

# CITY OF PALM DESERT STAFF REPORT

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MEETING DATE: November 16, 2023

PREPARED BY: Vanessa Mager, Management Analyst

REQUEST: APPROVE AN EXTENSION TO THE DINING DECK PROGRAM AND DIRECT STAFF TO RESEARCH A POTENTIAL FEE FOR USE OF THE RIGHT-OF-WAY

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## **RECOMMENDATION:**

1. Approve an extension to the temporary outdoor dining deck program for an additional two (2) years through June 30, 2026, to align with the State's new extension.
2. Approve updates to the current Outdoor Dining Deck Design Guidelines, to be implemented effective January 1, 2024.
3. Direct City Attorney to make non-substantive changes to the Outdoor Dining Deck Design Guidelines for the remainder of the extension period.
4. Direct staff to return to a future City Council meeting to propose a new outdoor dining deck fee.

## **BACKGROUND/ANALYSIS:**

In 2020, in response to the COVID-19 pandemic, the City Council took action to support restaurants by directing staff to implement a temporary dining deck program for restaurants consistent with the COVID-19 pandemic relief bills (AB 61, SB 314, and SB 389). These bills allowed restaurants to operate under specific health and safety measures, inclusive of outdoor dining. Consequently, staff created an Outdoor Dining Deck Program, granting restaurants Temporary Use Permits (TUPs) for outdoor dining. A total of thirty (30) TUPs were issued citywide, eleven (11) of which were for outdoor dining within the public right-of-way along El Paseo and Highway 111 Frontage Road. The remaining TUPs were for private property. The program's popularity among both restaurant owners and patrons led to its extension into the following year.

By June 2021, when COVID-19 restrictions were lifted and indoor dining was once again permitted, fourteen (14) of the thirty (30) restaurants chose to remove their dining decks, leaving sixteen (16) in operation. On June 24, 2021, the City Council extended the existing TUPs for one (1) year to June 30, 2022. Additionally, the City Council instructed staff to collaborate with Prest Vuksic Greenwood Architects (PVGA) and the City's Architectural Review Commission (ARC) to develop and adopt a comprehensive design and safety manual, which was subsequently adopted in 2021. City Council then allowed for a specified timeframe to gain compliance and supported the program by offering \$5,000 in grant monies to bring dining decks into compliance.

On October 14, 2021, at a regularly scheduled City Council meeting, staff requested an extension of TUPS through June 30, 2024, for dining decks that adhered to the adopted guidelines. This extension coincided with AB 61 (Gabriel, Chapter 651, Statutes of 2021), a business pandemic relief measure that authorized the Alcohol Beverage Control (ABC) to

expand license privileges in alignment with COVID-19 Temporary Catering Authorization (ABC-218 CV19), which specifically includes temporarily expanding the licensed area of a qualified business to accommodate patrons while abiding by social distancing guidelines and directives. This authorization was set to expire on July 1, 2024, mirroring the City Council-approved two-year extension. On October 8, 2023, Governor Newsom signed California Assembly Bill AB 1217 (Rubio & Wiener) which extended the business pandemic relief from July 1, 2024, to July 1, 2026.

#### Dining Deck Funding

In 2020, the City Council established the Unite Palm Desert Economic Relief Program which provided a total of \$59,165 to sixteen (16) restaurants to aid in the creation of outdoor dining areas. Out of these recipients, seven (7) restaurants continue to operate outdoor dining decks (see attached list). In conversations with staff, the restaurant owners who still operate dining decks have attested to their economic benefits and express their desire to continue participating in the program.

#### Outdoor Dining Deck Design Guidelines

While the program has proven advantageous to restaurants still utilizing their outdoor dining decks, other restaurant owners and residents have voiced concerns regarding safety, deck maintenance, and financial gains from the use of the public right-of-way. In response to these safety concerns, staff recommends making adjustments and additions to the Outdoor Dining Deck Design Guidelines, as summarized below:

- Insurance Requirements - Clearly outline of what certificates of insurance are required and reinforces that all documents must be always current.
- Administration & Compliance section, which implements a quarterly dining deck inspection to ensure the decks are maintained at the highest safety standard. Also noting that any alterations or modifications must be submitted to the City's Planning Department, prior to work commencing.
- Maintenance & Storage section which clearly identifies the responsibility of dining deck operators and gives clear expectations on how dining decks should be maintained.

Staff recommends that the amended guidelines, if adopted, go into effect on January 1, 2024, which would allow dining deck operators sufficient time to make any changes needed. However, the requirement to complete an updated TUP annually, as well as the revokable license agreement would not go into effect until July 1, 2024.

Additionally, to address private business owner's financial gains from the use of public right-of-way, staff has explored implementing a fee schedule, similar to what other municipalities have established for their dining deck programs. Those fees are outlined in Table 1.

Table 1

City	Program Status	Fees
Indio	In progress	Encroachment Fee: \$1,500 - \$2,000 estimate Outdoor Dining Fee: TBD
Palm Springs	Temporary	Land Use Fee: \$1,536 monthly Rental Fee: \$1.85 per sf.
Murrieta	Temporary	Minor Conditional Use Permit: \$3,855 + noticing fees
Culver City	Permanent	Application Fee: \$750 Tech Surcharge Fee: \$32 Rental Fee: \$13.00/sq ft of parklet area Culver City Sewer Fee: \$339 per seat
Long Beach	Permanent	Application Fee: \$1,375 + 3% surcharge Inspection Fee: \$320/day + 3% surcharge Annual fee: \$760 + 3% surcharge
Pasadena	Permanent	Application Fee: \$219.88 Annual Renewal Process Fee: \$227.04 Temporary Use Permit: \$243 Sidewalk and Alley Dining Fees: \$11- \$14 sq ft / yr On-Street Dining Fee: \$7 - \$8.50 sq ft / yr *Permanent process for dining in the ROW, still temp for private property
Torrance	Temporary	ADM Fee: \$1,239 Encroachment Permit Fee: \$418.00 Plan Check Fees: Varies based on the project design Construction Deposit: Varies base on the project design Public Right of Way Use Fee: \$2.25 sq ft / monthly
Hermosa Beach	Permanent	Encroachment Fee: \$1, \$2, or \$5 sq ft / monthly (depending on location) \$2 sq ft / monthly 2023-2024 \$3 sq ft / monthly 2024-2025 \$4 sq ft / monthly 2025-2026
Laguna Beach	Permanent	Parklet TUP program: \$5 sq ft / monthly + \$4,500

In working with the City’s Attorney, staff identified the following two options for the City Council to consider.

- Charge a fee for the TUP, as it is currently set at \$0.
- Charge a per square foot user fee for use of public right of way.

Either option would require the City Council’s adoption of a resolution or ordinance. If the City Council opts to explore either of the options, staff recommends that the fee go into effect on July 1, 2024, so as to not interfere with the current temporary dining deck program and to allow the proper time needed for a fee study.

**Legal Review:**

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

**Strategic Plan:**

The TUPs for dining decks fulfill priorities identified in the City's Strategic Plan, as the following:

- Economic Development – Priority 4: "Expand and raise awareness of business-friendly services in order to retain and attract business."
- Tourism and Marketing – Priority 1: "Improve access to Palm Desert and its attractions.  
to enhance the ease of lifestyle."
- Transportation – Priority 1: "Create walkable neighborhoods and areas within Palm Desert that would include residential, retail, services and employment centers, and parks, recreation and open space to reduce the use of low occupancy vehicles."
- Land Use - Priority 4: "Create a mixed-use city core integrating shopping, dining, lodging, and housing."

In addition, the allowance of dining decks addresses initiatives listed in the Economic Development Strategic Plan approved by the City Council in 2018:

- Revitalization of the El Paseo Key Commercial Corridor.
- Facilitate long-term market strengthening of the El Paseo District.
- Align City placemaking and other development plans and strategies with key City-designated infrastructure elements.

**Appointed Body Recommendation:**

Staff has spent the last three months meeting with dining deck operators, the Palm Desert Restaurant Association, the El Paseo Parking and Business Improvement District and the City's Economic Development Sub-Committee to gather feedback. Below is a recap of the meetings and the recommendations.

*Palm Desert Restaurant Association & Dining Deck Operators Recommendation:*

According to the restaurant association, the dining decks have yielded economic advantages for their establishments, subsequently resulting in a boost to the City's revenue through increased sales tax collection. Therefore, the Association proposes that the City Council extend the City's dining deck program to align with the State's extension and maintain the existing outdoor dining deck design guidelines. Staff shared the proposed amendments to the outdoor dining deck design and dining deck operators were in acceptance. Staff also presented the consideration of a TUP or User fee. Operators recognized the rationale behind consideration of a modest fee for the use of the public right-of-way.

*El Paseo Parking and Business Improvement District Recommendation:*

On September 21, 2023, staff presented a summary report on the dining decks to the El Paseo El Paseo Parking and Business Improvement District (EPPBID) The EPPBID expressed its approval of the proposed amended guidelines and the updated requirements for annual TUP applications being submitted. The EPPBID was also in agreement with the consideration of a modest fee for the use of the public right-of-way.

*Economic Subcommittee Recommendation:*

The Economic Subcommittee agreed with Staff's recommendation regarding extending the dining deck program to align with the State's extension. Regarding the recommendation of a dining deck fee, the subcommittee recommends that the City Council consider adopting a TUP fee that would cover the cost of staff's time to review, implement and inspect the dining decks.

**Environment Review:**

The proposed extension is not subject to the California Environmental Quality Act (Public Resources Code Section 21000 et. seq.) pursuant to Section 1506(c)(3) of the State Guidelines, because the extension will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a "project," as that term is defined in Section 15378 of the State Guidelines.

**FINANCIAL IMPACT:**

There is currently no financial impact.

**ATTACHMENTS:**

1. Amended Dining Deck Design Guidelines
2. List of current operators with City funding status