Ordinances and regulated separately. It's different from the outdoor use associated with a restaurant. They generally would require either a temporary use permit to operate or they would fall under the exempt activities for exempt temporary activities. The third possibility which is a likelihood in the main street area is that we would establish a special event area and that area would obviate the need for temporary use permits for that type of use.

Ms. Aldean asked if deciding the areas for these pop up shops would be on a first come first serve basis.

Mr. Hester said what they're anticipating is that someone might get a permit either from the City of South Lake Tahoe or Douglas County if they were managing an event would probably get a master permit from TRPA. For example, for the Sparks Rib Cook Off, they would manage who gets what booth and where, but they get the whole event permitted. That would probably be something that would be addressed in more detail with the next phase of the Main Street Management Plan that the Tahoe Transportation District is working out with the two local governments of who owns the rights-of-way, who permits and maintains it, etc.

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Ms. Aldean said she's not sure if there's a definition for a pop up shop. There are pop up shops associated with special events but there are also existing vendors for example, who move their merchandise onto the sidewalk for sales. She's not sure if it's envisioned that those would fall under the pop up shop definition but suggested we may need to look at that. Also, it's her understanding that there is 15,000 square feet of additional commercial floor area for potential outdoor dining space in the Main Street Management Plan. Some of the restaurants that might be using outdoor seating and dining temporarily to deal with the challenges of Covid. Is it correct that they could continue those activities if they applied for, received, or purchased a portion of the 15,000 square feet of CFA?

Mr. Hester said yes, that is something they've discussed looking at in phase two. There's a large unallocated amount of the commercial floor area pool. Something they were thinking about in the second phase is should we take some of that pool and allocate it to these corridors that are in town centers for this very purpose but are not prepared to recommend today.

Ms. Gustafson said regarding the Covid situation and the timing of allowing people to move outdoors, can it be tied to the Governor's emergency orders from each state or to the most restrictive as far as putting that time limit on it?

Mr. Conger said under the current memo is exactly how it's limited based on the existing orders.

Ms. Gustafson urged everyone to be aware that for instance on the North Shore restaurant seats are tied to the sewer bills and treatment. Their special districts monitor that very closely as well. Working with them will alleviate some of the concerns about how many seats are being used inside and outside at any given time understanding that others are looking at that as well. She's unsure how TRPA works with TTSA for instance and the local sewer districts on the North Shore to validate their inspection process because then they don't have to do their own separate check on that capacity issue which they do routinely.

Mr. Conger said they address that within the proposed ordinance with a general requirement that "you must comply" with all necessary local requirements including building and fire code. That would also include special districts and water codes. They didn't reach out specifically to the special districts, but they had not considered that particular issue, but staff will do that before they move forward.

Ms. Gustafson said the board received a comment letter from the League to Save Lake Tahoe regarding the enforcement. Working with the local jurisdictions, counties, city, and special districts you can have some level of assurance that people are watching that for purposes of billing and other enforcement. Her only thought is how we coordinate that.

Ms. Laine said by the time the Main Street Management Plan gets to be boots on the ground it could be at least two to five years from now and none of us have that crystal ball to see how that's going to relate with Covid-19. What we do know with Covid is that we've been struggling with it for almost one year and we've gone from purple to red to almost yellow and the situation continues to move. Her concern is that we put in place too many restrictions that cause people to jump through hoops for extended periods of time in order to get permits. When in fact what they're trying to do is survive. The City of South Lake Tahoe has tried to be very nimble and responsive to the restaurants and needs and tried not to make extensive red tape.

She asked who is going to a) receive the applications and review the checklist and issue the permits and b) who is the enforcer and how will that be handled?

Mr. Conger said with respect to the permits, TRPA generally takes on qualified exemptions for commercial purposes. He doesn't believe we have any Memorandum of Understanding partners that do qualified exemptions for commercial uses but is not positive on that. TRPA would also be the ones to enforce TRPA's Code of Ordinances. The way this is set up, effectively if someone is what they've termed as outdoor seating or what Ms. Aldean termed non-commercial outdoor dining, if someone falls in that category and your legally established before adoption of this ordinance, they wouldn't expect any further action from someone at this point. But if you are the commercial outdoor dining, that technically is already non-conforming if someone doesn't have commercial floor area for that use. With the proposed ordinance, they wouldn't be changing the non-conforming status of those particular uses.

Ms. Laine asked what does that turnaround time look like for TRPA.

Mr. Conger said for the qualified exemption there is not a permit. For the qualified exemption someone would file a declaration of what they're going to do three days ahead of initiating the use. During that time, TRPA is able to review or screen the application to see if there are any major issues that might push it out of the qualified exemption and require a permit. But absent that, someone could carry on with the activities three days after filing the qualified exempt activity declaration.

Mr. Hester said how they envision this working is similar to how it works in other places for example in the midtown area of Reno. There are a number of things that limit the capacity besides what we do such the utility hookups and certificates of occupancy. There are a number of other organizations or different parts of organizations that are looking at capacity too. What TRPA is trying to do for two reasons, allow that fixed capacity to move in and out of the building on a permanent basis. It moves in during the bad weather and moves out when you want to activate the street in nice weather but there's still the fixed capacity. We and others would be enforcing the capacity and if they could move in and out without needing commercial floor area and coverage that's fine. If they need commercial floor area and coverage that's something they want to try and address in phase two. That's how they see all the pieces working together. The qualified exempt is a relatively a straight forward process through TRPA. They feel that it will not only work during Covid, but it activates the streets consistent with the Regional Plan and area plans on a permanent basis.

Ms. Aldean said under stakeholder coordination ultimately there will be some sort of merchants association or a business improvement district. In Carson City they have a bid in the downtown area and there is a lot of self enforcement. They had some people who were concerned about allowing this temporary movement of dining outdoors and how do restaurants that have permits for outdoor dining, are they placed at some sort of disadvantage? Once a bid is in place, you'll have merchants coordinating with one another and keeping track of what all the other merchants in the main street area are doing. That bid can help with enforcement issues. That's long term and doesn't address any violations that may be a result of loosening up the requirements with respect to offering these qualified exempt activities during Covid. Ultimately, a lot of it will be self-regulated.

Public Comment & Questions

Lew Feldman thanked Mr. Conger and Mr. Hester for teeing this up. This a remarkably awkward moment in time and appreciated the Agency's effort to be responsive to the Food and Beverage community which is fundamentally on life support. This has taken resources and stretched them thinner than any of us can ever recollect. These interim measures to enable businesses to navigate this extraordinary difficult time is a very positive step. There is a bigger issue with commercial floor area and dining. For 30 plus years he's watched TRPA try and manage this fiction about if you have outdoor seats and there's wait service, you maybe should have CFA but if you don't have wait service, you don't need CFA. That's never worked, it's never been enforced. It's a credibility issue because he thinks that we all think that outdoor dining that activates the areas and a resort community is positive. On the interim basis, being flexible and responsive to the challenges that folks are trying to save their businesses is laudable. He's disappointed that we didn't accelerate this next phase and conversation and recognize that a restaurant that can serve indoors and outdoors shouldn't have to cut itself off at the knees and say, "I'm going to reduce my indoor capacity because people would rather be in fresh air but if business is good, maybe they'll sit indoors, and I can make some money." He respected Mr. Marshall's earlier comments. The longer term solution is to look at this pool of 400,00 square feet of unallocated commercial floor area and reconcile the discrepancy between us trying to animate and activate public places and not look the other way but legitimize it because a lot of this has been permitted even though TRPA has been missing in action. It's time to correct and direct and allocate the resources that staff has indicated are required for us to solve this problem on the longer vision.

Steve Teshara on behalf of the Tahoe Chamber and the South Tahoe Restaurant Association. He said as Mr. Feldman pointed out and everyone knows that this has been a particularly challenging time for many businesses and certainly restaurants. He appreciated the agency's efforts to try an address the lack of clarity on some of these issues. We need to be thoughtful in the approach and one of the things that TRPA has done successfully when faced with challenges such as this in terms of ordinance amendments is convene a stakeholder's group or workshop. Those who are directly affected such as the restaurant owners, operators, and those who own the properties can be part of the solution. Some of the day to day operating challenges that they faced which Mr. Feldman spoke about several of those. He's concerned right now that this approach in its initial form doesn't necessarily reduce uncertainty. That's something that we want to try and reduce. He agreed with Councilmember Laine's comments that the City of South Lake Tahoe as an example has been very responses to the flexibility that restaurants have needed this year to continue in operation. We ought to be mindful of that same need for flexibility thinking about it in terms of TRPA code. We don't want to create more red tape. This week we went from orange at the beginning of the week in El Dorado County to purple as of yesterday. The changes that restaurant owners face in terms of trying to operate vary greatly and that variability needs to be contemplated moving forward. Lastly, his last thought to leave with the committee is the importance of convening a stakeholder's group or having a workshop or two so that some of the people who are directly involved can be part of the discussions.

Board Comments & Questions

Mr. Yeates said for about six years, he was the Coastal Commission's lobbyist, and the biggest challenge was when the commission, well-meaning as it was, got down in the weeds of issues

that we're probably more local governments responsibility. Legislature got impatient at times when they got into that mode and would introduce legislation that he had to deal with that would exempt certain activities from the Coastal Act. But generally, they would do things to change the way they looked at these policies. He finds himself revisiting his thoughts when he started thinking what we're doing here. He understands that staff is trying to get clarity, there is a real concern, Covid is driving everyone crazy. They've heard from Mr. Feldman and Mr. Teshara how people are trying to survive. They've heard it from Ms. Laine as a city official and from Ms. Gustafson raising questions. He feels this is like when he raised the question on why we treated commodities the way that we did. So, they created a Development Rights Working Group, met with the stakeholders and came to the consensus on how to deal with commodities in a different way that allowed them to implement the Regional Plan. He feels that this is that kind of issue. It's one that have been declared by some that we're missing in action. We need to get a consensus on how to deal with this particular issue. The only concern he has is that he doesn't want to disrupt the nimbleness that the City and possibly some of the of the counties, not the two California counties, but the others and how they're dealing with this issue and considering how we're being whip sawed all the time by the virus. If we do need to enact something or have a recommendation from the Regional Plan Implementation Committee that would help with this. But if we in fact have this memorandum of understanding, we're follow the states lead on the restrictions and maybe we don't need anything in particular right now from RPIC. He doesn't know how they'd make the recommendation because there are so many questions that he would prefer that we replicate what we did with Development Rights. He would like to hear what staff thinks about is proposal.

Ms. Marchetta said the question staff is trying to get some direction on is should we take an incremental step that swaps indoor commercial floor area for outdoor CFA right now which is a net zero. We can do it quickly; we can do it in a qualified exempt category without further environmental analysis. Staff wholly agrees that there is more to be done on this, but should we take an incremental step right now that takes us out of the uncomfortable situation of seating activity that is right now inconsistent with the Code of Ordinances. It puts all of that activity in conformance while we think about how to then staff and fund a longer funding need particularly in light of the Main Street Management Plan that is coming. We can look at that longer term action, but should we take an initial increment that brings so many of our businesses into conformity and takes us out of a detailed temporary permitting set of activities. It makes it much easier for businesses to come into compliance right now.

Mr. Lawrence said what he understands is that we have a situation under Covid where the Agency's given direction through a memo that basically allows for the shifting of indoor to outdoor as long the Governor's declarations are in place and that's the end time frame. It's his understanding that it happens simply that there's not a lot of red tape to do that. He has no concerns about what we do during Covid, it's absolutely essential to keep these businesses going. He's concerned about a long term slippery slope about not accounting for the commercial floor area and the long term slippery slope regarding our development caps without some procedures in place. He is struggling with what is the immediacy of doing something now during Covid when we already have something in place that allows for businesses to do this.

Mr. Yeates said he shares that concern also. It seems like we're trying to fix something that doesn't need to be fixed right now. The bigger issue would be something that we should roll up our sleeves and address.

Mr. Hester said an example of where it would be good to have this code. If in six months, June 1, summer dining season, the Covid vaccine has been distributed and is Covid is hopefully starting to become a memory. We will now be back in the situation where swapping the commercial floor area from inside to outside will no longer be legal per our code. That's why we wanted to change it because it's the first step towards implementing the Main Street Management Plan. It doesn't address the commercial floor area issue the others have spoken about. It's part of what we want to look at over the long term, it's not just a Covid response that's handled by the memo. If we didn't have Covid, the people who had moved dining outside last summer were in violation. It's an incremental step and heard Mr. Feldman and Mr. Teshara say it's good you're taking the incremental step, take some more. Do you want us to take an incremental step in the right direction or wait and do this in a bigger effort that will come later.

Mr. Yeates said it's the qualified exemption, it's kind of wishful but none the less, if in fact this summer, the miracle of a vaccine and 75 percent of the nation agrees to take the vaccine and things go back to normal that restaurants will be out of compliance. The qualified exemption, the part that we teasing out from this full discussion would be something that would allow us with a three-day qualified exemption process allow a restaurant, bar, or business to maintain their outdoor activity without being out of compliance with our code, is that correct?

Mr. Hester said yes.

Mr. Marshall said there is no immediate need for this. We are implementing the definitions as we set forth. We have the Covid memo, but as the attorney, he would rather have that in code than as general direction from the Executive Director. There is no immediate need for the Regional Plan Implementation to take action. This was in response to a presentation to RPIC earlier where the committee kind of agreed with the direction to take a step wise approach but if that's not the desire of the committee, staff will continue to apply the definitions as we have set forth and the Covid memo to stay in place until the Governor's emergency declarations are removed. There is no immediate need except to provide greater clarity, two, the regulated public and other stakeholders so they see in code what those interpretations are, that we have an implementation guidance memo, and then if we want to continue this switching of this indoor to outdoor out in the future, that would be in place. The best he can do is whether or not we need this or not and that answer is no. But also realize that given what's on our plate in the next six months, a stakeholder effort to try and address larger commercial floor area questions, is a pretty big lift that may cause other things to drop off. Do you want to take this step now, realizing that the effort is not going to happen immediately or do want to continue on with the way we're implementing this and direct that we try and package all this together sometime out in the future?

Ms. Aldean said she doesn't have a problem with an incremental approach to this. It may be symbolically important that the agency take notice of the problem and make at least an interim step to remedy it. This would provide guidance to people that are in the restaurant business who don't want to find themselves at odds with the agency. She doesn't see any downside to this based on the fact that everybody seems to be committed to the idea of diving into this in more depth with a stakeholder group to perhaps refine the proposal and look for a more permanent solution. This is an incremental step, and it has some value.

Ms. Laine said from the City's standpoint, longer view, they would be very supportive of an incremental process. But right now, the city staff in particular are feeling that this could possibly act as a disincentive and discourage business. They would like the opportunity to approach this from a stakeholder standpoint and have TRPA reach out to the City, the public utility districts, staff, etc. and brainstorm this and flush it out a little better given the fact that it's not significant that we do something right of way. She feels that everyone would feel more comfortable having this broader discussion and coming to terms before TRPA actually codifies this.

Mr. Yeates said he's still at a loss. From the standpoint of our general counsel saying that we don't need to do something now. If we have something miraculously happen this summer and we're back to normal, then the Governing Board could adopt the qualified exemption process to ensure that we don't have businesses out of compliance. He appreciated that staff is concerned that we don't even know what our own budgets will be and how much time this will take. He questioned this, especially when we've adopted area plans with increased opportunities for these kind of activities in town centers. The whole purpose behind the Main Street Management Plan was to get things out on the street and make a pedestrian friendly and a whole different feel to that main street. That seems like the type of discussion that we would have in a development rights format. He's unsure how we would balance that but will leave it to his colleagues if someone wants to make a motion from the committee, but he's not sure that we need to do anything.

Ms. Marchetta said regarding immediacy, there's an important distinction, Mr. Marshall's answer regarding immediacy went to the issue of legal immediacy. We have a guidance in place and can act upon that guidance. When she thinks about what it takes us to move through a decision, we're trying to be proactive on an issue that is creating non-compliance. It takes us at least two to three months, so if we have to confront this question again in the spring, perhaps if the Governor's orders are amended by then and we have to act quickly if we're trying to get out ahead of that. We need to give our businesses certainty both during this winter season, some will probably be creative about how they maintain their food and beverage this winter as well as we move into the spring. At a policy level, she's not sure she agrees with Mr. Marshall on the immediacy question. Which is why staff brought this as an incremental step. What it means to take on a much larger planning exercise, means it takes longer. If we load a lot of environmental review on this, it isn't a quick action anymore. It's a complex action, it will take time. She has enough experience to know that time on an action like that could be beyond next spring and summer season.

Mr. Yeates said he agreed, it took about two years to do development rights.

Ms. Gustafson said she feels meeting with stakeholders could happen relatively quickly with a meeting on north and south shore with the various agencies and businesses. We could move that part relatively quickly. She doesn't believe to understand the complexity of this, but she wants us to continue to move forward and appreciated staff bringing this forward. Unfortunately, none of us feel every optimistic that a vaccine can be widely distributed and or that people will take it and that we won't continue to have issues long into the spring. Ms. Marchetta is right that we're going to continue to see pressure and the agency staff is rightly trying to get ahead of this and appreciates that. She would like to see this continue moving forward to address this with the additional public process and some well thought structure on public input stakeholder engagement.

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Mr. Yeates said Ms. Gustafson has pieces of that and how formal of a recommendation does staff want from the committee. From what she is saying that a possible motion would be that we would accept staff's recommendation to move forward with an incremental approach. Then hold at least a couple of workshops at least on the north and south shores to get feedback from those that would be affected by even this incremental change.

Ms. Aldean said she doesn't know that we need a motion, but we do need to give staff some direction. She suggested that there should be some refinement in the language and terminology as she indicated earlier that we could do this in a less convoluted way. She suggested that the direction to staff be to pursue this, refine the language, pursue the code amendment with the understanding that this is an interim measure only and ultimately, we want to convene stakeholder groups to come up with a more permanent recommendation.

Ms. Marchetta said this is sufficient direction.

V. COMMITTEE MEMBER COMMENTS

None.

VI. PUBLIC INTEREST COMMENTS

None.

VII. ADJOURNMENT

Ms. Aldean moved to adjourn.

Chair Mr. Yeates adjourned the meeting at 1:36 p.m.

Respectfully Submitted,



Marja Ambler
Clerk to the Board