

Introduced by Councilmember _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTER 12.13 OF TITLE 12 OF THE PASADENA MUNICIPAL CODE ENTITLED "SIDEWALK DINING ON PUBLIC WALKWAYS" TO RENAME CHAPTER 12.13 TO "OUTDOOR DINING WITHIN PUBLIC RIGHTS-OF-WAY" AND TO INCLUDE ON-STREET DINING

The People of the City of Pasadena ordain as follows:

SECTION 1. This ordinance, due to its length and corresponding cost of publication, will be published by title and summary as permitted by Section 508 of the Pasadena Charter. The approved summary of this Ordinance is as follows:

"Summary

This proposed ordinance amends Chapter 12.13 of the Pasadena Municipal Code to include public roadways in addition to sidewalk and alley as part outdoor dining activities in the public rights-of-way.

This ordinance further deletes the provisions for notice and hearing of sidewalk dining permits because unlike entitlements within private properties, said practice is not applicable to and has not been implemented on permitting process within public right-of-way, as long as installation guidelines and safety measures are adhered to.

Ordinance No. _____ shall take effect 30 days from its publication."

SECTION 2. Chapter 12.13 of Title 12 of the Pasadena Municipal Code is amended to read as follows:

"Chapter 12.13 - OUTDOOR DINING WITHIN PUBLIC RIGHTS-OF-WAY

12.13.010 - Short title.

This chapter shall be known and designated as the "outdoor dining ordinance."

12.13.020 - Declaration of policy.

The primary purpose of the public right-of-way, including public walkways and public roadways (on-street), is the free and unobstructed right of travel. However, the city recognizes that the use of public rights-of-way for limited outdoor dining areas can improve the business environment and enhance the quality of life for Pasadena residents so long as such use is not inconsistent with the underlying dedication for public right-of-way, does not impede travel and does not interfere with the rights of adjoining property

owners. Therefore, the city may permit such uses on a temporary or nonpermanent basis and as a special privilege, not as a matter of right.

12.13.030 - Definitions.

- A. "Abutting property" means the property directly abutting the portion of the public right-of-way in which the outdoor dining area is to be placed.
- B. "Adjoining property" means a property which both adjoins the abutting property and fronts with it on the same public right-of-way.
- C. "Director" means the director of the department of public works or his or her designee.
- D. "Obstruction" means any object which completely or partially blocks a path of travel on a public right-of-way and includes all temporary structures, appurtenances, furnishings and furniture attendant to a permitted use under this chapter. "Obstruction" does not include table umbrellas or other shade structures.
- E. "Permit" means the outdoor dining permit created by this chapter.
- F. "Person" means any individual, firm, company, account, association, partnership, corporation, joint venture, or any other entity.
- G. "Public walkway " means all or any portion of territory within the city set apart and designated for the use of the public as a thoroughfare for primarily pedestrian travel, including alleys that are designated exclusively for pedestrian travel and/or enclosed with barriers for the permitted area, the sidewalks, the center and the side plots thereof.
- H. "Public roadway (On-street)" means all or any portion of roadway designated for the use of the public as a thoroughfare for primarily vehicular travel and/or parking within the city set apart, and enclosed with City's barriers for the permitted area designated for outdoor dining.
- I. "Parklet" means a temporary extension to and level with the public sidewalk that is installed on parking lanes or spaces to provide additional space for the public using the roadway for non-vehicular purposes.
- J. "Outdoor dining area" means an area within the public right-of-way set up in conjunction with the use of the abutting property for dining and including

both any obstruction and any activity related to dining, including, but without limitation, waiting for tables, waiting on tables, bussing tables and entertainment.

- K. "Visual obstruction" means any vertical element above three (3) feet in height that blocks more than 50% of the visibility of motorists into an onstreet dining area or parklet.

12.13.040 - Outdoor dining occupancy permit—Compliance required.

No person shall establish or maintain any outdoor dining area within the public right-of-way except pursuant to a written permit approved by the director pursuant to this chapter. This chapter shall not be applicable to any activity performed pursuant to and permitted by other specific provisions of this code or to other obstructions prohibited by other specific provisions of this code.

12.13.050 - Application.

A person desiring a permit shall file an application with the director and shall pay the application fee specified by resolution of the city council. The director shall establish a form for applications for a permit, including any application materials deemed necessary to enable complete review of the application. The application shall include a declaration under penalty of perjury that all information is true and correct and shall contain, at a minimum, the following information:

- A. The name, address and other contact information, including telephone number and email address of applicant if a natural person; if an entity, the name, address and other contact information, including telephone number and email address of the individual authorized to bind the entity in contract; if a corporation, the name, address and other contact information, including telephone number and email address, of the president or chairman, of the agent for service of process and of the local manager, if any, and the state of incorporation;
- B. If applicant is not the owner of the abutting property, then applicant shall obtain approval of the application signed by the legal or beneficial owner of abutting property, or by his or her duly authorized agent. Any person signing

the approval as an agent shall furnish a written authorization for such purpose;

- C. Plans satisfactory to the director which show in detail the dimensions of the outdoor dining area, a description of its use and the arrangement of the occupancy including, but without limitation, all obstructions and activities in the public right-of-way, the number of seats, tables, a schedule of time of use, and all utility connections to be utilized in connection with such occupancy;
- D. Sufficient evidence to establish, to the satisfaction of the director, in his or her sole discretion, that the proposed use is not inconsistent with the underlying dedication for public right-of-way and is not inconsistent with the city's title or estate in the underlying public right-of-way;
- E. If applicant wishes to serve alcohol within the outdoor dining area, then applicant must demonstrate the manner of intended compliance with the additional standards for serving alcohol set forth in Section 12.13.066.

12.13.051 - Change in permitted use.

Any permittee desiring to change the permitted use by increasing the size of the outdoor dining area, by changing substantially the use or arrangement of the occupancy, or by adding alcohol service to the outdoor dining area, shall file a new application under this chapter.

12.13.060 - Outdoor dining occupancy permit—Required findings.

No permit may be issued until the application is approved, by the director and all of the following findings are made by the director:

- A. The proposed outdoor dining activity meets the standards of this chapter; and
- B. The proposed outdoor dining activity does not unduly interfere with the use of the public right-of-way by adjoining property owners and tenants; and
- C. The proposed outdoor dining activity is complementary to and not inconsistent with the underlying dedication for public right-of-way and is not inconsistent with the city's title or estate in the underlying public right-of-way; and

- D. The proposed outdoor dining activity is compatible with the use and enjoyment of surrounding neighborhood uses; and
- E. The proposed outdoor dining activity does not impede travel on the public right-of-way or create a hazard to the safety or health of passers-by; and
- F. The proposed outdoor dining activity does not unlawfully alter the associated use of the abutting property; and
- G. The abutting property has previously received all necessary zoning related approvals; and
- H. Whether or not the director approves the serving of alcohol in an outdoor dining area. The director's approval shall be based upon a finding that serving of alcohol in the specific outdoor dining area would not be likely to create a nuisance to passers-by or to adjoining businesses or otherwise to create a danger to public health, safety or welfare.

12.13.061 - No serving of alcohol without expanded license.

Notwithstanding a finding by the director to approve the serving of alcohol in an outdoor dining area, no alcohol shall be served in the outdoor dining area until an expansion of the on-sale alcoholic beverage license to the outdoor dining area is approved pursuant to Division 9, commencing with Section 23000, of the California Business and Professions Code. The director's approval or failure to approve serving of alcohol in an outdoor dining area shall be conveyed by the director to the Department of Alcoholic Beverage Control in response to any application by the permittee for the expansion to the outdoor dining area of its on-sale alcoholic beverage license pursuant to Division 9, commencing with Section 23000, of the California Business and Professions Code.

12.13.065 - Outdoor dining occupancy permit standards.

All permits issued pursuant to the terms of this chapter shall conform to all of the following requirements, and no permit may be issued which does not so conform:

- A. The minimum width of the public walkway to be occupied shall be not less than ten feet, and the outdoor dining area must permit at least five feet of unobstructed area of public walkway unless additional or lesser public

walkway is approved by the director on the basis of the considerations specified in this chapter.

- B. The outdoor dining area shall not extend beyond the boundaries of the abutting property and shall not be located in a manner which interferes with the flow of pedestrian, vehicular, or other traffic.
- C. The maximum height of any obstruction within public walkways shall be four feet and all such obstructions shall be entirely portable. There shall be no visual obstructions within outdoor dining areas/parklets.
- D. A permit may be issued only to the operator of a business on the abutting property. A permit is not transferable to any entity or person and is valid only as to the original applicant.
- E. Smoking is not allowed at any time within the permitted area.
- F. Use, occupation and obstruction of the public right-of-way which is permitted under this chapter may be temporarily suspended, without prior notice or hearing, when, in the discretion of the director, the police chief, or the fire chief, any such use, occupation or obstruction may interfere with public safety efforts or programs, street improvement activities, construction activities, cleaning efforts or other similar activities or with the health, welfare or safety of the members of the public.
- G. The outdoor dining area shall be kept in a good state of repair and maintained in a clean, safe and sanitary condition.
- H. The outdoor dining area may be defined by placement of portable but sturdy fencing or other suitable dividers as required or approved by the director.
- I. All fencing, dividers and obstructions shall also be reviewed and approved by the planning director in order to ensure that they are in keeping with the aesthetic and architectural character of the area and with all approved design guidelines for the area.
- J. There shall be no modification of the texture of the surface of the public right-of-way.
- K. The outdoor dining area may not be located within twenty feet of an intersection (measured to the prolongation of the near curb of the

intersecting street) or within ten feet of a driveway or alley (measured to the near end of the fully depressed portion of an apron-type driveway or to the prolongation of the near curb of the driveway).

- L. The outdoor dining area shall be located in a manner which will not interfere with visibility, vehicular or pedestrian mobility or access to city or public utility facilities. The determination of whether an outdoor dining area or any part thereof interferes shall be made by the director at the time of application based on the characteristics of each proposed site.
- M. There shall be no covering over any part of the outdoor dining area except for awnings attached to the abutting property, and approved pursuant to all city requirements, including, but without limitation, all requirements of Title 17 of this code, and except for individual table umbrellas and shade structures as allowed by current Fire Code. A minimum vertical clearance of seven feet shall be maintained for table umbrellas and shade structures, which shall not extend past the permitted area.
- N. Exterior lighting should be battery or solar powered to eliminate the need for external wiring. External wiring (power) shall not extend across the public right-of-way.
- O. The director may, in his or her sole discretion, place additional conditions upon the issuance of the permit in order to insure the protection of the public rights-of-way and the rights of all adjoining property owners and the health, safety and welfare of the public.
- P. Permits shall be considered temporary and nonpermanent in nature, and permittee shall have neither property interest in nor any entitlement to the granting or continuation of any such permit.
- Q. An annual report shall be submitted to the city in the manner specified in Section 12.13.095.
- R. Permits may be terminated by the city, with or without cause, regardless of the nature and scope of financial or other interest in, or on account of the permit or the permitted use.

- S. Permits, outdoor dining areas and obstructions shall conform to all other applicable city and other governmental requirements.

12.13.066 - Additional standards for serving alcohol.

In addition to the standards set forth in Section 12.13.065, all permittees serving alcohol in an outdoor dining area must conform to all of the following requirements:

- A. Prior to serving alcohol in an outdoor dining area, the abutting property must possess both a valid on-sale alcoholic beverage license pursuant to Division 9, commencing with Section 23000, of the California Business and Professions Code of Type 41 (on-sale beer and wine eating place) or of Type 47 (on-sale general eating place), or of their successor types and an expansion of the licensed premises to include the dimensions of the outdoor dining area.
- B. Alcohol may be served in an outdoor dining area only to the extent that a valid outdoor dining occupancy permit is otherwise in effect.
- C. The outdoor dining area shall be entirely contiguous with the abutting property and shall be defined by a physical barrier designed to control ingress and egress which shall be reviewed and approved by the director and the planning director.
- D. A permittee serving alcohol within an outdoor dining area shall post conspicuously within the outdoor dining area a sign which reads: "People consuming alcohol outside of this outdoor dining area are subject to arrest. PMC Section 9.24.010."
- E. A permittee serving alcohol within an outdoor dining area shall neither use nor allow any free-standing card or any posted placard or sign of any size or kind promoting alcohol service or beverages within the outdoor dining area.
- F. A permittee serving alcohol within an outdoor dining area shall place before every patron, either as a notation on the menu or as a table card, the following message: "Service of alcohol is provided to enhance the outdoor dining experience. The management strongly encourages the ordering of alcohol only in conjunction with food service."

- G. Alcohol shall be served in its original containers or in nondisposable glassware.
- H. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The permittee shall at all times maintain records which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the business. The records shall be kept no less frequently than on a quarterly basis and shall be made available to the director on demand.
- I. Any other conditions which the director should find to be in the interest of the public health, safety or welfare.

12.13.067 - Additional design standards for parklets.

- A. A parklet may not extend beyond seven feet from the curb line where there is parallel parking, or 15 feet from the curb line where there is diagonal parking.
- B. Parklets are permitted on streets where the legal vehicle speed limit is 25 mph or less, unless additional safety barriers approved by the City are installed.
- C. Parklets shall be buffered using a wheel stop or similar protective deterrent located a minimum of 36 inches from the parklet. Parklets shall provide a 4' minimum setback from adjacent parking spaces and 12 inches from an adjacent bicycle lane or traffic lane.
- D. Parklets construction shall comply with the City's prototype drawings or standards. Any proposed deviations shall be subject to review and approval prior to permit issuance.
- E. Parklets shall be constructed and maintained in compliance with the current applicable American with Disabilities Act requirements at all times.
- F. The maximum height of any obstruction within a parklet shall be three feet and all such obstructions shall be entirely portable.
- G. There shall be no visual obstructions within parklets.
- H. A parklet may not be located at a red curb as a red curb demarcates a bus loading zone, fire access, traffic safety prohibition, etc.

12.13.070 - Outdoor dining occupancy permit—Subsequent application where there is failure to obtain.

- A. Any person who establishes, operates or maintains an outdoor dining area prior to obtaining a permit shall pay, as a penalty, an application fee equal to a fee three times the application fee specified by resolution of the city council.
- B. The payment of the additional fee shall not relieve such person from the obligations imposed by this chapter, or from any other of the penalties prescribed herein.

12.13.080 - Indemnification of city.

As a condition of issuance, the permittee, and any person acting under or pursuant to said permit, agrees to indemnify, hold harmless, release and defend (even if the allegations are false, fraudulent or groundless), to the maximum extent permitted by law, the city, its city council and each member thereof, and its officers, employees, commission members and representatives, from and against any and all liability, loss, suits, claims, damages, costs, judgments and expenses (including attorney's fees and costs of litigation) which in whole or in part result from, or arise out of, or are claimed to result from or to arise out of any acts, negligence, errors or omissions (including, without limitation, professional negligence) of permittee, its employees, representatives, subcontractors, or agents by reason of or arising out of, or in any manner connected with, any and all acts, operations, privileges authorized, allowed or undertaken pursuant to the permit including, without limitation, any condition of property used in the operations.

This agreement to indemnify includes, but is not limited to, personal injury (including death at any time) and property or other damage sustained by any person or persons (including, but not limited to, companies, or corporations, permittee and its employees or agents, and members of the general public).

As a further condition of issuance of the permit, permittee covenants not to sue the city, its city council members, employees, agents and representatives and shall cause its insurers to waive subrogation against the same with respect to any action, cause of action, claim or demand in any way resulting from or connected with any and all undertakings and operations conducted pursuant to the permit.

12.13.085 - Liability insurance.

The city council shall establish by resolution the minimum levels and standards of liability insurance and claims reserve which must be maintained in order to apply for, to receive and to operate with a permit under this chapter. The city council shall also establish by resolution the manner in which compliance with the minimum standards is to be demonstrated. The failure to maintain the minimum levels and standards of liability insurance for any period of time shall be sufficient grounds for revocation of permit.

12.13.090 - Annual permit fee—When due.

The permittee shall pay, on an annual basis, and prior to the deadline date specified on the permit, an amount based upon the fee established by resolution of the city council. Failure to pay the annual fee prior to the deadline date shall cause a lapse in the permit which terminates the privilege to operate an outdoor dining area. An application for a new permit must then be filed if the person wishes to restore the privilege to operate the outdoor dining area.

12.13.095 - Permit—Annual report.

The permittee shall file a report annually with the director, upon forms supplied by the city, which shall include a declaration under penalty of perjury that the owner is in compliance with the provisions of this chapter, with the conditions of the permit, and which shall provide such further information as the director may require. Such report shall be submitted prior to the deadline date specified on the permit. Failure to file the annual report prior to the deadline date shall cause a lapse in the permit which terminates the privilege to operate an outdoor dining area. An application for a new permit must then be filed if the person wishes to restore the privilege to operate an outdoor dining area.

12.13.100 - Extent of zoning compliance.

Use of a public right-of-way under this chapter is on a temporary and nonpermanent basis, allowed as a special privilege, and not as a matter of right. A permit granted under this chapter is not a land use entitlement that runs with the land. Notwithstanding anything in this code to the contrary, any outdoor dining area and related obstruction permitted pursuant to an outdoor dining permit shall not be subject to any of the requirements of Title 17 of this code, except as provided in this chapter. In particular, but not by way of limitation, an outdoor dining permit shall not be construed to

increase the floor area, square footage, or number of seats of the use of the abutting property nor shall it be subject to review by the design commission.

12.13.110 - Termination.

The director may notify the permittee in writing of a termination and specify the time within which the termination is to take place or, in the discretion of the director, immediately terminate the permit without prior notice. Upon delivery of a notice of termination, the city shall have the right to require the immediate removal of all obstructions in the public right-of-way; and may perform such removal if the permittee fails to do so within such time as specified by the director. The permittee shall reimburse the city for any expense incurred by the city in removing any obstruction in the event it is not removed by the permittee within the time required by the city. Should the permittee continue to use the public right-of-way after the permit has been terminated, the city may take appropriate action to restrain the use of the public right-of-way by permittee and, in such event, the permittee shall reimburse the city for its reasonable costs and expenses in connection therewith, including reasonable attorney's fees and court costs.

In the event a permit is terminated by the city, permittee is entitled to a pro rata refund of the annual permit fee.

12.13.120 - Lapse or revocation and refusal to issue.

- A. A person desiring a permit for an outdoor dining area which has been the subject, in part or in whole, of a prior permit which has lapsed, been revoked or terminated shall file a new application and shall pay the application fee specified by resolution of the city council.
- B. The director may refuse to issue such a permit for outdoor dining area, if any applicant for re-permitting fails to meet any requirements for a new permit, or if such person has failed or refused:
 - 1. To pay any fees for permits or charges as provided by this chapter; or
 - 2. To repair public improvements or other property damaged as a result of the occupancy of the public right-of-way; or
 - 3. To demonstrate readiness and willingness to comply with the terms of this chapter, with the standards promulgated pursuant to this chapter or with the terms of the permit.

12.13.130 - Violation—Penalty.

Any individual establishing, operating or maintaining an outdoor dining area without a valid permit issued pursuant to this chapter or who knowingly submits false information for the purposes of obtaining such a permit is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000.00 or by imprisonment in the county jail for a period of not more than 6 months or by both such fine and imprisonment.”

SECTION 3. The City Clerk shall certify the adoption of this Ordinance and shall cause this ordinance to be published by title and summary.

SECTION 4. This Ordinance shall take effect 30 days following publication by the title and summary.

Signed and approved this _____ day of _____, 2022.

Victor Gordo
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held this _____ day of _____ 2022, by the following vote:

AYES:

NOES:

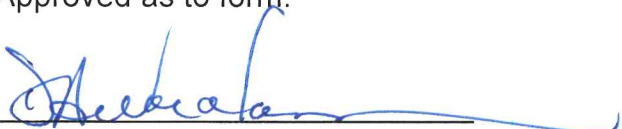
ABSENT:

ABSTAIN:

Date Published:

Mark Jomsky
City Clerk

Approved as to form:



Deborah A. Wordham
Deputy City Attorney