

City of Culver City, California
City Council Agenda Item Report

Meeting Date: 11/03/08		Item Number: <u>A-3</u>	
AGENDA ITEM: Adoption of a Resolution Approving Revised Outdoor Dining Standards and Procedures on the Public Right-of-Way, and Adoption of a Resolution Revising the Outdoor Dining Fee Schedule.			
Contact Person/Dept.: Glenn Heald/Redevelopment		Phone Number: (310) 253-5752	
Fiscal Impact: Yes ☒ No ☐		General Fund: Yes ☒ No ☐	
Public Hearing: ☐		Action Item: ☒ Attachments: ☒	
Public Notification: Downtown Business Association (10-09-08); Culver City Chamber of Commerce (10-09-08); All Restaurants Holding Valid Culver City Business Tax Certificates (10-06-08); Master E-Mail Notification List (10/22/08) and (10/29/08).			
Department Approval: Sol Blumenfeld (10/16/08) Charles Herbertson (10/16/08)		City Attorney Approval: Carol Schwab (by H. Baker) (10/23/08)	
Chief Financial Officer Approval: Jeff Muir (by M. Noller) (10/22/08)		City Manager Approval: Jerry B. Fulwood (10/23/08)	

RECOMMENDATION:

Staff recommends the City Council adopt a resolution approving the revised Outdoor Dining Standards and Procedures (the "Standards"), and adopt a resolution approving a revised fee schedule for outdoor dining.

BACKGROUND:

Culver City established Outdoor Dining Standards and Procedures in 1994 to allow businesses to utilize selected portions of the public right-of-way ("ROW") through the execution of Outdoor Dining License Agreements. The Outdoor Dining Standards and Procedures were updated in 1996 without an increase in fees. During the past few years Culver City has experienced unprecedented growth in the number of restaurants requesting use of the public right-of-way for outdoor dining areas, yet despite recent fee increases for Outdoor Dining License Agreements, current encroachment fees remain substantially below current norms for the Westside. At present, the City has not implemented an automated method of renewal and collection of these fees. In order to establish uniform design, operation, collection and enforcement standards, and to bring encroachment fees in line with comparable municipalities, staff proposes revising the Outdoor Dining Standards and Procedures.

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DISCUSSION:

There are currently approximately 160 licensed restaurants in Culver City, of which 43 currently have outdoor dining areas that encroach upon the public ROW. Of these, 33 have valid Outdoor Dining License Agreements and 2 are currently in the permitting process. The revised Standards include provisions which grandfather most current conditions of approval for existing valid Outdoor Dining License Agreement holders, modify existing Outdoor Dining License Agreements (the "License") to implement uniform calendar year permit expiration, and implement new collection and enforcement standards and procedures.

The Standards allow current holders of valid licenses for conforming use to continue operations unaltered until or unless they either modify their outdoor dining area or transfer their business. Operators with valid licenses for non-conforming use may continue operations under their current format during the remaining term of the existing license, at which time they must modify their conditions to meet the new Standards or apply for an extension of their current License. Existing entitlements and Disposition and Development Agreements ("DDAs") will be grandfathered at the design standards in place at the time the entitlements and DDAs were executed. Licensees may not modify or improve their outdoor dining areas without first receiving written confirmation from the City Engineer and Community Development Director or designee that the requested modifications are in compliance with the new Standards.

If approved by Council, fees for Licenses will be raised from \$0.58 per square foot per month (\$7.00 per s.f. per year) to \$1.00 per square foot per month (\$12.00 per s.f. per year). This is comparable to other cities in our area, as demonstrated in the following table:

City	Fee per square foot per mo.	Permit/Application Fee	Additional fees
Beverly Hills	\$0.90 - \$1.40	\$219.90 - \$3,614.30 Permit fee	\$120.00 per Chair, \$490.00 Review fee, \$2,500.00 Bond
Culver City	\$1.00	\$500.00 Application fee	
Hermosa Beach	\$1.00 - \$4.00	\$485.00 Encroachment fee	\$2,208.00 Use permit
Los Angeles		\$1,600.00 Flat fee annually	
Santa Monica	\$0.73 - \$1.78	\$210.00 Planning fee	\$259.00 - \$1,309.00 ARB review
Torrance	Not allowed		
West Hollywood	\$1.00	\$100.00 Permit fee	

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The revised fee for Licenses must be enacted by rescinding the current fee resolution and the passage of a new resolution (Attachment No. 4).

The Outdoor Dining Standards and Procedures are comprised of the application and renewal procedures, design standards, standards of operation, non-conforming uses, modifications and extensions, and enforcement policies and procedures.

The application procedure is streamlined in the revised Standards through a uniform set of submission requirements to allow applicants full knowledge of what must be done and how much it will cost to acquire a License. Applicants submitting a complete package in conformance with the Standards should be issued a License within thirty (30) days. Application fees will be prorated so that all Licenses will expire at the end of each calendar year. Licenses issued during the final quarter of each calendar year will be valid through the end of the *following* calendar year. All Licenses will be effective on a calendar year basis and will be renewed as part of the business license renewal process, with the applicable fee appearing as a line item in the business license renewal forms.

Design standards remain largely unchanged from previous standards and are designed primarily to codify existing practices and to ensure life safety issues are addressed, including requirements for adequate pedestrian passageways, and to prevent the size or shape of outdoor dining areas from unreasonably inconveniencing the public and neighboring businesses. Outdoor dining areas are restricted to a size no larger than the width of the tenant space. Barriers are required for most outdoor areas, though provisions are made for very small outdoor areas where barriers would be impractical or an impediment. Standards for furniture, lighting, signage, awnings and landscaping are addressed to ensure uniformity of use and compliance with building regulations and life safety issues.

Operational standards reflect modifications to allow more flexibility to business operators while ensuring there will be no significant negative impact on neighboring businesses or the general public, and to enact uniform and consistent enforcement.

Though the intent of the Standards is to allow and encourage creative use of the ROW by businesses, successful implementation of the Standards requires equitable and efficient enforcement of their provisions. To this end, the City Attorney's Office will be amending Resolution 2004-R016 prior to the effective date of the revised Standards to grant specific authority for enforcing Outdoor Dining Standards to the Enforcement Services Division.

The revised Standards contain the following language addressing enforcement:

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- A. All plans, permits and conditions of approval for the outdoor dining area approved by the City shall be kept on the premises at all times and shall be produced for inspection immediately upon request by officers, agents or inspectors of the Enforcement Services Division, Planning Division, Engineering Division, Building Safety Division, Police Department, or any other governmental enforcement agency.
- B. Notwithstanding the allowance to construct private improvements within the public right-of-way via these outdoor dining standards, the tenant and/or property owner shall provide the City and all its representatives with reasonable and immediate access to any part of the outdoor dining area while in the course of conducting official City business.
- C. Notice of violation of the outdoor dining design standards or standards of operation shall be made in writing to the Licensee by any Code Enforcement Officer, Public Works Inspector, or Building Inspector of the City. A copy of the notice shall be filed with the City Engineer. The Licensee 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 Licensee, the City Engineer may suspend or revoke the License Agreement.
- D. The City retains the right to revoke an Outdoor Dining License Agreement upon thirty (30) days notice, regardless of compliance with these provisions.

Staff has conducted public outreach concerning this item through consultation arranged by the Chamber of Commerce with selected Culver City restaurant operators on October 8th and a public meeting on Tuesday, October 14th at City Hall noticed through postcards to all Culver City restaurants holding current business licenses, a newspaper ad in the October 9th edition of the Culver City News, e-mail blasts sent by the Chamber of Commerce and the Downtown Business Association to their members on October 9th, and telephone calls from staff to all Culver City restaurants holding current outdoor dining permits.

FISCAL ANALYSIS:

The City currently has 33 valid Outdoor Dining License Agreements, with 2 applications awaiting approval, comprising a total of 9,953 square feet of ROW encroachment subject to permitting. Under present License fees, the total annual revenue, if collected in full, would be \$69,671. Under the terms of the fee resolution staff recommends Council approve with the revised Standards, the annual amount collected for these same Licenses would be \$119,436. The Standards call for the addition of License fees to be added as a line item on Business Tax renewal notices,

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which are sent out and collected by the Finance Department through an efficient and highly automated process. This manner of fee collection will add only a negligible amount of additional staff time to the collection of Business Taxes while offering a simple and reliable means of ensuring Outdoor Dining Fees are correctly calculated and collected each year. Failure to remit Licensing fees may be handled in the same manner as – and in conjunction with – delinquent Business Taxes, and subject to the same late-payment penalty of 20 percent of the delinquent amount per month, to a maximum of 100 percent of the total License fee due.

ATTACHMENTS:

1. Draft Revised Outdoor Dining Standards on Public Right-of-Way and Procedures for Outdoor Dining License Agreements.
2. Sample Application Packet.
3. Resolution R2008- to Adopt New Outdoor Dining Standards.
4. Resolution R2008- to Adopt New Fee Schedule for Outdoor Dining License Agreements.

MOTIONS:

That the City Council:

1. Adopt a Resolution approving the Revised Outdoor Dining Standards on Public Right-of-Way and Procedures for Outdoor Dining License Agreements; and,
2. Adopt a Resolution approving New Fees for Outdoor Dining License Agreements.