

Agenda Item

No.

2-1

DATE SUBMITTED 08/20/2020
 SUBMITTED BY COMMUNITY DEVELOPMENT DIRECTOR
 DATE ACTION REQUIRED 08/21/2020

COUNCIL ACTION (X)
 PUBLIC HEARING ()
 REQUIRED RESOLUTION ()
 ORDINANCE 1ST READING
 ORDINANCE 2ND READING
 CITY CLERK'S INITIALS

Handwritten initials

**IMPERIAL CITY COUNCIL
 AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: URGENCY ORDINANCE TO AUTHORIZE RESTAURANTS OUTDOOR DINING
 1. ADOPTION OF ORDINANCE No 809 ON AN URGENCY AUTHORIZING THE USE OR ADDITIONAL SPACE FOR OUTDOOR DINING

DEPARTMENT INVOLVED: COMMUNITY DEVELOPMENT DEPARTMENT

BACKGROUND/SUMMARY:
 Under the urgency ordinance, established restaurants would be permitted to temporarily establish outdoor eating areas by zoning clearance procedure in those zoning designations that already permit establishment of restaurants by zoning clearance. There would be increased flexibility to implement outdoor dining in "cordoned off" parking and sidewalk areas, as described under the Ordinance. Enacting these provisions would provide restaurant operators with additional flexibility to temporarily increase utilization of outdoor areas, such as sidewalks that are wide enough and parking areas to accommodate additional seating area without interfering with ADA accessibility and parking requirements. This added flexibility could assist restaurants to partially offset decreased business capacity from lost indoor dining space resulting from implementation of social distancing requirements administered by the Department of Public Health. The impacts of this action will be fiscally positive to the City, its businesses and residents, and will assist in the economic recovery from the COVID-19 crisis.

Government Code 65858 requires four-fifths (4/5) vote of the legislative body for adoption and the Urgency Ordinance shall be of no further force and effect 45 days from its date of adoption.

FISCAL IMPACT: ADMIN SERVICES SIGN INITIALS _____

STAFF RECOMMENDATION: Staff recommends Adoption of Ordinance No 809 on an urgency to authorizing the use or additional space or outdoor dining
 DEPT. INITIALS OM

MANAGER'S RECOMMENDATION: approve
 CITY MANAGER'S INITIALS DM

MOTION:
 SECONDED:
 AYES: APPROVED () REJECTED ()
 NAYES: DISAPPROVED () DEFERRED ()
 ABSENT: REFERRED TO:

ORDINANCE NO. 209

URGENCY ORDINANCE TO AUTHORIZE THE USE OF NEW OR ADDITIONAL SPACE FOR OUTDOOR DINING

The City Council of the City of Imperial does ordain as follows:

SECTION 1: Chapter 24 of the Imperial Municipal Code is hereby amended to allow the use of new or additional space for outdoor dining under this Ordinance.

Findings. Current City Ordinance provide for outdoor dining in limited circumstances and only in specific land use zones. Such ordinances are inconsistent and may be in conflict with contemplated changes to the City's land use scheme. In order to protect and enhance the public health, safety and welfare, this urgency ordinance is necessary in that it provides for outdoor dining services.

SECTION 2: Outdoor Dining Services. The following provisions apply to new or additional areas sought to be utilized for outdoor dining services:

A. Definitions.

1. Outdoor Dining Services. "Outdoor dining services" means services covered by a temporary outdoor dining approval and/or a temporary sidewalk dining permit.
2. Restaurant. "Restaurant" means a place where you can eat a meal and is served to you at your table by a waiter or waitress.
3. Sidewalk Dining. "Sidewalk dining" means a portion of an immobile retail food establishment located on a designated public right-of-way immediately adjacent to the retail food establishment.
4. Sidewalk Dining Elements. "Sidewalk dining elements" means any and all tables, chairs, tents, umbrellas, planters, heaters, and other objects associated with sidewalk dining.
5. Temporary Outdoor Dining Approval. Temporary outdoor dining approval authorizes a restaurant to temporarily utilize new or expanded outdoor dining areas on private property.
6. Temporary Sidewalk Dining Permit. A temporary sidewalk dining permit is a permit temporarily authorizing a restaurant to engage in sidewalk dining within a designated area on a public right-of-way.

- B. Temporary Suspension of Regulations Governing Outdoor Dining Areas and Sidewalk Dining. The following regulations temporarily shall supersede and replace any conflicting provisions of the City's zoning ordinances or regulations governing outdoor

dining services. All applicants for temporary outdoor dining approval shall follow the procedures set forth in Section 2.C and the comply with the standards set forth in Section 2.D. All applicants for a temporary sidewalk dining permit shall follow the procedures set forth in Section 2.E, comply with the design and layout standards set forth in Section 2.F, and comply with the operational standards set forth in Section 2.G.

- C. Temporary Outdoor Dining Approval. Any restaurant desiring to offer outdoor dining services on private property shall first apply to the Community Development Department and provide all information deemed necessary by the City's Community Development Director. The Community Development Director is hereby authorized and directed to generate standard application forms and adopt internal procedures for such purpose.
- D. Standards for Temporary Outdoor Dining Areas. Restaurants desiring temporary outdoor dining approval on private property shall comply with the following standards:
 - 1. The restaurant shall be properly licensed by appropriate state and local agencies to perform any activities, sales, and services.
 - 2. The restaurant shall comply with all applicable laws relating to litter, noise, and other livability matters. In addition to the foregoing, no amplified music shall be permitted in outdoor dining areas. The Community Development Director may impose additional conditions or limitations relating to noise on the restaurant when the Zoning Administrator finds that such additional conditions or limitations are necessary or appropriate based on the location of the new or additional outdoor dining area and the proximity of such area to residential areas, including without limitation existing residences, existing residential neighborhoods, and residentially-zoned properties.
 - 3. Unless authorized as part of a sidewalk dining permit, outdoor dining areas shall not encroach within any public rights-of-way.
 - 4. Outdoor dining areas shall not encroach into or interfere with required handicapped parking spaces.
 - 5. Outdoor dining areas shall not interfere with safe pedestrian and vehicular access or access required to be maintained under the Americans with Disabilities Act.
 - 6. Outdoor dining areas shall not encroach within or interfere with fire and other emergency access.
 - 7. Any sales and/or consumption of food and/or alcoholic beverages shall be in compliance with the provisions of any federal, state, and/or local laws and regulations governing same.
 - 8. Outdoor dining areas shall comply with all applicable occupancy requirements or other provisions of the fire code.

9. The Community Development Director may impose other conditions or limitations on a restaurant to protect against adverse impacts from noise, traffic, parking, fire, people with disabilities, and travel.
- E. Temporary Sidewalk Dining Permit. The following procedures shall apply to temporary sidewalk dining permits:
1. Application. Any restaurant desiring a temporary sidewalk dining permit shall first apply to the Community Development Department and provide all information deemed necessary by the Community Development Director. The Community Development Director is hereby authorized and directed to generate standard application forms and adopt internal procedures for such purpose. Without limiting the foregoing, the Community Development Director may require a layout sketch or site plan and a minimum of two (2) photographs showing all sidewalk dining elements, utilities, sidewalks, and appropriate measurements with the application.
 2. Effect. The following terms and conditions shall apply to any temporary sidewalk dining permit issued by the City under this Ordinance:
 - a. The permit is for a permissive use only and the issuing of the permit shall not operate to create or vest any property rights in the permittee.
 - b. The City shall have free and complete access to the public right-of-way (the "ROW") in which sidewalk dining has been permitted for maintenance and repair of the ROW, and the permittee shall hold harmless the City for any damage that may be done by the City during maintenance and repair of the ROW.
 - c. The permittee shall maintain the sidewalk easement area in a good and safe condition as long as the temporary sidewalk dining permit remains in effect. Permittee understands and acknowledges that, should the permittee, its agents, employees, vendors, or patrons, damage and/or disturb the ROW and/or the sidewalk dining area, the permittee shall be solely responsible for repairing the destroyed/disturbed ROW and the sidewalk dining area to the City's satisfaction.
 - d. Permittee shall maintain a general liability insurance policy with combined single liability limits for personal injury or death and property damage in the amount \$1,000,000 naming the City as an additional insured. The permittee agrees to provide proof of such policy to the City upon request.
 - e. If alcoholic beverages will be served within the sidewalk dining area, the permittee shall maintain liquor liability insurance for the area under the same terms and conditions as those applying to general liability insurance.
 - f. Permittee shall indemnify, defend, and hold harmless the City against any and all claims or suits for damages or injury arising from permittee's or the permittee's agents', employees', vendors', and/or patrons' use of the ROW or the sidewalk dining area or

from any activity, work, or act done, permitted, or suffered by permittee in or about the sidewalk dining area, and shall further indemnify, defend, and hold harmless the City against and from any and all claims or suits arising from any breach or default of any performance of any obligation of permittee under this Ordinance or the sidewalk dining permit, and against and from all costs, attorneys' fees, expenses, and liabilities related to any claim or any action or proceeding brought within the scope of this indemnification.

- g. Permittee shall not assign the sidewalk dining permit without the prior approval of the City.
 - h. Any unlawful encroachments existing in the ROW shall be subject to removal and the permittee shall be responsible for labor and costs associated with such removal. Any encroachments existing in the public ROW shall be removed upon twenty-four (24) hours' notice given by the department of public service when such removal is necessary to repair or improve the ROW. If it is necessary to remove any encroachments, including but not limited to sidewalk dining elements, the permittee shall be responsible for labor and costs associated with removal and reinstallation.
 - i. In the event that the City police, fire, public service or traffic and transportation departments determine that the location of an encroachment, including but not limited to sidewalk dining elements, constitutes an immediate physical danger to life, safety or health, the encroachment may be removed immediately without prior notice. If the City removes an encroachment, a notice of removal shall be sent to the permittee as soon as practicable under the circumstances. Any abandoned encroachment shall be subject to removal. For purposes hereof, 'abandoned' shall mean the vacating of the premises by the permittee for a period of seven (7) consecutive days or more. Any costs incurred to the City in restoring the public ROW to the condition that existed prior to the use of the sidewalk dining area shall be the responsibility of the permittee.
3. Inspection. The Community Development Director may perform or caused to be performed a site inspection of the area to be utilized for sidewalk dining to verify compliance with the requirements set forth herein prior to issuing a temporary sidewalk dining permit. The City of Imperial's Fire Department, Fire Marshal, Police Department, Building and Safety Division, and Code Enforcement Officers, shall be authorized to inspect and determine whether applicants and permittees comply with and continue to comply with the rules and regulations governing sidewalk dining set forth herein, as may be amended.
 4. Decision. The Community Development Director is hereby authorized, after any necessary consultation with other City departments, to issue temporary sidewalk dining permits upon finding that the application meets all standards set forth in Section 2.F.
 5. Posting. The temporary sidewalk dining permit shall be posted on the premises so as to be visible from the public right-of-way during all times that sidewalk dining is being conducted within the public right-of-way.

- F. Design and Layout. The following standards shall govern the design and layout for sidewalk dining:
1. The width of the sidewalk dining area shall not exceed the width of the frontage of the restaurant's property.
 2. Permittees shall maintain a clear pedestrian path of at least six feet (6') at all times; provided, however, in areas of higher pedestrian traffic or activity, or in conditions that suggest the need for additional clearance, the Community Development Director may require a clear pedestrian path greater than six feet (6'). Any such clearance area must be free of all obstructions such as trees, parking meters, utility poles, fire hydrants, and similar encroachments in order to allow for adequate pedestrian movement. All services and patron activity provided within the designated public right-of-way shall occur within the designated area and shall not encroach within the minimum clearances for pedestrian passage at any time.
 3. Sidewalk dining and sidewalk dining elements shall not interfere with any utilities or other facilities such as utility poles, fire hydrants, signs, parking meters, mailboxes, and/or benches within the sidewalk or within the public right-of-way.
 4. Sidewalk dining and sidewalk dining elements shall not interfere with or obstruct any required clearance for maneuvering around entrances or exits.
 5. Sidewalk dining and sidewalk dining elements shall not interfere with or obstruct any areas required for accessibility for disabled persons, whether patrons or employees.
 6. Sidewalk dining and sidewalk dining elements shall not interfere with or obstruct required ingress and/or egress for adjacent buildings set forth in the building code or otherwise.
 7. Sidewalk dining and sidewalk dining elements may not violate vision clearance requirements.
 8. Vision clearance will also be required when sidewalk dining or sidewalk dining elements are located adjacent to an alley or driveway; provided, however, the Community Development Director is authorized to modify such requirements when unusual circumstances exist or when public safety may be jeopardized.
 9. Signs advertising the sale of food, beverages, goods, or services without sidewalk dining areas shall be prohibited. This prohibition includes but is not limited to sandwich boards, banners, pamphlets, podiums, or any other advertisements. Nothing herein shall prohibit the posting of any signage required by the City.

10. No amplified music, whether live or recorded, shall be permitted within sidewalk dining areas. No speakers, microphones, televisions or other audio or video devices shall be permitted within sidewalk dining areas.
 11. No vending machines, carts, or objects for the sale of goods shall be permitted within sidewalk dining areas.
- G. Standards for Sidewalk Dining. Restaurants obtaining a temporary sidewalk dining permit shall comply with the following operational standards:
1. The standards for temporary outdoor dining approval in Section 2.D.
 2. Sidewalk dining is prohibited between 1:00 a.m. and 7:00 a.m., unless the permitted hours are more restrictive under the existing zoning applicable to the property, use, or activity, in which case the more restrictive hours shall control.
 3. Any and all tables, chairs, umbrellas, planters, heaters, and other objects associated with the sidewalk dining (the "Sidewalk Dining Elements") shall be removed from the public right-of-way except during the restaurant's daily operations. The storage of sidewalk dining elements within the public right-of-way at any time is prohibited. The leaving of sidewalk dining elements in public rights-of-way at any time before or during daily operations is also prohibited.
 4. If alcoholic beverages are served within the designated public right-of-way, the permittee must have a valid license under all applicable laws for such sales. Alcoholic beverages supplied by the customer or by any other person other than the permittee shall not be allowed within the designated public right-of-way. No alcoholic beverages may be stored or mixed within the designated public right-of-way.
 5. The permittee must require patrons dining within the designated public-right-of-way to wear shoes and shirts at all times.
 6. All employees must comply with applicable requirements and standards for a retail food establishment.
 7. The permittee must comply with all federal, state, and local laws, rules, and regulations applicable to the operation of sidewalk dining within the City.
- H. Administrative Suspension/Modification. Any temporary outdoor dining approval and/or sidewalk dining permit is subject to suspension, modification, or amendment at any time with or without notice based on a determination that additional conditions or limitations shall be required to protect against adverse impacts associated with new or expanded area. City Council may suspend, modify, or amend the provisions governing outdoor dining services at any time by emergence ordinance, in which case all restaurants shall comply with any such modifications or amendments, whether or not they previously received an approval or permit hereunder. All approvals and permits governed by this

Ordinance shall automatically expire 45 days from the date of adoption of this Ordinance, unless such approval or permit is otherwise suspended, modified, amended, or extended in accordance with this Ordinance or subsequent ordinance adopted by the City Council.

- I. Appeal. Any decision of the Community Development Director under this Ordinance may be appealed to the Board of Appeals, in accordance with the standards governing appeals from administrative officers under state law and the City's Zoning Ordinance.

SECTION 3: Restaurant owners/operator are responsible for ensuring that the procedures and standards set forth in this Ordinance are followed or otherwise cease services. The City may deny or revoke any license granted to conduct any such business when, in the judgment of the City, the business is not complying with this Ordinance.

SECTION 4: Fee Waivers for Sidewalk and Encroachment permits, and Parking Space Closures.

- A. The permit fees set forth in the Municipal Fee Schedule are temporarily waived for applications for sidewalk and encroachment permits, as modified by this Ordinance, to place structures and equipment in the public right-of-way for purposes of outdoor dining and outdoor retail sales and displays of wares
- B. The parking space closure fee in the Municipal Fee Schedule collected by the Community Development Department is temporarily waived for the use of a parking space(s) on-street or in a parking lot for purposes of outdoor dining and outdoor retail sales and display of wares as authorized through an encroachment permit, license, or agreement with the City.

SECTION 5: The City of Imperial Fire Department, Police Department, Building and Safety Division, and Code Enforcement Officer, are hereby authorized to inspect and determine whether businesses are in compliance with this Ordinance. Any person who shall refuse to allow such inspection or who shall obstruct any officer whose duty it is to make such inspection shall be subject to the revocation of a license.

SECTION 6: Environmental Clearance. This action is exempt from the California Environmental Quality Act since it would result in minor alterations to existing facilities and does not have the potential for causing a significant effect on the environment in accordance with CEQA Guidelines section 15061(b)(3) (common sense exemption), 15301 (existing facilities) and 15303 (new construction or conversion of small structures).

SECTION 7: Effective Date. This ordinance is adopted on an urgency basis and shall be effective immediately upon adoption. Prior to the expiration of fifteen (15) days from the passage thereof, this ordinance shall be published at least once in a newspaper of general circulation printed and published in the County of Imperial, together with the names of the members of the City Council voting for and against the same.

I HEREBY CERTIFY that the foregoing Ordinance was duly adopted by the City Council of the City of Imperial at a _____ meeting thereof, held on the _____ day of _____, 2020, by the following vote, to wit:

<u>AYES</u>	<u>NAYS</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Debra Jackson, City Clerk

The foregoing Ordinance is hereby approved this _____ day of _____, 2020.

Darrell Pechtl, Mayor

ATTEST:

Debra Jackson, City Clerk