



CITY OF

NEWPORT BEACH

City Council Staff Report

June 8, 2021
Agenda Item No. 20

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Resolution No. 2021-58: An Extension of Emergency Temporary Use Permits Issued to Businesses Due to State COVID-19 Restrictions (PA2020-069)

ABSTRACT:

For the City Council's consideration is a request to extend emergency temporary use permits ("ETUPs") through September 6, 2021, if Emergency Ordinance No. 2020-005 is terminated or repealed. This would allow for commercial uses (such as outdoor dining) and institutional uses to continue to utilize private property, parking lots, sidewalks, and public property as approved through the Back to Business program.

Thereafter, ETUP holders who wish to continue their permitted outdoor uses could apply for a limited-term permit which would be reviewed on an individual basis. This resolution also proposes to waive application fees for limited-term permits requested by ETUP holders.

RECOMMENDATION:

- a) Conduct a public hearing;
- b) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines under Class 1 (Existing Facilities), because this project has no potential to have a significant effect on the environment; and
- c) Adopt Resolution No. 2021-58, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing an Extension of Emergency Temporary Use Permits Issued to Commercial and Institutional Uses for the Use of Private Property, Parking Lots, Sidewalks, and Public Property in the City of Newport Beach (PA2020-069).*

DISCUSSION:

Back to Business Program

The Back to Business program was adopted on May 26, 2020, through Emergency Ordinance No. 2020-005 (Attachment B), which authorized the issuance of ETUPs during the COVID-19 pandemic to allow commercial businesses or religious institutions the opportunity to expand their use and utilize parking lots, sidewalks or public property. The application process incorporated an expedited review by City of Newport Beach (“City”) departments, ensuring the timely expansion of uses in a safe manner and minimizing impacts to the surrounding properties.

ETUP Extension

The attached resolution would extend existing ETUPs through September 6, 2021, and allow permit holders to continue to utilize private property, parking lots, sidewalks, and public property pursuant to the previous Emergency Ordinance No. 2020-005. The proposed extension of ETUPs would provide a transition period as restaurants and other commercial/institutional uses recover from the effects of the COVID-19 pandemic, continue operations per industry guidance, and recover economic costs caused by closures.

Thereafter, ETUP holders could then apply for a limited-term permit to continue to authorize their use. Applications would be reviewed on an individual basis based on the merits of the location, availability of parking, and land use compatibility. Applications could be approved administratively for durations less than 90 days or for up to a one-year duration through a public hearing process with Zoning Administrator approval.

This resolution also proposes to waive application fees for limited-term permits requested by ETUP holders. The current fees are \$592 for less than 90 days and \$1,994 for requests up to a one-year term. For requests that propose a term of 90 days to one year, a \$497 public notice fee is required to defray the administrative costs of preparing and mailing the notice and the costs of publishing the notice in the newspaper.

Existing ETUPs

To date, approximately 114 commercial and institutional establishments have had ETUPs authorized. Approximately 22 establishments have improvements authorized within the public right-of-way, 18 establishments have improvements authorized in public parking or park areas, and the remaining establishments have improvements authorized on private property or in private parking areas.

Many ETUP locations, particularly restaurants with outdoor dining, have expressed an interest in making their improvements permanent. The proposed resolution is not intended to legalize existing outdoor dining improvements, but rather to be “a bridge” to create a path to establish permanent outdoor dining, where appropriate and subject to a public hearing.

Parking Challenges

The primary challenge to establish more permanent outdoor dining is that private parking lots for restaurants and outdoor dining are constrained by Zoning Code required parking. The current parking requirement for food service uses is one parking space per 30 to 50 square feet of net public area (customer service areas) including outdoor dining areas exceeding 25 percent of the interior net public area or 1,000 square feet, whichever is less. Most existing restaurants are designed to comply with this requirement or have parking waivers and do not provide surplus parking to expand their land use.

Parking Study

The City has initiated a study and code amendment related to parking for land uses authorized under the Zoning Code. In addition to considering amendments to the methodology and parking ratio for restaurants, the project will examine incentives and parking reductions for rideshare and bicycle facilities, curbside management strategies, and the potential for parking management districts in the City's primary activity nodes. It is expected that the project will likely result in modified or reduced parking requirements for many restaurants, which, in turn, could facilitate the establishment of permanent outdoor dining facilities.

The parking update is expected to be completed in two phases. The initial phase will focus on restaurant parking requirements and rideshare and bicycle facility incentives/reductions. Findings are expected to be presented to the City Council by the end of the calendar year. The second phase, which focuses on curbside management and parking management districts, requires more in-depth analysis and outreach and is expected to be completed mid-year of 2022. It is important to note that for properties located in the coastal zone, any Zoning Code amendments would then require a Local Coastal Program amendment reviewed by the California Coastal Commission before revised parking ratios in these areas could become effective. Therefore, the overall amendment process is anticipated to take 18 to 24 months.

In the interim, staff is recommending a limited-term permit application for ETUP holders wishing to continue with their exterior uses and bridging the gap between the proposed September 6, 2021 extension until a code amendment could be approved and effective. The merits of each application would be reviewed on an individual basis.

Once a code amendment is effective, limited-term permit holders wishing to establish permanent outdoor dining improvements would then have the opportunity to amend their conditional use permits to meet the new parking requirements or to submit a parking study for a CUP and parking waiver. For improvements in the public right-of-way, applicants could also apply for a Sidewalk Café Permit. It is anticipated that outdoor dining design and processing guidelines will be developed to ensure permanent outdoor facilities are aesthetically integrated and do not negatively impact surrounding uses.

Path Toward Permanent Outdoor Dining

For outdoor dining located within the public right-of-way, Council Policy L-21 (Sidewalk Café Standards and Procedures) may be used to authorize outdoor dining on public sidewalks. The Sidewalk Café permit is reviewed and approved by the Public Works Department. Properties located within the coastal zone would also require a Coastal Development Permit (“CDP”). Further review of the policy will be conducted by staff to ensure it provides the maximum opportunities for businesses.

Existing ETUPs have varied circumstances best discussed by geographic area:

- **Airport Area** – Most ETUP locations are within private parking areas and are constrained by code-required parking. Permanent dining areas depend on a Zoning Code amendment to reduce parking requirements and an amendment to existing use permits.
- **Balboa Island** – The majority of ETUP improvements in this area are located in sidewalk areas along Marine Avenue. Continued use of Marine Avenue may be approved through the Sidewalk Café permit, but maintaining ADA clearances on the public sidewalk would take priority. A CDP would also be required for expanded dining in this area.
- **Balboa Pier** – Most ETUPs issued in the Balboa Pier area are located in the street or on public park property and would likely need to be removed following the conclusion of the Back to Business program. Some improvements in the Peninsula Park area are located within the California Coastal Commission’s permit jurisdiction under the adopted Local Coastal Program. These locations pose long-term coastal access and public recreation conflicts which would make the feasibility of permanent private improvements unlikely.
- **Corona del Mar** – ETUP approvals in Corona del Mar include a mix of improvements in the public right-of-way and on private property parking areas, which are constrained by code-required parking. For improvements in the public right-of-way, a Sidewalk Café permit is required from Public Works. ETUP locations within private parking areas depend on a Zoning Code amendment to reduce parking requirements and amendments to existing use permits. All properties located in the coastal zone may require a CDP (generally the south side of West Coast Highway).
- **Irvine Company Shopping Centers** - Most locations are in private parking areas constrained by code-required parking and depend on a Zoning Code amendment to reduce parking requirements and amend existing use permits.

- **Newport Pier** – Improvements in this area primarily occur on public property or public parking areas. Improvements in pedestrian alleys could be permitted through a Sidewalk Café permit in accordance with Council Policy L-21. The majority of the Newport Pier public parking area falls within the California Coastal Commission's permit jurisdiction under the adopted Local Coastal Program. Removing the availability of public parking on a permanent basis may pose a conflict with coastal access in this area. If a program is developed and approved by the California Coastal Commission that would permanently eliminate public parking spaces for outdoor dining use, then the City will need to enter into agreements with business tenants to reimburse the City for loss of parking revenue and the use of the public space.
- **Mariners' Mile** – Most ETUP locations are within private parking areas constrained by code-required parking. Permanent dining areas depend on a Zoning Code amendment to reduce parking requirements and amend existing use permits. Many properties are located in the coastal zone and may also require a CDP.
- **Peninsula/Lido** – ETUP approvals on the Balboa Peninsula and Lido Village area include a mix of improvements in the public right-of-way and on private property parking areas. For improvements in the public right-of-way, a Sidewalk Café permit is required from Public Works. ETUP locations within private parking areas are constrained by code-required parking and depend on a Zoning Code amendment to reduce parking requirements and amend existing use permits. All properties are located in the coastal zone may require a CDP.
- **West Newport** – All ETUP locations in West Newport are within private parking areas constrained by code-required parking. Permanent dining areas depend on a Zoning Code amendment to potentially reduce parking requirements and amend existing use permits to accommodate expanded patio areas. Properties are located in the coastal zone and will require a CDP.
- **Others** - Most ETUP locations are within private parking areas constrained by code-required parking. Permanent dining areas depend on a Zoning Code amendment to reduce parking requirements and an amendment to existing use permits. Properties located in the coastal zone may also require a CDP.

Summary

In summary, this resolution proposes an automatic extension of ETUPs through September 6, 2021. Thereafter, ETUP holders could apply for a limited-term permit. Limited-term permits will be reviewed based on their individual merits. Consideration will be taken for the proximity to residential uses, the hours of operations, noise and parking impacts. The City's review will focus on finding a balance to minimize impacts to residential uses. Limited-term permits are discretionary applications that are subject to review and approval by the Community Development Director or the Zoning Administrator for applications greater than 90 days subject to a public hearing. Any decision by the Community Development Director or the Zoning Administrator can be appealed to the Planning Commission within 14 days of the decision.

If a code amendment to amend parking ratios for land uses is adopted in the future by the City Council, then ETUP holders constrained by existing parking requirements may apply for an amendment to their existing use permit on an individual basis. Amendments to use permits are discretionary and subject to review by the Planning Commission.

FISCAL IMPACT:

This resolution proposes to waive application fees for limited-term permits requested by ETUP holders (\$592 for requests less than 90 days and \$1,994 for requests up to a one-year term). For requests that propose a term of 90 days to one year, applicants would still be responsible for the payment of a \$497 public notice fee to defray the costs of the public notice. Depending on how many businesses apply for a limited-term permit, it is estimated that the cost of the fee waiver is \$200,000 in lost revenue.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, under Class 1 (Existing Facilities) because it has no potential to have a significant effect on the environment. The project consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. This exemption includes additions to existing structures that will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Resolution No. 2021-58

Attachment B – Emergency Ordinance No. 2020-005