



# ***CITY COUNCIL AGENDA REPORT***

---

MEETING DATE: JUNE 2, 2020

ITEM NUMBER: NB-3

**SUBJECT: URGENCY ORDINANCE TO SUSPEND THE REQUIREMENTS FOR MINOR CONDITIONAL USE PERMITS AND CONDITIONAL USE PERMITS TO ALLOW TEMPORARY OUTDOOR ACTIVITIES**

**DATE: MAY 27, 2020**

**FROM: BARRY CURTIS, DIRECTOR OF DEVELOPMENT SERVICES**

**PRESENTATION BY: BARRY CURTIS, DIRECTOR, DEVELOPMENT SERVICES**

**FOR FURTHER INFORMATION CONTACT: BARRY CURTIS  
Barry.curtis@costamesaca.gov**

---

## **RECOMMENDATION:**

Approve an Urgency Ordinance to allow the suspension of the requirement for a minor conditional use permit or conditional use permit to facilitate the installation or temporary expansion of outdoor dining patios and that religious services be temporarily permitted to occur in accompanying parking lots for a period of 180 days as a result of COVID-19 limitations.

## **BACKGROUND:**

Due to the COVID-19 pandemic, state and local mandates prohibited on-site dining at restaurants. As of May 23, Orange County has entered the Phase 2 re-opening of certain businesses, which includes restaurants for dine-in use subject to reach restaurant's readiness to implement and comply with specific guidance and restrictions: <https://covid19.ca.gov/pdf/checklist-dine-in-restaurants.pdf>.

Predominantly due to new physical distancing protocols and other best practices contained in the above guidance, dine-in restaurants will see their previous dining capacities reduced on average by approximately 50-70 percent. In an effort to address this reduction in capacity, staff has prepared a number of temporary measures for City Council consideration. These temporary measures fall into three general categories and are intended to assist restaurants during these difficult times while ensuring the safety of the public:

1. Allow temporary dining areas on private property on sidewalks, plazas, vacant spaces, or other, non-parking lot areas

2. Allow temporary outdoor dining within the parking lots
3. Allow temporary outdoor dining in the public right-of-way

Also proposed is a process to consider a temporary waiver of valet parking requirements and to allow religious services to be temporarily permitted to occur in accompanying parking lots within the City.

### **ANALYSIS:**

#### *Outdoor Dining Patios*

Following are considerations for each of the three scenarios.

#### Temporary Dining Opportunities on Private Property (excluding parking lots)

Many properties have oversized sidewalks, plazas or other areas where outdoor seating can be provided, as well as some vacant commercial space adjacent to restaurants. Additionally, the Zoning Code permits outdoor seating by right if the seating is not placed in required setbacks or landscaping areas and when adequate parking is provided. It is expected that with limits on indoor seating under the new guidance and regulations, parking generation will also be limited. Therefore, temporary outdoor dining areas or limited expansion into adjacent vacant indoor spaces should not result in significant increases in parking demand, if any. Regardless, the proposed measures will be temporary in nature and, staff believes, are critical to the survival of much of the City's restaurant community. Therefore, the recommendation is to allow the owner/manager of the property to work with the restaurant owner to provide expanded dining opportunities, subject to the following parameters:

- All dining areas shall observe State and local health guidelines for restaurants
- Temporary outdoor seating is restricted to serving existing, on-site restaurants
- Temporary outdoor seating is located within a reasonable proximity to the restaurant
- A minimum 4-foot-wide pedestrian access is provided to accommodate wheelchairs
- Pedestrian ingress/egress to the subject or other businesses may not be obstructed
- Any service of alcoholic beverages in these temporary areas will be subject to approval by the ABC
- Any canopies or tents will require Fire and Building Department approval prior to installation
- Temporary outdoor dining on a property within 200 feet of a residential zone will be required to be closed between 11 PM and 6 AM
- These temporary measures shall remain in effect for 180 days. At such time, the City Council will review circumstances and may extend these temporary measures, as necessary

### Provide Temporary Outdoor Dining within Private Parking Lots

Some properties provide limited to no space to accommodate additional outdoor dining opportunities. In such cases, staff recommends the City Council authorize staff to consider the limited use of on-site parking areas for dining opportunities. Because this could have impacts on parking availability for the restaurant and other tenants on the property, impact on-site vehicles circulation, and create the potential for safety conflicts, staff recommends such proposals be considered on a case-by-case basis subject to a staff-approved temporary use permit. This outdoor dining could be subject to the following parameters.

- All dining areas shall observe State and local health guidelines for restaurants
- Temporary outdoor seating be restricted to serving existing, on-site restaurants
- Only parking areas and/or driveways abutting a restaurant or access to a restaurant shall be permitted to be converted to temporary outdoor dining – no satellite patio spaces or crossing of active drive aisles would be permitted
- Temporary outdoor dining must allow for adequate vehicular circulation
- Clearly visible safety barriers (such as planters and other vertical barriers) will be required so drive aisles/access for drivers is clearly visible – including in the evening hours
- Any service of alcoholic beverages in these temporary areas would be subject to approval by the ABC
- Any canopies or tents will require Fire and Building Department approval prior to installation
- Temporary outdoor dining on a property within 200 feet of a residential zone to be closed between 11 PM and 6 AM
- Use of shared parking lots for temporary outdoor seating should be closely coordinated with landlords and/or other users
- These temporary measures shall remain in effect for 180 days. At such time, the City Council will review circumstances and may extend these temporary measures, as necessary

### Provide Outdoor Dining within Certain Public Rights-of-Way

Some cities have allowed temporary installations in public rights-of-way such as sidewalks and traffic lanes. Seating within areas such as extra-wide City sidewalks adjacent to a restaurant, areas of excess public right-of-way behind public sidewalks, and even the strategic use of portions of city streets (e.g. curbside parking and other locations where streets are wider than necessary, and the strategic closure of lanes) can offer additional dining opportunities so long as adequate handicap access is provided and other concerns are satisfied. In this regard, staff recommends that any temporary use of right-of-way within a public street (such as parking, traffic lanes and/or street closures) be subject to Public Services, Police and Fire Department review and implemented where safe and appropriate. At this time, staff is seeking direction

regarding the establishment of initial pilot programs on west Randolph Street and on West 19<sup>th</sup> Street in areas westerly of Pomona Avenue.

Regarding other areas within the public right-of-way, staff recommends that outdoor dining opportunities be permitted in areas where the sidewalk width can safely permit both required pedestrian access and seating and, similarly, in areas where additional public right-of-way exists to accommodate outdoor dining. Staff's recommendation is subject to the following parameters, and subject to issuance of a temporary use permit by the Planning Division:

- All dining areas shall observe State and local health guidelines for restaurants
- Temporary outdoor seating be restricted to serving existing, on-site restaurants
- Temporary outdoor dining opportunities shall be adjoining or in immediate vicinity to the restaurant
- A minimum 4-foot-wide pedestrian access is required to accommodate wheelchairs
- Pedestrian or vehicular ingress/egress to the subject and/or other businesses may not be obstructed
- Any service of alcoholic beverages in these temporary areas will be subject to approval by the ABC
- Temporary outdoor dining on a property within 200 feet of a residential zone to be closed between 11 PM and 6 AM
- An encroachment permit shall be obtained before the establishment of temporary outdoor dining spaces
- Umbrellas only will be permitted; no canopies will be allowed
- These temporary measures shall remain in effect for 180 days. At such time, the City Council will review circumstances and may extend these temporary measures, as necessary

#### *Other Outdoor Activities/Related Activities*

#### Valet Parking

Several properties are conditionally required to provide valet parking to address required parking. However, staff believes this requirement is contrary to social distancing and public health efforts and, for the time being, staff believes such services will not be utilized by the overwhelming majority of diners. Consequently, staff recommends that valet parking requirements be waived for the next 180 days corresponding with allowances for temporary outdoor dining, subject to a similar reconsideration and potential extension at that time.

#### Religious Institutions

The State recently relaxed restrictions for religious services and some institutions have proposed conducting services in their parking lots. The Zoning Code does not permit

religious assemblies in a parking lot unless approved under a master plan or minor conditional use permit. Due to social distancing requirements, and to allow flexibility for religious institutions, it is recommended that religious services be temporarily permitted to occur in adjoining parking lots, subject to staff approval of a temporary use permit and subject to the following parameters:

- Temporary religious services within a parking lot are prohibited between 7 PM and 9 AM
- Amplification is prohibited; use of smart phones or car radios (if possible) to transmit audio is recommended and encouraged
- Temporary outdoor religious services may be provided for 180 days unless the temporary approvals are extended, subject to a similar reconsideration and potential extension at that time

#### Future Modifications

To allow staff to be responsive to changing circumstances, staff recommends that revisions to these temporary measures may be approved by the City Manager or her/his designee.

#### **ALTERNATIVES CONSIDERED:**

The City Council may choose not to temporarily suspend the requirements for the minor conditional use permit/conditional use permit to allow outdoor activities such as temporary outdoor dining on private properties; temporarily waive the requirement for valet parking; and allow temporary religious services within the parking lots. The City Council may also determine not to allow any type of private activity within the public right-of-way nor to allow staff to modify temporary outdoor uses without first returning to the City Council.

#### **FISCAL REVIEW:**

There is no fiscal impact to the City.

#### **LEGAL REVIEW:**

The City Attorney's Office has reviewed this staff report and drafted the attached urgency ordinance and approves them as to form.

#### **CITY COUNCIL GOALS & PRIORITIES:**

Goal #3: Keep the City Fiscally Sustainable.

#### **CONCLUSION:**

Approval of the Urgency Ordinance will allow the enlargement or establishment of outdoor activities including dining patios and religious services that would provide a safe

way to encourage people to return to City-wide businesses and religious institutions until such time that the COVID-19 restrictions are lifted. The proposed temporary measures are intended to provide an economic safety net for local restaurants and other businesses as well as a means for religious institutions to again provide on-site services for their parishioners.

---

**BARRY CURTIS, AICP**  
Economic and Development Services  
Director

---

**KIMBERLY HALL BARLOW**  
City Attorney

---

**CAROL MOLINA**  
Acting Finance Director

Attachment 1 – [Urgency Ordinance](#)