

ORDINANCE NO. NS-XXX

ZONING ORDINANCE AMENDMENT NO. 2022-04 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA AMENDING SECTIONS 41-130, 41-522 AND 41-1341 OF, AND ADDING SECTION 41-130.5 AND ARTICLE XXI (OUTDOOR DINING ON PRIVATE PROPERTY) TO, CHAPTER 41 (ZONING) OF THE SANTA ANA MUNICIPAL CODE ESTABLISHING REGULATIONS RELATING TO THE PLACEMENT, DEVELOPMENT, AND OPERATION OF OUTDOOR DINING ON PRIVATE PROPERTY

THE CITY COUNCIL OF THE CITY OF SANTA ANA HEREBY ORDAINS AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and, declares as follows:

- A. On March 17, 2020, the City Council proclaimed the existence of a local emergency to ensure the availability of mutual aid and support an effective response to the novel coronavirus (“COVID-19”) pandemic.
- B. On May 8, 2020, the state moved into Stage 2 of the California Resilience Roadmap, which allowed non-essential retail businesses and restaurants to reopen for curbside pickups and deliveries.
- C. On May 23, 2020, the County of Orange announced the State’s approval of the County’s plan to accelerate local businesses further into Stage 2 of the California Resilience Roadmap.
- D. On May 28, 2020, the City Manager, acting as Director of Emergency Services, approved Executive Order No. 5-2020 allowing restaurants and retail businesses to temporarily use public and private sidewalks and parking spaces for outdoor dining and retail operations to help stimulate the economy. In addition, the City Manager issued and published written guidelines (“A Guide for Outdoor Business Operations”) providing guidance and safety measures for businesses to implement.
- E. On December 15, 2020, the Orange County Board of Supervisors awarded a \$500,000 grant to the City for the use of developing safe outdoor dining opportunities for businesses along or within 500 feet of First Street and Seventeenth Street. The City utilized the grant money to retain a vendor to design, construct, and install 22 outdoor dining parklets for restaurants located on private property. Parklets included tables, chairs, bistro lights, railings, planters, drought resistant tolerant plants, umbrellas, shade sails, roman shades, and painted flooring or wood, and cement decks.

- F. On June 1, 2021, the City Council adopted Resolution No. 2021-29 extending Executive Order No. 5-2020 for a period of one year from the date on which the State moved beyond the Blueprint for a Safer Economy.
- G. On June 15, 2021, the State moved beyond the Blueprint for a Safer Economy.
- H. On May 3, 2022, the City Council directed staff to prepare a permanent outdoor dining ordinance to expand outdoor dining opportunities on private property citywide, to enhance the user experience, to create healthy, sustainable, and vibrant neighborhoods, and to support the local economy.
- I. The proposed amendments to the Santa Ana Municipal Code (SAMC) support the objectives and policies of the City's General Plan.
- J. On November 14, 2022, the Planning Commission held a duly-noticed public hearing to consider this Ordinance, where all interested persons were given an opportunity to be heard, and recommended approval of the ordinance to the City Council.
- K. On December 6, 2022, the City Council held a duly-noticed public hearing to consider this Ordinance, where all interested persons were given an opportunity to be heard.

Section 2. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 3. Section 41-130 (Reserved) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-130. – ~~Reserved~~Outdoor Dining.

Outdoor Dining means an ancillary outdoor area use on private property where tables and chairs are provided for patrons to consume food and/or beverages provided by an adjacent eating establishment.

Section 4. Section 41-130.5 (Outdoor Dining Area) of Chapter 41 of the SAMC is hereby added to read as follows:

Sec. 41-130.5 – Outdoor Dining Area.

Outdoor Dining Area means an approved designated outdoor dining area, in accordance with Article XXI (Outdoor Dining on Private Property) of this Chapter, that is enclosed by permanent improvements such as landscape, planters, fencing, decks, patio or shade structures, or other decorative barriers.

Section 5. Section 41-522 (Uses subject to a conditional use permit in the C-SM district) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-522. – Uses subject to a conditional use permit in the C-SM district.

The following uses may be permitted in the C-SM district subject to the issuance of a conditional use permit:

- a. Clubs, lodges, and fraternal organizations.
- b. Outdoor and indoor recreational or entertainment uses including night clubs, other than those set forth in Section 41-521 of this Chapter.
- c. Hotels, motels, lodging houses, care homes, fraternity houses and sorority houses.
- d. Thrift and resale stores, antique shops and collectable stores, excluding pawn shops and auction houses.
- e. Eating establishments open at any time between the hours of 12:00 midnight and 5:00 a.m. and located within one hundred fifty (150) feet of residentially zoned or used property, measured from property line to property line.
- f. Laundromats.
- ~~g. Ancillary outdoor dining facilities located in the front yard area.~~
- hg. Banquet facilities, subject to development and operational standards set forth in Section 41-199.1 of this Chapter.
- ih. Banquet facilities as an ancillary use, subject to development and operational standards set forth in Section 41-199.1 of this Chapter.
- ji. Automobile repair and automobile servicing.
- kj. Retail markets having less than twenty thousand (20,000) square feet of floor area which are open at any time between the hours of 12:00 midnight and 5:00 a.m.
- lk. Churches and accessory church buildings.

Section 6. Section 41-1341 (Restaurants, cafes, etc.) of Chapter 41 of the SAMC is hereby amended to read as follows:

Sec. 41-1341. – Restaurants, cafes, etc.

- (a) The minimum off-street parking requirements for restaurants, cafes and other eating establishments are as follows: ~~eight (8) spaces for each one thousand (1,000) square feet of gross floor area and open-air dining area except that an open-air dining area no greater than twenty-five (25) per cent of the gross floor area of the restaurant, or one thousand (1,000) square feet, whichever is smaller, is exempt from a parking requirement.~~
- (1) Eight (8) spaces for each one thousand (1,000) square feet of gross floor area.
 - (2) An outdoor dining area equal to or less than five hundred (500) square and serving an eating establishment of less than two thousand five hundred (2,500) square feet does not require additional off-street parking.
 - (3) An outdoor dining area less than twenty-five (25) percent of the gross floor area of the eating establishment or one thousand (1,000) square feet, whichever is smaller, does not require additional off-street parking.
 - (4) An outdoor dining area exceeding the thresholds established by subsection 2 and 3 above shall provide off-street parking at a rate of one (1) space per each two hundred and fifty (250) square feet of outdoor dining area above the thresholds.
 - (5) An outdoor dining area located within the public-right-of way and approved in accordance with Article VI of Chapter 33 of the SAMC does not require additional off-street parking.
- (b) Each drive-through eating establishment shall have vehicular stacking lanes of at least eighty (80) feet from the center of the pick-up window or pay window, whichever is closer to the menu board; and eighty (80) feet from the order point or menu board to the beginning of the drive-through lane. Such stacking lanes shall be located so that they do not serve as entries to parking spaces.

Section 7. Article XXI (Outdoor Dining on Private Property) to Chapter 41 of the SAMC is hereby added in its entirety to read as follows:

ARTICLE XXI. – OUTDOOR DINING ON PRIVATE PROPERTY

Sec. 41-2200. – Purpose.

The purpose and intent of this Article is to create a streamline administrative permit process for outdoor dining areas located on private property in order to benefit tenants, property owners, and the public, and to establish regulations that enhance the pedestrian ambiance of the City and ensure that such outdoor dining areas do not adversely impact adjacent uses, properties, and surrounding neighborhoods.

Sec. 41-2201. – Applicability.

- (a) The provisions of this Article shall apply to:
 - (1) All new outdoor dining areas located on private property; and
 - (2) All legally established and existing outdoor dining areas located on private property that are proposed to be expanded or enlarged.

- (b) The provisions of this Article do not apply to:
 - (1) Common outdoor dining and seating areas as part of a development that has been approved through a Development Project Plan in accordance with Division 3 of Article V of this Chapter; and
 - (2) Outdoor dining areas in the public right-of-way that are subject to the provisions set forth in Article VI (Outdoor Dining Areas in the Public Right-Of-Way) of Chapter 33 (Streets, Sidewalks and Public Works) of the SAMC.

- (c) The provisions of this Article are not intended to provide exclusive regulation of the development of an outdoor dining area. An outdoor dining area shall comply with all applicable state and federal laws and all local regulations imposed in other articles of this Chapter and other city ordinances, unless explicitly exempted under this Article. Should a conflict exist between the provisions of this Article and the provisions of other articles of this Chapter, the provisions of this Article shall prevail, unless otherwise determined by the Director of the Planning and Building Agency.

Sec. 41-2202. – Application, Permit, and Review Requirements.

- (a) An outdoor dining area shall require approval of an administrative application and permit as established by the Executive Director of the Planning and Building Agency, and shall be developed in compliance with an approved site plan that indicates the area dedicated for outdoor dining and the maximum seating capacity.

- (b) Approval of the outdoor dining area permit shall be granted only to the property owner or business owner of the eating establishment with written concurrence of the property owner.

- (c) When an eating establishment use is proposed to be replaced with another eating establishment where an outdoor dining area permit has been previously approved pursuant to this Article, the new business owner may continue to utilize the existing outdoor dining area without obtaining a separate outdoor dining permit, so long as such business owner submits an agreement to comply with the previously approved outdoor dining area permit application, conditions, and the requirements of this Article. Such agreement shall be on a form as approved by the Executive Director of the Planning and Building Agency.

Sec. 41-2203. – Zone Requirements.

An outdoor dining area shall be permitted as an ancillary use in all zones where eating establishments are permitted or conditionally permitted.

Sec. 41-2204. – Placement, Development, and Design Standards.

An outdoor dining area shall comply with the following placement, development, and design standards:

- (a) The location of the outdoor dining area shall be approved by the property owner(s) with consent of the affected business(es).
- (b) An outdoor dining area may encroach into and up to fifteen (15) percent of the required front and street side yard areas.
- (c) The outdoor dining area shall provide and maintain: (1) a five (5) foot landscape buffer between property lines and the edge of the outdoor dining area; and (2) a three (3) foot landscape buffer between parking spaces and vehicular areas and the edge of the outdoor dining area.
- (d) The outdoor dining area shall comply with corner and driveway obstruction line-of-sight standards, as modified from time to time.
- (e) The outdoor dining area shall not obstruct any required off-street parking spaces, drive aisles, paths of travel, ingress or egress, emergency access/exits, or fire lanes unless replaced elsewhere on site.
- (f) The outdoor dining area shall be constructed on a permanent raised pad with curbs and may be enclosed by a permanent barrier made of landscape planters, fencing, decking, shade structures and other decorative materials that physically separate and/or define the outdoor dining area. If installed, the height of the barrier shall not exceed four (4) feet in height.
- (g) Awnings, covers, furniture, umbrellas, shade structures, and other physical elements shall be compatible with the character of the primary use structure and shall be fire-retardant, pressure-treated or manufactured of fire-resistant materials.
- (h) Planter boxes, if installed, shall be made of durable materials such as wood, ceramic, stone, or metal.

- (i) Signage within the outdoor dining area is prohibited with the exception of a menu board. A menu board of up to six (6) square feet may be displayed within the outdoor dining area.
- (j) Lighting in accordance with Chapter 8 of the SAMC shall be provided to illuminate the outdoor dining area during nighttime hours.
- (k) When an outdoor dining area is located adjacent to sensitive uses (e.g., residential uses, parks, playgrounds, and private and public schools (K-12)), provisions shall be made to minimize noise, light, and odor impacts on the adjacent sensitive uses. This may include without limitation a sound-buffering acoustic wall and/or separation by a physical barrier to define the limits of the outdoor dining area.

Sec. 41-2205. – Operational Standards.

Outdoor dining shall comply with the following operational standards:

- (a) All areas in and around the outdoor dining area shall be well kept and maintained free of trash and debris.
- (b) The hours of operation for the outdoor dining area shall be limited to the hours of operation for the eating establishment. However, if the outdoor dining area is adjacent to a sensitive use, such hours of operation may be restricted to reasonable operating hours as determined by the Executive Director of the Planning and Building Agency.
- (c) The outdoor dining area shall be operated in a manner to comply with the noise provisions pursuant to Section 10-153 of Chapter 10 of the SAMC.
- (d) Establishments with an approved conditional use permit (CUP) pursuant to Section 41-196 (Establishments Selling Alcoholic Beverages) of this Chapter may serve alcoholic beverages within the outdoor dining area if consistent with the scope and intent of the CUP, as evaluated by the Executive Director of the Planning and Building Agency.
- (e) No heating, cooking or open flames are permitted in the outdoor dining area.
- (f) Heating units are permitted only if an outdoor approved type and located in accordance with the manufacturer's recommendations. Propane tanks, if used, shall not be stored outdoors.
- (g) Movable furniture must be secured or moved inside the primary establishment at closing time.
- (h) All outdoor dining furnishings and materials shall be maintained and cleaned regularly with no ripped, faded, or otherwise damaged materials. Any damaged materials shall be repaired or replaced immediately.

- (i) The outdoor dining area shall be operated in a manner that complies with all applicable federal, state, county and city laws and regulations.
- (j) The outdoor dining area shall not be detrimental to the health, safety, or welfare of persons residing or working in the vicinity.

Sec. 41-2206. – Off Street Parking Requirements for Outdoor Dining Areas.

Off-street parking for an outdoor dining area shall be provided in accordance to Section 41-1341 of this Chapter, except that:

- (a) An outdoor dining area located within an integrated development site, as defined in Section 41-83.5 of this Chapter, may convert up to three (3) required off-street parking spaces into outdoor dining without needing to replace such parking. An integrated development site with two-hundred fifty (250) or more off-street parking spaces may convert additional required off-street parking spaces into outdoor dining at the discretion and approval of the Executive Director of the Planning and Building Agency.
- (b) An outdoor dining area located within a stand-alone development site with one primary eating establishment may convert up to twenty-five (25) percent of the required off street parking spaces into outdoor dining without needing to replace such parking.

Sec. 41-2207. – Outdoor Dining Area Modification by Executive Director.

The standards of this Article are intended to promote quality development of outdoor dining areas. In special circumstances, modifications to the placement and development standards required per Sec. 41-2204 of this Article may be adjusted, subject to the applicant providing the necessary information for the Executive Director of the Planning and Building Agency to make an informed decision in granting or denying the request for the modification. The approval of a modification per this section shall be accompanied by the following findings:

- a) Approval of the modification would not result in detrimental impacts to adjacent properties or the character and function of the neighborhood.
- b) The design, development, and conditions associated with the outdoor dining area are consistent with the goals, policies, and intent of the General Plan, and the purpose, intent, and character of the applicable zone.
- c) The outdoor dining area creates and provides a visually pleasing setting for occupants, visitors and the general community.
- d) To the maximum extent feasible, the outdoor dining project includes improvement to the site such as but not limited to:

- (1) Landscaping shall be improved to bring the site closer into compliance with the landscaping requirements of this Chapter;
- (2) Parking areas in poor condition shall be improved and maintained in accordance with Section 41-1304 of this Chapter;
- (3) Bicycle parking shall be provided and maintained in accordance with Section 41-1307.1 of this Chapter.
- (4) Building(s) on the site shall be repainted as needed; and
- (5) A trash enclosure in accordance with this Chapter shall be constructed or rehabilitated as determined by the Public Works and Planning and Building agencies.

Sec. 41-2208. – Enforcement, Modification, Revocation and Termination of Outdoor Dining Area Permit.

- (a) It is unlawful for any property owner, business owner, operator, tenant, or other person in control of property within the city for which the provisions set forth in this Article apply, to operate an outdoor dining area without an outdoor dining area permit, or to fail to comply with each and every condition of that outdoor dining area permit.
- (b) Each and every violation of this Article shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the SAMC. Additionally, as a nuisance per se, any violation of this Article shall be subject to injunctive relief, revocation of the outdoor dining area permit, revocation of certificate of occupancy for the eating establishment, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney's fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under local and state laws for any violations committed by an outdoor dining permittee and persons related or associated with the business.
- (c) When an authorized City of Santa Ana representative finds that any of the provisions of this Article have been violated or that any of the following findings of fact can be made, the Executive Director of the Planning and Building Agency, or its designee, may revoke, suspend, or modify an outdoor dining area permit:
 - (1) Circumstances under which the outdoor dining permit was granted have been changed by the operator to a degree that the public convenience, health, interest, safety or welfare require revocation or modification;

- (2) The outdoor dining permit was issued, in whole or in part, on the basis of a misrepresentation or omission of a material statement in the application;
 - (3) One (1) or more of the requirements of the outdoor dining permit have not been substantially fulfilled or have been violated;
 - (4) The improvement/use authorized in compliance with the outdoor dining permit approval is in violation of any code, law, ordinance, regulation or statute of the city, state or federal government; or
 - (5) The improvement/use authorized in compliance with the outdoor dining permit has become detrimental to the public convenience, health, interest, safety or welfare, or the manner of operation constitutes or is creating a nuisance.
- (d) No such revocation shall become effective until the outdoor dining permit holder has been notified in writing by certified mail of the right to appeal the revocation decision pursuant to the provision of Chapter 3 of the SAMC. If a timely appeal is filed, the revocation shall be effective only upon decision of a hearing officer as provided for in Chapter 3 of the SAMC. Otherwise, the revocation shall become effective after the time for appeal has passed.
- (e) An outdoor dining area permit shall be terminated and the outdoor dining area and its improvements shall be removed and rehabilitated to their original use by the property owner if the outdoor dining area is vacant, unused, or unoccupied for more than six (6) months, or if the eating establishment is replaced with a non-eating establishment.

Section 8. The City Council may, by resolution, establish a fee for the administrative outdoor dining permit required per this ordinance. The City Council shall from time to time by resolution adopt a schedule of fees to be charged.

Section 9. The City Council finds and determines that this ordinance is not subject to the California Environmental Quality Act (CEQA). Pursuant to CEQA and the CEQA Guidelines, the adoption of this Ordinance is exempt from CEQA review pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, as there is no possibility it will have a significant effect on the environment and it is not a "project", as defined in Section 15378 of the CEQA Guidelines. As a result, a Notice of Exemption, Environmental Review No. 2022-88, will be filed upon adoption of this ordinance.

Section 10. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 11. This Ordinance shall become effective thirty (30) days after its adoption.

Section 12. The Clerk of the Council shall certify the adoption of this ordinance and shall cause the same to be published as required by law.

ADOPTED this _____ day of _____, 2022.

Vicente Sarmiento
Mayor

APPROVED AS TO FORM
Sonia R. Carvalho, City Attorney

By: John M. Funk
John M. Funk
Chief Assistant City Attorney

AYES: Councilmembers: _____

NOES: Councilmembers: _____

ABSTAIN: Councilmembers: _____

NOT PRESENT: Councilmembers: _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, _____, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-_____ to be the original ordinance adopted by the City Council of the City of Santa Ana on _____, 2022 and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: _____

Clerk of the Council
City of Santa Ana