Agenda Report

Fullerton City Council

MEETING DATE: **DECEMBER 2, 2025**

TO: **CITY COUNCIL / SUCCESSOR AGENCY**

SUBMITTED BY: **STEPHEN BISE, PUBLIC WORKS DIRECTOR**

PREPARED BY: **MATTHEW LANINOVICH, SENIOR CIVIL ENGINEER**

SUBJECT: **STANDARD OUTDOOR DINING PROGRAM AND LEASE RATE REVIEW**

SUMMARY

An overview of the Standard Outdoor Dining Program and request for direction on program parameters, lease rates, term and enforcement.

PROPOSED MOTION

Provide direction on policy, program parameters, lease rate, enforcement and/or outstanding debt.

ALTERNATIVE OPTIONS

- Approve the Proposed Motion
- Other options brought by City Council.

STAFF RECOMMENDATION

Staff recommends the Proposed Motion.

CITY MANAGER REMARKS

None.

PRIORITY POLICY STATEMENT

This item matches the following Priority Policy Statement:

- Infrastructure and City Assets.

FISCAL IMPACT

The Standard Outdoor Dining Encroachment Program requires participating businesses pay application fees and monthly lease rates. The lease rates provide additional City revenue but may deter some businesses from participating in the program. Any revenue increase or decrease depends on City Council direction for this program. Staff would present any proposed changes to the lease rate as City Master Fees and Charges schedule amendment at a future City Council meeting.

BACKGROUND AND DISCUSSION

Guidelines

The City adopted the current Outdoor Dining Guidelines in June 2022. The attached guidelines provide a roadmap from application to agreement including current lease rates.

The guidelines include specific criteria and approval process to utilize one of the three parking districts for outdoor dining since several businesses used public parking lots under the temporary program. In addition, any businesses opting to mobilize in one of the City paid parking lots, resulting in a loss of parking spaces, shall be responsible for the lost revenue incurred.

The Encroachment Agreement has an initial 12-month period and may extend indefinitely based on compliance with the terms and timely monthly lease payments. Language includes a termination clause that allows cancellation based on a 30-day written notice. The agreement has a no-appeal immediate cancellation clause based on any serious violation associated with use that may adversely affect the public health, safety or general welfare.

Encroachment Fees and Lease Rates

Each Standard Outdoor Dining Encroachment Agreement requires application fees established by City Council as part of the fee schedule. The City additionally requires a monthly lease based on dining area square footage and type of alcohol license held.

Staff proposed setting monthly lease rate at 75% of Citywide average market rate per square foot (sf) on June 21, 2011. Staff initially looked at both ¼ mile and ½ mile radii around the potential Encroachment Agreement sites. However, this resulted in a variation from $1.54 / sf to $2.08 / sf, or a nearly 35% range from one end of downtown to the other. The whole-City approach to smoothing the lease rate results in $1.78 / sf which sets the base lease rate at *$1.34 / sf / month* using the at $1.78 / sf / month x 0.75 calculation.

City Council directed staff to revise the monthly lease rate on February 7, 2012 to 50% of the Citywide average, per square foot. Staff adjusted the base lease rate to *$0.90 / sf / month.*

City Council approved modifications to the Outdoor Dining Guidelines on May 15, 2012, to include a tiered monthly lease rate based upon the type of alcohol license held for outdoor dining within the public right of way as follows:

- No liquor: $0.30 / sf (or $3.60 / sf annually)
- Beer and Wine only: $0.60 / sf (or $7.20 / sf annually)
- Full Liquor: $0.90 / sf (or $10.80 / sf annually).

City Council directed staff to revisit and update the lease rates to current market value on March 15, 2022. Staff retained a brokerage firm to perform an Opinion of Value, which details an outdoor dining lease rate value reset given Consumer Price Index (CPI). Staff directed the consultant to use the 2011 recommended rate (75% of market value; $1.34 / sf / month) as the baseline to reset rates. In addition, the City maintained the same tiered approach based on the applicant alcohol license.

The following lists the 2022 market lease rates for outdoor dining based on the Opinion of Value:

- No liquor: $0.58 / sf (or $6.96 / sf annually)
- Beer and Wine only: $1.14 / sf (or $13.68 / sf annually)
- Full Liquor: $1.71 / sf (or $20.52 / sf annually).

Staff attached a comparison of these rates to this report. These rates do not apply to businesses applying for 100 sq. ft. or less of space with no permanent fixtures in the right of way. Staff notified any business with an existing encroachment agreement for outdoor dining of the change in rates and issued a notice of termination in accordance with agreement terms.

Terms and Enforcement

Each agreement has an initial 12-month term and continues on a year-to-year basis subject to timely payment of applicable fees. Either party may terminate the agreement without prejudice by providing a written notification at least 30 days prior to the proposed termination date. The City will provide written notice to the owner and/or tenant of known violations to correct said violations with five days. Failure to comply within the five-day grace period results in the City issuing the 30-day notice of termination.

Current Business Participation in the Outdoor Dining Program

Seven businesses have active encroachments and one terminated earlier this year. This list only includes businesses that have signed encroachment agreements under the outdoor dining guidelines. Staff attached the past due balances and current payments made by each business along with the area occupied to this report. Some businesses have payment plans to address previous unpaid balances.

Adjacent City Policies on Outdoor Dining

Staff reviewed outdoor dining policies for nearby cities including Anaheim, La Habra, Placentia, Brea, Buena Park and Orange. The majority do not allow for outdoor dining in the public right of way. The City of Brea does not have an outdoor dining program but has a specific path for use of the public right of way, not directly tied to outdoor dining. The City of Orange does allow for café style seating in specific areas with restrictions on use.

<u>Attachments:</u>

- Attachment 1 – Exhibits 1 through 18

cc: Interim City Manager Eddie Manfro