

ANALYSIS

This ordinance amends Title 16 – Highways – of the Los Angeles County Code, enabling restaurants to apply for an annual encroachment permit to use the public right-of-way for outdoor dining in the unincorporated areas of the County. Amending the ordinance will continue to allow restaurants that serve food to apply for permits to use the public right-of-way, including public sidewalks, public alleys, and portions of public streets, for outdoor dining facilities while removing the existing additional permit fee.

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LTJ:jj

Requested: 07/10/2023
Revised: 12/15/2023

ORDINANCE NO. _____

An ordinance amending Title 16 – Highways – of the Los Angeles County Code, enabling restaurants to apply for an annual permit to use the public right-of-way for outdoor dining in the unincorporated areas of the County of Los Angeles.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Chapter 16.27 is hereby amended to read as follows:

Chapter 16.27 OUTDOOR ~~SIDEWALK~~ DINING

SECTION 2. Section 16.27.010 is hereby amended to read as follows:

16.27.010 ~~Permit—Required.~~

Any person desiring to erect, construct, place, or maintain an encroachment upon ~~any~~ any highway (as defined in Section 16.04.100 of this Division 1 of Title 16), including a public sidewalk, a public alley, or a public street, for outdoor ~~sidewalk~~ dining facilities, must first obtain an annual outdoor ~~sidewalk~~ dining permit from the Commissioner pursuant to this ~~e~~Chapter. Each applicant for an annual outdoor ~~sidewalk~~ dining permit shall comply with the requirements of this ~~e~~Chapter and any other applicable laws.

Section 3. Section 16.27.015 is hereby added as follows:

16.27.015 Definitions.

A. Applicant. "Applicant" means a person or entity applying for a permit for outdoor dining upon a highway, including a public sidewalk, a public alley, or a public street, pursuant to this Chapter.

B. Outdoor Dining. "Outdoor dining" is defined as use of an outside area that is located adjacent to a restaurant establishment for the same eating and drinking activities that occur within the establishment. The outdoor dining area could be located upon those portions of a highway that comprise a public sidewalk, an on-street public parking area, and/or a public alley.

C. Owner. "Owner" means the party responsible for the outdoor dining who is authorized to control and maintain the outdoor dining areas.

D. Permittee. "Permittee" means any person or entity granted a permit pursuant to this Chapter.

E. Restaurant. "Restaurant" means a food establishment, including, but not limited to, a food establishment also serving alcohol, in unincorporated Los Angeles County, that maintains all required permits and approvals, including, but not limited to, a County business license, a valid Public Health Permit, and a conditional use permit, as applicable. All permits issued pursuant to this Chapter shall be limited to outdoor dining facilities established in conjunction with and adjacent to restaurants that serve food and currently maintain a valid County business license and Public Health permit.

SECTION 4. Section 16.27.020 is hereby amended to read as follows:

16.27.020 Permit—Application.

The ~~director of public works (the "director")~~Commissioner shall establish an application form for an annual outdoor ~~sidewalk~~ dining permit, including any application materials deemed necessary to enable complete review of the application.

A. Application submittal. An application for outdoor dining shall contain all information required by this Chapter, including compliance with all applicable design standards and guidelines and permit conditions, and payment of all application fees required pursuant to this Division 1 of Title 16.

B. Design Standards and Guidelines. The Commissioner may develop and issue design standards and guidelines and permit conditions for outdoor dining to implement the provisions of this Chapter, which will be found on the Commissioner's public-facing website. The permit application for outdoor dining shall demonstrate compliance with the applicable design standards and guidelines and permit conditions posted on the website.

SECTION 5. Chapter 16.27.035 is hereby added to read as follows:

16.27.035 Permit – Other Required Permits/Approvals.

Prior to the issuance of an annual outdoor dining permit, the applicant shall obtain all other required County, State, federal, and public agency permits and approvals, as applicable, including those described in the design standards and guidelines.

SECTION 6. Section 16.27.040 is hereby amended to read as follows:

16.27.040 Permit—~~Director's~~Commissioner's aAuthority to issue and sSet eConditions.

The ~~director~~Commissioner, in acting upon any application for an annual outdoor sidewalk dining permit, shall either approve, approve with conditions, or deny the

issuance of a permit based on whether, or the degree to which, the following principles and standards/conditions are met:

A. ~~That~~The proposed use of the public sidewalk, public street, or public alley is in compliance with all applicable provisions of this ~~e~~Chapter, including any applicable design standards and guidelines and permit conditions. Permits processed and granted pursuant to this Chapter are subject to all provisions of Division 1 (Highway Permits) of Title 16 – Highways – of the County Code, including, but not limited to, the requirements of this Chapter and any permit conditions imposed by the Commissioner;

B. ~~That~~The proposed use of ~~the~~a public sidewalk, public street, or public alley is so arranged as to ~~ensure~~ the protection of public health, safety, and general welfare, and prevent interference with users of the highway ~~right-of-way~~ and with holders of other permits; and

C. ~~That~~The proposed outdoor sidewalk dining and the abutting restaurant ~~will properly comply~~ies with the provisions and development standards prescribed in Title 22 of this ~~e~~Code, or as prescribed by the pPlanning ~~H~~Hearing ~~e~~Officer, planning commission, or planning director.

The denial of a permit application shall be issued in writing and state the reasons for the denial.

SECTION 7. Section 16.27.050 is hereby amended to read as follows:

16.27.050 Permit—Fee for New and Renewal Permit Applications.

Each applicant for an annual outdoor ~~sidewalk~~ dining permit under this Chapter shall pay ~~at~~the nonrefundable permit application issuance fee of ~~\$1,442.00~~specified in

subsections 16.10.020 and 16.10.155 of this Chapter. Each holder of such a permit shall be required to submit a ~~renew~~ application along with the nonrefundable permit issuance fee specified in subsections 16.10.020 and 16.10.155 of this Chapter ~~of \$454.00~~ each year to obtain a new annual permit. ~~On July 1st of each year, each fee imposed by this Section shall be reviewed by the director and the amount of each fee shall be adjusted as follows: Calculate the percentage of movement between March of the previous year and March of the current year in the CPI for all urban consumers in the Los Angeles Long Beach Anaheim areas, as published by the United States Government Bureau of Labor Statistics, adjust each fee by said percentage amount, and round up to the nearest dollar. No adjustment shall increase any fee to an amount more than the amount necessary to recover the reasonable cost of providing the services for which the fee is imposed.~~

SECTION 8. Section 16.27.060 is hereby amended to read as follows:

16.27.060 Minimum ~~s~~Sidewalk ~~e~~Clearance.

~~Sidewalk dining facilities shall not be permitted on sidewalks which are less than 10 feet wide. All outdoor sidewalk dining facilities shall be located at least five feet from the curb and~~ A five-foot-wide minimum clear pedestrian pathway shall be maintained as measured from the outdoor dining area to the curb or building and any sidewalk obstruction, which shall include, but not be limited to, street light poles, trees, sign posts, news racks, and utility poles.

SECTION 9. Section 16.27.070 is hereby deleted in its entirety:

~~**16.27.070 Limited to restaurants that serve food.**~~

~~All permits issued pursuant to this chapter shall be limited to outdoor sidewalk dining facilities established in conjunction with and abutting to restaurants that serve food.~~

SECTION 10. Section 16.27.080 is hereby amended to read as follows:

16.27.080 Limitations on oOutdoor dDining fFacilities.

~~All outdoor dining facilities shall be placed, installed, used or maintained as follows~~Outdoor dining on a highway:

A. ~~All outdoor dining furnishings and equipment such as chairs, tables, fences, planters and such related furnishings and equipment shall not exceed 48 inches in height~~If in the sidewalk area, shall be located adjacent to a restaurant;

B. ~~Any umbrella used in conjunction with the aforementioned furnishings and equipment or any portable heater may exceed 48 inches in height if the umbrella or heater does not encroach upon the air space required in the five foot sidewalk clearance area referred to in Section 16.27.060~~If in an on-street parking area, shall be located adjacent to a restaurant within the curb lane on streets, where on-street metered or unmetered parking spaces exist adjacent to the front or side of the restaurant, or along adjacent neighboring on-street metered or unmetered parking spaces with the written permission from the adjacent property/business owner stating the permission is valid for the duration of the permit;

C. ~~No items of furnishings or equipment, including but not limited to umbrellas, chairs, tables, fences, planters and related furnishings and equipment shall be attached to the sidewalk, sidewalk surface, nor shall any of those items cause~~

~~damage to the sidewalk in any manner~~ If in a public alley, the permit shall only be granted to an applicant restaurant exclusively utilizing the public alley; except that, if the public alley serves other business or residents/tenants, written permission for the use of the alley for outdoor dining must be obtained from all other users stating the permission is valid for the duration of the permit;

D. ~~Outdoor sidewalk dining shall only be allowed between the hours of 6:00 a.m. and 11:00 p.m., unless otherwise authorized by separate permit;~~ Shall not interfere with the use of the highway; impede the flow of vehicular, bicycle, or pedestrian traffic; impair the primary use and purpose of traffic signals, utility poles and cabinets, streetlights, or other infrastructure in the highway;

E. ~~All sidewalk dining furnishings and equipment must be removed and the sidewalk kept clear of all obstructions between the hours of 11:00 p.m. and 6:00 a.m., unless otherwise authorized by separate permit; and~~ Shall not interfere with the County's use of County infrastructure;

F. ~~The maximum total number of tables, chairs or other items of furnishings or equipment allowed under any permit shall be consistent with the provisions of this chapter and any other applicable laws. The decision of the director with regard to the total number of tables, chairs or other items of furnishings or equipment which may be permitted under the permit granted hereunder, shall be final~~ Shall not otherwise obstruct the accessibility of the highway; and

G. Outdoor dining and associated equipment in the highway must comply with Americans with Disabilities Act requirements.

SECTION 11. Chapter 16.27.085 is hereby added to read as follows:

16.27.085 Operational Standards.

A. The owner of the restaurant is responsible for proper operation and maintenance of the outdoor dining area. The outdoor dining area shall not be used for storage of dining furnishings and equipment during non-operating hours.

B. Restaurants are required to maintain all areas in and around the outdoor dining area in a manner that is clean and free of litter and debris.

C. The outdoor dining hours of operation shall be limited to the hours of operation of the associated restaurant.

D. The outdoor dining permit must be displayed prominently at the front of the restaurant.

SECTION 12. Section 16.27.090 is hereby amended to read as follows:

16.27.090 Indemnification and Insurance.

As a condition of the issuance of an annual outdoor ~~sidewalk~~ dining permit, the permit holder shall defend, indemnify, and hold harmless the eCounty of Los Angeles and shall present, along with each application or renewal application for an annual permit, evidence of liability insurance in a form acceptable to the ~~director~~ Commissioner.

SECTION 13. Section 16.27.100 is hereby amended to read as follows:

16.27.100 No Live Entertainment or Amplified Music.

As further detailed in the design standards and guidelines, ~~No~~ live entertainment or amplified music shall be permitted in any ~~sidewalk~~ outdoor dining area established pursuant to this eChapter.

SECTION 14. Section 16.27.100 is hereby amended to read as follows:

16.27.110 ~~Notice of violation and termination~~Permit Expiration,

Renewal, Revocation, Violations, and Impoundment.

~~If the director or his designate believes that a permittee is in violation of this chapter, the director or his designate may issue a notice of violation to the permittee. The notice of violation shall be served on the permittee, either in person or by first class mail. The notice shall indicate that the permit is subject to termination unless, within 30 days of service of the notice of violation, the violation is corrected or a hearing pursuant to this chapter is requested in writing. If the director or his designate determines that a permittee will not be able to continue to meet the requirements of this chapter because of a proposed public highway right-of-way improvement, the director or his designate shall notify the permittee, either in person or by first class mail, that the permit will be terminated unless, within 30 days of service of the notice of termination, a hearing pursuant to this chapter is requested in writing. Notice shall be deemed served and effective upon receipt if notice is provided in person or two days after sending by first class mail.~~

A. Permit Expiration. An annual outdoor dining permit shall expire one year from the date of permit issuance.

B. Permit Renewal. A permit renewal application must be received by the Commissioner a minimum of 30 days before the expiration of the permit; and the permit renewal application must comply with all the requirements of this Chapter and be accompanied by a non-refundable permit renewal application fee.

C. Revocation. An annual outdoor dining permit may be revoked for failure to comply with the requirements of this Chapter and/or Division 1 of Title 16 and/or applicable design standards and guidelines, and/or applicable law. The Commissioner may revoke the annual outdoor dining permit before its expiration date, at any time, for any reason, including, without limitation, noncompliance, unsafe conditions, or a determination by the Commissioner that a permittee will not be able to continue to meet the requirements of this Chapter because of a proposed public highway improvement. If the Commissioner determines that a permittee will not be able to continue to meet the requirements of this Chapter because of a proposed public highway improvement, the Commissioner shall notify the permittee of the permit revocation in writing. Upon notification of revocation, the permittee shall immediately cease the use of the highway for outdoor dining and remove all outdoor structures, furnishings, and equipment from the highway.

D. Violations. If the Commissioner believes that a permittee is in violation of this Chapter, the Commissioner may issue a notice of violation to the permittee. The notice of violation shall be served on the permittee in writing. The notice shall indicate that the permit is subject to revocation unless, within 30 days of service of the notice of violation, the violation is corrected, as further detailed in the design standards and guidelines.

E. Impoundment.

1. The Commissioner may impound any outdoor dining structures, furnishings, and equipment believed to be in violation of this Chapter if the structures,

furnishings, and equipment are deemed a hazard to the health, safety, and welfare of the public. Before impounding any structures, furnishings, and equipment, the Commissioner shall make reasonable efforts to contact the permittee and provide the permittee reasonable time to correct the violation. If, however, the violation constitutes an immediate threat to the health, safety, and welfare of the public, the Commissioner may impound structures, furnishings, and equipment without any advance notice to the permittee.

2. The Commissioner may impound any outdoor dining structures, furnishings, and equipment if the permittee fails to cease the use of the highway for outdoor dining upon notification of revocation. The Commissioner is not responsible for damages to the structures, furnishings, and equipment upon impoundment, and the Commissioner may impose an impound fee to the permittee.

3. The Commissioner may impound any outdoor dining structures, furnishings, and equipment if the permittee fails to cease the use of the highway for outdoor dining upon notification of the temporary removal of dining furnishings due to County operational use or maintenance of the highway. This includes any utility work by utilities lawfully operating their facilities in the highway.

4. Notice of all impoundments shall be served in writing to the permittee within two working days after the impoundment. The notice shall inform the permittee of the right to seek the return of the impounded structures, furnishings, and equipment.

5. The Commissioner may sell or otherwise dispose of the structures, furnishings, and equipment any time after the owner's right to seek the return of the structures, furnishings, and equipment has expired, as set forth in Sections 16.27.130 and 16.27.140 below, and may deposit the proceeds, if any, in the road fund.

SECTION 15. Section 16.27.120 is hereby deleted in its entirety:

~~16.27.120~~ ————— ~~Impoundment.~~

~~A. The director or his designate may impound any furnishings and equipment believed to be in violation of this cChapter if the furnishings and equipment are deemed a hazard to public health, safety or welfare. Before impounding any furnishings and equipment, the director or his designate should make reasonable efforts to contact the permittee and provide the permittee a reasonable time period to correct the violation. If, however, the violation constitutes an immediate threat to the public health, safety or welfare, the director or his designate may impound furnishings and equipment without any advance notice to the permittee.~~

~~B. Notice of all impoundments shall be served by first class mail to the permittee of record within two working days after the impoundment. The notice shall inform the permittee of the right to seek the return of the impounded furnishings and equipment and the right to request a hearing concerning the impoundment fee. Notice shall be deemed served and effective two days after sending by first class mail.~~

~~C. Consistent with provisions of this cChapter, the director or his designate may sell or otherwise dispose of the furnishings and equipment anytime after the~~

~~owner's right to seek the return of the furnishings and equipment has expired, and deposit the proceeds, if any, from any such sale or other disposition in the road fund.~~

SECTION 16. Section 16.27.130 is hereby amended to read as follows:

16.27.130 Return of ~~i~~mpounded ~~f~~urnishings and ~~e~~quipment.

A. The permittee or, if there is no permittee, a claimant who provides sufficient proof of ownership of impounded structures, furnishings, and equipment to the Commissioner, may, at any time up to and including the thirtieth day after the impounding, ~~and if a hearing pursuant to this chapter is held concerning the~~ obtain a return of the furnishings and equipment, ~~may at any time up to and including the thirtieth day after the decision at such hearing and any appeal therefrom becomes final, obtain a return of the furnishings and equipment,~~ upon paying an impound fee of \$100.00 plus the reasonable additional cost, if any, ~~of impounding the furnishings and equipment in excess of \$100~~ as determined by the Commissioner.

B. ~~The director or his designate~~ Commissioner may, ~~after a hearing in accordance with this chapter,~~ order the furnishings and equipment returned without payment of any impound fee; or, if an impound fee has previously been paid, the Commissioner may order return of any such impound fee.

SECTION 17. Section 16.27.140 is hereby amended to read as follows:

16.27.140 Hearings on ~~impoundment and t~~Termination.

A. Request for Hearing. A permittee may request in writing a hearing before the ~~director~~Commissioner or his or her ~~designated~~designee any time within 30 days of service of a notice of termination, notice of violation, or notice of impoundment.

B. Conduct of Hearing. The ~~director~~Commissioner or his or her ~~designated~~designee shall hold a hearing, unless continued by agreement, within 45 ~~five~~ ~~working~~ days of the request for a hearing. At the hearing, any person may present evidence and argument relating to the notice of termination, notice of violation, or notice of impoundment.

C. Decision. A written decision by the Commissioner or his or her designee shall be served on the permittee within five working days after the close of the hearing. The decision shall be final and effective on the date of service of the written decision, is not subject to further administrative review, and constitutes the final administrative decision.

SECTION 18. Section 16.27.150 is hereby deleted in its entirety:

~~**16.27.150 Appeal after hearing.**~~

~~A. Appeal. Any person who requested a hearing may, within five days after notice of the decision therein is given pursuant to this cChapter, appeal such decision to the board of supervisors of the cCounty of Los Angeles.~~

~~B. Contents of Appeal. The appeal shall be in writing, shall state the legal and factual basis upon which the appeal is to be based, and shall be filed with the~~

~~director or his designate, who shall forthwith forward the appeal, together with a copy of the decision, to the executive officer of the board of supervisors.~~

~~C. Stay Pending Appeal. A timely appeal of the decision shall operate to stay any termination of a permit during the pendency of such appeal.~~

~~D. Action by Board. Upon receipt of the appeal, the board of supervisors may take any one of the following actions:~~

~~1. Approve the decision;~~

~~2. Refer the matter back to the director with or without instructions;~~

~~3. Set the matter for public hearing. Such public hearing shall be held de novo as if no hearing previously had been held.~~

SECTION 19. Section 16.27.160 is hereby amended to read as follows:

16.27.160 Violation—Penalty.

Any person who violates Sections 16.27.010, 16.27.050, 16.27.060, or 16.27.070 of this eChapter and may be punished by fine not exceeding \$500.00 per day.

SECTION 20. Section 16.27.170 is hereby amended to read as follows:

16.27.170 Violation—Other rRemedies.

The provisions of this eChapter are cumulative to any other remedies authorized by law.

SECTION 21. Section 16.27.180 is hereby amended to read as follows:

16.27.180 Severability.

If any section, subsection, subpart, or provision of this eChapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the

provisions of this eChapter and the application of such to other persons or circumstances shall not be affected thereby.

SECTION 22. Section 16.04.030 is hereby amended to read as follows:

"Commissioner" means the road commissioner of the county of Los Angeles or their designee. Commissioner may also be referred to as the "director of public works" or "director" in this Chapter.

[CH1627LJCC]