



## STAFF REPORT

To the Honorable Mayor and City Council  
From the City Manager

DATE: September 23, 2024

### SUBJECT

Extend fee waiver deadline and approve proposed plan to gain compliance with the Outdoor Business Program

### RECOMMENDATION

1. Adopt a resolution extending the deadline to qualify for a “use of space” fee waiver for Outdoor Business Activity Permits for parklets and sidewalk cafes; and
2. By motion, approve proposed plan to gain compliance from non-compliant businesses.

### STRATEGIC PLAN GUIDING PRINCIPLE

Economic Vitality

### BACKGROUND

From 2003 to 2022, the City administered multiple outdoor dining/business activity programs: The Sidewalk Café Program, the Sidewalk Café Pilot Program, and most recently, the Temporary Outdoor Business Activity Program implemented to support businesses during the COVID-19 pandemic. On [July 25, 2022](#), in an effort to consolidate these programs, the City Council adopted the Outdoor Business Activity Program (Program).

As part of the City Council’s approval of the Program, various fees were established, including a processing fee, an annual use of space fee, and an annual renewal fee. To incentivize businesses to participate in the Program, on [June 27, 2022](#) the City Council approved a waiver of the annual use of space fee for applicants who applied for and received permits by October 31, 2022.

After approval of the Program, businesses expressed concern that the two-month period between August 25, 2022, and October 31, 2022, was not enough time to provide the required application information to enable them to receive the fee waiver. On November 14, 2022, the City Council extended the fee waivers through April 21, 2023, for businesses that applied to the Program on or before January 20, 2023, and received approval from the City by April 21, 2023. No businesses met the April 21, 2023, deadline for full permitting.

From April 2023 through April 2024, several key staff members who were vital contributors to the Program left City employment. As a result, staff was unable to process applications in a timely manner. Since May 2024, both staff and applicants have been working diligently to process and complete as many applications as possible. However, due to the time lost between April 2023 and April 2024, staff is recommending that the fee waiver be extended through September 30, 2024, for eligible businesses participating in the Program.

The purpose of this staff report is twofold: 1) to recommend extending the fee waiver through September 30, 2024, for eligible businesses, and 2) to propose a strategy for gaining compliance among businesses that are not adhering to the Program.

## **ANALYSIS**

### **Extension of Fee Waiver for Eligible Outdoor Business Activity Permits**

At the April 15, 2024, City Council meeting, staff provided an update on Outdoor Business Activity permitting, noting that six of 47 applications (including two which were submitted after January 20, 2023) had been conditionally approved, but no Outdoor Business Activity Permits had been issued, nor had any of the accompanying license agreements been issued. At the time, the City Council expressed concern for the business owners who may have needed more support to get through the permitting process and instructed staff to work more closely with the business owners to help them.

Since that meeting, ten (10) businesses have received their Outdoor Business Activity Permits and license agreements – six of which applied prior to the January 20, 2023, deadline, three of which applied between January 20, 2023, and April 2024; and one which applied in May 2024. Nine other businesses have license agreements pending or near completion. Eight additional businesses may now proceed with the permit process, owing to the changes to the program regarding property owner notification adopted on July 22, 2024, and in effect as of August 22, 2024. In fact, one of these businesses has already executed their license agreement.

In executing the first license agreements and working to get all pending applications processed, staff realized that the “use of space” fee waiver expired with no businesses permitted by the initial fee waiver deadline. There have been many businesses, as noted above, who have been engaging, but staff have observed that once some businesses receive the necessary approvals on their plans, they have trouble getting the requisite proof of insurance to move forward with executing the license agreement, even with one-on-one support from Engineering and Finance staff to provide guidance.

Staff expected that most businesses who had applied by January 20, 2023, would have received their Outdoor Business Activity permits in the fiscal year 2023-2024 and the budget line item was expected to be close to zero. Not realizing extending the fee waiver required additional City Council action, staff granted a fee waiver to two businesses that had applied by January 20, 2023. Staff believe that the spirit in which the fee waiver was adopted – to help businesses defray the costs of implementing parklets – is important. The fee waiver can still be a motivational tool for businesses to comply, especially those who are very close to completing the process, and it can serve as a sign of the City’s business-friendly practices.

Accordingly, staff recommends an extension of the fee waiver for businesses which applied to the program by January 20, 2023, and which receive their license agreement by October 31, 2024. Businesses who applied after January 20, 2023, or who receive their license agreements after October 31, 2024, would not be eligible for the first-year fee waiver.

### **Proposed Approach to Gain Compliance with City Outdoor Business Activity Program**

Staff also recommend additional steps to bring non-compliant businesses into the Program. Fourteen businesses have not resubmitted anything to the City since April 15, 2024. The approach to gain compliance would vary based on two distinct groups of businesses:

1. Businesses which did not have structures prior to the pandemic and have not made progress to come into compliance with the new program; and
2. Businesses which had parklet structures pre-pandemic that were built according to the codes at the time

*Group 1:* For businesses who have been largely non-responsive since May 2024, staff recommend a phased approach to gain compliance. This fall, City staff would notify businesses of an intent to initiate enforcement, if their parklets and sidewalk cafes have not yet received their Outdoor Business Activity permits, with the goal that non-permitted parklets and sidewalk cafés be removed from the public right of way by the end of calendar year 2024.

*Group 2:* When the current Program Guidelines were adopted, the City terminated all previous programs, and required that all businesses would need to come into compliance with the adopted Guidelines. Staff notified businesses that had parklet structures pre-pandemic of this requirement in 2022. The new program was intended to provide a predictable way for businesses that had conducted business outdoors during the pandemic to invest in longer-term parklets and sidewalk cafes and improve the appearance and aesthetic of downtown. Recognizing some unintended consequences of the Program on parklets and sidewalk cafés built pre-pandemic, staff plan to return in early 2025 with revisions to the ordinance and the Program Guidelines. Staff intend to recommend changes to Program Guidelines that allow pre-Program parklets and structures to remain if they do not present health and safety concerns.

## **EQUITY IMPACT STATEMENT**

Equity and/or inclusion was considered in development or implementation of item at the initial reading.

## **FISCAL IMPACT**

The fiscal impact to the General Fund of extending the fee waiver for the annual use of space fee through September 30, 2024, could be up to \$115K in foregone revenue, based on the estimated square footage of the parklets and sidewalk cafes. In the FY2024-25 Adopted Budget, we projected approximately \$30,000 in space use fees; the budget will be amended as needed at the mid-year and end-of-year budget to reflect what is received.

## **ENVIRONMENTAL REVIEW**

This activity is not a project under California Environmental Quality Act (CEQA) as defined in CEQA Guidelines, section 15378, because it has no potential for resulting in either a direct or reasonably foreseeable indirect physical change in the environment.

## **PUBLIC NOTICE**

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

## **ALTERNATIVES**

The following are options that the City Council may take:

1. Not adopt the resolution to extend the fee waiver or modifications to the terms of the fee waiver, meaning that no businesses would receive the fee waiver, and staff would need to seek repayment from the businesses which received the waiver incorrectly; or
2. Direct staff to present additional information before adopting the resolution
3. Modify the proposed approach to enforcement

## **ATTACHMENTS**

Attachment A – Resolution Extending the Deadline to Qualify for a “Use of Space” Fee Waiver for Outdoor Business Activity Permits for Parklets and Sidewalk Cafes

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