



# City of Huntington Beach

File #: 20-1664

MEETING DATE: 6/1/2020

## REQUEST FOR CITY COUNCIL ACTION

**SUBMITTED TO:** Honorable Mayor and City Council Members

**SUBMITTED BY:** Oliver Chi, City Manager

**PREPARED BY:** Ursula Luna-Reynosa, Director of Community Development

**Subject:**

**Approve a program to allow Temporary Emergency Outdoor Commercial Activity on Private and Public Property during the COVID-19 pandemic**

**Statement of Issue:**

On May 18, 2020, Council Members Brenden and Posey introduced an H-Item to direct staff to develop a program that would temporarily allow conversion of adjacent public and private spaces into outdoor dining areas for restaurants. After discussion, the City Council directed staff to develop a program for Council consideration that would allow the temporary conversion of adjacent public and private spaces into outdoor dining and retail use to provide local businesses with the opportunity for greater customer capacity (up to but not exceeding the capacity limits that were in effect prior to the COVID-19 restrictions).

Staff has prepared a regulatory framework to allow businesses to quickly expand into private and public spaces in order to allow patrons to frequent local businesses in a safe manner during the Local Declaration of Emergency as follows:

1. Authorize the City Manager, and his designee, to expand the Temporary Emergency Use Permit to allow outdoor business expansion; and
2. Authorize the City Manager, and his designee, to expand the use of temporary signs and banners and approve minor deviations from design standards associated with Temporary Emergency Use Permits as described in item 1, above; and
3. Forego all fees associated with processing Temporary Emergency Use Permits and Temporary Signs and Banners as described in items 1 and 2, above.

Additionally, based on City discussions regarding this particular matter, the Downtown BID did initiate a survey to their members to better understand the needs of downtown businesses given California's and Orange County's phased reopening of the economy, particularly as it relates to utilizing public right-of-way to accommodate social distancing requirements. It was shared with the City that an

overwhelming majority of survey respondents indicated a preference for instituting temporary adjustments along Main Street (an in particular, the second block of Main Street) during the phased reopening to support current business needs during this phased reopening of the economy.

To that end, staff is also seeking authorization from the City Council to engage with the Downtown BID to discuss the implementation of a pilot program focused on the second block of Main Street during the phased recovery, as further outlined in this report.

**Financial Impact:**

The City's current established fee for a Temporary Use Permit for extended periods of outdoor uses is \$5,096 and requires a public hearing before the Zoning Administrator. In addition, temporary outdoor events with a shorter duration (no more than 4 days, once every three months) are processed via an over-the-counter Temporary Activity Permit with a \$270 filing fee. Finally, the established fee for a Temporary Sign/Banner permit is \$93.

Based on the proposed program developed for City Council consideration, staff would recommend that all fees associated with the Temporary Emergency Use Permit program be waived, which will result in reduced permit fee collections. However, it is anticipated that any permit fee costs would generally be offset by increased sales tax revenue to the City as businesses return to pre-COVID conditions.

Finally, there is no fiscal impact associated with exploring a pilot program for downtown. If Council authorizes such exploration, staff will return at the next City Council meeting with a program and associated costs.

**Recommended Action:**

A) Confirm that allowing temporary emergency outdoor commercial activity on private and public property with issuance of a Temporary Emergency Use Permit during the period of the emergency is reasonably related to the protection of property being impacted by the COVID-19 emergency, and allow the City Manager, or his designee, to implement the temporary emergency use permit process; and,

B) Confirm that allowing a Temporary Sign/Banner Permit in conjunction with issuance of a Temporary Emergency Use Permit during the period of the emergency is reasonably related to the protection of property being impacted by the COVID-19 emergency, and allow the City Manager, or his designee, to implement the temporary sign and banner permit process including minor design deviations; and,

C) Forego all fees associated with Temporary Emergency Use Permits and associated Temporary Sign/Banner Permits; and,

D) Direct and authorize staff to engage with the Downtown BID to develop a possible Downtown Pilot Program along the Second Block of Main Street, and return with program details for formal City Council consideration at the June 15<sup>th</sup> City Council meeting.

**Alternative Action(s):**

Do not approve the program, and provide staff with additional direction.

**Analysis:**

The State of California and Orange County are taking a phased approach to reopening the economy,

As stated in the City Council adopted Resolution 2020-15 declaring a local emergency, "The City Manager, and Director of Emergency Management under Huntington Beach Municipal Code Chapter 8.60, is hereby the authorized representative of the City of Huntington Beach for all purposes and to take all action for the preparation, mitigation, response and recovery from the COVID-19 pandemic."

Typically, a standard imposed by the City Council can only be amended by the City Council. However, the declaration of local emergency allows flexibility to rapidly respond to emergencies, including adopting temporary use permit procedures to aid in economic recovery from the pandemic.

This analysis recommends an outdoor commercial activity plan for temporary expansions on private and public property, and seeks direction from the City Council regarding a Pilot Program for the Downtown business improvement district.

**PRIVATE PROPERTY**

In accordance with the local emergency declaration and the City Council's recent direction, restaurants and commercial establishments with access to private sidewalks and/or private parking may utilize portions of these areas for dining, retail, or personal services, provided certain safety criteria are met, the landlord or property-owner agrees, and approval of a Temporary Emergency Use Permit, (reviewed administratively by the Community Development, Public Works, Fire, and Police Departments) is obtained.

An overall summary and highlights of the Temporary Emergency Use Permit standards are described below. However, the complete detailed criteria is included in Attachment No. 1. The Temporary Use Permit Application can be found in Attachment No. 2.

**Applicability Summary**

- ***Private Sidewalks and Parking Lots.*** Businesses and institutions with access to private sidewalks and/or private parking lots may utilize portions of these areas for dining, retail sales, personal services, religious assembly, and curbside pick-up.
- ***Uses and Businesses Identified by State and County Order Can Operate.*** The uses and businesses allowed to operate outdoors shall only be those identified by the State and Orange County Health Care Agency. As the State and County expand the list of businesses allowed to operate, the list of uses that can operate outdoors in Huntington Beach will automatically expand accordingly.

- **Uses with Licenses or Approvals by Other Agencies.** Businesses that are subject to operating under other licenses or agency approval (ABC, Cosmetology, Health Care Agency, etc.) shall continue to be subject to those operational standards.
- **Duration.** The Temporary Emergency Use Permit shall terminate when: (a) the local emergency proclaimed on March 16, 2020 (as may be extended), is no longer in effect; or (b) the State and County allow resumption of normal and full commercial operations. As a use or business is permitted to resume full and normal operations, they shall abandon outdoor operations, relocate back indoors, and restore outside areas to original conditions.

### Permit Process Summary

- **Temporary Emergency Use Permit (TEUP) application.** The application will be responded to within two business days. There will be no application fee.
- **Commercial Centers.** If there are multiple tenants in a commercial center, it is highly encouraged that a TEUP for an entire center be submitted by the property manager. Commercial centers may create communal areas for multiple businesses to utilize.
- **Individual Uses and Businesses in Commercial Centers.** The temporary outdoor commercial activity area shall be limited to the sidewalk/plaza/parking area directly in front of the store. The length of the outdoor commercial activity area shall be limited to the leasehold frontage, and the depth will be dependent upon the required ADA and social distancing clearances.

### Criteria for Temporary Outdoor Commercial Activity Summary

#### a. Permitted Locations (General)

- Within private parking lots, plazas, and sidewalks when the safety criteria described herein is met.
- The use of removable barriers to define outdoor commercial activity areas, seating areas, curbside pick-up areas, pedestrian paths, vehicular paths is permissible. There is no limitation as to the type of temporary barriers, but they must clearly serve the intended purpose and ensure public safety.

#### b. Private Sidewalks and Plazas

- Tenants may use the sidewalk or plaza directly in front of their business.
- The temporary outdoor commercial area and/or pedestrian path shall be physically separated from pedestrian and vehicular paths and clearly demarked by durable and removable barriers.
- No tables, chairs, umbrellas or other fixtures shall be permitted within the pedestrian path.
- Access to public utilities, building entrances/exits, ADA facilities, fire hydrants, and fire hose connections for sprinkler systems shall not be obstructed by barriers or seating.

**c. Parking Lots**

- As approved for a commercial center, tenants may convert a portion of the parking lot near their business for temporary outdoor commercial activity. Individual tenants may not utilize private parking lots of a commercial center without a TEUP first approved for the entire commercial center. Cement or water barriers (or similar) shall protect outdoor commercial activity within parking lots.
- Up to 50% of off-site private parking in a center may be converted to outdoor commercial activity.
- No parking for disabled persons may be repurposed, unless replaced and demarked elsewhere in the center.
- Landscape areas shall not be used or converted for parking, outside seating, or commercial activities.
- Vehicular paths and curbside pick-up areas must be clearly marked and signed to ensure pedestrian safety.
- Marked fire access lanes shall be maintained.

**d. Tents and Other Shade Structures**

- Tents that are 10 feet by 10 feet in size or smaller may be erected in the approved outdoor commercial activity areas. Tents or shade structures that are larger than 10 feet by 10 feet in size must comply with Fire Department requirements.
- Tents shall be properly anchored; allow for airflow; no heaters; no smoking.

**e. Operational Criteria**

- The hours of operation of the temporary outdoor commercial activity area for all business types shall be restricted to 7:00 AM - 10:00 PM only, including set-up and breakdown activities.
- Vehicular circulation/access lanes must be kept clear at all times.
- Driveways must be kept clear at all times to prevent cars from stacking into streets. This may require that parking lot monitors be employed by the business and/or commercial center.
- Temporary banners advertising the business may be permitted in conjunction with TEUP. One banner per tenant and three banners for the commercial center shall be allowed.
- There is no limit on directional and safety signage (e.g., one way, exit only, maintain social distancing, etc.) that does not contain advertisements.
- Space heaters are permitted if they are an outdoor approved type, and are located at least five (5) feet from the edge of any umbrella canvas, any foliage, or any other flammable object or material.

- No heating, cooking, or open flames are permitted.
- Tents, umbrellas and other decorative material shall be fire-retardant, pressure-treated, or manufactured of fire-resistant material.
- No outdoor amplified noise or live entertainment shall be permitted as part of the TEUP. A separate, Entertainment Permit, consistent with the normal application process, may be submitted for amplified noise or live entertainment.
- The business and property manager shall be responsible for cleaning up trash as needed, but at a minimum of two times per day.
- Keep it simple. Limit visual clutter (banners, flags, signs, etc.) so public can easily navigate access to pick-up areas.

#### **f. Outdoor Seating**

- Maintain a 6 ft. separation between each table, including chairs.
- If people are at a table together, they do not need to be 6 ft. apart. Each table grouping needs to be 6 ft. from other tables measured from the back of each chair, chair-to-chair.
- Identify the total capacity of each outdoor area; the maximum number of customers or patrons permitted within the outdoor seating area shall be based on available seats; there shall be no standing permitted. Total capacity of combined indoor and outdoor areas shall not exceed the total interior maximum seating capacity pre-COVID.

#### **g. Alcoholic Beverages**

- Prior to sales, service, or consumption of alcoholic beverages the business shall have a valid ABC license. Businesses must only serve what is allowed on their current license type.
- Alcohol may only be served in conjunction with food service in outdoor areas.
- Only an employee, and not a patron, will be permitted to carry an alcoholic beverage from the interior portion of the premises to said patio area, or from said patio area to the interior portion of the premises.
- Plastic cups only, no glasses or glass bottles allowed; proper signage; illumination; and 36 inch high barrier.
- All must obey all state, local, and municipal laws, and conditions of the Conditional Use Permit, Alcoholic Beverage Control License and any other regulations, provisions, or restrictions prescribed by a regulatory authority with jurisdiction over the premise at all times.

#### **4. Business Responsibilities for Outdoor Commercial Activity**

- Maintain and secure the removable barriers per the approved plans and all materials located inside the commercial outdoor activity areas.
- The business shall provide evidence of general liability insurance in the amount of \$1,000,000,

and an endorsement naming the city of Huntington Beach as an additional insured.

- By signing and accepting the TEUP, the applicant accepts the benefits conferred by the permit subject to the conditions imposed therein. By accepting the right to operate pursuant to the TEUP, the applicant waives all rights to challenge any condition imposed as unfair or unreasonable.
- The applicant understands that there are inherent safety concerns when operating outdoors, especially in a parking lot, and by signing the TEUP the applicant agrees to indemnify, hold harmless, and defend the City, its officers, agents and employees, from any and all liability or claims that may be brought against the City arising out of its approval of the TEUP.
- The City is not responsible for any damages or loss of equipment installed pursuant to an approved TEUP.

## **5. Revocation**

- The City reserves the right to revoke, without a public hearing, any outdoor commercial activity area that: (i) creates an obstruction to, or causes congestion of, pedestrian or vehicular traffic on the surrounding public right-of-way; (ii) if it finds the installation represents a danger to the health, safety or general welfare of the public; or (iii) a business violates the requirements of a TEUP.
- The applicant shall comply with all federal, state, and local laws. Violations of any of those laws in connection with the use will be cause for revocation of this TEUP.

## **PUBLIC PROPERTY**

When the City allows a private business to utilize public property for commercial activity, in addition to any Planning permits, Public Works also issues an encroachment permit and/or a License and Maintenance Agreement. Staff is recommending that an encroachment permit incorporating applicable provisions of the TEUP process and criteria described above be utilized for public property; however, there may be a few additional terms included to protect the City's property. No fees or "rent" will be collected during this emergency period.

Downtown offers a unique environment in that it is an area of continuous storefronts owned by multiple property owners, unlike a managed shopping center. Further, the sidewalks, on-street parking spaces, and streets are publicly owned. The ability for business owners to utilize public parking spaces as parklets (see Attachment 3), does offer an opportunity for businesses to expand outdoors, but it also poses some safety concerns and potential liability for the City.

Based on the City's discussion to date regarding establishment of the Temporary Emergency Use Permit program, the Downtown BID initiated a survey of their members to better understand downtown business needs as we enter a phased reopening of the local economy. Survey results reported by the Downtown BID indicate overwhelmingly strong support for instituting a temporary physical modification of the Main Street to accommodate social distancing requirements.

- 54 businesses responded to the survey, which is the highest response rate that the Downtown

BID has received for any survey that they have issued.

- Of those that responded, 83.7% of respondents favored some type of temporary modification to Main Street to help facilitate / adjust to new social distancing rules for restaurants and retail operations.
- The second block of Main Street was also identified as the most desirable Downtown location to explore a modification.

Based on those survey results and informal discussions with the Downtown BID, staff is seeking City Council direction and authorization to engage with the Downtown BID to explore development of a pilot program located along the second block of Main Street during the current phased recovery.

As staff has researched this item, we've identified that many other cities in the region are considering similar ideas, including the cities of Laguna Beach, Long Beach, and Manhattan Beach. All three of those jurisdictions is working with a firm called Choura Events to develop communal outdoor dining and retail environments within certain business districts. Based on that feedback, staff reached out to Choura Events, who prepared a slide deck that depicts a high-level concept that could be implemented on the Second Block of Main Street (Attachment 4).

Should the City Council authorize engagement with the Downtown BID to explore a pilot program for the second block of Main Street during the phased recovery, staff will return at the June 15<sup>th</sup> City Council meeting with a detailed plan that addresses the following areas:

- Traffic and Circulation: Analyze any impacts to Level of Service (LOS) on adjacent intersections and circulation in downtown;
- Parking: Identify the number of parking spaces that will be taken out of service and potential mitigations;
- Security Plan: Identify how the area will be secured to ensure the area is maximizing commerce opportunities;
- COVID-19 Sanitation Plan: Identify sanitation measures to help prevent the spread of COVID-19;
- Public Art Opportunity: Identify ways to engage the local art community to beautify the area by providing exhibit areas to showcase work for sale and providing a stage area for performing arts;
- A contract with Choura Design that outlines a menu of services and associated costs specific to Huntington Beach for City Council's consideration;
- A Return on Investment analysis that projects anticipated revenue capture from the investment in a temporary Main Street promenade.

### **Environmental Status:**

Establishing a Temporary Emergency Use Permit process during the COVID-19 pandemic is exempt from California Environmental Quality Act pursuant to CEQA Section 15061 (b)(3), which exempts projects where it can be seen with certainty that there is no possibility that the activity may have a

significant effect on the environment. Directing staff to explore a pilot program to explore closing a portion of Main Street is not a project under CEQA as such exploration will not result in any effect on the environment.

**Strategic Plan Goal:**

Strengthen long-term financial and economic sustainability

**Attachment(s):**

1. TEUP Outdoor Activity Criteria for Private Property
2. TEUP Application for Private Property
3. Concept Parklet Design
4. Concept Pilot Program