



Legislation Text

File #: 23-0021, **Version:** 1

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

Talyn Mirzakhanian, Acting Community Development Director
Erik Zandvliet, T.E., City Traffic Engineer

SUBJECT:

Discussion of Options for Temporary Encroachment Permits for Street Dining and Business Uses and Outdoor Facilities Permits for Outdoor Uses on Private Property After Expiration of COVID-19 Emergency Orders (Acting Community Development Director Mirzakhanian).

(Estimated Time: 60 min.)

DISCUSS AND PROVIDE DIRECTION

RECOMMENDATION:

Staff recommends that the City Council discuss and provide direction on the options for temporary encroachment permits for street dining and business uses, and outdoor facilities permits for outdoor uses on private property previously issued under COVID-19 Emergency Orders.

FISCAL IMPLICATIONS:

The City is currently foregoing an estimated \$50,502 in revenue each month due to the use of 57 parking spaces for private outdoor dining/business use, which is comprised of \$44,460 in unrecovered parking meter fees and \$6,042 in unrealized potential parking citation revenue. In addition, staff time in support of outdoor dining/business use has not been charged.

The City is also foregoing approximately \$32,000 in revenue each month that would normally be charged for long-term commercial use of public property, currently set by resolution at \$3.00 per square foot per month.

Pursuant to City Council direction, restaurants with temporary encroachment permits or outdoor facilities permits are allowed to serve more patrons than their pre-COVID maximum occupancy during the COVID-19 emergency, which incrementally increases local sales tax revenue, as well as increases demand (and related costs) for public services, such as more frequent refuse pick-up, public infrastructure maintenance, and public safety resources.

BACKGROUND:

In March 2020, the State, Los Angeles County, and the City each declared a State of Emergency due to the COVID-19 pandemic. Los Angeles County Department of Public Health (LACDPH) issued orders restricting many indoor uses, causing businesses to look for opportunities to operate outdoors.

On June 10, 2020, the City Manager issued City Emergency Order No. 10, allowing staff to issue temporary encroachment permits for street dining and business uses in the public right-of-way (PROW), as well as Outdoor Facilities Permits for outdoor uses on private property, referred to collectively in this report as the COVID-19 Outdoor Dining/Business Use Program ("COVID-19 Program").

Since June 2020, City staff and City Council have worked with the businesses and community to balance the benefits and impacts of the COVID-19 program. The COVID-19 program has evolved as County, State and National regulations changed. Notably, the City has modified indoor and outdoor dining occupancy limits, adjusted encroachment area sizes for equity, imposed and relaxed seat spacing requirements, temporarily closed Manhattan Avenue for expanded dining, extended permit deadlines, and most recently waived restaurant dining occupancy limits. A summary of the more significant actions is attached to this staff report.

On October 17, 2022, the Governor announced that California's State of Emergency will end on February 28, 2023. Pursuant to City Council direction on December 21, 2021, the current COVID-19 Program is scheduled to expire at the end of the Governor's State of Emergency. Staff has prepared this report to assist in the City Council's discussion related to options available after the COVID-19 Program ends.

On October 5, 2021, the City Council added a Work Plan item titled Long-Term Outdoor Dining and Business Uses on Public and Private Property to study a post-COVID approach to outdoor dining. On February 15, 2022, the City Council approved the addition of a Senior Planner position to the Community Development Department to perform complex planning projects, including the Work Plan item. On July 5, 2022, the City Council directed staff to form a task force to support the Work Plan item. The Senior Planner joined the City in January 2023 and has been assigned to this effort. Furthermore, an official email address has been created for this effort. Stakeholders can email the City at outdoordining@manhattanbeach.gov <<mailto:outdoordining@manhattanbeach.gov>> to enroll in the "interested parties" list. The webpage is expected to be published by the first week of February and task force applications will be posted the following week.

DISCUSSION:

As described in Emergency Order No. 10, the main purpose of the COVID-19 Program was to allow restaurants and businesses to "temporarily expand their existing footprints into the public right of way, public property, and private property to accommodate social distancing requirements required by state and county protocols to limit the spread of COVID-19." With the end of the Governor's State of Emergency, the original reason to authorize outdoor dining and business areas will no longer exist.

Currently, there are 26 outdoor dining/business use encroachment areas in the PROW totaling approximately 10,757 square feet and occupying 57 parking spaces. There are also approximately 11 Outdoor Facilities Permits for expanded temporary outdoor dining on private property. In addition, the City has also issued sidewalk business/dining permits to 16 businesses in the City under a permit program predating the pandemic; these permits are not impacted by the Emergency Order expiration dates, but are subject to the restaurants' overall dining occupancy limits or waivers, as well as all other requirements provided in Manhattan Beach Municipal Code (MBMC) Section 7.36.160. Sidewalk dining permits are also charged a \$3.00 per square foot per month fee for commercial use of the public property.

Land Use Approvals

Pursuant to building codes and the MBMC, certain regulations (such as additional restroom facilities, parking, and waste facilities, etc.) may be required when the building floor area or dining occupancy of the business is increased. The Municipal Code requires that businesses with Use Permits, including all restaurants, apply for and obtain a Use Permit Amendment before applying for an encroachment permit for private commercial use of the PROW (MBMC Section 7.36.140) or an Outdoor Facilities Permit for expanded use on private property. Coastal Development Permits may also be required for each restaurant expansion and for new development within the Coastal Zone. The development must meet findings related to public access to the coast in order to issue a Coastal Development Permit.

Encroachment Permits

Notwithstanding the City's Declaration of Emergency, private commercial use of the PROW can be authorized by the City Council pursuant to Section 7.36.170 of the Municipal Code. Only the City Council is authorized to approve private commercial use of the PROW. A series of findings would need to be satisfied pursuant to Section 7.36.065, including the following:

- A. The granting of the encroachment permit will not be materially detrimental to the public health, safety, convenience, and welfare or injurious to property and improvements in the same vicinity and zone in which the property is located;
- B. The granting of the encroachment permit will be in conformity with the policies and goals of the General Plan;
- C. The proposed encroachment will comply with the provisions of this chapter, including any specific condition required;
- D. The proposed encroachment will not encroach into the area of the right of way occupied by an improved paved sidewalk or pedestrian or vehicular accessway or stairway, except as expressly provided in this chapter;
- E. The proposed encroachment will not reduce or adversely impact public pedestrian access along the paved and improved portion of the street, sidewalk, walk street, alley or stairway and does not reduce or adversely impact the vehicular access along the improved alley.
- F. For properties that are located in the coastal zone, the proposed encroachment will be consistent with the public access and recreation policies of Chapter 3 of the California Coastal Act of 1976, as follows:
 - 1. The proposed encroachment will not impact public access to the shoreline, adequate public access is provided and shall be maintained in the public right-of-way adjacent to the subject property (Section 30212 (a)(2)).
 - 2. The present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area (Section 30221).

Finding "F" requires that private commercial use of the PROW within the coastal zone shall NOT impact public access to the shoreline consistent with the California Coastal Act. This means ensuring that public parking supply is not impacted by development and that public access on sidewalks or

roads to the coast is not reduced or hindered. The current temporary encroachment areas that occupy public street parking spaces would not be able to satisfy this finding without providing an equivalent number of public parking spaces elsewhere. Furthermore, the provisions of Assembly Bill (AB) 61, as described in detail below, do not serve to relax regulations applicable to public parking.

In addition to satisfying the findings, both mandatory and discretionary conditions would be imposed, including an encroachment agreement, insurance coverage, commercial use fee, restoration of the area after use and other conditions as deemed appropriate. The City Council could terminate the encroachment agreement at any time in a manner similar to the current temporary encroachment agreements.

Outdoor Facilities Permits (Private Property)

Businesses may also apply for an Outdoor Facilities Permit pursuant to Section 10.60.080 of the Municipal Code. These permits allow for the outdoor display of merchandise, chairs and benches for customer waiting, and outdoor food and beverage service on private property (i.e. in parking lots or open spaces on private property). Outdoor facilities are subject to the following performance standards:

- A. Outdoor display of merchandise or materials shall not occupy public property, and may not occupy more than fifty percent (50%) of the total "tenant frontage" of a building as defined in Section 10.72.030 of this title.
- B. Yards, screening, or planting areas may be required to prevent adverse impacts on surrounding properties. The height of merchandise, materials, and equipment stored or displayed shall not exceed the height of the screening fence or wall, if required.
- C. There shall be no outdoor preparation of food or beverages associated with outdoor dining where food is consumed at tables.

In addition, the outdoor facility must comply with all other zoning requirements, including setbacks, required parking, screening, etc. The business would also need to maintain conformance to its Use Permit conditions, which may include occupancy limits. The Community Development Director shall review the application for compliance with the performance standards and may impose conditions to avoid adverse impacts such as, but not limited to, public safety impediments, visual clutter, and disorderly displays.

Parking Requirements

Based on approximately 10,757 square feet of additional restaurant areas created by outdoor dining spaces in the public right-of-way, the Municipal Code would otherwise require 215 new public parking spaces (one parking space per 50 square feet of seating area). This places additional demand on the existing parking supply, which is already over capacity during the summer and holiday seasons, and further reduced by the 57 public spaces currently occupied by encroachment areas.

AB61, effective as of January 1, 2022, requires that cities reduce the number of required parking spaces for existing uses to accommodate outdoor dining used to mitigate indoor dining restrictions for COVID-19. This statute does not require a State of Emergency to be in place, and rather, remains in effect until January 1, 2024. As such, there is a "grace period" for meeting parking requirements. Local governments are also not precluded from adopting ordinances to reduce or relax parking

requirements outside of a State of Emergency. However, AB 61 only applies to required parking; therefore, it does not offer relief for the loss of public parking spaces, unless such spaces constitute “required” parking through conditions of approval or permit.

Service of Alcohol

AB 61 authorizes the California Alcoholic and Beverage Control to allow licensees to temporary expand their license area (pursuant to a COVID-19 Temporary Catering Authorization) until February 28, 2024. If the City wishes to continue temporary approvals for expansion of alcohol license areas, there would be an expedited path forward.

Public Resources

The City has experienced an increase in requests for sidewalk cleaning and refuse services to handle the additional waste generated by an increase in dining activity. There has been an incremental increase in public safety incidents, as evidenced by several minor vehicle collisions with the encroachment areas that required police response and collision reporting. The City has also deferred pavement maintenance under the street dining encroachment areas until such time as they are removed. Furthermore, it costs the City extra funds to have the pavement maintenance vehicles maneuver around the dining decks.

As noted in the Financial Implications section, the City is foregoing approximately \$32,000 in revenue each month by not charging a long-term encroachment fee for the commercial use of public property, currently set by resolution at \$3.00 per square foot per month. This fee was waived by the City Council on March 1, 2022, but could be reinstated to help defer the costs of additional public resources.

Conclusion

Given AB 61’s allowances for parking reductions and expanded temporary alcohol service areas, the City may be able to consider limited-term non-COVID-19 encroachment permit applications on a case-by-case basis after the end of the State of Emergency through this code section. This would require complying with Coastal Development Permit requirements for dining areas within the right-of-way in Coastal areas, and temporarily relaxing Use Permit conditions of approval for all areas.

POLICY ALTERNATIVES:

Staff presents the following alternatives:

ALTERNATIVE 1:

No action. At the expiration of the Governor’s State of Emergency, and by March 10, 2023, businesses would need to remove existing temporary encroachment areas in the public right-of-way in accordance with their Temporary Encroachment Agreements. Outdoor areas on private property would need to follow the regulations of the City’s Outdoor Facilities Permits, using the provisions of AB 61 to address the parking requirements and alcohol service limitations. Businesses could apply for sidewalk dining permits subject to existing regulations, restrictions and relaxed alcohol service provisions of AB 61. Separately, the long-term outdoor dining effort would proceed.

ALTERNATIVE 2:

Create a City-initiated Coastal Development Permit and Temporary Encroachment Permit process to collectively evaluate and temporarily allow outdoor business/dining areas in the public right-of-way

during the term of AB 61. The City would then work with individual businesses to assess their ability to use these areas while meeting the findings of the Coastal Act. Use of encroachment areas would require a like-for-like replacement of public street parking. Outdoor areas on private property would need to follow the regulations of the City's Outdoor Facilities Permits, using the provisions of AB 61 to address the parking requirements and alcohol service limitations. Similarly, sidewalk dining would be permitted subject to existing sidewalk dining permit regulations and temporarily relaxed alcohol service provisions of AB 61. The uncertainties of this alternative include delays related to processing, potential appeals or denial of a Coastal Development Permit, as well as unknown time needed to acquire or construct replacement parking. This alternative would require considerable staff resources.

ALTERNATIVE 3:

Allow individual businesses to apply for Coastal Development Permits and Temporary Encroachment Permits for commercial use of the public right-of-way pursuant to MBMC Section 7.36.170 subject to City Council approval, or to apply for an Outdoor Facilities Permit on private property, or sidewalk dining permits. Businesses would need to provide documentation that required findings or performance standards will be satisfied, including the equivalent replacement of any public or required parking spaces. A Coastal Development Permit may also be required for expanded business uses if applicable. The uncertainties of this alternative include delays related to processing, potential appeals and/or denials of Coastal Development Permits. This alternative would require considerable staff resources.

PUBLIC OUTREACH:

This meeting was announced at the September 20, 2022, City Council meeting, and City staff has informed the Chamber of Commerce, Downtown Business and Professional Association, North Manhattan Beach Business Improvement District, and the Downtown Residents Association of this agenda item. The City Council meeting agenda has also been noticed in conformance with public meeting requirements.

ENVIRONMENTAL REVIEW:

The City has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the Council's discussion of this item is not a "Project" as defined under Section 15378 of the State 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 at this time.

LEGAL REVIEW:

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

ATTACHMENTS:

- 1.Outdoor Street Dining/Business Use Encroachment Area Chronology
- 2.PowerPoint Presentation