



# ***Agenda Report***

## ***Fullerton City Council***

**MEETING DATE:** SEPTEMBER 21, 2021

**TO:** CITY COUNCIL / SUCCESSOR AGENCY

**SUBMITTED BY:** STEVE DANLEY, ACTING CITY MANAGER

**PREPARED BY:** GREG PFOST, INTERIM DIRECTOR OF COMMUNITY AND ECONOMIC DEVELOPMENT  
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**SUBJECT:** OUTDOOR DINING PROGRAM POTENTIAL EXTENSION

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### SUMMARY

Request City Council review and direction regarding continuation of the City's Outdoor Dining program.

### RECOMMENDATION

City Council provide direction on three decision points related potentially extending the City's Outdoor Dining Program on public and private property.

### PRIORITY POLICY STATEMENT

This item matches the following Priority Policy Statements:

- Public Safety
- Infrastructure and City Assets.

### FISCAL IMPACT

The City would generate nominal permit fee revenue if City Council extends outdoor dining and requires encroachment fees. Extending outdoor dining would result in a continued loss of parking revenue where outdoor dining uses existing public parking spaces as well as continued use of overtime to address code enforcement and safety issues associated with the program.

## DISCUSSION

### Background:

Prior to the COVID-19 pandemic, the Fullerton Municipal Code permitted outdoor dining as an extension to a business' operations / floor area through the issuance of an Encroachment Agreement (with specific mitigating measures) and encroachment permit with associated fees on public property. The City "grandfathered" Conditional Use Permits (CUP) for long established businesses. Those businesses operated existing outdoor dining areas without amending their CUP, while the City required newer businesses to have an amended CUP.

When indoor dining was restricted by the State during COVID-19, many municipalities, including the City of Fullerton, relaxed outdoor dining regulations and standards to allow businesses to continue to operate, primarily by allowing outdoor dining and retail operations to conduct business on either private property or public rights-of-way. The City of Fullerton has issued more than 60 permits for outdoor dining.

These relaxed standards have had both positive and negative effects on businesses and City operations. The City intended to implement the relaxed standards on a temporary basis until the state lifted indoor dining restrictions. City Council last extended the outdoor dining program through September 30, 2021.

This agenda item provides City Council with information to assist in determining whether to continue the relaxed outdoor dining standards for a certain period of time or return to previous regulations for requesting and receiving approval for an outdoor dining experience. To facilitate this discussion, staff requests City Council consider the following decision points:

1. Should the City extend the temporary Outdoor Dining Program?
2. If extended, then for how long?
3. If extended, should the City impose additional operational conditions?

### Decision Point 1: Should the City extend the temporary Outdoor Dining Program with its relaxed restrictions?

The City originally relaxed outdoor dining regulations to provide restaurants a viable means to continue operating their business while under the "indoor" dining restrictions imposed by the State during the COVID-19 pandemic. The state has since rescinded the "indoor" restrictions. On the other hand, given the uncertainty of the COVID environment and possible re-imposition of state mandates, it may be premature to shut the temporary program down only to have to consider restarting it in the short-term.

To assist City Council with this decision point, staff has provided the following pros and cons associated with discontinuing the temporary program:

#### Pros to discontinuing the temporary relaxed outdoor dining program:

- Puts all businesses on an equal footing when requesting the implementation of an outdoor dining experience. Currently, some business have preference, due locations adjacent to a public parking lots or plaza.

- The current relaxing of standards has placed increased duties and responsibility on City resources. The Police Department has consistently monitored crowds for compliance with established laws. Some of these outdoor dining locations have caused a “choke point” for patrons at closing. The choke points lead to loitering and altercations. The Fire Department has continually verified that businesses abide by the temporary guidelines due to the direction to relax various safety aspects of normal permitting. Code Enforcement has responded to unpermitted outdoor dining areas. All of these additional activities have required increased costs for city staff overtime.
- Restores access to public spaces including public parking and resumes parking fee revenue for spaces lost to temporary outdoor dining.
- Improves public safety by restoring proper ingress / egress to businesses, reduces the concentration of patrons in areas that may inhibit public safety and addresses fire safety issues related to some of the outdoor modifications installed.
- Addresses building occupancy concerns which patrons often exceed when utilizing both indoor dining and drinking spaces.
- Reduces trash production and overflowing of trash bins.

Cons to discontinuing the temporary relaxed outdoor dining program:

- Uncertainty of the pandemic and future State mandates which may cause the need to consider reestablishing outdoor dining.
- Loss of revenue for businesses that participate in the program, which is also a loss of sales tax revenue to the City.
- Removes the attraction of outdoor dining in the downtown area.

Decision Point 2: If City Council extends the temporary outdoor dining program, then for how long?

If City Council desires to extend the program, then City Council should determine a specific ending date for the extension so the City can reestablish important outdoor dining regulations. Staff recommends consideration of January 31, 2022 as a potential end date for any extended program. This would allow enough time to account for the uncertainty of the pandemic's impact, allow businesses time to dismantle their outdoor dining infrastructure or decide if they want to apply for a continuation of the program under normal regulatory conditions and allow outdoor dining to continue through the holiday season.

Decision Point 3: If City Council extends the temporary outdoor dining program, should the City impose additional operating conditions?

The temporary relaxing of outdoor dining regulations to accommodate businesses during the pandemic has resulted in additional costs to the City, losses of some parking revenue and an increase in the potential for safety issues either through temporary structures and heaters, loss of adequate egress and the congregation of unusually large numbers of

crowds in the later evening hours. City staff has identified various issue areas to address with businesses even if City Council approves an extension to the outdoor dining program. These include the following:

1. Occupancy Levels – ensure businesses post and follow occupancy levels in all outdoor and indoor areas.
2. Alcohol Sales – in outdoor dining areas, require that businesses only allow the sale of alcohol alongside the sale of food.
3. Ingress / Egress – ensure businesses maintain proper ingress / egress according to the Building Official and Fire Chief.
4. Trash disposal and dining area infrastructure upkeep – require each business to properly dispose of trash and maintain outdoor dining areas.
5. Ability for the City to rescind a business' outdoor dining area if persistent issues or dangerous situations arise.
6. Require businesses to release the City of liability for the use of public spaces.
7. Require businesses to develop a safety / security plan approved by the Police Chief.
8. Per the Building Code, require businesses to obtain a building permit for any utilities such as lighting, heat lamps or other electrical appliances.
9. Fees for use of public space – require businesses to pay a fee for the loss of parking spaces related to the construction of outdoor dining areas.
10. Additional areas identified by City Council.

If City Council approves any of the above requirements, staff recommends that businesses apply for a permit for outdoor dining and for compliance with said conditions established by October 30, 2021. If a business does not obtain a permit, staff recommends that the specific business discontinue and remove their existing outdoor dining area within no later than November 7, 2021.