



Agenda Report

Item #: 23-1463

Meeting Date: 12/05/2023

TITLE: FIRST READING OF AN ORDINANCE TO AMEND TITLE 13 (PLANNING, ZONING, AND DEVELOPMENT) OF THE COSTA MESA MUNICIPAL CODE TO MODIFY THE CITY'S OUTDOOR DINING PROVISIONS (CODE AMENDMENT PCTY-23-0002)

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION

PRESENTED BY: CAITLYN CURLEY, ASSISTANT PLANNER

CONTACT INFORMATION: CAITLYN CURLEY, 714-754-5692

RECOMMENDATION:

Staff recommends the City Council:

1. Find that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) ("General Rule"); and
2. Introduce for first reading, by title only, Ordinance No. 2023-XX amending Title 13 of the Costa Mesa Municipal Code (Planning, Zoning, and Development) to modify the City's outdoor dining provisions.

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 associated public health-related restrictions. The City's adopted Urgency Ordinances allowed staff to issue temporary permits for restaurants to redistribute its indoor dining capacity to a new or existing expanded outdoor dining area. Total indoor/outdoor capacity was required to stay the same as a condition of the permit in order to streamline the permitting process and ensure compliance with the Federal and State building, safety and accessibility codes. Other standards were also applied with the temporary permits to ensure public health and safety. The Urgency Ordinance's effective period 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 majority of the permits were issued between 2020 and 2021, and only one permit was issued in 2022. The City did not receive any temporary use permit applications in 2023. These outdoor dining areas have been permitted to occupy privately-owned parking lots, oversized walkways, and interior plazas, courtyards or other areas where outdoor dining could be accommodated onsite. One temporary use permit/encroachment permit was also issued for outdoor dining located within the public right of way utilizing on-street parking stalls.

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, as part of its decision to extend the sunset date of the Urgency Ordinance to December 31, 2023, the City Council expressed a desire to adopt a permanent ordinance in the future that would continue to allow for and promote outdoor dining opportunities. 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. Councilmembers also requested standards for 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

Planning Commission Recommendation

On November 13, 2023, staff presented the Planning Commission with a Draft Ordinance to modify the Costa Mesa Municipal Code (CMMC) outdoor dining provisions for a recommendation to the City Council. After considering staff's presentation and public comments, the Planning Commission deliberated and voted 3-1 to recommend that the City Council give first reading to an Ordinance amending Title 13 (Planning, Zoning, and Development) to modify the City's outdoor dining provisions.

The Planning Commission's motion included the following revisions to the Draft Ordinance:

- 1) Increase the proportion of onsite parking spaces which could be removed to accommodate outdoor dining, subject to the approval of a minor conditional use permit, from "2 spaces or 10% of required spaces, whichever is less" to "greater than five parking spaces, or removal of more than 25% of existing, required parking, whichever is less."

Staff Response: The text of Table 13-47(b) has been modified to reflect the Planning Commission's recommended threshold.

- 2) Prohibit solid materials above 3.5 feet for outdoor dining barriers and restrict the use of temporary materials.

Staff Response: The barrier requirements have been modified in the draft Ordinance to prohibit temporary materials and limit barrier heights to five feet, with the upper portion required to be transparent.

- 3) Add an operational standard that addresses potential parking related issues for all establishments with an outdoor dining area to ensure that on-site parking is properly managed and potential impacts to the surrounding areas are timely resolved.

Staff Response: The draft Ordinance was revised to include an operational standard to ensure that off-site parking impacts due to restaurant operations are properly addressed and do not adversely impact surrounding businesses and residential neighborhoods.

Additionally, although not part of the motion, the Planning Commission suggested requiring existing temporary outdoor dining facilities to upgrade materials to meet the proposed permanent outdoor dining standards. This suggestion was based on the fact that many of the existing temporary outdoor dining areas were installed with minimal investment with the understanding that these facilities may have to be removed at a later time. As such, as an option, staff has added language into the ordinance that would require outdoor dining areas previously approved under the City's temporary program to upgrade the materials used from temporary to permanent materials.

November 13, 2023 Planning Commission Staff Report:

<https://costamesa.legistar.com/View.ashx?M=A&ID=1135455&GUID=7ECD4C06-87E5-4283-8149-4BFF97215AA2>

Video:

https://costamesa.granicus.com/player/clip/4063?view_id=14&redirect=true&h=f22a251337c41beeb55301395ff67cc2

ANALYSIS:

As proposed, the establishment of an Outdoor Dining Program that will meet the City Council's goals will occur in two phases. The first phase, which is proposed in this Zoning Code amendment, establishes a streamlined 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. The second phase (Phase II) requires extensive additional analysis and will focus on permitting outdoor dining in a public-right-of-way (such as "outdoor dining parklets"). Phase II will be presented to the Planning Commission and City Council for consideration at a later date.

The proposed Zoning Code amendment (clean copy) is attached to this staff report as Attachment 2. It allows for the temporary outdoor dining areas approved during the pandemic to become permanent subject to compliance with aesthetic standards, and establishes development standards and streamlined approval processes for the installation of new outdoor dining areas moving forward. Attachment 3 includes a copy of the proposed ordinance amendments with "~~strike through~~" formatting showing removed code language and "underline" formatting for added code language.

Active Temporary Use Permits

There are 22 temporary outdoor dining areas permitted that remain operating. Of these, seven occupy existing 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, on average, three to ten parking stalls. 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 uses. The

“characteristics” outlined in Table 1, such as location and parking impacts, reflect the current operating conditions of the outdoor dining areas.

As proposed, the active Temporary Use Permits for outdoor dining areas that were approved pursuant to Urgency Ordinance 2020-15 may continue to operate without further planning or zoning approvals, subject to compliance with all building, fire and health code requirements. Those located within driveways/drive aisles would be required to remove the portions of the outdoor dining areas that block access. Those that used temporary materials would be required to upgrade materials to meet the permanent dining area standards outlined in Section 13-48.

Additionally, the single parklet approved pursuant to the Urgency Ordinance will also be “grandfathered” subject to issuance of an encroachment agreement.

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

	Business	Address	Outdoor Dining Area Location/Characteristics
1	Pasta Connection	1969 Harbor Blvd	Walkway
2	Baja Fish Tacos	171 E 17 th St	Walkway
3	Mogu	2969 Fairview	Walkway
4	Strut	719 W 19 th St	Walkway
5	Uroko Café	3030 Bristol St	Walkway
6	Oak and Coal	333 E 17 th St	Walkway
7	Salty Bear Brewing	2948 Randolph	Courtyard
8	Garduno's	298 E 17 th St, #A	Courtyard
9	SOCO Collections	3313 Hyland Ave	Courtyard
10	Semi Tropic Wines	820 W. 19 th St	Drive Aisle
11	Breakfast Republic	410 E. 17 th St	Drive Aisle
12	The CAMP	2937 Bristol St	Drive Aisle
13	Ourbar and Kitchen	2000 Newport St	Street Setback
14	Taco Mesa	647 W. 19 th St	Paved Area
15	El Matador	1768 Newport Blvd	Private Parking (occupies 4 parking spaces, 20% of the 20 required parking spaces)
16	Avila's El Ranchito	2101 Placentia Ave	Private Parking (occupies 7 surplus parking spaces)
17	Dick Church's	2698 Newport Blvd	Private Parking (occupies 6 parking spaces, 13% of required 48 parking spaces)
18	Green Cheek Beer Company	2957 Randolph Ave Unit B	Private Parking (occupies 10 parking spaces, 67% of the 15 required parking spaces)
19	Goat Hill Tavern	1830 Newport Blvd	Private Parking (occupies 6 parking spaces, 30% of the 20 required parking spaces)
20	The Boulevard	1824-1826 Newport Blvd	Private Parking (occupies 6 parking spaces, 46% of the 13 required parking spaces)
21	Bootleggers Brewery	696 Randolph Ave	Private Parking (occupies 4 parking spaces, 33% of the 12 required parking spaces)
22	Eat Chow	1802 Newport Blvd	Parklet – Public Right of Way (3 On-street parking spaces)
Note: Any future modifications to these outdoor dining areas shall be approved by the City and shall 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 includes provisions such as the following:

1. *“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...”*
2. *“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... 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).”*

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. 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 new streamlined approval process for food and beverage establishments to obtain permits for outdoor dining areas. Depending on the proposed location and design of the outdoor dining area, most requests would be approved at the staff level administratively “by right” (i.e. “Planning Division”). Outdoor dining designs that have a greater potential to cause impacts would be reviewed by the Zoning Administrator through the minor conditional use permit (MCUP) process. Staff believes the MCUP process is appropriate for these more complex requests so that public noticing, compliance with MCUP findings, and conditions of approval that would respond to site specific issues can be applied.

CMMC Table 13-47 (b)

LOCATION OF OUTDOOR AREAS AND OPERATIONAL CHARACTERISTICS	Approval Process
Courtyard Area	Planning Division
Setback Area – Expansion of up to 50% of indoor public area outdoors. ¹	Planning Division
Setback Area – Expansion of more than 50% of indoor public area outdoors. ¹	Minor Conditional Use Permit
Parking Area - Expansion of up to 50% of indoor public area outdoors and does not remove greater than five parking spaces or 25% of existing, required parking whichever is less. ¹	Planning Division
Parking Area – Expansion of more than 50% of indoor public area outdoors. ¹	Minor Conditional Use Permit
Parking Area - removal of greater than five parking spaces, or removal of more than 25% of existing, required parking, whichever is less. ¹	Minor Conditional Use Permit

Proposed Outdoor Dining Development Standards

The proposed Draft Ordinance modifies CMMC Section 13-48 to create standards that promote and incentivize outdoor dining including, but not limited to:

1. Prioritizing locations of outdoor dining areas in plazas, courtyards, and areas abutting sidewalks/streets and requiring the selection of preferred options when available;
2. Requiring maintenance of outdoor dining areas;
3. Exempting outdoor dining areas from parking standards;
4. Requiring that outdoor dining areas comply with applicable building, fire and health codes;
5. Restricting outdoor dining areas in parking lot drive aisles and other vehicle circulation areas;
6. Establishing operational hours for outdoor dining from 6AM to 11PM;
7. Requiring Noise Ordinance compliance;
8. Lighting standards; and
9. Aesthetic standards for barriers and landscaping.

Staff Assistance and Next Steps

With few exceptions, increasing seating capacities by adding outdoor dining areas (in addition to indoor seating areas) will require conformance with applicable Building, Fire and accessibility codes. For example, a parking lot “path of travel” for wheel chair accessibility may be required in certain instances. If outdoor dining areas result in certain seating/occupant capacity increases, the Building Code requires applicable bathroom improvements (e.g. increasing the number of toilets, urinals and/or lavatories). Building and Fire Safety codes also apply to new permanent shade structures, and may require fire

sprinklers for the new structure if the existing building includes sprinklers (umbrellas do not require Code compliance).

With the understanding that the building, fire safety and accessibility codes can be complex and potentially can require additional investment, staff will be forming an interdepartmental customer service team (including a planner, building staff, and the fire marshal) who will proactively reach out to each existing business with temporary outdoor dining facilities to discuss the potential opportunities and constraints of proposing an increase in occupancy and/or permanent outdoor structures. This team will assist business owners through the entire process and will suggest options and design alternatives that will allow business owners to achieve their goals with minimal disruption.

Phase II

Phase II of the outdoor dining ordinance will include code updates to City provisions regulating parklets, outdoor dining utilizing sidewalks, and outdoor dining amenities within the public right-of-way. The updates will contribute to the city-wide efforts to incorporate complete streets into the urban landscape, and promote walkability within neighborhoods. These updates will involve careful consideration of factors including traffic speed, circulation, street width, and fee schedules.

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 regarding outdoor dining to the City's Municipal Code provisions will have a significant impact on the environment. The Code amendments establish streamlined procedures to allow for outdoor dining areas which are already allowed by the Municipal Code.

ALTERNATIVES:

The City Council has the following alternatives:

1. Give First Reading. The City Council may give first reading to the draft Ordinance
2. Give first reading with modifications. The City Council may modify the draft Ordinance and give first reading.
3. Not adopt the changes to the City's outdoor dining provisions. The City Council may choose to not adopt the proposed Code amendments.
4. Continue the Ordinance review to a date certain. The City Council may continue the item to a date certain with direction for staff to return with additional information, changes and/or clarifications

FISCAL REVIEW:

The adoption of the proposed Ordinance will not have any fiscal impact on the City's budget.

LEGAL REVIEW:

The draft Ordinance and staff report have been prepared in conjunction with and reviewed by the City Attorney's Office.

CITY COUNCIL GOALS AND PRIORITIES:

This item supports the following City Council Goals:

- Achieve Long-Term Fiscal Sustainability
- Strengthen the Public's Safety and Improve Quality of Life

CONCLUSION:

The proposed code amendment would streamline and incentivize the development of permanent outdoor dining areas and establish development standards for new and existing outdoor dining areas. Staff recommends the City Council give first reading to the ordinance. If approved, staff would return to the Council for a second reading and the ordinance would become effective 30 days after the second reading.