



The City of San Diego

Staff Report

DATE ISSUED: 8/19/2021

TO: City Council

FROM: Planning

SUBJECT: Spaces As Places - San Diego Municipal Code Amendment, Exclusive Use Fee, and Spaces As Places Design Manual.

Primary Contact: Sameera Rao Phone: (619)-446-5346

Secondary Contact: Heidi Vonblum

Council District(s): Citywide

OVERVIEW:

Spaces as Places is the City of San Diego's proposed program to transition temporary outdoor spaces, which were allowed to replace indoor capacity in response to the COVID-19 pandemic which significantly restricted indoor operations, to permanent places that safely bring people together to dine, play and gather. The Spaces as Places program will offer a menu of options to allow for the creation of a variety of quality outdoor places for dining, walking, biking, public artwork, and other enjoyable public interaction for the post-pandemic world.

PROPOSED ACTIONS:

RECOMMEND ADOPTION of amendments to the San Diego Municipal Code and Local Coastal Program to include Spaces as Places Regulations for outdoor dining.

RECOMMEND ADOPTION of the Spaces as Places Design Manual.

RECOMMEND ADOPTION of an Exclusive Use Fee and Development Impact Fee for outdoor dining spaces.

DECLARE that this activity is exempt from CEQA pursuant to CEQA Guidelines Sections 15301(c) (Existing Facilities), 15303 (New Construction or Conversion of Small Structures), 15304(h) (Minor Alterations to Land), and 15311 (Accessory Structures); and that none of the exceptions to the exemptions found in CEQA Guidelines Section 15300.2 would apply.

DISCUSSION OF ITEM:

Background

On August 4, 2020, the City Council approved an emergency ordinance allowing Temporary Outdoor Business Operations as an emergency response to the COVID-19 pandemic (Emergency Outdoor

Operations Regulations). The Emergency Outdoor Operation Regulations allowed businesses to conduct outdoor dining within the public right-of-way as a means to provide for dining establishments to continue to operate when indoor operations were wholly or partially significantly limited due to public health orders issued to protect public health. On May 18, 2021, the City Council extended the Emergency Outdoor Operations Regulations to continue to allow the temporary use of the public right-of-way for outdoor dining for an additional year due to continuing limits on indoor operations in effect at that time.

While originally conceived as an emergency response to the pandemic, outdoor dining proliferated, often in ways that have resulted in more active and enjoyable use of public spaces not previously experienced prior to the pandemic. In response to this, the Planning Department has developed Spaces as Places to provide permanent options for outdoor dining that simultaneously provide flexibility for business owners to use the public right-of-way while contributing to the enjoyment of the public space for people with all abilities, and increasing opportunities for more enjoyable pedestrian travel. Spaces as Places is a comprehensive program that includes such flexibility, as well as necessary regulations and design standards to achieve the vision of the program.

Spaces as Places Vision and Process

Spaces as Places is focused not only on increasing opportunities for businesses to expand indoor dining operations into outdoor operations within the public right-of-way, but also simultaneously creating an enhanced experience for active transportation for people of all abilities consistent with the City's climate goals. The creation of quality pedestrian and bike friendly spaces to help improve social connections and build strong communities contributes to the City's achievement of the mode share goals for pedestrians and bicyclists set forth in the Climate Action Plan. Active outdoor spaces with corresponding investments, such as tree plantings, can also address the need to adapt to extreme heat due to a changing climate, particularly through investments in areas with the highest extreme heat vulnerabilities. Spaces as Places also provides opportunities to support businesses in traditionally underserved communities to ensure that outdoor dining investments that improve public spaces and enhance the pedestrian environment can be equitably enjoyed across the City.

The Planning Department has worked with various City departments to develop draft regulations that will ensure these uses in the public right-of-way will continue to comply with requirements for fire safety and access, stormwater, ADA accessibility, and traffic safety, and will be designed and operated in a manner that is the most safe for our City. The draft proposed Spaces as Places regulations are included as Attachment 1. Spaces as Places also includes a Spaces as Places Design Manual that provides a step-by-step guide and design guidelines for creating safe and enjoyable public spaces. The draft Spaces as Places Design Manual is included as Attachment 2.

Staff has engaged various stakeholders to gather feedback on the initiative. Two online workshops were conducted in June to provide an overview of the preliminary draft regulations and gather additional input. Over 150 people attended these workshops with feedback indicating strong support for the permanent operation of outdoor dining within the public right-of-way. Feedback on use of outdoor spaces and outdoor dining is also being gathered through online surveys for residents and businesses. More than 500 residents have taken the survey and provided valuable input that has helped shape the initiative thus far.

Outdoor Dining Opportunities

Spaces as Places includes a menu of options to facilitate the creation of wider sidewalks, facilitate outdoor dining, and allow for the creation of more space for pedestrians and bicycles to safely use the streets. Given the City's diverse urban landscape, Spaces as Places includes the following options:

Streetaries: Streetaries are outdoor places created in areas formerly dedicated to parking spaces that serve as an extension of a restaurant or other establishment that sells food and drink. Based on the discussions with various City departments, guidelines for design and locational

requirements are proposed, along with operational requirements to ensure public health, safety, and enjoyability, and land use compatibility.

Social Curb: Social curbs consist of a permanent extension of the existing curb to extend into the existing parking spaces to facilitate a variety of activities such as recreation, outdoor dining, and enjoyable public interaction, all which contribute to an enhanced active transportation experience, making it more likely that people will walk or bike. Social curbs are intended to create places for all. Social curbs would provide a more flexible option for the creation of outdoor spaces by allowing for permanent curb extensions along streets where on street parking currently exists. Given that permanent curb extension is an involved process, locational and design requirements have been developed. Operational requirements are also included the draft regulations.

Outdoor Dining on Private Property: Outdoor dining within private property is currently allowed as a temporary use. Spaces as Places would include new regulations to allow permanent outdoor dining on private property to replace existing privately owned off-street parking, while also providing necessary locational, design, and operational requirements to ensure compatibility with surrounding land uses.

Promenades: Promenades involve partial or complete street closures to vehicular traffic to facilitate active transportation uses such as walking and biking free from vehicular conflicts. Recreational amenities, outdoor dining, and other enjoyable public interactions can facilitate and contribute to the enjoyment of the active transportation experience. Spaces as Places includes new regulations to facilitate the approval process for these types of public promenades where necessary locational, design, and operational requirements are satisfied.

Outdoor Dining that Enhances our Communities

The proposed Municipal Code regulations would allow for outdoor dining to occur in the right-of-way and in other private parking areas, while also including certain requirements to ensure that the outdoor dining will positively contribute to the active use of the public right-of-way for walkers and bikers of all abilities.

Location Requirements

Streetaries will be allowed along unpainted, yellow or green curbs and at least 20 feet from the intersection to ensure visibility and will not be allowed along red, blue or white curbs and within an alley. Streetaries will be limited to streets with lower speed limits and pedestrian friendly streets. Streetaries will not be allowed within a bus lane and an existing or planned bike facility to avoid conflicts. It will be required that access to underground facilities such as manhole covers, water valves and required clearances from fire hydrants and storm drain inlets are maintained at all times. Social Curbs will be allowed where on street parking exists and will need to be designed to meet all locational requirements to the satisfaction of the City Engineer.

Design Requirements

All outdoor dining areas will need to be designed to meet ADA standards, ensure storm water compliance and meet the requirements of the fire code. A horizontal and vertical clearance of 3 feet will be required for every 20 feet of streetary. The use of umbrellas will be allowed to provide shade but no overhead structures will be permitted. A 42-inch railing is required along the side of the outdoor dining area facing the street. It will be required that the platform of the streetary is flushed with the side walk and a five feet clear path of travel is maintained to ensure accessibility, and maintain an 8 inch by 6-inch clear gutter to ensure compliance with storm water requirements. Social curb is the permanent curb extension into the parking lane and will need to meet all engineering standards to the satisfaction of the City Engineer.

Operational Requirements

Property owner will be required to enter into an encroachment, maintenance and removal agreement to ensure that the property owner maintains the outdoor dining area free of litter at all times and indemnifies the City from any claims, damages or injuries. The permit would be issued for a two-year period, which could be renewed for later additional two-year periods. All outdoor dining areas are designed to create smoke-free and vape-free environments. Serving alcohol, food and beverages is allowed between 7 am and 10 pm Sunday through Thursday and between 7 am to 11 pm Friday through Saturday and for outdoor dining areas located within 150 feet of a residential use, food and beverages is allowed between 7 am to 9 pm Sunday through Thursday and between 7 am to 10 pm Friday and Saturday and it will be required that the noise levels within outdoor dining comply with the permitted sound levels of the adjacent use.

Public Improvements and Enhancements

Spaces as Places is proposed for the post-pandemic world when restaurants can function at full capacity indoors and outdoor dining would represent an expansion of a restaurant's seating capacity into the outdoors, to enhance the overall public experience within the public right-of-way. A fee for the exclusive use of the public right-of-way is proposed to ensure that the public right-of-way will be enhanced in ways that will facilitate its successful use by private businesses. Specifically, the fee, which would be charged to businesses that operate within the public right-of-way would be used to fund improvements that enhance the safe and enjoyable use of the surrounding public spaces. At least 50 percent of this funding source would be used to support businesses in traditionally underserved communities so that outdoor dining investments that enhance the public right-of-way can be enjoyed equitably across the City. Examples of investments that could be made with the funds include traffic calming investments to enhance safety for all people experiencing the public right-of-way, expanded sidewalks and bikeways to allow for more spaces for people, tree and shade investments to provide relief from the heat within the right-of-way, and recreational amenities that can enhance the public's experience while also providing recreational value. The increased space used by restaurants can also create the need for additional investments in public infrastructure itself, and this fee would also provide a funding source to realize those needed investments. To ensure that the public right-of-way continues to be accessible to all – throughout the City – the following fee structure is proposed for private businesses operating in the public right-of-way:

the fees are proposed at \$20 per square foot of outdoor dining area per year. In addition to the exclusive use fee, streetaries would be required to pay 1/15th of the Development Impact fees for non-residential uses once every two years in order to ensure that facilities needed to serve the commercial uses during the two-year operational period under the permit are provided. The exclusive use fee will be charged for a 2-year period – the duration of the permitted use. Social Curbs and Promenades would not be subject to the Development Impact Fees.

Additionally, to encourage publicly-accessible spaces within the right-of-way, businesses that elect to provide at least 25% of the outdoor dining area open to public during operational hours and open it to the public during all non – operational hours, would be subject to an exclusive use fee that is reduced by reduced by 25%, and businesses provide all of their outdoor dining spaces open to public at all times, there would be no exclusive use fee.

City Strategic Plan Goal(s)/Objective(s):

Goal # 2: Work in partnership with all of our communities to achieve safe and livable neighborhoods

Objective # 3: Invest in quality infrastructure

Goal # 3: Create and sustain a resilient and economically prosperous City with opportunity in every community

Objective # 1: Create dynamic neighborhoods that incorporate mobility, connectivity, and sustainability

Objective # 3: Diversify and grow the local economy

Objective # 4: Prepare and respond to climate change

Fiscal Considerations:

N/A; there is no contract associated with this action.

Charter Section 225 Disclosure of Business Interests:

N/A; there is no contract associated with this action.

Environmental Impact:

The City of San Diego conducted an environmental review under the California Environmental Quality Act (CEQA) and determined that the Spaces as Places program is categorically exempt from CEQA pursuant to CEQA Guidelines Sections 15301(c) (Existing Facilities), 15303 (New Construction or Conversion of Small Structures), 15304(h) (Minor Alterations to Land), and 15311 (Accessory Structures). An exception to the exemptions as listed in CEQA Guidelines Section 15300.2 would not apply. The Spaces as Places program is also consistent with the Final Program Environmental Impact Report for Complete Communities: Housing Solutions and Mobility Choices (SCH No. 2019060003) certified by the San Diego City Council on November 9, 2020 (Resolution R-313279). This activity is a subsequent discretionary action and is not a separate project for the purposes of CEQA review pursuant to CEQA Guidelines Sections 15378(c) and 15060(c)(3). Pursuant to CEQA Statute Section 21166 and CEQA Guidelines Section 15162, there is no change in circumstance, additional information, or project changes to warrant additional environmental review for this action.

Equal Opportunity Contracting Information (if applicable):

N/A

Previous Council and/or Committee Actions:

On July 14, 2020, the City Council approved Ordinance No. O-21218 allowing outdoor retail sales and eating and drinking establishments to expand their footprint to allow adjacent exterior areas located within the public right-of-way and their private property. This emergency ordinance was in effect for 45 days.

On August 4, 2020, the City Council approved Ordinance No. O-21229 allowing outdoor retail sales and eating and drinking establishments to expand their footprint to allow adjacent exterior areas located within the public right-of-way and their private property, extending the original emergency ordinance for an additional ten months and 15 days.

On August 4, 2020, the City Council approved Ordinance No. O-21230 allowing outdoor retail sales and eating and drinking establishments to expand their footprint to allow adjacent exterior areas located within the public right-of-way and their private property. This Ordinance was in effect for 45 days.

On September 5, 2020, the City Council approved Ordinance No. O-21237 allowing to expand their footprint to allow adjacent exterior areas located within the public right-of-way and their private property. This Ordinance was in effect for ten months and 15 days.

On May 18, 2021, the City Council approved Ordinance No. O-21319 allowing to expand their footprint to allow adjacent exterior areas located within the public right-of-way and their private property. This Ordinance is in effect until July 13th, 2022.

On August 24th, 2021, the Community Planners Committee voted unanimously to request additional review time and that all public hearings to be postponed by 8 weeks.

Spaces as Places is scheduled to be heard by the Planning Commission on September 9, 2021, and staff will provide an update on the Planning Commission's recommendation.

Key Stakeholders and Community Outreach Efforts:

Citizens of the City of San Diego, business owners/operators, applicants, and permit holders

Mike Hansen

Jeff Sturak

Department Director

Deputy Chief Operating Officer