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Title: Consideration of a Fee for the Use of Temporary Street Encroachment Areas of the Public Right-of-Way (PROW) for COVID-19 Purposes (Community Development Director Tai).
APPROVE

Sponsors:

Indexes:

Code sections:

Attachments: 1. Outdoor Street Dining/Business Use Permit Fees and Cost List

Date	Ver.	Action By	Action	Result
9/21/2021	1	City Council Regular Meeting	approved	Pass

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

Carrie Tai, AICP, Community Development Director
Steve S. Charelian, Finance Director
Erik Zandvliet, T.E., City Traffic Engineer

SUBJECT:

Consideration of a Fee for the Use of Temporary Street Encroachment Areas of the Public Right-of-Way (PROW) for COVID-19 Purposes (Community Development Director Tai).

APPROVE

RECOMMENDATION:

Staff recommends that the City Council approve a monthly \$1.00 per square foot fee for temporary street encroachment areas used by private businesses to aid in pandemic related social distancing restrictions.

FISCAL IMPLICATIONS:

Between June 2020 and August 2021, the City waived \$886,618 in revenue from unused parking meters, use fees for the public right-of-way (PROW) and parking citations. Moving forward, the City will be foregoing approximately \$71,952 in fee revenue each month. Lost revenue is estimated to be: 1) \$56,161 for the use of 71 public metered parking spaces at \$26 per day (\$2.00 per hour); 2) \$8,265 for the use of approximately 2,755 square feet of PROW for street dining at \$3.00 per square foot; and 3) \$7,526 in parking citation revenue loss. Revenue from parking meters is directed into the Parking Fund and Capital Improvement Plan Fund, which is used to improve and repair City parking

facilities, as well as fund general capital improvements and on-going maintenance expenses. Revenue from public parking citations and PROW use fees is directed into the General Fund. Lastly, staff time in support of outdoor dining has not been charged.

The City typically offers free parking during the Holiday season by “bagging” the City parking meters. The loss of revenues, which is already factored into the annual budget, is roughly \$79,000 per week, for four weeks. The annual revenue impact is approximately \$316,000.

BACKGROUND:

On March 13, 2020, the City declared a State of Emergency due to the spread of COVID-19. In late May 2020, Los Angeles County Department of Public Health (LACDPH) began gradually relaxing the closures, allowing for non-essential retail to fully open and restaurants to re-open for outdoor dining only, subject to COVID-19 operating protocols. On June 10, 2020, the City Manager issued Emergency Order No. 11, allowing the City to issue temporary encroachment permits for street dining and business use, including the street/parking space portion of the PROW, referred to herein as the COVID-19 Outdoor Dining/Business Use Program (“Program”).

On May 18, 2021, the City Council voted to extend the Program to September 7, 2021, for areas east of Ocean Drive, made effective by the City Manager’s issuance of City Emergency Order No. 26. On June 15, 2021, LACDPH relaxed indoor operating restrictions on restaurants, lifting social distancing regulations and allowing for 100% indoor capacity. In early August 2021, cases throughout Los Angeles County and Manhattan Beach increased due to the Delta variant of COVID-19. On August 24, 2021, the City Council extended the Program to January 3, 2022, made effective through City Emergency Order No. 27.

Currently, the City has issued encroachment permits and signed agreements for 27 businesses to operate street dining in 71 parking spaces and about 2,755 square feet of PROW areas. (See Attachment). All permits limit restaurants to 100% of their pre-COVID seating occupancy using combinations of indoor and outdoor seating areas. Each business obtained a temporary encroachment permit to construct their dining area in the PROW. Several raised dining platforms constructed on Manhattan Beach Boulevard also required building permits and building inspections.

Background on Fees for Right-of-Way Usage

The City is not currently charging businesses for lost parking meter revenue or right-of-way use fees for the street dining uses. At the initiation of the COVID-19 Outdoor Dining/Business Use Program, the City specified the following charges: 1) \$3.00 per square foot for the use of any non-parking PROW areas for commercial purposes; and 2) reimbursement of parking meter fees that would otherwise be collected for any commercial use of public parking meter spaces. The City initially charged these fees during the Program’s inception. On August 4, 2020, the City Council retroactively waived these two fees to provide some relief to the City’s businesses and restaurants in the Program. The waived fees are described in an attachment to this report.

On July 6, 2021, the City Council discussed the City’s past practice of charging for the use of the PROW for street dining and business use. At that meeting, the City Council extended a waiver of such use fees until at least September 7, 2021, and directed staff to provide additional information about revenue and costs that have been charged and waived to date, prior to resuming any further discussion. On August 24, 2021, the City Council discussed the possibility of charging fees for the use of the public right-of-way, and directed staff to return with a formula for a “nominal but reasonable fee.”

DISCUSSION:

When a business requests a Temporary Encroachment Permit to use the PROW for commercial uses, the City normally charges a fee for permit issuance and inspection. In addition, the business must also reimburse any lost parking meter revenue and remit \$3.00 per square foot for the use of any non-parking areas, as per the City's fee resolution.

The City is currently foregoing \$56,161 in parking meter revenue monthly (\$673,932 annually) for the use of 71 parking spaces. On September 15, 2020, the City Council approved an increase in parking meter rates to \$2.00 per hour for on-street meters and City-owned parking lots to help offset losses associated with the use of metered parking spaces for street dining. At that time, the increase in parking meter rates was estimated to generate an additional \$750,000 per year. However, due to the continuation of the pandemic and case surge in December 2020 through early 2021, parking meter revenues to date have fallen far short of the original estimate. The revised estimate will be approximately \$550,000 per year. While this amount approximately compensates for lost parking meter revenue caused by street dining, it does not compensate for the loss of revenue from use fees for non-parking PROW areas, parking citation revenue, or staff time and resources. The City's costs to support the Program include, but are not limited to, extra public services for trash and maintenance, modifications of streets to accommodate additional dining areas, code enforcement, traffic control, law enforcement presence, sign installation, creation of custom signs, and staff resources diverted from other work initiatives.

Staff has calculated the market value of providing outdoor space for businesses. Staff has identified a common industry practice of charging 50% of the indoor lease rate for businesses to operate within the PROW for private gain, due to the less certain terms and usability of outdoor right-of-way space. With the average rate of approximately \$8.00 per square-foot for indoor commercial space in premier downtown locations, staff assesses the approximate market rate of temporary PROW use to be \$4.00 per square foot. The City's current rate is \$3.00 per square foot.

At first when only metered parking spaces were available for outdoor use, the frontage of each business largely dictated the amount of PROW space available to that business. This resulted in businesses having different-sized outdoor spaces not always commensurate with their indoor space. At first, the City encouraged some businesses to share encroachment areas with others, but there were limited opportunities for that. Soon thereafter, the City created additional right-of-way areas by narrowing and shifting travel lanes on certain streets to create more equitably sized encroachment areas. These additional PROW areas, outside of parking spaces, come to an additional 2,755 square feet of non-parking PROW used for commercial uses.

Nominal, Yet Reasonable Fee

At its August 24, 2021, meeting, the City Council conducted a discussion and agreed in concept that a "nominal, but reasonable fee" should be considered for the continued use of the City's PROW for commercial uses. This fee would offset some of the unrealized revenue noted above as well as resume the practice of compensating the City for exclusive use of the City's public assets.

While parking meter rates were increased in September 2020 to help compensate for lost meter revenue, it should be noted that the City Council is currently waiving any parking meter fee that would be reimbursed by the businesses. The remaining revenue that would normally be realized prior to this Program is about \$8,265 per month for non-parking PROW user fees and \$7,526 in monthly parking citation revenue for 71 spaces, totaling \$15,791. Therefore, a reasonable fee would be one

in which the City is not subsidizing the Program, yet is low enough that it does not impose an undue burden on the businesses. Further, City staff time and effort already included in the City's budget could be excluded from the fee calculation to make it even more reasonable.

There are several methods upon which to base a fee for the use of the PROW, including a flat fee per business, a fee rate per square foot of occupied area, and a pro-rated fee for parking meter reimbursement/non-parking lease areas. A flat fee would impose proportionately higher burden on businesses using smaller encroachment areas. Since not all restaurants occupy the same size area and some do not occupy parking spaces, a discounted parking meter/lease area fee would result in higher charges for businesses that use only non-parking areas. One approach to creating an equitable fee basis would be to charge in proportion to the overall area used by the business within the PROW. In other words, businesses using larger encroachment areas would be charged proportionately more than businesses using a smaller area. This may also incentivize businesses to reduce their outdoor "footprint" if the entire area is no longer needed.

For example, a \$3.00 per-square-foot rate would result in approximately \$51,000 in revenue per month, which would fully cover the current \$3.00 PROW use fee for commercial use of public areas, while a \$3.50 per-square-foot rate would cover both current lease fees and lost citation revenue. On the other hand, a \$1.00 per-square-foot rate would equate to about \$15,374 in monthly revenue, which is a reasonable amount similar to the unrealized City monthly revenue of \$15,791. At \$1.00 per square foot, businesses would be charged between \$176 and \$1,132 per month, in proportion to the overall size of their encroachment area. Given that the market rate is \$4.00 per square foot, and the current City adopted rate is \$3.00 per square foot, a \$1.00 per square foot rate also represents a nominal fee to allow a business the flexibility to operate in outdoor spaces during the COVID-19 emergency. The attached table lists the proposed charges broken down by business.

CONCLUSION:

Staff recommends that the city council approve a "nominal but reasonable" fee for the private use of public right-of-way of \$1.00 per square foot per month of total temporary encroachment area authorized by a business pursuant to Emergency Order No. 27.

PUBLIC OUTREACH:

City staff conducts regular meetings on COVID-19 business solutions, which include attendees from the Chamber of Commerce, Downtown Business and Professional Association, North Manhattan Beach Business Improvement District, and the Downtown Residents Association. City staff discussed this agenda item and asked attendees to notify their respective members. This meeting has also been noticed in conformance with public meeting requirements.

ENVIRONMENTAL REVIEW:

The City has reviewed the proposed fee modification for the Program in accordance with the California Environmental Quality Act (CEQA) and has determined that the activity is statutorily exempt from CEQA pursuant to Section 15273 of the State CEQA Guidelines as it constitutes a rate charged by a public agency for meeting operating expenses. Thus, no environmental review is necessary.

LEGAL REVIEW:

The City Attorney has reviewed this report and determined that no additional legal analysis is necessary.

ATTACHMENT:

1. Outdoor Street Dining/Business Use Permit Fees and Cost List