



Staff Report

File #: REPORT 22-0044, Version: 1

Honorable Mayor and Members of the Hermosa Beach City Council
Regular Meeting of January 25, 2022

DISCUSSION OF ENCROACHMENT FEES FOR TEMPORARY OUTDOOR DINING PERMIT PROGRAM

(Environmental Programs Manager Doug Krauss)

Recommended Action:

Staff recommends City Council consider the information presented by staff and provide direction regarding possible fees for the City's temporary outdoor dining permit programs.

Executive Summary:

The temporary outdoor dining program was created during the COVID-19 pandemic as a means of supporting our residents and business during limited indoor operations. Since its original implementation, fees for this temporary program, as well as a variety of outdoor programs administered by the City, have been suspended. As directed by City Council, staff is currently working on the development of a permanent outdoor dining permit program including performing the necessary California Environmental Quality Act (CEQA) analysis. Staff recommends Council discuss and consider an encroachment fee for the temporary outdoor permit program for the dining decks until such time as the permanent program is developed.

Background:

The City has long supported and encouraged outdoor dining on private and public property to supplement indoor operations. With the onset of the pandemic and related health orders, businesses were limited to conducting business outdoors. Recognizing this hardship, City Council suspended existing encroachment fees and approved a program to allow expanded outdoor dining and other commercial activity. The City also suspended zoning and parking requirements that allow outdoor dining on private property and established a temporary encroachment permit program allowing encroachments into sidewalks, public streets, and Pier Plaza. Both the private property programs and encroachment program (together, the "Outdoor Permit Program") include a basic set of guidelines. These guidelines include:

- Business hours no later than 11:00 P.M.;
- Temporary furnishings to be brought in every night;
- Maintenance of cleanliness;

- Alcohol service only with food; and
- Insurance maintained by permittees.

At the May 12, 2020 City Council meeting, City staff presented an item describing a concept to repurpose sections of public right of way to improve multimodal traffic safety and expand physical-distancing options for the public and businesses per Los Angeles County Health orders related to the COVID-19 pandemic. The City Council moved quickly to accommodate these programs and staff developed guidelines based on information gathered from existing programs in other cities and internal review of policies and regulations. This led to Council's approval of downtown lane reconfigurations that allowed businesses to expand their on-street deck areas.

The City has issued over 60 permits during the term of the Outdoor Permit Program in a variety of commercial locations (**Attachment 1**). To date, City Council has allowed these uses without consideration of any encroachment area rents or reimbursement of lost parking meter revenue. At its June 22, 2021 meeting, City Council approved extension of this pilot program and authorized implementation of a reapplication process for outdoor dining areas that included:

- Renewal of applicants' permissions from neighboring businesses where decks encroach upon the frontage of these other businesses.
- Requirement of a surety bond or deposit to fund any City costs related to deck removal in the event of maintenance emergencies or abandonment.

The City also approved an outdoor live music program for the outdoor dining encroachments. In October 2021, Council directed staff to develop permanent versions of these programs and in December of 2021, Council approved extension of the programs through June 30, 2022.

At City Council's regular meeting on January 11, 2022, Mayor Pro Tem Jackson requested, and a unanimous vote of the City Council supported, directing staff to place on the next regular session agenda an item that includes a recommendation for an encroachment fee for the temporary outdoor permit program for the dining decks.

Past Council Actions

Meeting Date	Description
June 9, 2020	Approved Ordinance 20-1410U allowing temporary permit program for outdoor dining in response to pandemic.
July 14, 2020	Directed staff to proceed with development of lane closure plans.
August 11, 2020	Chose a lane reconfiguration concept for Hermosa Avenue, extended it to 8 th Street, authorized the City Manager to implement lane reconfiguration, and provided a six-month duration.
September 8, 2020	Chose a lane reconfiguration concept for Pier Avenue.
October 27, 2020	Awarded contract for construction of lane reconfigurations.

June 22, 2021	Approved extension of the outdoor permit program through December 31, 2021.
July 13, 2021	Approved Resolution authorizing extension of lane reconfigurations.
October 26, 2021	Approved development and implementation of permanent versions of these programs and directed staff to return with item to discuss fees for outdoor encroachment programs
December 14, 2021	Approved extension of programs through June 30, 2022

Discussion:

As directed by Council from the beginning of the COVID-19 pandemic, encroachment fees were suspended for all existing encroachment permittees and no new encroachment fees were created for new outdoor dining areas in the public right of way. Many of the businesses with existing encroachments, especially those on Pier Plaza, expanded their prior encroachment areas with no additional fee. Additionally, the City has not sought reimbursement of any parking meter revenues lost from on-street deck operators. Also, as part of its business assistance efforts, the City waived fees for the outdoor music program, temporary signs and banners, extended business license tax renewals, deferred business license taxes for businesses who were closed, and waived business license tax penalties and interest. The extended business license taxes and waived penalties and interest totaled \$57,322 in revenue the City did not collect. The waived sign and banner fees are estimated at about \$10,000 thus far. At its January 12, 2022 meeting, Council unanimously supported having a discussion regarding encroachment fees for the new outdoor dining areas.

For many years, Hermosa Beach businesses have been able to request use of the public right of way through an encroachment permit program. Fees for this use vary based on location and operating hours:

Location and Hours	Fee per Square Foot
Pier Plaza, open after midnight	\$5
Pier Plaza, closed before midnight	\$2
Outside of Pier Plaza or snack shop	\$1

These fees generate approximately \$283,000 annually and consequently, due to their suspension since the beginning of the pandemic in Spring of 2020, approximately \$500,000 in encroachment fees have not been collected.

The new outdoor dining areas, permitted by the City's pandemic related urgency orders, have not been charged any encroachment fees. Additionally, decks placed in on-street parking areas have not been charged for any lost parking meter revenue. Staff researched the historic parking meter revenue for the 60 parking spots currently occupied by deck areas. The individual annual revenue

from these spaces ranges from approximately \$2,000-6,000 each and, in total, these spots generated nearly \$220,000 in 2019.

The City's many encroachment areas vary in size, with some on Pier Plaza measuring over 1,000 square feet and some of the smallest under 100 square feet. The new on-street deck areas also have a wide range but, as a guide, a typical parking spot measures approximately 160 square feet and most decks utilize 2-3 parking spots at a minimum.

For comparison, the City of Manhattan Beach recently began charging its public right of way deck areas an encroachment fee. Manhattan Beach approved a \$1 per square foot fee in September 2021 and increased that fee to \$3 per square foot in December 2021. In their effort to develop a "nominal yet reasonable" fee, Manhattan Beach utilized a variety of factors including parking revenue lost and commercial lease rates. The neighboring agencies of El Segundo and Redondo Beach have not implemented fees for their on-street decks yet.

There are many rationales to be considered in the creation of these new fees. In reference to the existing encroachment fees, the new on-street decks compare to the areas being charged \$1 per square foot because of their location off Pier Plaza and the fact that they close before midnight. A key difference is the decks' use of on-street public parking spaces and the consequent loss of the space for wider public benefit and suspension of parking meter revenues. Assuming an average of \$4,000 per parking spot in annual meter revenue and a typical deck size of three parking spots, it would require approximately \$1,000 in monthly fees per typical deck to fully compensate for annual meter revenue loss. This is approximately \$2 per square foot per month. A few possible encroachment fee scenarios are described in the table below:

	At \$1 per sq. ft.	At \$2 per sq. ft.	At \$3 per sq. ft.
Monthly Fee for an on-street deck occupying 3 parking spots	Approximately \$480	Approximately \$960	Approximately \$1,440

The benefit these decks provide to the City as a whole is also a consideration. Discussions with other agencies have anecdotally shown that, despite parking revenue loss from on-streets decks, there is an overall increase in visitors and the resulting parking revenue has offset a portion of the losses. A fee of \$2 per square foot per month for the new on-street decks could be an efficient compromise between the various factors mentioned above. It would reflect the methodology of the existing public encroachment area fees while also including additional compensation to offset the parking meter revenue loss.

General Plan Consistency:

The proposed program options match the model of "living streets", also known as "complete streets", and a key guiding principle of the General Plan Vision is to foster a vibrant local economy. A living street combines safety and livability while supporting ground floor and outdoor economic

activities. This centers on designing streets that can be safely shared by both vehicular and non-vehicular traffic. A living street should also contribute to an engaging public realm and a vibrant local economy.

Relevant Goals and Policies are listed below:

Governance Element

Goal 6. A broad-based and long-term economic development strategy for Hermosa Beach that supports existing businesses while attracting new business and tourism.

Policies:

- **6.4 Business support.** Support the Chamber of Commerce, retailers, tourist service businesses, artists, and other agencies to develop an aggressive marketing strategy with implementation procedures.
- **6.6 Pop-up shops.** Develop plans and programs for underutilized spaces, such as vacant buildings, utility corridors, parkways, etc., for temporary retail, restaurant, and community promoting uses.

Mobility Element

Goal 1. Complete Streets (Living Streets) that serve the diverse functions of mobility, commerce, recreation, and community engagement for all users whether they travel by walking, bicycling, transit, or driving.

Policy:

- **1.1 Consider all modes.** Require the planning, design, and construction of all new and existing transportation projects to consider the needs of all modes of travel to create safe, livable and inviting environments for all users of the system.

Goal 7. A transportation system that results in zero transportation-related fatalities and which minimizes injuries.

Policy:

- **7.1 Safe public rights-of-way.** Encourage that all public rights-of-way are for all users at all times of day where users of all ages and ability feel comfortable participating in both motorized and non-motorized travel.

Fiscal Impact:

The encroachment fees that have not been charged during the pandemic typically generate approximately \$283,000 annually. Due to their suspension since the beginning of the pandemic in Spring of 2020, approximately \$500,000 in encroachment fees have not been collected. A discussion of the existing encroachment fee schedule is anticipated for a revenue study session coming in Spring of 2022. The parking meter revenue lost to the newly-created on-street deck areas was

approximately \$220,000 in 2019. The deferred fees related to business license tax and associated waived penalties is \$57,322. Revenue from any new fees charged for these new encroachment areas would depend on the rate approved by City Council. Based on the estimates described above, the following revenue projections could result:

	At \$1 per sq. ft.	At \$2 per sq. ft.	At \$3 per sq. ft.	At \$6 per sq. ft.
Total annual revenue for 60 on-street deck encroachments (at 160 sq. ft. each)	\$115,200	\$230,400	\$345,600	\$691,200

Attachments:

1. Map of current encroachment areas and decks
2. Link to June 9, 2020 City Council Report
3. Link to July 14, 2020 City Council Report
4. Link to August 11, 2020 City Council Report
5. Link to September 8, 2020 City Council Report
6. Link to October 27, 2020 City Council Report
7. Link to June 22, 2021 City Council Report
8. Link to July 13, 2021 City Council Report
9. Link to October 26, 2021 City Council Report
10. Link to December 14, 2021 City Council Report

Respectfully Submitted by: Douglas Krauss, Environmental Program Manager

Concur: Ken Robertson, Community Development Director

Noted for Fiscal Impact: Viki Copeland, Finance Director

Legal Review: Mike Jenkins, City Attorney

Approved: Suja Lowenthal, City Manager