

CITY OF PALM DESERT STAFF REPORT

MEETING DATE: October 24, 2024

PREPARED BY: Nick Melloni, AICP, Principal Planner

SUBJECT: RESOLUTION ESTABLISHING AN ANNUAL LEASE RATE FOR DINING DECKS AND LICENSING REQUIREMENTS FOR USE OF PUBLIC RIGHT-OF-WAY FOR OUTDOOR DINING DECKS AND MAKING FINDINGS

RECOMMENDATION:

1. Adopt a resolution entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM DESERT, CALIFORNIA, ADOPTING AN ANNUAL LEASE RATE FOR DINING DECKS AND LICENSING REQUIREMENTS FOR USE OF PUBLIC RIGHT-OF-WAY FOR OUTDOOR DINING DECKS."
2. Authorize the City Attorney to make necessary non-monetary changes to the contract.
3. Authorize the City Manager to execute the license agreements with dining deck operators and any other documents necessary to effectuate this action.

BACKGROUND/ANALYSIS:

The proposed resolution will establish requirements for all temporary outdoor dining deck within the public right-of-way to pay an annual license fee and enter into license agreements with the City. This requirement will go into effect after the existing Temporary Use Permit (TUP) approval expires in May 2025. The proposed annual lease rate is \$7.08 per square foot of deck area. The proposed annual lease rate is based upon 25% of the blended lease rate (\$28.31/SF) per the City Council's action on May 23, 2024.

The license agreement establishes terms and conditions by which the operators may use the right-of-way. The fee and license requirement will remain in effect for the duration of the Dining Deck Program. This action implements the previous direction of the City Council.

At the November 16, 2023, City Council meeting, the City Council took action on the following:

- Extended the City's Dining Deck program through June 30, 2026
- Adopted updates to the Outdoor Dining Deck Design Guidelines
- Directed staff to study 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 timing of the El Paseo Street and Sidewalk Rehabilitation Project. Staff presented options for potential lease rates based on market lease rates for commercial properties in areas around El Paseo, San Pablo Avenue, and Highway 111. The City Council selected a "blended" lease rate, which combined market lease rates in these areas, amounting to \$28.31, and directed

City of Palm Desert
Dining Deck Annual Lease Fee and Licensing Requirements

City staff to meet with dining deck operators to gather feedback on the rate and El Paseo Rehabilitation Project schedule.

On April 29, 2024, City staff hosted an open meeting with dining deck operators to discuss the proposed lease rate and El Paseo project schedule. The operators expressed concern over the methodologies for the proposed annual lease rates and timing of the rehabilitation project.

At the May 23, 2024, City Council Regular Meeting, two actions were taken:

Action 1 passed unanimously and directed City staff to:

1. Phase 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.

Action 2 passed on a 3-2 vote, to direct City staff to:

1. Establish a License Agreement for dining deck use of the public right-of-way.
2. Implement an annual lease blended rate of 25% for businesses.

If adopted, the resolution will require operators to execute the agreement and pay the annual lease rate as a condition of approval for the City's issuance of a new Temporary Use Permit (TUP). This requirement will go into effect June 1, 2025, and terminate June 30, 2026.

The table below provides an **estimate** of the annual fees based on **existing** dining decks:

Table 1 – Existing Dining Deck Lease Rate Estimates

Restaurant Name	Estimated Square Footage of Existing Deck	Estimated Annual Lease Rate: \$7.08/sq ft/year
Armando's Bar and Grill	899	\$6,365
Daily Grill	254	\$1,799
Kitchen 86	635	\$4,496
Mamma Gina's Ristorante	554	\$3,923
Piero's Pizza Vino	318	\$2,252
Sweet Basil	597	\$4,227
The Fix	856	\$6,061
Little Bar	432	\$3,058

If the dining deck lease rate exceeds the rate paid by a restaurant operator pays to lease their building space, the resolution provides a "relief" for a reduced rate: the restaurant operator may provide proof of a lease agreement, entered legally with their landlord on, or prior to January 1, 2024, to the City for review. The City may reduce the dining deck rate to an amount equal to the rate paid by the restaurant to lease their building space. Additionally, the license agreement provides an option for operators to submit payment of the fee as an annual lump sum or in two semi-annual payments.

Legal Review:

This report has been reviewed by the City Attorney's Office.

Environment Review:

Adoption of the fee is not a "Project" as defined by the California Environmental Quality Act (CEQA) as defined by CEQA Guidelines Section 15378(b)(4). This action will establish a framework for administration and fee collection for future applications which may be submitted for temporary dining decks.

Public Notification:

Public notice was conducted for this item in accordance with the provisions of Government Code (Gov. Code), Section 66018. A ten-day public hearing notice was published on October 11, 2024, in The Desert Sun newspaper. In accordance with the requirements of Gov. Code Section 6062a, a second publication was posted in The Desert Sun on October 18, 2024. Copies of the notices were provided to each dining deck operator. Additionally, City staff provided drafts of the use fee and license agreement and met with each dining deck operator to answer questions, comments or provide clarifications of the requirements.

Staff provided an informational flier to each of the dining deck operators, and subsequently met with them, and provided email correspondence regarding the fees. The operators did not voice opposition or major questions.

One question was raised regarding the need for automobile insurance as a part of the license agreement. This type of insurance is required due to the higher likelihood of the decks being struck by an automobile as they are located within right-of-way.

FINANCIAL IMPACT:

Based on current estimates of deck square footage, collection of the annual lease rate may generate up to \$32,178 to the General Fund in Fiscal Year 2025-26. The total may vary depending on the existing operators' decision to continue utilizing dining decks and/or changes in total area of each respective deck.

The estimated staff time for each annual temporary use permit (TUP) is approximately 10 hours, this estimate includes staff review by Development Services, Economic Development, and Public Works, as well as quarterly inspections by the Code Compliance Division. Per City Council Resolution No. 2012-37, the cost per hour of planner staff time is \$138, resulting in a minimum cost of \$1,380 per TUP. The current TUP application costs \$87 per request. Annual lease rate fees will cover City costs.

ATTACHMENTS:

1. Draft Resolution
2. Dining Deck License Agreement
3. Hearing Notice(s)