



# City of Costa Mesa

## Agenda Report

77 Fair Drive  
Costa Mesa, CA 92626

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**File #:** 22-914

**Meeting Date:** 11/1/2022

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**TITLE:**

**EXTENSION OF URGENCY ORDINANCE 2020-15 SUSPENDING CERTAIN PERMIT REQUIREMENTS AND DEVELOPMENT STANDARDS FOR OUTDOOR ACTIVITIES DUE TO THE COVID-19 PANDEMIC**

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

**PRESENTED BY: JENNIFER LE, DIRECTOR OF ECONOMIC AND DEVELOPMENT SERVICES**

**CONTACT INFORMATION: SCOTT DRAPKIN, ASSISTANT DEVELOPMENT SERVICES DIRECTOR, 714-754-5278**

**RECOMMENDATION:**

Staff recommends the City Council:

1. Extend Urgency Ordinance 2020-15 for six months to expire on June 30, 2023.
2. Provide direction to prepare a Code amendment to modify development standards and streamline the approval process for outdoor dining in Costa Mesa.

**BACKGROUND:**

On June 2, 2020, City Council approved Urgency Ordinance 2020-15 to reduce the potential social and economic impacts from the Coronavirus pandemic to the City's business establishments and residents. Urgency Ordinance 2020-15 temporarily suspended permit requirements and development standards for outdoor activities for dining patios and places of religious assembly, as well as a waiver of valet parking requirements. Similarly, on July 21, 2020, City Council approved another urgency measure (Urgency Ordinance 2020-16) that suspended the permit requirements and development standards for outdoor activities and parking requirements applicable to retail sales and service businesses.

Both ordinances were originally set to expire in December 2020 and were extended by City Council for one-year periods on November 17, 2020, and again on November 2, 2021. Accordingly, both ordinances are set to expire on December 31, 2022, unless an extension is granted.

Along with the approval of the second one-year extension, City Council directed staff to investigate opportunities for amending the City's outdoor dining regulations to allow similar outdoor dining conditions afforded as a result of the COVID-19 pandemic. The analysis in this report provides a summary of the City's existing Temporary Use Permit Program for Outdoor Dining, a summary of

approaches by nearby cities for permanent outdoor dining regulations, and a discussion of potential modifications to the City's existing Municipal Code necessary to promote outdoor dining.

The proposed six-month extension to the Urgency Ordinance would allow staff to complete the Code amendment for outdoor dining pursuant to the direction provided by City Council.

### **ANALYSIS:**

#### **Proposed Extension of Urgency Ordinance 2020-15**

Currently, the State of California has moved Beyond the Blueprint to safely and fully reopen the economy. The State has ended its restrictions for physical distancing, capacity limits on businesses, and the County tier system. Mask mandates have been lifted, with a few exceptions, and new recommended quarantine timeframes have been established. However, COVID-19 remains a concern to public health due to surges of COVID-19 cases and waves of highly transmittable variants. The State has outlined steps to prepare for future surges and variants in its [SMARTER Plan - Coronavirus COVID-19 Response \(ca.gov\) <https://covid19.ca.gov/smarter/>](https://covid19.ca.gov/smarter/) to ensure that strains on the healthcare system are minimized, keep staff and public safe, and keep businesses open and schools in person. It is essential that the City remains vigilant and continues to monitor the State's and County of Orange's Health Officer's Orders and Recommendations.

In the past two years, many of the City's restaurants, churches, and other businesses that were allowed to conduct outdoor activities during the pandemic are slowly returning to pre-pandemic interior operating conditions. However, based on evolving public health conditions, including virus variants, there is still uncertainty as to how the spread and impacts of the virus may continue. In addition, economic recovery from the COVID-19 pandemic is ongoing.

Therefore, staff is recommending that the previously approved Urgency Ordinance 2020-15 be extended for an additional six months, to expire on June 30, 2023. The extension will allow the continued use of existing outdoor dining areas established under the City's temporary program, while allowing staff to complete its work drafting a formal process to allow for such outdoor dining permanently. This extension would be adopted by urgency ordinance and would be effective immediately. The draft ordinance is attached as Attachment 1.

#### **Existing Temporary Program**

Since the adoption of Urgency Ordinance 2020-15, the Development Services Department has issued 48 Temporary Use Permits (TUPs) for outdoor dining that are located within public right-of-way and on private property within a parking lot. Of those issued, 41 were issued in 2020, and six were issued in 2021, and one was issued in 2022.

The vast majority of the approved outdoor dining areas were located in private parking lots and involved removing existing parking spaces to accommodate customer seating areas. (Some outdoor dining areas were established on private property within other onsite open areas; however, these installations did not require a Temporary Use Permit. As such, there is no data as to how many businesses utilized this provision.) In addition, one Temporary Use Permit/Encroachment Permit was issued for outdoor dining located within public right of way utilizing on-street parking (commonly referred to as a "parklet"). There are 20 permitted outdoor dining areas currently in use.

In the months of September and October 2022, staff contacted the restaurant establishments for feedback regarding long term use of the outdoor dining areas. Staff received responses from 28 restaurants, of which 16 expressed interest in continuing the outdoor dining area. Attachment 2 is a map depicting the locations of the aforementioned TUPs.

### **Considerations for a Permanent Outdoor Dining Policy**

In its previous discussions, the City Council expressed an interest in establishing provisions that would promote outdoor dining in Costa Mesa. Necessarily, this effort would focus on crafting creative solutions that would allow Costa Mesa businesses and residents to celebrate our local outdoor dining culture, better activate Costa Mesa streets and pedestrian activity, maintain pedestrian safety, maintain the attractiveness of the City's public rights-of-way, foster neighborhood interaction, and support local businesses and employment. The goal of such provisions would be to facilitate greater opportunities for restaurant establishments to offer "al fresco" customer dining experiences while minimizing potential community impacts.

### **Existing Code Requirements**

#### *Review Process/Permitting*

Title 17 (Zoning) of the Costa Mesa Municipal Code (CMMC) includes provisions that regulate the provision of outdoor uses. The Code requires that all uses be conducted indoors and requires outdoor uses (including outdoor dining) in any zoning district to obtain approval of a Minor Conditional Use Permit. Minor Conditional Use Permits are decided on by the City's Zoning Administrator. The Zoning Administrator's decisions are posted online, and notice of the decisions are published in the local newspaper, posted onsite, and mailed to property owners and occupants within a 500-foot radius of the site. The Zoning Administrator, in his/her deliberations, considers whether the outdoor use is compatible with surrounding uses and requires conditions of approval to address impacts to the community and ensure neighborhood compatibility. Typical conditions of approval include: limitations on hours of operation, capacity, sound amplification, sound attenuation requirements when appropriate, safety measures, and measures to preserve community aesthetics.

The City's Municipal Code is silent on outdoor dining located in public right of way (such as in a wide sidewalk area or within on-street parking spaces), though any use of public right of way generally requires an encroachment permit.

#### *Parking*

In addition, since an outdoor dining area functionally increases the seating capacity of a dining establishment, parking requirements are applied to the seating area of an outdoor dining space in the same manner as an interior dining space. Generally, dining spaces require onsite parking to be provided at a rate of 10 spaces per 1,000 square feet of 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.

If available parking is already limited onsite, providing sufficient parking for an expanded outdoor customer seating area can be an obstacle to approval. However, if sufficient parking is not provided, customers of the dining establishment may park on-street (where available) or use parking spaces on adjacent private commercial properties. The primary community concern in these cases is “neighborhood intrusion,” whereby business customers park in nearby residential neighborhoods, contributing to a lack of on-street parking for residents and their guests. This potential is less severe when there is no direct access to a residential street or when the residential street is not located within a reasonable walking distance from the business.

## **Recommendations**

In order to achieve the Council’s stated goals, staff recommends that existing Code provisions for outdoor dining on private property should be modified to:

- Establish minimum design standards;
- Consider additional flexibility for parking requirements;
- Streamline the approval process for certain types of proposals based on scale, design, and location; and
- Provide a path forward for outdoor dining areas that were previously established under the temporary regulations.

In addition, and as a second phase of work, staff recommends that the City develop an outdoor dining program applicable to public rights-of-way.

In developing such a program, staff will build on the community outreach efforts conducted for the Citywide Residential Parking Action Plan, dated March 8, 2022. The Action Plan primarily focused on optimization of the residential permit parking program and parking management within the residential neighborhoods. However, the Action Plan also made general recommendations regarding commercial corridors and use of curb space, including a recommendation to develop policies for permanent parklets and on-street use policies.

The Action Plan states that “parklets can be an opportunity to improve commercial area vibrancy by activating outdoor spaces. While they do displace on-street parking supply, this trade-off may be a worthwhile consideration depending on community feedback and the success of other parking management strategies. The City should proactively implement curb management best practices and accommodate all users. Traditionally, the City’s curb space has primarily been allocated for the purpose of on-street public parking. However, as mobility trends are ever-changing, the City should work to convert valuable curb space for other uses, where appropriate, and assess creative uses to support the commercial areas. The City should evaluate the Temporary Use Permit fee for outdoor dining in the public right-of-way, taking into consideration the value of the parking space. The City should consider an ongoing fee for the permit, and the frequency of reapplication.”

The program development would also explore other jurisdictions' approaches to permitting outdoor dining in public areas. For example, the City of Newport Beach and City of Pasadena, as a response to COVID-19, also permitted outdoor dining through the adoption of urgency ordinances. The urgency Ordinances for both Cities' have expired. The City of Newport Beach is relying on existing Code provisions and permitting processes for outdoor dining in the public right of way. The City of Pasadena updated its existing "Sidewalk Dining on Public Walkways Ordinance" to allow outdoor dining in the public right of way, including sidewalks, alleys, and streets. The City of Pasadena also updated the City's fee schedule for outdoor permits and adopted On-Street Dining Design Guidelines. Attachment 3 provides a summary of other jurisdictions' approaches to permitting outdoor dining areas.

The recommended updates to the Municipal Code will provide opportunities for a vibrant outdoor dining environment while addressing community issues like parking, aesthetics, noise, safety and pedestrian circulation.

### **ALTERNATIVES:**

The City Council can determine that they do not wish to extend Urgent Ordinance 2020-15. All temporary improvements would therefore be required to be removed by December 31, 2022. Additionally, the City Council can decide not to further pursue permanent outdoor dining regulations.

### **FISCAL REVIEW:**

There is no direct impact to the City's General Fund. However, the Urgency Ordinance is intended to assist businesses in Costa Mesa to continue operating and recovering from the COVID-19 pandemic, subject to compliance with State and local public health regulations, which would ultimately have a fiscal benefit to the City through sales tax.

### **LEGAL REVIEW:**

The City Attorney's Office has reviewed this staff report and the attached urgency ordinance and approves them as to form.

### **CITY COUNCIL GOALS AND PRIORITIES:**

This item supports the following City Council Goal:

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

### **CONCLUSION:**

Staff recommends that the City Council extend Urgency Ordinance 2020-15 for six-months to expire on June 30, 2023, and direct staff to prepare a Code amendment that would streamline and promote outdoor dining on a more permanent basis. The Code amendment would be presented to the Planning Commission for a recommendation and forwarded to the City Council for final adoption.