



# ***Agenda Report***

## ***Fullerton City Council***

**MEETING DATE:** OCTOBER 6, 2020

**TO:** CITY COUNCIL / SUCCESSOR AGENCY

**PREPARED BY:** KENNETH A. DOMER, CITY MANAGER

**SUBJECT:** OUTDOOR DINING AND RETAIL REGULATIONS  
EXTENSION AND AMENDMENTS TO PROVIDE FOR  
HEALTH AND SAFETY

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### **SUMMARY**

On May 5, 2020, City Council approved the relaxation of outdoor dining regulations to allow private use of public right-of-ways and increased ability for private property use for outdoor dining and retail operations. The program was originally scheduled to end on November 2, 2020. However, due to the continued impacts from the COVID-19 pandemic, it is proposed to extend the program until April 5, 2021. Additionally, certain amendments related to winter outdoor operations are requested to the program.

### **RECOMMENDATION**

1. Approve the extension of outdoor dining and retail program until April 5, 2021.
2. Waive encroachment permit fees for utilization of public space for outdoor dining and retail use until April 5, 2021.
3. Authorize the City Manager to make administrative adjustments to outdoor dining regulations and on-site parking requirements as needed to assist local businesses.

### **PRIORITY POLICY STATEMENT**

This item matches the following Priority Policy Statements:

- Public Safety
- Fiscal and Organizational Stability
- Infrastructure and City Assets.

## FISCAL IMPACT

Expenditures related to Staff review of encroachment permits and working with participating businesses have been nominal. Continued loss of current outdoor dining fees (which have been administratively waived during restaurant closures) for the duration of the program, estimated by the writing of this report at approximately \$13,000. Impact of continued waiver of fees expected to be very minimal and anticipated to be offset by unknown revenue gain from ability of restaurants and retail able to serve a higher amount of customers than under indoor only occupancy standards.

## DISCUSSION

The City Council relaxed the City's outdoor dining and other regulations on May 5, 2020 in order to assist local businesses to serve patrons in response to restrictions put in place the severely limited or curtailed indoor dining and retail related to the COVID-19 pandemic. The program has been very successful with 60 permits issued and many restaurants opening up or expanding their outdoor operations on to public right-of-way or private property in a safe manner. This includes the use of vehicle barriers, increased signage and separations of operations to comply with State alcohol guidelines. The City continues to work with our businesses to overcome issues associated with the program to include late night noise complaints, social distancing queuing in lines and those few businesses which are less compliant with County and State health orders.

On September 9, 2020 City Staff held an in-person, socially-distance compliant meeting in the Grand Hall at the Fullerton Community Center with businesses to go over the new regulations related to the County moving from the Purple tier to Red tier of the States four-tiered system. Over 50 representatives were present. The consensus is that the outdoor dining program is of benefit and the extension is needed in order to continue to assist our businesses during this health and economic crisis. Good discussion was held regarding the different approach to hosting outdoor dining during the fall and winter due to wind, rain, and cold weather conditions. This includes the need to ensure health and safety related to extension cords, potential generator use and the use of outdoor heating.

### **Outdoor Dining Regulations**

The City's Outdoor Dining regulations have been in place since at least 2004 and were amended in 2012, to update the fee structure for the utilization of public right-of-way for private dining purposes. Prior to COVID-19 approximately ten businesses had encroachment agreements with the City to use public right-of-way, mostly sidewalks, for outdoor dining purposes, all within the downtown area. As stated above, 60 permits have been issued at this time. The City will continue to work with current permittees and any business seeking a permit to make sure that the program works for them, the City (i.e., assurance of health and safety issues) and adjacent business to the outdoor areas.

The County is currently in the second (Red) tier and was expected to move prior to October 6<sup>th</sup> into the third (Orange) tier, however, as of September 29<sup>th</sup> that move will not occur due to an increase in positive cases pushing the County outside the required metric for advancement. Once in the Orange tier, indoor dining is allowed at 50% of occupancy but there will remain a strong demand for continued outdoor dining. Additionally, in case

there are upswings in positive cases, it is advised that outdoor dining be continued in case indoor dining is moved to a more restricted level.