



STAFF REPORT CITY OF SOLANA BEACH

TO: Honorable Mayor and City Councilmembers
FROM: Gregory Wade, City Manager
MEETING DATE: November 9, 2022
ORIGINATING DEPT: Community Development Department
SUBJECT: **City Council Consideration and Discussion of Outdoor Dining Regulations**

BACKGROUND:

On March 16, 2020, pursuant to Section 2.28.060(A)(1) of the Solana Beach Municipal Code (SBMC), the Director of Emergency Services/City Manager proclaimed a state of local emergency in the City of Solana Beach due to COVID-19, which was ratified by the City Council through adoption of Resolution 2020-036. Since that time, there have been numerous Orders and Guidance by the California Department of Public Health (CDPH) and the Health Officer of the County of San Diego to curtail the spread of COVID-19. In June 2020, the City Council adopted Resolution 2020-087 which established a COVID-19 Temporary Use Permit process and requirements for temporary outdoor dining. In July 2022, the City Council adopted Resolution 2022-085 extending the COVID-19 TUP Policy through January 1, 2023.

The item before the City Council is to consider, discuss and provide direction on options regarding possible outdoor dining regulations.

DISCUSSION:

Since the City Council's approval of the COVID-19 TUP Policy, the City of Solana Beach (City) has conditionally approved 33 COVID-19 TUP applications, 24 of which are for businesses with outdoor dining services. Of the 24 businesses with outdoor dining, 19 of those are utilizing parking areas, two of which (Pillbox Tavern & Saddle Bar) are utilizing public parking spaces. The other five businesses with outdoor dining are utilizing public and/or private sidewalk areas for the outdoor dining. No new TUP applications have been filed since the April 2021 extension. Temporary outdoor dining activities continue to be utilized by 13 businesses (Pizza Port, Saddle Bar, Pillbox

COUNCIL ACTION:

Tavern, ALCE, Naked Café, Claire's, Homestead, Fish Market, Carruth Cellars, Lofty Coffee, Crust, Parioli's, & T's Café). All other businesses that were permitted to conduct outdoor activities due to COVID-19 requirements have since eliminated their outdoor activities.

The existing SBMC allows certain sidewalk cafes and outdoor eating areas with approval of a Director's Use Permit or Conditional Use Permit pursuant to SBMC Section 17.60.130 (see Attachment 1). While the purpose and intent of those regulations was to encourage outdoor eating areas and sidewalk cafes as visual amenities that intensify pedestrian activity and make street life more attractive in commercial areas, Staff is unaware of any applications for such a use permit being considered since the adoption of these provisions in 1993. While there may be many reasons for the lack of such applications, one contributing factor may be the requirement to comply with current parking requirements for such outdoor eating areas. Pursuant to SBMC Section 17.52.040, parking for outdoor seating/eating areas requires 1 space per 100 square feet of gross floor. Since most commercial properties within which cafes and restaurants are located were developed prior to the City's incorporation and, therefore, have little if any available onsite parking, providing additional parking onsite or even shared parking can be problematic.

On October 25, 2006, the City Council adopted Ordinance No. 350 that amended SBMC Section 17.52.040 to provide a limited exemption for outdoor dining by allowing up to two incidental tables and eight chairs for outdoor dining without having to provide additional parking. However, this SBMC Amendment specifically prohibited this parking exemption for tables and chairs located within the public right-of-way or for dining areas facing an adjacent residential area unless specifically permitted by the City Council as part of a discretionary permit.

There continues to be a desire by the businesses, business districts, Chamber of Commerce and members of the public to continue outdoor dining activities. Consequently, Council included in the Fiscal Year (FY) 2022-23 Work Plan the evaluation of allowing outdoor dining activities City-wide. When last discussed in December 2021, the primary concerns related to allowing such outdoor dining activities revolved around the use of and impact to parking, impacts to surrounding residential neighborhoods and maintaining sufficient pedestrian access along public sidewalks.

Over the past year, Staff has carried out inspections of temporary outdoor dining areas, and the areas surrounding them. During these inspections, Staff has not observed significant impacts associated with these outdoor dining areas and there have been very limited issues raised by surrounding businesses or neighbors regarding the establishments that have temporary outdoor dining. Staff has responded to a couple of complaints related to maintenance of sidewalks, pedestrian access and the use of public parking for outdoor dining. In each of these instances, the businesses have been responsive and compliant with Staff's requests to address the issues raised.

In attempting to assess parking impacts both to the immediate business area as well as to adjacent residential areas, it was difficult at best to determine how much of the observed on-street parking was being utilized as a result of the temporary outdoor dining areas. Based on Staff's observations, outdoor dining areas that utilized existing

parking, whether public or private parking spaces, were far more likely to have an impact on the amount and availability of on-street parking. To this end, the more parking occupied by an outdoor dining area, the greater the impact to available on-street parking. This observation was in part supported by a review of sales tax data, as, on average, establishments utilizing public rights-of-way for their temporary outdoor dining areas did not seem to realize a significant increase in business activity (based on sales tax receipts) as compared to those establishments utilizing parking areas for their temporary outdoor dining.

Outdoor Dining Area Standards/Regulations

While there have been few complaints filed with the City regarding temporary outdoor dining areas, the development and implementation of specific standards to allow these outdoor dining uses on a permanent basis would provide clear and consistent standards to apply to these outdoor dining areas as well as a clearly defined process by which such permit applications could be processed. When considering an appropriate amount of area that could be utilized for outdoor dining, there are a few different options the City Council may consider when determining how much physical space an outdoor dining area should be allowed:

- 1) As a percentage of the business' gross indoor square footage prior to COVID-19;
- 2) As a percentage of the allowed indoor seating area prior to COVID-19; or
- 3) As a percentage of the number of indoor seats prior to COVID-19.

Under the SBMC, parking is calculated on gross square footage of the business, therefore, the first option listed above would be the easiest for the applicant and Staff to quantify and calculate. While the other two options could be considered, it may be challenging since many dining establishments don't have fixed seats and, therefore, defining the existing seating area within the business may not necessarily be clearly defined.

If the City Council chooses option 1 above, Staff would need to further discuss the appropriate percentage of indoor area to allocate to outdoor dining. It is estimated that the businesses that continue to utilize the outdoor dining areas utilize between 20% and 100% of the business' gross indoor square footage. For options 2 and 3, it is difficult to estimate the percentages that are being utilized based on allowed seating area or number of seats at this time.

Other standards the Council should consider that are typical of outdoor dining area regulations are outlined in SBMC Section 17.60.130, Sidewalk Cafes and Outdoor Eating Areas. These include:

- **Maintaining an Adequate "Clear Path"** – this is the area of a public right-of-way that must remain clear of all obstructions to allow for clear passage of pedestrians using the sidewalk
- **Outdoor Dining Area Boundary** – ensuring for an appropriate and safe enclosure or surrounding of any designated outdoor dining area
- **Location** – where and how outdoor dining areas may be located
- **Americans with Disability Act (ADA) Access** – ensuring compliance with ADA

- **Design Characteristics** – ensuring compatibility with the dining establishment and/or adjacent uses, use/design of canopies, umbrellas, chairs, tables, etc.
- **Environmental Compatibility** – compatibility with surrounding area and adjacent uses, hours of operation, impacts to area, etc.
- **Encroachment Permit Required** – require the application and issuance of an Encroachment Permit by the City for any outdoor dining area utilizing the public right-of-way
- **Liability Insurance** – provision of general liability insurance naming the City as an additional insured

Additionally, Council may also want to consider the following standards for outdoor dining areas:

- **Minimum Maintenance Standards** – ensuring that outdoor dining areas are kept clean and litter free and that, if located in the public right-of-way, the sidewalks are routinely cleaned and well maintained
- **Restricting Noise Amplification/Entertainment** – apply requirements or restrictions on any proposed entertainment or amplified music
- **Encroachment Maintenance and Removal Agreement (EMRA)** – require an EMRA for any outdoor dining area utilizing the public right-of-way
- **Public Parking** – restrict or prohibit the use of public parking for outdoor dining purposes
- **Indemnification Agreement** – requiring an agreement indemnifying and defending the City for third party liability claims

Council is also requested to consider and provide direction on the process by which permits for outdoor dining areas are processed and approved by the City. Currently, SBMC Section 17.60.130 requires a Conditional Use Permit (CUP) for such uses issued by either the Community Development Director or City Council. This would provide Council with the option to require a Director's Use Permit (DUP) with approval by the Community Development Director. Such a process would require notification of the surrounding area for each permit but would limit Staff time dedicated to processing each application. Decisions made on a DUP would be appealable to the City Council.

Lastly, it should be noted that the existing COVID-TUPs are set to expire January 1, 2023. If the City Council does not extend the COVID-TUP resolution, Staff would prepare a courtesy letter informing the businesses that are still utilizing the outdoor dining areas that they would need to remove the improvements by January 1, 2023. If given direction to draft modified ordinance language allowing outdoor dining for City Council consideration, Staff would notify the businesses that an application will need to be filed pursuant to those regulations if they wish to continue such outdoor dining areas.

CEQA COMPLIANCE STATEMENT:

This item is not a project as outlined by CEQA and therefore is not subject to environmental review.

FISCAL IMPACT:

There are no direct fiscal impacts related to this item.

OPTIONS:

- Provide direction on preferred application requirements and standards for permanent outdoor dining.
- Provide direction to extend the current COVID-TUP regulations.
- Allow the COVID-TUP regulations to expire on January 1, 2023 and require businesses to remove outdoor dining areas.

DEPARTMENT RECOMMENDATION:

Staff is seeking City Council direction regarding outdoor dining/sidewalk café regulations.

CITY MANAGER'S RECOMMENDATION:

Approve Department Recommendation.



Gregory Wade, City Manager

Attachments:

1. SBMC Section 17.60.130 – Sidewalk cafes and outdoor eating areas

17.60.130 Sidewalk cafes and outdoor eating areas.

A. Purpose and Intent. The purpose and intent of these regulations is to encourage outdoor eating areas and sidewalk cafes as visual amenities which intensify pedestrian activity and make street life more attractive in commercial areas, to promote and protect public health, safety, and general welfare, to preserve and enhance the character of neighborhoods, and to ensure adequate space for pedestrians.

B. Definitions.

1. An “outdoor eating area” is a portion of a restaurant, located between the front setback of a building and the street, which is used exclusively for dining, drinking and circulation therein. Outdoor eating areas include sidewalk cafes.

2. A “sidewalk cafe” is a portion of a restaurant, located within the sidewalk area of the public right-of-way, which is used exclusively for dining, drinking and circulation therein. A sidewalk cafe may provide waiter or waitress service or self-service.

C. Conditional Use Permit Required. A sidewalk cafe shall only be permitted by conditional use permit issued by the director of community development or city council in accordance with SBMC [17.68.010](#). Specific conditions providing for the development, operation, and design of such a use shall be imposed by the director of community development or the city council.

Outdoor eating areas which do not include a sidewalk cafe do not require a conditional use permit but shall comply with all applicable regulations below.

D. Regulations. All outdoor eating areas, including sidewalk cafes, shall comply with the following regulations as applicable:

1. Clear Path.

a. For sidewalk cafes, there shall be a minimum clear distance, which is free of all obstructions, of 50 percent of the sidewalk width or four feet, whichever is greater. The minimum distance may be measured from any point within the sidewalk width; provided the clear path is maintained in a continuous line conforming to the curvature of the sidewalk. Portions of the sidewalk cafe may be located on either side of the clear path thereby creating two distinct perimeters. In no event may recesses in the sidewalk cafe frontage be used to satisfy this unobstructed width requirement except that corners of the sidewalk cafe may be rounded or mitered. For the purposes of the minimum clear path, parking meters, traffic signs, and trees which have gratings flush to grade, without fence or guards, shall not count as

obstructions. Within a sidewalk cafe perimeter located on the street side of a clear path, tables and chairs may be located between sidewalk obstructions such as trees, light standards, planters, news racks, mail boxes, benches and similar fixtures; provided such public facilities remain accessible.

b. At the intersection of streets a minimum clearance, free of all obstructions, measured from the outer edge of the sidewalk cafe to the curb side or nearest obstruction, shall be required as determined by the city engineer. The corner of the sidewalk cafe wall may be rounded or mitered.

2. Cafe Boundary. No portion of a sidewalk cafe, such as gates or any objects placed within a sidewalk cafe, shall swing or project beyond the designated exterior perimeter of the sidewalk cafe. However, fire exit doors, which are used exclusively as emergency exit doors, shall be exempt from this provision.

3. Location. No portion of an outdoor eating area shall be located within eight feet of the entrance to a ground floor commercial use other than an entrance to an outdoor eating area. An exception to the minimum distance between outdoor eating areas and adjacent business entrances may be granted up to zero feet after review of existing conditions in that commercial area on that particular street by the director of community development and all other appropriate departments, and upon the affected adjacent property and first floor tenant(s) having given notarized written permission for an encroachment. The review will take into consideration the effect that the exception may have on adjoining businesses in terms of visibility and access.

4. Access For Persons with Physical Disabilities. An outdoor eating area and its restaurant shall be directly accessible to persons with physical disabilities. In the event the main restaurant has provided such access, the outdoor eating area shall be accessible to persons with disabilities from the interior of the restaurant. In order to ensure access for persons with physical disabilities:

a. At least one door leading into the outdoor eating area or restaurant from the adjoining sidewalk shall be not less than three feet wide.

b. A ramp with nonskid surface, if there is change of grade, having a minimum width of three feet and a slope of not greater than one inch in height for every 12 inches of horizontal distance shall be provided. Such ramp may be of portable type for cafes which are six feet wide or less, except if the cafe is 180 square feet in area or greater.

5. General Design Considerations.

a. Fixtures.

i. Sidewalk cafes may contain readily removable railings or fencing or any combination of removable railings, fencing, and landscaping in planter boxes to separate the encroachment area from the remainder of the sidewalk.

ii. No solid walls shall be permitted in the right-of-way. Solid walls and wind screens are permitted in outdoor eating areas outside of the right-of-way.

iii. The furnishings of the interior of a sidewalk cafe shall consist of readily movable tables, movable chairs, and movable umbrellas. For the purposes of this section "readily movable" shall mean that no object such as a table, chair, planter, or any other fixture, shall be leaded, cemented, nailed, bolted, power riveted, screwed, or affixed, even in a temporary manner, to either the sidewalk or to any other structure which it abuts.

iv. Landscaping may be placed either in movable planters or planted in the ground inside the defined cafe area adjacent to any barrier, railing fence, or combination thereof.

v. Lighting and heating fixtures may be permanently affixed onto the exterior front of the main building. Portable heating units may be used in all outdoor cafes.

b. Signage. Only the following signs are permitted within an outdoor eating area or sidewalk cafe:

i. The name and type of establishment may appear on the umbrellas or the valance of an awning.

ii. A movable menu board, not to exceed eight square feet, shall be allowed within the boundaries of the outdoor eating area or sidewalk cafe.

c. Refuse Storage Area. No structure or enclosure to accommodate the storage of trash or garbage shall be erected or placed on, adjacent to, or separate from a sidewalk cafe on the public right-of-way.

d. Safety.

i. All barriers, railings, or fences placed around a sidewalk cafe shall be contiguous to the sidewalk. The barriers shall be adequately designed so that unsafe conditions are not created for the physically disabled, blind and partially sighted. In order to maximize

visual access and pedestrian safety, the height of the railing, barrier, fence, or planter within the right-of-way shall not exceed three feet in elevation.

ii. Adequate lighting of barriers and railings for stairways and sidewalks shall be provided.

iii. No cantilevered projections over a public right-of-way or other pedestrian walkway shall be permitted. A change in paving pattern and texture may be required to alert pedestrians of a change in sidewalk use.

iv. Awnings or umbrellas may be used in conjunction with all outdoor eating areas. For sidewalk cafes within the public right-of-way, awnings shall be adequately secured, retractable and shall be constructed and installed to the satisfaction of the building official. At no point shall the height of the awning including the valance be less than seven feet from the floor of a sidewalk cafe.

v. Sidewalk cafes should be at the same elevation as the adjoining sidewalk. However, in the event of a grade change, consideration may be given to permit the floor level of the sidewalk cafe to be elevated or depressed.

6. Environmental Compatibility.

a. The outdoor eating area should fit in with the character of the area and reinforce the aspect of outdoor pedestrian plazas/park settings.

b. The scale of an outdoor cafe should be compact, and suggest intimacy, charm and functionality through materials, landscaping, signs, and use.

c. The hours of operation of an outdoor eating area shall be limited to the hours of operation of the associated eating or drinking establishment.

E. Encroachment Permit Required. An encroachment permit shall be required for a sidewalk cafe in accordance with the provisions of SBMC [11.20.200](#) and shall be applied for and processed concurrently with the application for a conditional use permit.

F. Liability Insurance. The permittee shall agree to hold the city of Solana Beach harmless and indemnify the city of Solana Beach from and against all claims, demands, costs, losses, damages, injuries, litigation, and liability arising out of or related to the use of the public property by the permittee or permittee's agents, employees, contractors, or guests. The permittee shall also give evidence of liability insurance in

an amount determined by the issuing authority to be sufficient to deal with the maximum amount of potential liability related to permittee's use of the public property, and such additional terms as the issuing authority deems appropriate. The issuing authority may require an additional bond to be posted as security for the performance of permittee's obligation to repair all public property damaged as a result of permittee's use of the public property. (Ord. 185 § 2, 1993)