

# Capitola City Council

## Agenda Report



**Meeting:** April 28, 2022

**From:** Community Development

**Subject:** Temporary Outdoor Dining Program

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**Recommended Action:** 1) Receive a report on the coastal commission certification of Ordinance 1050: Outdoor Dining in the Public Right of Way; and 2) Consider adopting the proposed resolution extending the COVID-19 temporary outdoor dining use permits with new modified conditions, including fees.

**Background:** On June 2, 2020, in response to the COVID-19 pandemic and the ensuing social distancing orders, the City adopted Emergency Order No. 4-2020 to issue temporary use permits to allow local restaurants outdoor dining within public parking spaces and on private property. City Council extended the temporary outdoor dining use permit program four times in 2021. The temporary program is currently due to expire on May 31, 2022.

In September of 2021, City Council directed staff to develop a program for permanent street dining in Capitola Village. On December 9, 2021, City Council adopted Ordinance 1050 allowing 25 Village parking spaces to convert to street dining areas and allowing sidewalk dining on Monterey Avenue, Capitola Avenue, and the Capitola Wharf. The ordinance will not take effect until certified by the Coastal Commission.

In January 2022, City staff submitted the ordinance to the Coastal Commission for certification. Coastal Commission staff has requested two changes to the ordinance which staff has identified as potentially problematic. Currently, City staff is working with Coastal staff toward a solution. However, due to this delay certification will not occur prior to May 31, 2022, when the temporary outdoor dining use permits are set to expire. The purpose of this report is to provide an overview of the temporary outdoor dining use permit program, and outline staff recommendations for program changes should Council wish to extend the temporary program until Ordinance 1050 is certified by the Coastal Commission.

**Discussion:** The temporary outdoor dining use permit program is linked to Emergency Order 4-2020. Based on prior City Council action, the temporary program expires on May 31, 2022. City Council has the option to let the program expire, extend the current program, or extend the program with new conditions.

There are currently 18 active temporary outdoor dining permits citywide: 12 in the Village, one on the Wharf, and five outside the Village. In the Village, 10 dining areas are located within 27 public parking spaces and two are located on the sidewalk.

The five eating and drinking establishments with temporary outdoor dining use permits outside the Village are: East End Gastropub, Pizza My Heart 41<sup>st</sup> Avenue, Pono Hawaiian Bar and Grill, Sante Adarius Brewery, and the Cook House. Of the five, all dining areas outside the Village are in private parking lots or private open space. Each of the outdoor dining areas on private property have been well maintained and remain available for patrons.

### *Ongoing Concerns*

Within the Village, there are several ongoing issues related to the dining areas in public parking spaces. One significant item of concern is that the areas are underused: Staff monitored use in November 2021 and again in April 2022 (Attachment 1 and 2). The trend of little-to-no use and,

in some instances, street dining areas being unavailable to customers, is noted because if the spaces are not being used for dining, they could instead revert to valuable public parking spaces. In the most recent survey, 7 of 12 restaurants regularly allow access to outdoor areas during lunch and dinner hours. Others limit customer access to outdoor dining areas to only night and weekend operating hours. In a few instances, the outdoor dining areas appeared completely unused.

A second concern is the ongoing dining area maintenance. Although some restaurants do an exemplary job of keeping their outdoor dining area clean, plants maintained, and ground swept, others do not. Staff observed outdoor dining areas with litter on the ground (napkins and condiment packets) for multiple consecutive days, broken planters, and dead plants. There are several locations that have yet to transplant plants into planters, leaving unattractive empty planters. Overall, the appearance/maintenance of outdoor dining areas varies from establishment to establishment.

Further, City benches also require attention. The original design for outdoor dining areas in the public street included planters with posts and City benches as the area barriers. At the time of its adoption the outdoor dining temporary use permit program was anticipated for one summer; we are now headed into the program's third summer. The use of City benches as barriers for all participating restaurants worked well in the short-term. Now that the program has been extended several times, staff recommends that City benches be returned for public use. Staff has received multiple requests from members of the public to return the benches to their original locations for all to enjoy and some of the benches need repair and maintenance.

### *Special Events*

Special Events should also be considered if Council is to decide upon an additional program extension. The following special events are scheduled to take place in Capitola Village this summer and fall:

<b>Date</b>	<b>Event</b>
June 11 – 12	Capitola Rod and Custom Classic Car Show
July 24	Wharf to Wharf
September 10 – 11	Art and Wine Festival
September 24 – 25	Capitola Beach Festival
October 9	Monte Foundation Fireworks

In summary, the temporary outdoor dining program was put in place to assist businesses through the pandemic. Now that all restaurants are allowed to function at full capacity with no pandemic restrictions required, the use of the outdoor dining areas has decreased substantially, except for in food establishments with limited interior dining. Understanding that many of the outdoor dining areas are not being utilized, City staff recommends that outdoor dining be balanced with the high demand for public parking. To create this balance, staff recommends only continuing the temporary outdoor dining program with the addition of the following requirements:

1. Implement the "open for use" requirement from Ordinance 1050. Require all outdoor dining be open for use a minimum of five days per week, except in cases of inclement weather. "Open for use" means that the eating or drinking establishment must allow customers to use the outdoor dining area when the establishment is open for business. Signs should indicate seating available for patrons.
2. Remove all city benches from outdoor dining areas and instead require planters every 5-feet. Planters must be a minimum of five gallons and be consistent in design throughout the outdoor dining area. Planers must contain live plants.

3. Require a maintenance deposit. Each establishment shall pay a \$500 maintenance deposit. Staff will do random, periodic inspections to ensure street dining areas are clean, plants are alive and maintained, ground is swept, and the tables and heaters organized. Non-compliance will result in an administrative citation with a fee assessed against the depots. If all funds are depleted due to multiple citations for non-compliance, the outdoor dining permit will be revoked.
4. Require a fee of \$1.50 per square foot per month, due on the 15<sup>th</sup> of the month prior. For example, a single parking space is approximately 180 square feet. The monthly fee would be \$283. All establishments participating June 1 and beyond must pay the appropriate fee by May 15, 2022. The recommended fee is based on the annual \$3,400 fee established for the permanent program, prorated to a monthly fee.

The above conditions are included in a proposed resolution (Attachment 3), which extends the deadline for temporary use permits.

On October 8, 2021, Assembly Bill No.61 was passed by the State to allow jurisdictions the ability to extend the outdoor dining that take up existing parking spaces to July 1, 2024. Staff recommends extending the Village two months beyond the Coastal Commission's certification of Ordinance 1050. This will allow adequate time to hold the lottery and issue permits.

City Council could consider a different expiration date for temporary outdoor dining use permits held by restaurants located outside the Village.

Fiscal Impact: The temporary outdoor dining use permit program reduces parking meter revenue by approximately \$7,587 per month based on pre-pandemic annual revenue.

Attachments:

1. Utilization survey November 2021:
2. Utilization survey April 2022
3. Proposed resolution extending temporary use permits with new conditions

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