

CITY OF HERMOSA BEACH
RESOLUTION NO. 23-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH
ESTABLISHING OPERATIONAL AND DESIGN GUIDELINES FOR
ENCROACHMENT AREAS ON PIER PLAZA AND OFF-STREET
ENCROACHMENT AREAS CITYWIDE**

WHEREAS, On August 9, 2005, the City Council conducted a public meeting to review the outdoor dining standards and procedures for outdoor dining areas on Pier Avenue adopted in 1997, pursuant to Title 12, Chapter 12.16 of the Municipal Code pertaining to encroachments into the Public Right-of-Way; and

WHEREAS, On May 8, 2012, the City Council adopted a resolution amending standards and procedures for the design and operation of outdoor dining areas on Pier Plaza; and

WHEREAS, On May 11, 2015 the City Council adopted a resolution further amending the aforementioned standards and procedures for the design and operation of outdoor dining areas on Pier Plaza; and

WHEREAS, In October 2021, City Council directed staff to develop permanent versions of the temporary extended outdoor dining programs implemented during the COVID-19 pandemic ; and

WHEREAS, City staff has gathered input from the City Council, local businesses and community stakeholders to develop the proposed guidelines for permanent encroachments on Pier Plaza and off-street encroachments citywide.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council does hereby declare that the recitals set forth above are true and correct and are incorporated herein by reference.

SECTION 2. The City Council hereby adopts the attached Plaza Guidelines attached as Exhibit A and incorporate herein. Resolution Nos. 05-6417, 12-6802, and 15-6955 are hereby rescinded.

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase or word of this resolution is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the remaining provisions of this Ordinance.

SECTION 4. Environmental Review. The proposed project is Categorically Exempt from the California Environmental Quality Act as defined in Section 15300 of the CEQA Guidelines, in accordance with Section **15061**, the 'common sense' exemption, and Section **15301** which addresses minor alterations of existing public facilities, specifically:

15061(b)(3) – The project is covered by the common sense exemption that applies where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

15301(c) – Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety), and other alterations such as the addition of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities and bicycle lanes, transit improvements such as bus lanes, pedestrian crossings, street trees, and other similar alterations that do not create additional automobile lanes.

None of the exceptions to the Categorical Exemption apply, nor would the project result in a significant cumulative impact of successive projects of the same type in the same place over time or have a significant effect on the environment due to unusual circumstances or damage a scenic highway or scenic resources within a state scenic highway. The site is not located on a hazardous waste site and would not cause a substantial adverse change in the significance of a historical resource.

SECTION 5. The City Clerk shall certify the adoption of this Resolution which shall be effective upon its adoption. The City Manager may delay the implementation of this ordinance to ensure continuity and effective and efficient execution of the Pier Plaza outdoor dining program.

PASSED, APPROVED and ADOPTED on this 25th day of April, 2023

Raymond Jackson

PRESIDENT of the City Council and **MAYOR** of the City of Hermosa Beach, CA

ATTEST:

APPROVED AS TO FORM:

Myra Maravilla
City Clerk

Patrick Donegan
City Attorney

Exhibit A

**CITY OF HERMOSA BEACH
OUTDOOR DINING DESIGN AND OPERATIONAL STANDARDS
FOR PIER PLAZA AND OFF-STREET ENCROACHMENT AREAS**

I. INTRODUCTION

- A. The Outdoor Dining Design and Operational Standards are adopted pursuant to Section 12.16.100 of the Municipal Code in order to establish specific design and operational criteria for outdoor dining on the public right-of-way known as Pier Plaza (including Loreto Plaza) and other off-street encroachment areas citywide. These standards balance the respective interests of restaurant and establishments that desire to offer outdoor dining to their patrons, restaurant patrons and the City, which encourages the atmosphere created by outdoor dining but seeks to assure and protect the availability of the right-of-way for safe and convenient pedestrian passage. All outdoor dining on Pier Plaza shall comply with the standards set forth herein, and all encroachment permits issued for outdoor dining on Pier Plaza shall be in conformance herewith. No person shall use the public right-of-way on Pier Plaza for outdoor dining without first obtaining an Outdoor Dining Encroachment Permit from the City. These guidelines also apply to retail businesses on Pier Plaza.
- B. An outdoor dining area is a place on the public sidewalk where patrons may consume food and/or beverages provided by an adjacent food service establishment.
- C. Establishments serving alcoholic beverages that apply for an Outdoor Dining Encroachment Permit shall meet the additional requirements of the State of California Alcohol Beverage Control Board.
- D. These standards and procedures regulate the design and operation of outdoor dining areas on Pier Plaza. However, they do not provide information on all the government agency requirements for starting a new restaurant or expanding an existing one. Business owners must secure the appropriate licenses and permits from the State Alcohol Beverage Control Board, Los Angeles County Health Department, the City of Hermosa Beach Community Development Department and Business License Office.
- E. Outdoor Dining Encroachment Permits are not transferable, salable, delegable or assignable. In the event of a transfer of the business, to the extent of 51% or more, the transferee shall apply to the Public Works Department for a new Encroachment Permit.

- F. These regulations do not apply to outdoor dining on private property.

II. APPLICATION PROCEDURE

- A. An application form for an Outdoor Dining Encroachment Permit may be obtained from the Public Works Department. A scaled and measured plan prepared by a licensed design professional shall accompany the application form. The plan shall delineate the encroachment area and the layout of furnishings and allowable amenities. The plan shall comply with all building and fire code regulations, and shall comply fully with all State and federal laws providing for access by the disabled. If the Applicant intends to modify the arrangement of furniture and other amenities or otherwise deviate from the plan at any time or times during the term of the Permit, the plan shall delineate all alternate arrangements to be utilized and all shall comply with the requirements set forth herein. The application will also include information on any variations of operating hours that will affect calculation of quarterly encroachment fees.
- B. An application fee in an amount determined by resolution of the City Council shall be paid at the time the application is submitted to the Public Works Department.
- C. Public Works Department staff shall obtain the written concurrence of the Community Development Department before approving any Outdoor Dining Encroachment Permit.
- D. The Director of Public Works is authorized to approve an outdoor dining application and to issue an Outdoor Dining Encroachment Permit on behalf of the City. The Encroachment Permit will specify the amount of the Outdoor Dining License fee to be paid by the applicant as established by resolution of the City Council.
- E. A maintenance deposit, in an amount not to exceed five thousand dollars (\$5000), shall be paid to the City at the time the Outdoor Dining Encroachment Permit is issued. It is the responsibility of the Applicant to maintain sidewalk paving and fixtures within the outdoor dining area in the condition they are in at the time of permitting. The Applicant shall be responsible for any repairs required as a result of the Applicant's use of the area. Upon termination of the Permit and inspection of the paving and fixtures by the Public Works Department, the deposit shall be refunded to the Applicant less any offset for repairs.
- F. An application for renewal of an Outdoor Dining Encroachment Permit may be submitted to the Public Works Department on a form obtained

from the Director. The application must be filed with the Public Works Department no later than thirty (30) days prior to the expiration of the existing Outdoor Dining Encroachment Permit. Upon determination by the Director that the Permit should be renewed, the Applicant shall pay the annual fee as determined by resolution of the City Council.

III. OUTDOOR DINING SITES

- A. The outdoor dining encroachment area on Pier Plaza shall be a maximum depth of twenty-five feet (25') and include a clear, continuous pedestrian path not less than five feet (5') in width or more as deemed appropriate by the Director of Public Works for pedestrian circulation outside of the outdoor dining area. As used herein, pedestrian path means a continuous obstruction-free sidewalk area, paved to City standards, between the outside boundary of the dining area.
- B. The outdoor dining area shall be accessible to the disabled. The buildings adjacent to these dining areas shall maintain building egress as defined by the Uniform Building Code and Title 24 Disabled Access Standards.
- C. The final location and configuration of the outdoor dining area shall be subject to approval by the Director of Public Works, who shall consider public safety issues unique to the specific location.
- D. No underground utilities are permitted within the encroachment area.

IV. DESIGN STANDARDS

- A. Establishments that serve alcoholic beverages in the outdoor dining area shall provide a physical barrier that satisfies both these Standards and the requirements of the Alcohol Beverage Control Board. It is the responsibility of the applicant to research and verify design compliance with the Alcohol Beverage Control Board prior to filing an application for an Outdoor Dining Encroachment Permit. Barriers shall be attractive with a quality appearance, made of new materials such as wood and wrought iron. Barriers shall be of a permeable design that allows for visibility through the barrier. Chain-link fencing or other low quality materials are not permitted. Furnishings that provide the functional equivalent of a fixed barrier may be approved.
- B. Barriers shall conform to the Public Works Director's installation standards and be removable. Barriers need not be removed each evening, but shall be capable of being removed; if imbedded into the pavement they

must be fixed through the use of recessed sleeves and posts, otherwise by wheels that can be locked into place or weighted in place. No signs or banners of any kind shall be placed, displayed or erected on barriers.

- C. Any modification to the surface of public sidewalks, such as borings for recessed sleeves, shall be approved by the Director. In no case shall there be any modification to the existing sidewalk surface.
- D. Barriers shall be able to withstand inclement outdoor weather and one hundred (100) pounds of horizontal force at the top of the barriers when in their fixed positions.
- E. The height of any barrier shall not exceed three feet, six inches (3'- 6") with the exception that clear glass or plastic windscreens not to exceed six feet, six inches (6'- 6") in height may also be installed on the westerly side of the encroachment area.
- F. The use of awnings or umbrellas over the outdoor dining area is permitted, provided they do not interfere with street trees. No portion of an awning or umbrella shall be less than eight feet (8') above the sidewalk. Umbrellas must be contained in the encroachment area. Awnings may extend up to six feet six inches (6'-6") from the building front or cover up to fifty percent (50%) of the outdoor dining area, whichever is less. On Pier Plaza, retractable awnings may extend up to thirteen feet (13') from the building front or cover up to one hundred percent (100%) of the outdoor dining area, whichever is less. Retractable awnings shall be fully retracted to their closed position when the business is closed. A building permit must be obtained prior to installation of an awning.
- G. Outdoor lighting fixtures should complement the style of the building. Lighting fixtures shall not be glaring to pedestrians on the adjacent right-of-way, and shall illuminate only the outdoor dining area. Outdoor lighting may be installed on the facade of the building. Lighting shall be installed by a licensed electrician and requires an electrical permit from the Building and Safety Division.
- H. Tivoli lights, table lamps and candles are encouraged. The use of any candles shall comply with State of California Fire Code and applicable City of Hermosa Beach requirements.
- I. An Historic Preservation Certificate of Appropriateness shall be required prior to attaching any lights, awnings, or physical barriers to an historic structure that has been designated "landmark" or "significant" by the City Council.
- J. Flowering plants are encouraged.

- K. Television sets are permitted with a building permit and electrical permit.
- L. Heaters are permitted with a building permit, electrical and plumbing permit.
- M. No queueing is permitted on any encroachment areas.
 - 1. No dine-in restaurant shall permit the congregating or lining up of customers in any public right-of-way. A “dine-in restaurant” means a restaurant that provides customers the option to dine on the site of the restaurant. The congregating or lining up of customers outside a dine-in restaurant, in any manner, on sidewalks or other public rights of way is prohibited.
 - 2. Unless no table is available, a dine-in restaurant must immediately seat a customer in its outdoor dining area if the customer is dining on-site. In the event no table is available, the restaurant staff shall ask the customer to wait in a vehicle or at a location away from the restaurant premises.
 - 3. Dine-in restaurants shall implement a phone reservation or call-back system that notifies customers via text, phone call, or other method once a table has become available. No customer shall be permitted in the dining area until the customer has been notified by the restaurant that he or she can be seated.
 - 4. Restaurant staff shall be responsible for instructing customers not to form lines or congregate in abutting public areas while waiting to be seated.
 - 5. One host/hostess podium located outside the encroachment area is permitted per business as follows:
 - a. The podium shall be a maximum of 30” wide (length), 30” deep, and 48” high. One single-pole umbrella, without advertising, attached to the podium to shield the employee from the elements is permitted; no portion of an umbrella shall be less than eight feet (8’) above the sidewalk. Identification of the business name and menu board may be affixed to the podium provided the dimensions above are not exceeded. Display or sales of merchandise from the podium is not permitted. Any podium that does not comply with these standards shall be located within the encroachment area at all times.
 - b. Podiums placed outside the encroachment area shall be located adjacent to the perimeter of the encroachment area in an approved

location on the Encroachment Permit site plan. The podium shall be placed within the encroachment area or inside the business during hours that the business is closed.

6. Portable heaters located outside the encroachment area shall be limited to one heater per 15 feet of linear frontage on the Plaza, provided that heaters need not be spaced at 15-foot intervals. Heaters placed outside the encroachment area shall be located adjacent to the perimeter of the encroachment area in an approved location on the Encroachment Permit site plan. All heaters shall be placed within the encroachment area or inside the business during hours that the business is closed.

V. STANDARDS OF OPERATION

- A. Restaurant management is responsible for running and operating the outdoor dining area and shall not delegate or assign that responsibility. Outdoor dining areas shall be continuously supervised by management. Patrons are prohibited from disturbing customers or passersby on the adjacent right-of-way by loud, boisterous, and unreasonable noise, offensive words or disruptive behavior.
- B. Restaurant management shall keep the outdoor dining area clear of litter, food scraps, and soiled dishes and utensils at all times. Trash receptacles shall be provided in outdoor dining areas used for consuming take-out items.
- C. At the end of each business day, establishments are required to clean (sweep and wash) the area in and around the outdoor dining area and remove the debris to a closed receptacle. No debris shall be swept, washed, or blown into the sidewalk, gutter or street in conformance with the City's NPDES regulations.
- D. Televisions shall not be operated with audio.
- E. If disposable materials are used, the establishment shall comply with all applicable City recycling programs.
- F. Plants shall be properly maintained and stressed or dying plants shall be promptly replaced. Because plant fertilizers contain materials that can stain the pavement, water drainage from any plants onto the adjacent right-of-way shall not be allowed. Potted plants shall have saucers or other suitable systems to retain seepage and be elevated to allow for air flow of at least one inch (1") between saucer and sidewalk.

- G. Awnings and umbrellas shall be washed whenever they are dirty and, in any event, no less than two times each year.
- H. All plans and permits for the outdoor dining area approved by the City shall be kept on the premises for inspection at all times when the establishment is open for business.
- I. Outdoor dining areas shall be operated in a manner that meets all requirements of the Los Angeles County Health Department and other applicable regulations.
- J. Upon termination of the Outdoor Dining Encroachment Permit, the Permittee shall immediately remove the barriers around the outdoor dining area, return the sidewalk to its original condition, and remove all personal property, furnishings, and equipment from the sidewalk. Any personal property remaining on the premises shall be removed pursuant to the laws of the State of California.
- K. All existing CUP provisions for the adjoining commercial establishment shall be enforced within the encroachment area. Noise, hours of operation and other city requirements shall be strictly enforced as if the encroachment area were an extension of the permittee's place of business. If the encroachment permit requirements should not agree with the CUP requirements the stricter of the two requirements shall prevail.
- L. The allowable hours of operation within the outdoor encroachment area shall be consistent with the CUP requirements for a particular permittee. City Council will have the option to extend these hours for special events. City Council may extend or reduce these hours.

VI. INSURANCE

- A. The Applicant shall obtain and maintain in force during the life of the Outdoor Dining Encroachment Permit comprehensive general liability, broad form property damage and blanket contractual liability insurance in a combined single limit amount, per claim and aggregate, of at least two million dollars (\$2,000,000) covering the applicant's operation on the sidewalk. Such insurance shall name, on a Special Endorsement form, the City, its elected, appointed boards, officers, agents and employees as additional insureds. A Certificate of Insurance shall contain provisions that prohibit cancellation, modification, or lapse without thirty (30) days prior written notice to the City. Both the Certificate of Insurance and the completed standard Special Endorsement form shall be submitted with the completed application for an Outdoor Dining Encroachment Permit.

- B. The Applicant shall obtain and maintain in force during the life of the Outdoor Dining Encroachment Permit Worker's Compensation insurance with statutory limits, and employer's liability insurance with limits of not less than one million dollars (\$1,000,000) per accident.
- C. Comprehensive general liability policy shall provide coverage for all of the Applicant's outdoor operations and facilities whether or not within the encroachment area.
- D. The Applicant shall indemnify and hold harmless City, its officers, employees and agents from and against all claims, causes of action, liabilities and damages for injuries to persons and property, including reasonable costs of defense and attorney fees, arising from the Applicant's encroachment on City property, including but not limited to the Applicant's negligent or wrongful acts, errors or omissions in the construction, erection, operation and continued maintenance of the encroachment in its location. The Applicant shall promptly pay the amount of any judgment rendered against City, its officers, employees and agents for any such indemnified claims, and reasonable costs and attorney fees incurred by City in the defense of such claims.

VII. ENFORCEMENT

- A. Notice of violation of the outdoor dining design standards or standards of operation shall be made in writing to the Permittee by any Code Enforcement Officer, Public Works Inspector, Building Inspector, Police Department Official, or Fire Department Official of the City. A copy of the notice shall be filed with the Public Works Director. The Permittee shall immediately cure the violation upon receipt of notice. If the violation is not cured within ten (10) days after issuance of the notice to the Permittee, the Director may suspend or revoke the Encroachment Permit.
- B. The Outdoor Dining Encroachment Permit is in the nature of a revocable license, and is revocable at will by the City. The Public Works Director may revoke an Outdoor Dining Encroachment Permit upon thirty (30) days written notice, with or without cause. The Director's decision may be appealed to the City Council pursuant to the provisions of Chapter 12 of the Hermosa Beach Municipal Code. The City Council's decision shall be final.