



## Legislation Text

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**File #:** 21-0209, **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:**

Continued 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 when to reinstate the City's practice of requiring businesses utilizing the public right-of-way to render payment for such use, with fees tied to parking meter revenue reimbursement for use of parking spaces, and a per-square-footage fee for use of non-parking space portions of the public right-of-way.

**FISCAL IMPLICATIONS:**

The City is currently losing revenue of approximately \$734,597 annually due to 78 public metered parking spaces being utilized by business operations, specifically 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, as described in the "Discussion" section below. There is 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 amount to \$87,000 annually. Revenue from parking meters is deposited into the Parking Fund and Capital Improvement Plan Fund, which serves to fund improvements and repairs to City parking facilities, as well as on-going maintenance expenses. Lastly, expenses related to City staff hours devoted to the support of outdoor dining is currently not being recovered.

**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 from 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.

On May 18, 2021, the City Council began a discussion on this topic, but continued the matter until after June 15, when the Governor was expected to relax certain COVID-19 restrictions, including those for indoor dining. This agenda item was continued to this meeting to continue discussing whether to charge fees for the use of the public right-of-way.

## **DISCUSSION:**

On Wednesday, June 15, 2021, the Governor's office announced that, due to increasing vaccinations and decreasing COVID-19 cases, all capacity limits and distancing requirements, with the exception of those applicable to mega events, were lifted in California. The County of Los Angeles joined the State in lifting most COVID-19 restrictions and retired the Protocol for Restaurants, referred to previously as "Appendix I." While restaurants are now able to utilize 100% of their indoor seating capacity, the County's best practices recommend limiting table spacing to no less than six feet. In addition, there are a number of masking, group seating, and ventilation guidelines. Restauranters have informed us that the County's recommendations prevent them from using 100% of their indoor seating capacity. Restauranters have also informed us that some of their customers are not comfortable dining indoors under present circumstances, where – among other things – new variants of COVID-19 are spreading throughout California. Nevertheless, the lifting of the restrictions creates the potential for the combination of indoor and outdoor dining areas resulting in an overall seating capacity that exceeds the restaurant's pre-COVID maximum seating capacity.

On June 3, 2021, the Governor's office announced the extension of "relief measures that permit restaurants and bars to continue to benefit from their investments to expand outdoor operations in areas such as sidewalks and parking lots, and to continue the sale of to-go alcoholic beverages with food deliveries, among other successful pandemic adaptations. In addition, the Administration is urging local governments to facilitate outdoor dining through local zoning and programs that support and promote expanded open-air, take-out and delivery options." Concurrent with this announcement, the State Department of Alcoholic Beverage Control ("ABC") extended "regulatory relief" allowing for the expansion of licensed footprints for specified ABC-licensed restaurants until December 31, 2021. The Governor's announcement, and the ABC's expansion of licensed footprints until December 31, 2021, support the position taken by restaurant owners that additional time is needed to recoup their investments and to recover from the pandemic. However, the Governor's announcement is silent on whether restaurants should pay for such outdoor dining programs and/or expansion of licensed footprints. This encouragement of outdoor dining by the Governor and ABC's temporary expansion of the "licensed footprint" are additional factors to consider when assessing whether restaurants

should pay for their use of the public right-of-way, and, if so, when.

With the lifting of the COVID-19 restrictions, it appears that restaurants may now be able to operate fully indoors and on private property. The Council has already received public comment on this matter stating that the use of the public right-of-way for the private economic gain of a business, constitutes a “gift of public funds.” Under normal circumstances, it would be very difficult to justify the benefit to the public derived from providing restaurants an expansion of their approved footprints on public property at no cost. However, during the pandemic, cities, counties and the State recognized the benefit to the public of using public funds (or waiving fees) to keep businesses in business. So, the question is one of timing: when should the City resume charging businesses for the use of the public right-of-way? Property owners state that they need more time (e.g., see attached email; from David Zislis).

Staff has calculated the market value of providing space for businesses to operate within the public right-of-way 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 for a finite duration, nor is it guaranteed, the value of the outdoor space can be expected to be lower than the indoor value. The additional space enables businesses to increase their respective cash flows. Staff has identified a common industry practice of charging 50% of the indoor rate to accommodate the less certain terms 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 recommends charging \$4.00 per square-foot for temporary outdoor use. The City’s current rate is \$3.00 per square-foot. Of the neighboring cities surveyed, Hermosa and Santa Monica charge similar fees, but other South Bay cities contacted do not charge.

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.

Staff recommends that the City Council discuss the matter and provide direction regarding imposing a fee on businesses who opt to utilize the public right-of-way, and when.

#### **PUBLIC OUTREACH:**

While no public outreach was required for this item, and depending on City Council’s 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.

**ATTACHMENTS:**

1. Public Comment