



PLANNING COMMISSION

AGENDA REPORT

MEETING DATE: NOVEMBER 13, 2023 ITEM NUMBER: PH-1

SUBJECT: A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL GIVE FIRST READING TO AN ORDINANCE TO AMEND TITLE 13 (PLANNING, ZONING, AND DEVELOPMENT) OF THE COSTA MESA MUNICIPAL CODE (CMMC) TO MODIFY THE CITY'S OUTDOOR DINING PROVISIONS

**FROM: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/
PLANNING DIVISION**

PRESENTATION BY: CAITLYN CURLEY, ASSISTANT PLANNER

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RECOMMENDATION

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the project is categorically exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) (General Rule) in that the updates to the City's outdoor dining provisions will not have a significant impact on the environment.
2. Recommend that the City Council give first reading to an Ordinance approving Code Amendment No. 2023-XX, amending portions of the Costa Mesa Municipal Code (Zoning Code) relating to outdoor dining areas.

APPLICANT OR AUTHORIZED AGENT

The subject Code Amendment is a City initiated request.

BACKGROUND

On June 2, 2020, the City Council adopted Urgency Ordinance No. 2020-15 which allowed establishments where food and beverages are served to offer a temporary outdoor dining area as a means to provide economic and social relief in response to the COVID-19 pandemic and the associated public health-related restrictions. For example, during COVID-19 pandemic public health rules required restaurants' indoor areas to close, or to be reduced to social distancing requirements. The City's adopted Urgency Ordinances allowed restaurants to reallocate its unused indoor capacity due to COVID regulations to newly-established or existing expanded outdoor dining areas. Urgency Ordinance 2020-15, as extended by Urgency Ordinance No. 2022-08, is attached to this staff report. The Urgency Ordinance's effective period has been extended several times and will expire on December 31, 2023.

To date and as permitted by the Urgency Ordinance, the City has issued 49 temporary use permits allowing existing food and beverage serving establishments to establish dining areas outdoors through a streamlined administrative "temporary use" permitting process. The fee for this administrative permit was \$250 and was typically issued by the Planning Divisions within a few days.

These outdoor dining areas have been permitted to occupy private parking lots, oversized walkways, and interior plazas, courtyards or other areas where outdoor dining could be accommodated onsite. Outdoor dining areas were not allowed within setbacks or required landscaped areas and were also required to close between 11PM and 6AM if located within 200 feet of residential uses (other requirements also applied). One temporary use permit/encroachment permit was also issued for outdoor dining located within the public right of way utilizing on-street parking areas. Approximately half of these establishments have transitioned back to their pre-pandemic indoor operating conditions, with 22 of the approved temporary outdoor dining areas still in use.

On November 1, 2022, City Council provided staff the following comments as part of the motion to extend the sunset date of the Urgency Ordinance to December 31, 2023 (the November 1, 2022 City Council Report, Minutes and video are linked below):

- A general emphasis was placed on both establishing creative standards to retain existing outdoor dining areas established during the COVID-19 pandemic, and encourage new outdoor dining areas; and
- Councilmembers also called for standards permitting live music, encouraging the incorporation of landscaping into outdoor dining area designs, and directed staff to prepare an ordinance for Council adoption.

November 1, 2022 City Council Report:

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=5899704&GUID=FAFA9180-B0C7-44AB-8E22-1602F74B323D>

Minutes:

<https://costamesa.legistar.com/View.ashx?M=M&ID=980821&GUID=59A4FB5E-7223-4819-91A3-D3228A962C20>

Video:

https://costamesa.granicus.com/player/clip/3915?view_id=14&redirect=true&h=aa81818ba2c0c7d30698e076b4f506ce

Subsequently, at the City Council's goal setting retreat held on March 10, 2023, the Council reviewed and updated its six-month strategic objectives. After discussion of priorities and staff capacity, the Council prioritized and focused staff on the completion of housing-related objectives. The outdoor dining ordinance was specifically discussed and was not identified as an immediate priority. In addition, a due date was not specified. However, recognizing that the Urgency Ordinance would expire in December 2023, the City Council asked staff to bring an ordinance back to the City Council to bridge the gap between the expiring Urgency Ordinance and a more comprehensive future outdoor dining ordinance. This item is intended to address the City Council's request.

DESCRIPTION

As proposed, amendments to the City's outdoor dining provisions will occur in two phases to meet the City Council's directive. The first phase, which is proposed in this Zoning Code amendment, will establish a permitting process and development standards for outdoor dining areas located on private properties within private parking lots, courtyards, oversized walkways, interior landscaped areas, and setback areas. Among other provisions included in the Draft Ordinance, the provisions provide for a streamlined permitting process, with parking regulation exemptions to incentivize outdoor dining in the City. The second phase requires extensive additional analysis and will focus on permitting outdoor dining in a public-right-of-way ("outdoor dining parklets"). Phase two will be presented to the Planning Commission and City Council for consideration at a later date.

ANALYSIS

The proposed Zoning Code amendment is attached to this staff report as Attachment 4. It allows the currently operating outdoor dining areas approved during the pandemic to become permanent, as well as establishing development standards and a streamlined approval processes for the installation of new outdoor dining areas. Attachment 3 includes a copy of the proposed ordinance amendments with "~~strikethrough~~" formatting for proposed removed code language and "underline" formatting for proposed added code language.

Active Temporary Use Permits

As mentioned earlier in this staff report, there are 22 outdoor dining areas that remain as approved through the COVID-19 Temporary Use Permit process. Of these, seven are installed in an area covering parking spaces, three occupy parking lot drive aisles and eleven are located elsewhere on private properties. Outdoor dining areas located within parking lots currently occupy three to ten parking stalls and utilize approximately 29% of required

parking stalls, on average. Almost all of the active outdoor dining areas are located within 200 feet of a residential zone, with six of the 22 located immediately adjacent to residential areas.

As proposed, the active Temporary Outdoor Permits for outdoor dining areas that were approved pursuant to Urgency Ordinance 2020-15 may continue to operate as approved subject to compliance with all building, fire and health code standards. City staff will work with these establishments to ensure that all safety code standards are met in a timely manner. Staff will also re-evaluate and work with establishments where existing active permits involve the use of parking lot drive aisles and/or other conditions that may necessitate limitations based on public safety.

**TABLE 1
OUTDOOR DINING AREAS PERMITTED PER URGENCY ORDINANCE 2020-15**

	Business	Address	Space Used	Required Parking	Percent Required Parking Covered
1	Pasta Connection	1969 Harbor Blvd	Walkway	NA	NA
2	El Matador	1768 Newport Blvd	Private Parking	20	20%
3	Baja Fish Tacos	171 E 17th St	Walkway	NA	NA
4	Avila's El Ranchito	2101 Placentia Ave	Private Parking	39	0%
5	Salty Bear Brewing	2948 Randolph	Courtyard	NA	NA
6	Breakfast Republic	410 E. 17th Street	Drive Aisle	NA	NA
7	Taco Mesa	647 W. 19th	Paved Area	NA	NA
8	The CAMP	2937 Bristol Street	Drive Aisle	NA	NA
9	Garduno's	298 E 17th St, Suite A	Courtyard	NA	NA
10	Dick Church's	2698 Newport Blvd	Private Parking	48	13%
11	SOCO Collections	3313 Hyland Avenue	Courtyard	NA	NA
12	Green Cheek Beer Company	2957 Randolph Ave Unit B	Private Parking	15	67%
13	Ourbar and Kitchen	2000 Newport	Street Setback	NA	NA
14	Goat Hill Tavern	1830 Newport Blvd	Private Parking	20	30%
15	The Boulevard	1824-1826 Newport Blvd	Private Parking	13	46%
16	Mogu	2969 Fairview	Walkway	NA	NA
17	Strut	719 W 19th St	Walkway	NA	NA
18	Semi Tropic Wines	820 W. 19th St	Drive Aisle	NA	NA
19	Bootleggers Brewery	696 Randolph Ave	Private Parking	12	33%

20	Uroko Café	3030 Bristol St	Walkway	NA	NA
21	Oak and Coal	333 E 17 th St	Walkway	NA	NA
22	Eat Chow	1802 Newport Blvd	Parklet – Public Right of Way	NA	NA
<u>Note:</u> Any future modifications to these outdoor dining areas shall be approved by the City and must be in compliance with the CMMC.					

Current Municipal Code Provisions Applicable to Outdoor Dining

The Costa Mesa Municipal Code regulates outdoor dining pursuant to Article 4 (“Establishments Where Food or Beverages are Served”), and states:

“Outdoor seating areas are permitted provided that the area does not encroach into required street setback, parking and circulation, or interior landscaped areas; except as approved through the issuance of a minor conditional use permit or as allowed in certain planned development zones. Shade structures for approved outdoor seating areas must comply with all setback requirements but, with approval of a minor conditional use permit, may encroach into the required street setback if it is either attached to the main building (e.g., an awning) or supported with a detached ground-mounted structure. To allow views to remain open and unobstructed, such detached shade structures shall not obstruct more than fifty (50) percent of the façade area along the property line(s) with either vertical (e.g., posts) or horizontal elements (e.g., planters, sloped awnings) with a minimum twenty-four (24) inches between the shade cover and any fences, walls, or other similar structures such that the outdoor seating area is not enclosed. Additionally, all Building and Fire Code requirements shall be satisfied.”

In addition, Costa Mesa Municipal Code Section 13-89 applies parking requirements to outdoor dining areas (if the total “public area” is greater than 300 square feet) at a rate of 10 spaces per 1,000 square foot gross floor area (12 spaces per 1,000 square feet if the space is greater than 3,000 square feet in area). The Code allows a business to apply for a “deviation” in parking requirements due to “unique operating characteristics” through the Minor Conditional Use Permit process, subject to Zoning Administrator approval. This process allows for flexibility in parking requirements and may involve preparation of a parking evaluation by a third party to support the provision of less onsite parking. Ultimately, the restaurant must demonstrate that the parking provided is sufficient to address parking demand and otherwise meet required MCUP findings (described below). If available parking is already limited onsite, providing sufficient parking for an expanded outdoor seating area can be an obstacle.

Proposed Outdoor Dining Streamlined Approval Process

The proposed draft ordinance amendments include a new table [Table 13-47 (b)] that outlines a streamlined approval process for food and beverage establishments to obtain permits for outdoor dining areas. Pursuant to Table 13-47(b), the final review authority depends on the proposed location and design of the outdoor dining area, and stipulates either Planning Division, or Zoning Administrator review of a Minor Conditional Use Permit (MCUP).

CMMC Table 13-47 (b)

LOCATION OF OUTDOOR DINING AREAS AND OPERATIONAL CHARACTERISTICS	Approval Process
Courtyard Area	Planning Division
Required Setback Area – Outdoor dining area up to 50% of public area.	Planning Division
Required Setback Area – Outdoor dining area more than 50% of public area.	Minor Conditional Use Permit
Parking Area - Outdoor dining area up to 50% of public area and does not remove more than two parking spaces or 10% of required parking whichever is less.	Planning Division
Parking Area – Outdoor dining area more than 50% of indoor public area.	Minor Conditional Use Permit
Parking Area – Outdoor dining area removes two or more parking spaces, or removes more than 10% of required parking, whichever is less.	Minor Conditional Use Permit

Based on previously submitted applications, staff anticipates that most outdoor dining applications can be approved administratively by the Planning Division; however, staff believes that certain outdoor dining designs and/or characteristics that have a greater potential to cause impacts are best reviewed subject to public noticing and required MCUP findings, and potential conditions of approval that go beyond minimum codified requirements. For example and as proposed, outdoor dining areas proposed in parking lots with more than a 50 percent increase in existing indoor food and beverage public area and/or the removal of two or more parking spaces/or 10 percent of required parking spaces (whichever less) requires approval of an MCUP. The following three MCUP findings are required pursuant to the CMMC:

1. *“The proposed development or use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area”;*
2. *“Granting the conditional use permit or minor conditional use permit will not be materially detrimental to the health, safety and general welfare of the public or*

otherwise injurious to property or improvements within the immediate neighborhood”; and

3. *“Granting the conditional use permit or minor conditional use permit will not allow a use, density or intensity which is not in accordance with the general plan designation and any applicable specific plan for the property”.*

Proposed Outdoor Dining Development Standards

As directed by the City Council, the proposed Draft Ordinance modifies the current CMMC Section 13-48 provisions to create standards that retain existing outdoor dining areas established during the COVID-19 pandemic, and incentivize and encourage the development of new outdoor dining areas. The proposed Draft Ordinance includes numerous provisions relating to outdoor dining development standards, including, but not limited to:

1. Prioritizing locations of outdoor dining areas and requiring the selection of preferred options when available;
2. Maintenance of outdoor dining areas;
3. Exempting outdoor dining areas from the “Food or Beverage” required parking standards;
4. Requiring that outdoor dining areas and improvements comply with applicable building, fire and health codes;
5. Restricting outdoor dining areas from parking lot drive aisles and other vehicle circulation areas;
6. Operational hour restrictions;
7. Noise Ordinance compliance;
8. Lighting standards; and
9. Aesthetic standards for outdoor dining areas including, but not limited to, barriers and landscaping.

GENERAL PLAN CONFORMANCE

The proposed ordinance is in conformance with the City’s General Plan including:

1. **Policy CD-8.3:** Encourage the use of entrance patios, courtyards, plazas, arcades, fountains, porches, tower elements, covered walks and other features in commercial areas. Promote pedestrian amenities.

Consistency. The development standards in this ordinance promote the placement of outdoor dining areas within existing patios, courtyards and plazas. The outdoor dining development standards and streamlined approval process that was in place through Urgency Ordinance 2020-15 have shown to be beneficial in supporting pedestrian activities and progress toward promoting walkable

communities and supporting the economic viability of local food establishments. The outdoor dining areas function as inviting open public spaces where customers can safely experience the City's numerous local dining establishments. In its simplest design, outdoor dining areas produce an environment where there are more "eyes on the street" which in turn creates an atmosphere where people can feel safe and secure in public spaces.

2. **Policy LU-6.7:** Encourage new and retain existing businesses that provide local shopping and services.

Consistency: By providing a process for eating establishments to permanently retain the outdoor dining areas approved during the COVID-19 pandemic, and for new outdoor dining areas to be installed, this ordinance will promote the economic vitality of new and existing restaurants in the City.

3. **Policy LU-6.9:** Provide efficient and timely review of development proposals while maintaining quality customer service standards for the business, development and residential community.

Consistency: The changes incorporated by this ordinance are designed to eliminate certain barriers to the installation of outdoor dining areas, such as requiring a lower level of review, and waiving parking requirements for outdoor dining areas, therefore lowering the review time and cost of constructing an outdoor dining area. Additionally, the development standards incorporated into the ordinance are designed to protect surrounding uses while promoting restaurants.

ENVIRONMENTAL DETERMINATION:

The proposed Ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) (General Rule) in that there is no possibility that the minor updates to the City's Municipal Code provisions will have a significant impact on the environment.

ALTERNATIVES:

The Planning Commission has the following alternatives:

1. Recommend City Council approval. The Planning Commission may recommend City Council approval of the proposed modifications as drafted in the attached draft Ordinance.
2. Recommend City Council approval with modifications. The Planning Commission may recommend approval with modifications.
3. Recommend that the City Council not adopt the changes to the City's outdoor dining provisions. The Planning Commission may recommend that the City Council not adopt the proposed Code amendments.

4. Continue the Ordinance review to a date certain. The Planning Commission may continue the item to a date certain with direction for staff to return with additional information, changes and/or clarifications.

LEGAL REVIEW:

The proposed Resolution, draft Zoning Code Amendment and report have been prepared in conjunction with and review by the City Attorney's Office.

NOTICE:

Pursuant to Title 13, Section 13-29(d), of the Costa Mesa Municipal Code, a 1/8th page public notice was published once in the Daily Pilot newspaper no less than 10 days prior to the November 13, 2023 public hearing. No public comments have been received in response to the notice.

CONCLUSION

The proposed code amendments relating to outdoor dining permits are consistent with the direction of City Council, consistent with the General Plan, and are proposed to incentivize the development of permanent outdoor dining areas and establish development standards for new and existing outdoor dining areas.