



CITY OF MANHATTAN BEACH CITY HALL

1400 Highland Avenue, Manhattan Beach, CA 90266

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TO: Honorable Mayor and Members of the City Council

FROM: Carrie Tai, Community Development Director

MEETING: City Council Adjourned Regular Meeting, June 4, 2020

SUBJECT: Agenda Item No. 2 – Discussion of Outdoor Dining and Retail Options on the Public Right-of-Way (Sidewalks or Parking Spaces) and Private Property for Restaurants and Businesses to Accommodate Social Distancing Measures Required by State and County Protocols to Limit the Spread of COVID-19

DATE: June 3, 2020

SUPPLEMENTAL STAFF REPORT

RECOMMENDATION:

Staff recommends that the City Council receive staff's report, conduct a discussion, and provide input.

FISCAL IMPLICATIONS:

There are fiscal implications associated with the recommended action. While a business will compensate the City the equivalent amount of parking revenue for the use of metered parking spaces, the City will not benefit from parking citation revenue during the duration of the temporary use. Existing applications for encroachments or outdoor use have associated fees which defray the cost of processing, so there is no additional burden to the City from processing applications.

BACKGROUND:

On March 13, 2020, the City declared a State of Emergency due to the spread of COVID-19, the disease caused by the novel coronavirus. The Los Angeles County Health Department issued a Safer-at-Home order on March 16, 2020 closing most businesses, with the exception of "essential" businesses. Non-essential retail uses were ordered to close, and restaurants were restricted to pick-up or delivery. On May 22, 26, and 29, 2020 Los Angeles County began gradually relaxing the closures, allowing for non-essential retail to fully open to customers, as well as restaurants to re-open their dining rooms, along with operating protocols to limit the spread of COVID-19. These protocols include social distancing requirements (where customers must increase space between themselves

and other) as well as limits of restaurant dining room capacities to 60%. One way to facilitate the recovery of businesses and restaurants is to allow them to expand operations outdoors.

On May 19, 2020, in response to requests from several downtown business owners and the Downtown Business and Profession Association, the City Council conducted a discussion temporary outdoor use of dining and business areas to allow for social distancing, in accordance with State and County protocols to limit the spread of COVID-19. The City Council provided policy direction supporting the accommodation of these requests and directed that staff work with business owners on this effort. The City Council also requested that staff review businesses in settings throughout the City, to ensure that the opportunity for temporary outdoor operations would be available.

DISCUSSION:

Staff considered a broad spectrum of situations to ensure businesses in different parts of the City had options. Staff also reviewed existing processes and determined that the City’s Municipal Code already includes provisions to accommodate most requests for outdoor use. It appeared that only slight modifications to internal processes and agreements were necessary.

The following table summarizes temporary outdoor use options for businesses, the type of application, relevant Municipal Code section. After the table, there are more detailed descriptions of each situation.

Temporary Outdoor Use Processes for Businesses or Restaurants

Type of Outdoor Use	Encroachment Location		
	Public Right-of-Way (Sidewalk)	Public Right-of-Way (Roadway or Parking Spaces)	Private Property / Non Public Right-of-way
Outdoor Dining	Encroachment Permit (Sidewalk Dining) Section 7.36.160 Apply Online (CSS) – Sidewalk Dining	Encroachment Permit (Dining and Business Use in Public Right-of-way) Section 7.36.030 Apply Online (CSS) – Encroachment Minor	Outdoor Facilities Permit Section 10.60.080 (Attachment 3 - Application)

<p style="text-align: center;">Outdoor Display/Sales</p>	<p style="text-align: center;">Encroachment Permit (Sidewalk Use)</p> <p style="text-align: center;">Section 7.36.030</p> <p style="text-align: center;">Apply Online (CSS) – Encroachment Minor</p>	<p style="text-align: center;">Encroachment Permit (Dining and Business Use in Public Right-of-way)</p> <p style="text-align: center;">Section 7.36.030</p> <p style="text-align: center;">Apply Online (CSS) – Encroachment Minor</p>	<p style="text-align: center;">Outdoor Facilities Permit</p> <p style="text-align: center;">Section 10.60.080</p> <p style="text-align: center;">(Attachment 3 – Application)</p>
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Public Right-of-Way (Sidewalk)

Business owners and restaurants have requested to place tables and chairs, as well as sales merchandise, outdoors along the sidewalk. Section 7.36.080 includes an existing permitting process specifically for sidewalk dining. This process is already in place.

The City’s Municipal Code can also accommodate for business uses like sidewalk sales by way of an Encroachment Permit and associated agreements. Other than the permit fee, there is currently no use fee for a sidewalk. The walking portion of a sidewalk must be kept clear.

Public Right-of-Way (Roadway or Parking Spaces)

Manhattan Beach Municipal Code Chapter 7.36 (Private Use of the Public Right-of-Way) allows private entities to use the public right-of-way if they obtain an Encroachment Permit from the City. A Right-of-Way Permit is also required if there is construction proposed; a Building Permit may also be needed.

The City routinely issues Encroachment Permits and Right-of-Way Permits on non-roadway portions of the right-of-way. These Permits are commonly issued for permanent residential encroachments (walk streets), or temporary encroachments, such as construction work in the right-of-way and already include permit conditions specific to each request, as well as requirements for insurance, liability protection for the City, etc. Staff is able to extend this process to accommodate for temporary outdoor uses in the public right-of-way. Attachments 1 and 2 detail newly-developed checklists and guidelines to assist staff and applicants.

Business Temporary Use of Metered Parking Spaces

Business owners, particularly restaurants, in the downtown have requested to construct “dining decks” in the metered parking space areas adjacent to their businesses to allow for outdoor dining for three (3) months. These metered parking spaces are a revenue source for the City. Most of the City’s downtown is within the Coastal zone, so public access is also a consideration.

While this signifies a departure from the City's existing practice, the Municipal Code allows for this. Therefore, staff has reworked internal processes to accommodate for these requests. This includes: 1) Use of the existing CSS Minor Encroachment Process; 2) New Temporary Encroachment Agreement to reflect the temporary nature of the use, need for protective barriers to separate customers and vehicles, operating criteria, and requirement to compensate the City an amount equivalent to lost parking meter revenue, along with other requirements. Due to safety reasons, staff proposes to allow "dining decks" along the curb only on streets with a maximum speed limit of 25 miles per hour.

Some other operating terms include:

- 1) No encroachments in travel lanes permitted.
- 2) Adherence with applicable building code and accessibility regulations.
- 3) Hours of operation are from 6:00 a.m. to 10:00 p.m.
- 4) No music or live entertainment.
- 5) All required State and County operating protocols.
- 6) Applicant must maintain and clean the encroachment area.
- 7) City can require removal with advanced notice.

Private Property / Non-Public Right-of-Way

Business and restaurant owners wishing to expand into their parking lots, courtyards, or other outdoor spaces on private property or non-public right-of-way (like Metlox Plaza) may apply for an Outdoor Facilities Permit, which is an existing process coordinated by the Planning Division. There is a permit processing fee and the application requires the property owner's approval.

Service of Alcohol

Most restaurants within the City were approved through a Use Permit, which includes conditions of approval that they operate in accordance with their approved floor plans as well as regulations from the California Department of Alcohol and Beverage Control (ABC). The California ABC has issued a series of temporary regulatory relief measures, including take-out of alcoholic drinks and allowing licensees to serve alcohol in any expanded areas created for social distancing protocols.

The City's regulations for Use Permits require a Use Permit Amendment to be processed in the same manner as a new Use Permit, which entails a public hearing before the Planning Commission and application fees of over \$6,000. Given the time sensitivity of businesses reopening, and the allowances by the California ABC, it is impractical to require every restaurant to amend their Use Permit to reapply for their temporary expanded floor plan. Therefore, staff proposes to work with the City Manager's office on an Emergency Order that would allow restaurants to temporarily expand their floor plans while continuing to comply with all California ABC regulations, and allow deviations from Municipal Code requirements such as the requirement addressed in the next paragraph.

Section 4.48.030 of the Municipal Code prohibits drinking of any alcoholic beverage on most public areas (including boulevard, streets, avenues, court, or other public place), unless specifically permitted by the prior written approval of the City. Staff proposes that the Emergency Order will

allow alcohol consumption on areas approved for expanded dining room service as part of the permit conditions included with each Encroachment Permit, consistent with ABC's temporary regulations.

CONCLUSION:

Staff recommends that the City Council receive staff's report, conduct a discussion, and provide input as desired.

PUBLIC OUTREACH:

Staff has been working with downtown business owners and the Downtown Business and Professional Association, the Chamber of Commerce, and representatives from the North End to gauge interest. As of Wednesday, staff has received 5 requests for outdoor dining in parking spaces, 3 applications for sidewalk dining, and 1 application for outdoor dining in Metlox.

ENVIRONMENTAL REVIEW:

This report covers existing processes permitted by the Municipal Code. The City has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that there is no possibility that the activity may have a significant effect on the environment; therefore, pursuant to Section 15061(b)(3) of the State CEQA Guidelines the activity is not subject to CEQA; thus no environmental review is necessary.

LEGAL REVIEW:

The City Attorney has reviewed this report and determined that no additional legal analysis is necessary.

ATTACHMENTS:

- 1) Outdoor Dining/Use Checklist
- 2) Outdoor Dining/Business Use Guidelines (Draft)
- 3) Outdoor Facilities Permit Application (Private Property / Non Public-Right-of-Way)



**Outdoor Dining & Business Use
in the Public Right-of-Way Checklist
(MBMC Section 7.36)**

Sidewalk Dining/Business Use on the Sidewalk:

- Apply for an Encroachment Permit for Sidewalk Dining. (Apply online)
- Submit Certificate of Insurance with Endorsement naming the city as additionally insured.
- Submit site plan with measurements of sidewalk and dining/business use area.
- Pay Encroachment Permit-Sidewalk Dining fee (Credit Card Authorization Form).
- Sign Hold Harmless Agreement and Requirements Page.
- City issues Temporary Encroachment Permit-Sidewalk Dining/Business Use to applicant.

Outdoor Dining/Business in the Roadway:

- Apply for a Planning Encroachment-Minor permit. (Apply online)
- Submit Certificate of Insurance with Endorsement naming the city as additionally insured.
- Submit site plan with measurements of sidewalk and dining/business area.
- Pay Planning Encroachment Permit-Minor fee (Credit Card Authorization Form).
- Sign Temporary Encroachment Agreement.
- (If applicable) Apply for Building Permit (Commercial Addition) if physical structures over curb height are proposed, (i.e. raised dining deck) and submit required drawings/calculations/specs.
- Apply and pay for a Right-of-Way Permit for the construction or installation of physical improvements in the public right-of-way.
- (If applicable) City issues Building Permit to applicant.
- City issues Encroachment Permit to applicant.
- City issues Right-of-Way permit to applicant to construct any physical improvements in street. Improvements must be inspected and approved before business may operate in street.
- Pay monthly parking meter reimbursement invoices.



Outdoor Dining & Business Use in the Public Roadway Guidelines (MBMC Section 7.36)

Application Submittal Requirements:

- Apply for a Planning Encroachment-Minor permit. (Apply online)
- Submit Certificate of Insurance with Endorsement naming the city as additionally insured.
- Submit site plan of licensed area with measurements of sidewalk and dining/business area.
- Pay Planning Encroachment Permit-Minor fee (Credit Card Authorization Form).
- Sign Temporary Encroachment Agreement.
- (If applicable) Apply for Building Permit (Commercial Addition) if physical structures over curb height are proposed, (i.e. raised dining deck) and submit required drawings/calculations/specs.
- Apply and pay for a Right-of-Way Temporary Fencing Permit to construct/install barricades and/or platforms in the street.
- Pay monthly parking meter reimbursement invoices.

Permit Conditions:

- The existing sidewalk width must be left unobstructed at all times, excluding the curb area. Licensed area shall not obstruct driver visibility or reduce travel lane width.
- Any portion of the Licensed area within the roadway must be protected with continuous water filled barriers or concrete "k" rail on any side facing a traffic lane. Roadway encroachments are not permitted on streets over 25 mph.
- Applicants and their customers may not place any objects within the required sidewalk width, accessible paths or any portion of the public right-of-way that is not part of the Licensed Area.
- Exterior lighting or other equipment shall comply with current City codes and requirements. Temporary electrical connections, such as extension cords, are not permitted.
- Alcoholic Beverages may not be served or consumed in the outdoor dining area, unless otherwise authorized by California's Department of Alcohol, Beverage Control Fourth Notice of Regulatory Relief measures.
- Use of the Licensed Area must comply with all applicable requirements of Title 24 of the California Code of Regulations.
- Amplified music and/or dancing is prohibited.
- Outdoor activities shall be limited to the hours operating hours of the business, and in no case before 7am or after 10pm unless otherwise stated on permit. All unsecured objects and merchandise must be removed from City property within one-half hour after operating hours.
- All required or accessible exits, paths of travel and means of egress from establishments and businesses must be maintained and remain unobstructed.
- Business Owner shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements.
- Business Owner shall maintain the Licensed Area in a good, safe, neat, and sanitary condition to the satisfaction of City. Business Owner shall cause the Licensed Area to be cleaned regularly and kept free of litter.
- Business owner shall pay City for reimbursement of parking meter revenue at the rate of \$1.75 per hour for 13 hours per day per space from the first day of parking space is closed to the public to the last day, excluding holiday meter bagging period. Payment shall be made on a monthly basis.
- City shall have the right to terminate this Agreement for any reason or for no reason upon ten calendar days' written notice to Business Owner. Business Owner agrees to cease use of the Licensed Area within ten calendar

days of receipt of such notice, and to remove all improvements and objects placed on the Licensed Area by Business Owner or its employees, contractors, agents, or customers.

- Business Owner's use of the Licensed Area is subject to temporary modification or suspension at any time based on the public's priority for use of City right-of-way as determined solely by the City.
- Business Owner shall comply with all applicable requirements of any Order of the State Public Health Officer or the Los Angeles County Health Officer, including requirements for "Social (Physical) Distancing" and implementing and posting a "Social (Physical) Distancing Protocol".

I acknowledge receipt of a copy of the Encroachment Permit Requirements for Outdoor Dining & Business Use in the Public Right-of-Way and agree to comply with all permit conditions:

Name : _____ Business Name: _____

Signature: _____ Business Address: _____

Date: _____ Business Phone: _____



CITY OF MANHATTAN BEACH COMMUNITY DEVELOPMENT

1400 Highland Avenue, Manhattan Beach, CA 90266

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OUTDOOR FACILITIES PERMIT APPLICATION

Business Address: _____

Phone: _____

Name of Business: _____

Mobile: _____

Proprietor's Name: _____

E-mail: _____

This application is for **OUTDOOR DINING OR DISPLAY OF MERCHANDISE on private property only** and may not occupy more than 50% of the total "tenant frontage" of a building. Tenant frontage is the width of a tenant space measured from one sidewall to the other along the front exterior wall.

DESCRIPTION OF OUTDOOR ACTIVITY _____

Proposed Days _____

Proposed Hours _____

Attach a top view diagram with measurements of tenant area and location of proposed outdoor dining and/or display of merchandise on the site. (Include property lines, streets, and adjacent businesses.)

Check box if this request is due to COVID-19 re-opening requirements. A limited number of parking spaces may be occupied for outdoor facilities under the following conditions at the discretion of the City:

- 1) Number and location of proposed parking spaces to be occupied are identified on the diagram.
- 2) Outdoor dining and/or display of merchandise cannot encroach upon:
 - a. Required Walkways or Entrances
 - b. Required Drive Aisles or Fire Lanes
 - c. Disabled-Accessible Parking Spaces
 - d. Disabled-Accessible Path of Travel
 - e. Electric-Vehicle Charging Spaces
 - f. Carpool/Vanpool/Clean Air Spaces
- 3) Outdoor dining and/or display of merchandise is limited to seats/merchandise currently approved for the business's indoor use.
- 4) The outdoor facilities shall comply with all applicable codes and permitting requirements.
- 5) I understand and agree that I will remove all outdoor facilities from parking spaces at the time local and/or County COVID-19 orders restricting the affected indoor activities are rescinded.

I agree to comply with the terms and requirements of this permit in adherence to Section 10.60.080 of the Manhattan Beach Municipal Code, as listed on the reverse side.

Applicant's Signature: _____

Date: _____

Property Owner's Signature: _____

Date: _____

REVIEWED BY: Code Enforcement: _____ Date: _____

APPROVED BY: Planning Division: _____ Date: _____

PERMIT FEE (4125) \$160.00 IMAGING FEE (4017) \$2.00 TOTAL _____

Manhattan Beach Municipal Code 10.60.080 - Outdoor facilities.

The purpose of this section is to permit and regulate commercial outdoor displays of merchandise on private property and materials in order to encourage visual interest along commercial streets and support the business community while minimizing adverse aesthetic impacts to the public and nearby residential uses.

A. What is Permitted. Outdoor facilities activities may include:

1. Outdoor display of merchandise (except bulk inventory), materials (including chairs and benches for customer waiting) and equipment including items for customer pick-up, on the site of and operated by a legally established business.
2. Outdoor food and beverage service and outdoor dining on the site of and operated by a legally established business and accessory to an eating and drinking establishment or food and beverage sales business with incidental seating area, as defined in [Section 10.08.050](#). Outdoor food and beverage service and dining on public property is not regulated by this section and requires an encroachment permit pursuant to [Chapter 7.36](#) of this Code.

B. Where Permitted. Outdoor facilities authorized by this section are permitted for all legally established commercial and industrial uses. Notwithstanding the aforementioned, outdoor facilities are prohibited in all residential districts.

C. Performance Standards. Outdoor facilities are subject to the following:

1. Outdoor display of merchandise or materials shall not occupy public property, and may not occupy more than fifty percent (50%) of the total "tenant frontage" of a building as defined in [Section 10.72.030](#) of this title.
2. Yards, screening, or planting areas may be required to prevent adverse impacts on surrounding properties. The height of merchandise, materials, and equipment stored or displayed shall not exceed the height of the screening fence or wall, if required.
3. There shall be no outdoor preparation of food or beverages associated with outdoor dining where food is consumed at tables.

D. Exceptions. Notwithstanding the provisions of subsections A, B, and C of this section, outdoor storage and display shall be permitted in conjunction with the following use classifications in districts where they are permitted or conditionally permitted:

1. Nurseries, provided outdoor display is limited to plants and related materials only.
2. Vehicle/equipment sales and rentals, provided outdoor display shall be limited to vehicles, boats, or equipment offered for sale or rent only.

E. Application. The owner of a business shall submit a written request with application fee, for an outdoor facilities permit (which may consist of a letter) to the Community Development Director. The request shall include a full description of the display activity, including but not necessarily limited to: types of items to be displayed, location on the site, and hours during which items are to be placed outdoors. The Community Development director shall review the application for compliance with performance standards contained in this section and may impose conditions to avoid adverse impacts such as but not limited to public safety impediments, visual clutter, and disorderly displays.

F. Grounds for Denial—Revocation. If adverse impacts cannot be prevented, the Community Development Director shall deny the outdoor facilities permit application. If a business fails to comply with the terms and conditions of an approved outdoor facility permit the Community Development Director may revoke the permit.

G. Duration and Renewal. Upon approval, an outdoor facilities permit shall be valid for a period of one (1) year or until March 1st. Outdoor facilities permits may be renewed annually, upon finding by the Community Development Director that the business has complied with all imposed terms and conditions, and that no adverse impacts or nuisance conditions have resulted.

H. Appeals. Decisions of the Community Development Director may be appealed to the Planning Commission in accordance with [Chapter 10.100](#) of this Code.