

# CITY OF PALM DESERT STAFF REPORT

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MEETING DATE: May 23, 2024

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REQUEST: PROVIDE STAFF DIRECTION ON THE DINING DECK PROGRAM AND EL PASEO IMPROVEMENT SCHEDULE AND ESTABLISH A LICENSE AGREEMENT FOR USE OF THE RIGHT-OF-WAY

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## **RECOMMENDATION:**

1. Separate the El Paseo Street Rehabilitation project into two separate projects to take place over two consecutive summers beginning Summer 2024.
2. Allow El Paseo dining deck operators to maintain current operations through May 2025 subject to approval of an annual temporary use permit with removal of the dining decks prior to Phase Two of the El Paseo Street Rehabilitation project.
3. Establish a License Agreement for dining deck use of the public right-of-way.
4. Provide direction on enforcement of design guidelines.

## **BACKGROUND/ANALYSIS:**

At the November 16, 2023, City Council meeting, the City Council took action to extend the City's Dining Deck program through June 30<sup>th</sup>, 2026. As part of that extension, the City Council also adopted updates to the Outdoor Dining Deck Design Guidelines and permitting requirements and directed staff to explore the development of a licensing agreement for use of the public right-of-way.

On April 11, 2024, the City Council held a study session to review right-of-way use options and discuss the El Paseo Street Rehabilitation Project (Project). The Project is a resurfacing of the El Paseo corridor from Highway 74, east to Highway 111, and includes improvements to the existing mid-block crossings, and installation of two (2) additional mid-block crosswalks west of Lupine Lane. As originally envisioned, the Project would require the removal of dining decks along El Paseo for the summer of 2024 and operators would have the option to reinstall them at the Projects completion. Also at that meeting, City staff proposed three separate options for possible lease methodologies for use of the public right-of-way which were based on market lease rates for El Paseo, San Pablo Avenue, and Highway 111. These included an annual lease rate based on market rate for the right-of-way where the deck is located, a blended market rate, and a 50% reduction of the blended rate. The City Council discussed a possible right-of-way use rate based at 50% market lease rates and directed staff to meet with the dining deck operators.

Staff hosted a meeting with dining deck operators on April 29, 2024, to inform them of a proposed licensing agreement requirement and upcoming Project. Operators expressed concern with the lease methodology and the costs associated with removal and reconstruction of the decks for the Project. Subsequently, staff met individually with all operators to address specific concerns.

El Paseo Street Rehabilitation Project:

The street rehabilitation project will require the operators of the dining decks to remove the structures before the improvements to the roadway begin. The operators requested additional time to budget for the expense of removing the decks. Staff recommends that a compromise be made by splitting the project into two phases. The first phase would make improvements to ADA curb ramps, driveways, sidewalks, and concrete drainage structures. The first phase would be completed in the off-season of 2024. The second phase would include the improvements to the asphalt concrete roadway and would be scheduled for the Summer of 2025. Splitting the project into two phases will help to ensure the project will not spill over into the season.

The construction of the two new mid-block crossings west of Lupine will be included in the second phase of the project. Staff contemplated the idea of constructing the new mid-block crossings in the first phase of the project, but ultimately recommends delaying the installation of the crossings until the rest of the asphalt concrete work is constructed due to the potential damage to the crossings and related electrical lighting components.

Dining Deck Removal:

If direction is provided to divide the Project into two Phases and complete each phase in consecutive summers beginning in 2024, then the first phase of the project will not require removal of the existing dining decks on El Paseo. However, the second phase of the Project, beginning in Summer 2025, would require removal of the dining decks from El Paseo and operators would have the option to replace the dining decks once the Project is complete. By dividing the project into multiple summers staff anticipates minimal disruption to the street during “season” as work should be completed by mid-September of each year. This will allow operators to budget and plan accordingly for deck removal by mid-2025.

Dining Deck Lease/Licensing Agreement:

In meeting with operators and property owners staff learned that many are not charged a lease for patio and/or outdoor space. Operators also expressed concerns with any lease amount for the decks as the decks are not in use during the summer months due to the outdoor temperatures. At the April 11, 2024, City Council meeting, the City Council indicated that a 50% market lease rate should be explored. Since operators will only recognize the benefits of these decks for one additional year, staff is recommending a 25% market lease rate based on the blended rate previously presented at the City Council Study Session.

The market rates used for the blended rate total are listed below:

Area	Annual Market Rate SF/Year*
El Paseo (Portola to Hwy 74)	\$34.82 per SF
San Pablo (San Gorgonio to Highway 111)	\$23.50 per SF
Highway 111 Frontage Roads (Portola to Monterey)	\$26.62 per SF
<b>Blended Average Market Rate</b>	<b>\$28.31 per SF</b>

\*Source: CoStar

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 Direction on Dining Decks and El Paseo Rehabilitation Project

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The table below provides an estimate of the total payment each restaurant would pay under this rate at the 100%, 50%, 33% and 25% rates:

Restaurant	Approximate Deck Square footage SF*	Annual Lease Blended Rate 100%	Annual Lease Blended Rate 50% Total	Annual Lease Blended Rate 33% Total	Annual Lease Blended Rate 25% Total
<b>Rate</b>		<b>\$2831 SF/Yr</b>	<b>\$14.16 SF/Yr</b>	<b>\$9.34 SF/Yr</b>	<b>\$7.08 SF/Yr</b>
Armando's Bar and Grill	889 SF	\$25,168	\$12,584	\$8,305	\$6,292
Daily Grill	254 SF	\$7,191	\$3,595	\$2,373	\$1,798
Kitchen 86	635 SF	\$17,977	\$8,988	\$5,932	\$4,494
Mamma Gina	554 SF	\$15,684	\$7,842	\$5,176	\$3,921
Piero's Pizza Vino	318 SF	\$9,003	\$4,501	\$2,971	\$2,251
Sweet Basil	597 SF	\$16,901	\$8,451	\$5,577	\$4,225
The Fix	856 SF	\$24,233	\$12,117	\$7,997	\$6,058
<b>Potential Lease Rev to City</b>		<b>\$116,157</b>	<b>\$58,078</b>	<b>\$38,331</b>	<b>\$29,039</b>

\*Square footage is an estimate only

In the event that the selected dining deck lease rate exceeds the square foot rate a restaurant operator pays to lease their building space, the City Council may consider implementing a “relief” for a reduced rate: the restaurant operator would be required to provide proof of a lease agreement, entered into legally with their landlord on or prior to January 1, 2024, to the City for review. If accepted, the City may reduce the rate to an amount equal to the rate paid by the restaurant to lease their building space.

Staff will return with a formal resolution to adopt the lease rate selected by the City Council.

**Legal Review:**

This report has been reviewed by the City Attorney’s office.

**FINANCIAL IMPACT:**

Based on current estimates of Deck Square Footage, staff’s recommendation of the 25% market lease rate would generate \$29,039 to the General Fund for FY 2024-25.