



Folsom City Council Staff Report

MEETING DATE:	9/13/2022
AGENDA SECTION:	New Business
SUBJECT:	Ordinance No. 1332 – An Ordinance of the City of Folsom Adding Chapter 12.25, “Temporary Outdoor Dining Permit”, to the Folsom Municipal Code Regarding Temporary Use of Parking Space on City Streets and City-owned Public Properties for Outdoor Dining (Introduction and First Reading)
FROM:	Community Development Department

RECOMMENDATION / CITY COUNCIL ACTION

Staff respectfully recommends that the City Council introduce and conduct first reading of Ordinance No. 1332 – An Ordinance of the City of Folsom Adding Chapter 12.25, “Temporary Outdoor Dining Permit”, to the Folsom Municipal Code Regarding Temporary Use of Parking Space on City Streets and City-owned Public Properties for Outdoor Dining.

BACKGROUND / ISSUE

Following proclamation by the State and the County of the COVID-19 public health emergency, the Folsom City Council proclaimed a local emergency caused by the rapid spread of COVID-19 in Sacramento County and throughout California.

The City’s Director of Emergency Services (City Manager) issued Emergency Order DES-04-20 on May 1, 2020 which included, among other things, permission for temporary use of certain City-owned public properties for outdoor dining until termination of the local emergency. Thereafter, several restaurants in the City fronting public streets with on-street parking obtained temporary permits to use designated on-street parking areas (the “parklets”) as well as City-owned public property for outdoor dining.

Following a review of the proclamation of the COVID-19 local emergency on August 23, 2022, the City Council directed staff to bring an action item to this Council meeting to terminate the local emergency but keep the temporary outdoor dining permit process in place.

POLICY / RULE

The City Council has authority to enact or repeal ordinances pursuant to Section 2.12(A) of the Folsom City Charter.

ANALYSIS

For over two years since allowing temporary use of parking spaces on City streets and City-owned public properties for outdoor dining, the City has received no complaint except one recently where an individual brought to the City's attention that the "parklet" outdoor dining areas lack ADA accessibility. The City promptly notified all permittees to review and evaluate ADA accessibility in their parklet areas under the permit condition prohibiting interference with access under the Americans with Disabilities Act.

The proposed Ordinance will make the temporary outdoor dining permit on City Streets and City-owned public properties process permanent in the Folsom Municipal Code and not dependent on the COVID-19 local emergency. The following are some of the key provisions for the Temporary Outdoor Dining Permit:

1. Permit valid for 12 months and may be renewed
2. Permit requires approval of an encroachment permit
3. Permit not transferrable to another location
4. Permit subject to cancelation with written determination of danger or noncompliance by Community Development Director
5. Permittee required to provide liability insurance and indemnity to City

The permit application will be reviewed and evaluated by the Community Development Department, in consultation with the Public Works Department, Parks and Recreation Department, Fire Department and Police Department, for suitability of using the proposed on-street parking space or City-owned public property for outdoor dining. Upon receiving necessary plans submitted with the application, City staff will work collaboratively with the applicant to make the outdoor dining area safe and enjoyable for everyone.

FINANCIAL IMPACT

The City Council will utilize the Site Design Review fee previously adopted by City Council Resolution for the Temporary Outdoor Dining Permit. The financial impact on the City's general fund will be negligible.

ENVIRONMENTAL REVIEW

This action is not considered a project under Section 15061(b)(3) of the California Environmental Quality Act Guidelines, and as such is exempt from environmental review.

ATTACHMENT

Ordinance No. 1332 – An Ordinance of the City of Folsom Adding Chapter 12.25, “Temporary Outdoor Dining Permit”, to the Folsom Municipal Code Regarding Temporary Use of Parking Space on City Streets and City-owned Public Properties for Outdoor Dining (Introduction and First Reading)

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Pam Johns", followed by a long horizontal line extending to the right.

Pam Johns, Community Development Director

ORDINANCE NO. 1332

**AN ORDINANCE OF THE CITY OF FOLSOM
ADDING CHAPTER 12.25, "TEMPORARY OUTDOOR DINING PERMIT",
TO THE FOLSOM MUNICIPAL CODE REGARDING TEMPORARY USE OF
PARKING SPACE ON CITY STREETS AND CITY-OWNED PUBLIC PROPERTIES
FOR OUTDOOR DINING**

The City Council of the City of Folsom does hereby ordain as follows:

SECTION 1 PURPOSE

The purpose of this Ordinance is to allow temporary use of parking space on City street and City-owned public property for outdoor dining by adding Chapter 12.25, "Temporary Outdoor Dining Permit", to the Folsom Municipal Code.

SECTION 2 ADDITION TO CODE

Chapter 12.25 is hereby added to the Folsom Municipal Code to read as follows:

**Chapter 12.25
Temporary Outdoor Dining Permit**

Sections:

- | | |
|------------------|---|
| 12.25.010 | Temporary use of parking space on city street and city-owned public property for outdoor dining. |
| 12.25.020 | Permit required. |
| 12.25.030 | Permit not transferable. |
| 12.25.040 | Modification or cancelation of permit. |
| 12.25.050 | Insurance and indemnity. |

12.25.010 Temporary use of parking space on city street and city-owned public property for outdoor dining.

A. Restaurants desiring to use parking space on City street or City-owned public property for outdoor dining may apply for a Temporary Outdoor Dining Permit from the Community Development Department.

B. If approved through issuance of a Temporary Outdoor Dining Permit under this Chapter, the use of parking space on City street or City-owned public property for outdoor dining shall be temporary and subject to modification or cancelation by the City at any time with notice to the permittee.

C. No real property interest or right is provided, given, or otherwise conveyed to any person or entity using parking space on City street or City-owned public property for outdoor dining under this Chapter.

D. The use of parking space on City street or City-owned public property for outdoor dining shall not interfere with vehicular and pedestrian traffic, or access under the Americans with Disabilities Act.

12.25.020 Permit required.

A. No outdoor dining in parking space on City street or City-owned public property shall be allowed without a valid Temporary Outdoor Dining Permit.

B. The permit application shall be on a form prescribed by the Community Development Department and shall include necessary plans and supporting materials of the proposed location and layout and any information deemed necessary by the Department to determine compliance with applicable building and fire codes and accessibility requirements.

C. The permit application shall be deemed incomplete without payment of a non-refundable permit fee (Site Design Review fee) established by resolution of the City Council.

D. All Temporary Outdoor Dining Permits also require approval of an Encroachment Permit and payment of applicable fee adopted by resolution of the City Council.

E. The Community Development Department shall, in consultation with the Public Works Department, Parks and Recreation Department, Fire Department and Police Department determine the suitability and appropriateness of the proposed use of parking space on City street or City-owned public property requested by the restaurant for outdoor dining.

F. The permittee shall comply with the requirements of this Chapter and all conditions specified in the permit.

G. Temporary fencing not exceeding 3 feet tall to separate the outdoor dining area from vehicular and pedestrian traffic shall be placed in a safe manner around the outdoor dining area. Exceptions may be granted for taller fencing if required by other outside agency such as Alcohol and Beverage Control (ABC).

H. No permanent item or structure may be installed on City streets or City-owned public property.

I. Permittee shall comply with all applicable State and County laws and regulations pertaining to outdoor dining, including but not limited to sale and consumption of alcoholic beverages.

J. Permit issued under this Chapter is temporary, modifiable and cancelable at any time upon notice to the permittee, valid for 12 months upon issuance unless canceled, and renewable subject to verification of compliance of the permit conditions by the Community Development Department. Application for a Temporary Outdoor Dining Permit and Encroachment Permit is required for permit renewal, along with payment of applicable permit fees.

K. The use permitted under this Chapter shall cease upon cancelation of the permit, and the permittee shall return public property to the condition existing at the time of permit issuance within seven calendar days of receiving cancelation notice.

L. For purpose of this Chapter, "permittee" shall include the person or entity receiving the permit and the restaurant entity, business, or organization operating under the permit.

12.25.030 Permit not transferable.

Permits issued pursuant to this Chapter are not transferable to another location.

12.25.040 Modification or cancelation of permit.

A. The Community Development Director may modify conditions imposed on permits issued under this Chapter with notice to the permittee.

B. The Community Development Director may cancel any permit issued under this Chapter for the following reasons:

1. Failure to comply with any condition imposed on the permit.
2. Failure to comply with any provision under this Chapter.
3. The outdoor dining has been conducted in a manner contrary to the application and approval granted in the permit.
4. The outdoor dining operation poses a danger or hazard to vehicular or pedestrian traffic, or the public, or interferes with access under the Americans with Disabilities Act.
5. The permittee or his/her/its employees or agents have failed to comply with all applicable federal, state, and local laws, rules, or regulations in connection with the outdoor dining operation.
6. The applicant has knowingly made a false statement of material fact or has knowingly omitted a material fact in the application.

C. The Director's determination to cancel the permit shall be in writing, setting forth the reasons for said determination.

12.25.050 Insurance and indemnity.

A. The permittee shall maintain in full force and effect, at its sole cost and expense, commercial general liability insurance coverage for claims of bodily injury and property damage liability not less than \$1,000,000 for each occurrence and provide the City with an additional insured endorsement and primary and non-contributory endorsement naming the City of Folsom and its officers, agents and employees as additional insured.

B. The permittee shall protect, defend, indemnify, save and hold the City and its officers, agents, and employees harmless from any and all claims, demands, lawsuits, or causes of action for death or injury to persons, or damage to property resulting from intention or negligent acts, errors, or omissions of the permittee or its employees, contractors, and agents, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of the permittee or its employees, contractors, or agents, or by the permittee's operation under the permit.

SECTION 3 SCOPE

Except as set forth in this Ordinance, all other provisions of the Folsom Municipal Code shall remain in full force and effect.

SECTION 4 NO MANDATORY DUTY OF CARE

This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 5 SEVERABILITY

If any section, subsection, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council declares that it would have passed each section irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared unconstitutional, invalid, or ineffective.

SECTION 6 EFFECTIVE DATE

This ordinance shall become effective thirty (30) days from and after its passage and adoption, provided it is published in full or in summary within twenty (20) days after its adoption in a newspaper of general circulation in the City.

This ordinance was introduced and the title thereof read at the regular meeting of the City Council on September 13, 2022 and the second reading occurred at the regular meeting of the City Council on September 27, 2022.

On a motion by Council Member _____ seconded by Council Member _____, the foregoing Ordinance was passed and adopted by the City Council of the City of Folsom, State of California, this 27th day of September 2022, by the following roll-call vote:

AYES: Councilmember(s):
NOES: Councilmember(s):
ABSENT: Councilmember(s):
ABSTAIN: Councilmember(s):

Kerri M. Howell, MAYOR

ATTEST:

Christa Freemantle, CITY CLERK