



## Legislation Text

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**File #:** 21-0178, **Version:** 1

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**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

**SUBJECT:**

Discussion of Fees for the Business Use of the Public Right-of-Way (Community Development Director Tai).

**DISCUSS AND PROVIDE DIRECTION**

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**RECOMMENDATION:**

Staff recommends that the City Council discuss and provide direction on requiring businesses using the public right-of-way to render payment for such use with the fees tied to parking meter revenue replacement for use of parking spaces, and a per-square-footage fee for use of non-parking space portions of the public right-of-way, after expiration of the Los Angeles County COVID-19 restrictions on indoor dining (expected on or about June 15, 2021).

**FISCAL IMPLICATIONS:**

The City is currently losing revenue of approximately \$734,597 annually due to 78 public metered parking spaces used by businesses operations, specially outdoor dining. This includes lost citation revenue of approximately \$101,000 annually. The City is also foregoing revenue for use of non-parking space portions of public right-of-way. The revenue loss of approximately \$114,000 annually from non-parking space portions at \$3 per square foot per month. The analysis of the loss in parking meter revenue was initially estimated to be \$544,000 annually, based on 67 parking spaces. This includes the loss of parking citation revenue estimated to be \$87,000 annually. 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 on-going maintenance expenses. Lastly, staff time in support of outdoor dining is not reimbursed.

**BACKGROUND:**

On June 5, 2020, through Emergency Order No. 10, the City approved the Outdoor Dining and Business Use Program. This consisted of allowing businesses to use metered parking spaces in the public right-of-way for outdoor operations, due to COVID-19 operating restrictions limiting indoor capacity. This also included the City charging for lost parking meter revenue. Beginning July 2020, the City Council authorized additional use of right-of-way areas on Ocean Drive, Manhattan Avenue,

and Manhattan Beach Boulevard at \$3.00 per square foot, the same lease amount charged to Uncle Bill's Pancake House, Ocean View Café, Fusion Sushi, and Summers restaurant through the City's Resolution of Fees, pre-existing the pandemic. On August 4, 2020, the City Council retroactively waived \$51,000 in lost parking meter revenue and right-of-way use fees due by the businesses. Since then, businesses have used public parking spaces and the public right-of-way free of parking meter revenue replacement or right-of-way encroachment charges.

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 offset losses associated with the use of metered parking spaces for street dining. The increase in the parking meter rates was estimated to generate an additional \$750,000 per year to compensate for lost parking meter revenue caused by street dining. This did not compensate for the loss of revenue from leasing of non-public right-of-way spaces. To date, there are 78 parking spaces and about 3,373 square feet of public right-of-way used by outdoor dining.

### **DISCUSSION:**

On Friday, May 20, 2021, the Governor's office announced that due to increasing vaccinations and decreasing COVID-19 cases, the State could possibly reopen fully by June 15, 2021, including removal of capacity limitations and most operating restrictions. Given this, it is possible that restaurants will be able to return to providing for 100% indoor seating capacity. Los Angeles County has indicated that it intends to align with the State regulations. If this were the case, the use of the City's right-of-way would exceed the scope of emergency response.

If restaurants are able to operate fully indoors and on private property, the use of the public right-of-way, which is a public resource, for the private economic gain of a business may constitute a gift of public funds. As such, it is necessary for the City to determine the market value of providing space for businesses to operate for private gain. Given that the businesses use the public right-of-way outdoor space in the same manner as inside the building or on private property, the market rate should be the equivalent to the indoor rate. However, given that the use of the public right-of-way is not time-certain or guaranteed, the value of the outdoor space can expected to be lower than an indoor rate. The additional space enables businesses to increase its cash flow. There is an industry practice of charging 50% of the indoor rate to accommodate the less certain terms of right-of-way space. With the average rate of approximately \$8.00 per square foot for indoor commercial space in premier downtown locations, we would recommend charging \$4.00 per square foot for temporary outdoor use. The current rate we charge is \$3.00 per square foot.

Furthermore, the City has incurred undetermined costs from supporting the Outdoor Dining and Business Use Program. These costs include, but are not limited to, extra public services for trash and maintenance, modifications of streets to accommodate dining areas, code enforcement, traffic control, law enforcement presence, sign installation, creation of custom signs, and staff resources diverted from other work initiatives to support the program and the City Council Ad-Hoc Committee. Once there is no longer the need to accommodate for businesses to operate outside due to relaxation of indoor operating restrictions, the City must study the resources for this Program and disclose this to the City Council and the public in a transparent manner. Otherwise, the appropriation of these resources to support private businesses could also be construed as a gift of public funds.

Staff recommends that the City Council discuss and provide direction on charging businesses utilizing the public right of way for commercial for private gain.

**PUBLIC OUTREACH:**

Depending on City Council direction, staff will notify current encroachment permit holders of any pending changes to the Outdoor Dining and Business use terms.

**ENVIRONMENTAL REVIEW:**

The subject request is not a “project” as defined under Section 15378 of the State California Environmental Quality Act (CEQA) Guidelines; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA. Thus, no environmental review is necessary.

**LEGAL REVIEW:**

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