

## REPORT TO CITY COUNCIL

**DATE:** JUNE 28, 2023

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** NATHAN HAMBURGER, CITY MANAGER

**BY:** DENICE THOMAS, COMMUNITY DEVELOPMENT DIRECTOR  
JESSICA CLEAVENGER, PRINCIPAL PLANNER

**SUBJECT:** ADOPTION OF ORDINANCE NO 23-470 AMENDING ARTICLE IX (ZONING) OF THE AGOURA HILLS MUNICIPAL CODE TO MODIFY CHAPTER 3 (COMMERCIAL DISTRICTS) AND CHAPTER 6 (REGULATORY PROVISIONS) TO ADD PROVISIONS TO THE OUTDOOR DINING DESIGN AND OPERATIONAL STANDARDS AND AMEND THE OFF-STREET PARKING PROVISIONS TO ALLOW OUTDOOR DINING OPERATIONS AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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At the June 14, 2023, meeting, the City Council unanimously introduced, read by title only, and waived further reading of Ordinance No. 23-470 (Case No. ZOA-2023-0006), approving an Ordinance that will provide relief for restaurants seeking to continue to serve dining patrons in their expanded outdoor seating areas and create a holistic approach to reviewing applications.

Attached for reference is a copy of Ordinance No. 23-470.

### **RECOMMENDATION**

Staff respectfully recommends the City Council adopt Ordinance No. 23-470.

Attachment: Ordinance No. 23-470

# **ATTACHMENT 1**

Ordinance No. 23-470 Amending the Outdoor Dining Provisions

**ORDINANCE NO. 23-470**

**AN ORDINANCE OF THE CITY OF AGOURA HILLS, CALIFORNIA, AMENDING ARTICLE IX (ZONING) OF THE AGOURA HILLS MUNICIPAL CODE TO MODIFY CHAPTER 3 (COMMERCIAL DISTRICTS) AND CHAPTER 6 (REGULATORY PROVISIONS) TO ADD PROVISIONS TO THE OUTDOOR DINING DESIGN AND OPERATIONAL STANDARDS AND AMEND THE OFF-STREET PARKING PROVISIONS TO ALLOW OUTDOOR DINING OPPORTUNITIES AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

WHEREAS, the City understands that some residents and visitors may desire to have the option to dine and engage in certain activities outdoors and it is important to provide such opportunities in a safe manner.

WHEREAS, the City Council finds that allowing the expansion of outdoor operations without a proper regulatory process has the potential to impact the safety of residents and visitors due to substandard access and ADA requirements.

WHEREAS, the City Council finds that allowing the expansion of outdoor operations without a proper regulatory process has the potential to impact health and safety of residents and visitors due to substandard sanitation requirements.

WHEREAS, the City Council finds that regulations on commercial outdoor operations are necessary to ensure neighborhood compatibility, to facilitate economic growth within the City, and to protect the health, safety and general welfare of the City's residents.

WHEREAS, in accordance with the California Constitution, Article XI, Section 7, a City may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.

NOW, THEREFORE, the City Council of the City of Agoura Hills does ordain as follows:

**Section 1.** The facts set forth in the recitals of this Ordinance are true and correct.

**Section 2.** The proposed amendments are consistent with the objectives of Article IX (Zoning) of the Agoura Hills Municipal Code and with the General Plan. The Ordinance is consistent with Goal LU-1 of the General Plan which encourages sustainable growth and change through orderly and well-planned development that provides for the needs of existing and future residents and businesses. Specifically the Ordinance is consistent with Policy LU-1.2 of Goal LU-1 which allows for growth of existing development in limited designated areas. The Ordinance is consistent with Goal LU-2 of the General Plan which encourages a mix of land uses that meets the diverse needs of the City's residents. Specifically the Ordinance is consistent with Policy LU-2.4 of Goal LU-2 which calls for visitor

serving commercial uses in key locations to attract tourists, beachgoers, and Santa Monica Mountains park users.

**Section 3.** Section 9395.1 of Part 12 (SPECIAL COMMERCIAL USE STANDARDS) of Chapter 3 (COMMERCIAL DISTRICTS) of Article IX (ZONING) of the Agoura Hills Municipal Code is hereby amended to read as follows, with deleted language shown in ~~strikeout~~, new language shown in underline, and reordered language shown in double underline:

**“9395.1. - Outdoor dining design and operational standards enumerated.**

No property in the commercial land use districts which allows for dining establishments defined in this section shall be used for outdoor dining unless said outdoor dining complies with the following standards. ~~This section does not apply to patio areas which were designated for dining as part of the original permit processing.~~

~~A. Outdoor dining operational standards.~~

1. All outdoor dining shall be located on within the private parking lot, private sidewalk, and/or other private outdoor space ~~private property~~ immediately adjacent to the dining establishment.
2. Dining establishments that serve alcoholic beverages in their outdoor dining area shall be required to meet the additional specific standards from the state alcoholic beverage control board as well as all other applicable federal, state, and local requirements.
3. Temporary, mobile, or freestanding food service providers are not eligible under these standards.
4. An obstruction free, clear sidewalk area for pedestrian traffic passing through the outdoor dining and seating area shall be required. Dining areas shall not be permitted in areas where less than a four-foot obstruction-free pedestrian area exists between outside the cafe outdoor dining area and any obstructions such as streets, trees, newsstands, bus benches, or curblines.
5. No sign, including signs on table umbrellas, shall be permitted in the outdoor dining area of the establishment with the exception of an identification or menu sign.
6. All fire department regulations and standards concerning exterior lighting and power shall be met. These regulations and standards shall be supplied at the time of application.

7. All fire department regulations and standards concerning adequate access shall be met.
8. ~~7.~~ All outdoor dining sites shall be handicapped accessible per federal, state, and local requirements.
9. ~~8.~~ The property owner, the property management, and the management of the dining establishment shall be responsible for compliance with all outdoor dining requirements.
10. Contact information for the property owner, the property management, or the management of the dining establishment shall be posted on-site during operating hours.
11. ~~9.~~ Unruly behavior shall not be permitted in the outdoor dining area.
12. ~~10.~~ Outdoor dining areas, including flooring, shall remain clear of litter, food scraps, and soiled dishes at all times. Where eating establishments provide self-service take-out service, an adequate number of employees shall be maintained to clear refuse or litter on a regular basis even though table service is not provided. Concrete flooring shall be washed daily.
13. ~~11.~~ At the end of the business day, establishments shall be required to clean (sweep and mop) the area in and around the outdoor dining area.
14. ~~12.~~ If disposable utensils are used, the establishment shall comply with all applicable recycling programs and all provisions of the Agoura Hills Municipal Code.
15. ~~13.~~ Outdoor dining areas shall be continuously supervised by management or employees of the dining establishment. Dining establishments serving alcoholic beverages shall have a supervisor on-site at all times.
16. ~~14.~~ Outdoor dining areas shall be operated in a manner that meets all requirements of the health department of Los Angeles County and any other applicable regulations.
17. ~~15.~~ Outdoor speakers are prohibited.
18. Any dining establishment that provides outdoor dining requiring an outdoor dining permit shall provide the required parking for the dining area, as defined in section 9654.6.

19. The design materials and colors used for chairs, tables, lighting and other fixtures including umbrellas and awnings for both public eating and food establishments shall be generally consistent with both the architectural style and colors used on the building facade and the quality of the shopping center fixtures, as determined by the Director.
20. The layout of outdoor dining and seating areas required as part of the outdoor dining permit shall be in conformance with design established by the department of planning and community development.
21. Outdoor dining areas requiring an minor or major outdoor dining permit pursuant to section 9395.2 shall provide barriers or enclosures to designate outdoor dining areas. The need for barriers or enclosures shall be at the discretion of the Director and shall depend on the number of tables and the distance from pedestrian accessways. Barriers or enclosures must conform to the building and safety department's installation standards and be removable (capable of being removed, if needed, by use of recessed sleeves and posts, or by wheels which can be locked into place). All barriers must be able to withstand inclement outdoor weather and one hundred (100) pounds of horizontal force at the top of the barricade when in their fixed positions. The height of any barrier shall not be less than three (3) feet, or more than three and one-half (3½) feet, including the top of any landscaping.
22. Any Required landscaping used for barriers shall be properly maintained. Water drainage onto the sidewalk shall not be allowed. Stressed or dying landscaping must be promptly replaced. Potted plants shall have a saucer or other suitable system to retain seepage and be elevated to allow for air flow of at least two (2) inches between the saucer and the sidewalk.
23. Upon termination of the outdoor dining use, the outdoor dining barriers shall be removed and the sidewalk returned to its original condition.
24. Any other regulation promulgated by the Director of Planning and Community Development to implement the provisions of this Chapter."

**Section 4.** Sections 9395.2 and 9395.3 are hereby added to Part 12 (SPECIAL COMMERCIAL USE STANDARDS) of Chapter 3 (COMMERCIAL DISTRICTS) of Article IX (ZONING) of the Agoura Hills Municipal Code to read as follows:

**“9395.2. - Outdoor dining permit application requirements.**

~~B. Outdoor dining permit requirements and standards.~~

~~1. Public eating establishments with four (4) or more tables shall require an outdoor dining permit from the planning and community development department. Such eating establishments shall provide the following:~~

A. All public eating establishments with outdoor dining tables are required to obtain an outdoor dining permit subject to the following:

1. Public eating establishments with fewer than four (4) tables, or less than or equal to 360 square feet of outdoor dining area, whichever is less, shall be required to obtain an outdoor dining zoning clearance from the planning and community development department on the basis of a ministerial decision to certify that the proposed use meets all requirements and conditions of any previously approved conditional use permit or site plan review.

a. Applications for an outdoor dining zoning clearance shall include the following:

~~c. Each outdoor dining permit application shall include the following:~~

- 1) Written approval from the property management;
- 2) A seating plan and floor plan that includes ingress and egress locations;
- 3) Existing and proposed interior and outdoor seating and waiting area square footages;
- 4) A detail of ~~the required~~ any proposed barrier or enclosure;  
and
- 5) Furniture specifications; ~~and~~
- 6) ~~A parking analysis~~

2. Public eating establishments with four (4) or more tables, or more than 360 square feet of outdoor dining area, whichever is less, shall be required to obtain an outdoor dining permit as follows:

a. Minor outdoor dining permits. Minor outdoor dining permits are defined as those outdoor dining permits for applications where the square footage of the outdoor dining area is less than or equal to 10 percent of the existing interior dining and waiting area square footage. The Director of Planning and Community Development shall be the reviewing authority for all minor outdoor dining permits.

- b. Major outdoor dining permits. Major outdoor dining permits are those outdoor dining permits for applications where the square footage of the outdoor dining area is greater than 10 percent of the existing interior dining and waiting area square footage. The Planning Commission shall be the reviewing authority for all major outdoor dining permits.
- c. Applications for minor and major outdoor dining permits shall include the following:
  - 1) Written approval from the property owner;
  - 2) A seating plan and floor plan that includes ingress and egress locations;
  - 3) Existing and proposed interior and outdoor seating and waiting area square footages;
  - 4) A detail of the required barrier or enclosure;
  - 5) Furniture specifications; and
  - 6) A parking analysis.

B. 2. All plans and permits for the outdoor dining area approved by the city shall be kept on the premises for inspection at all times the establishment is open for business.

C. 4. Any modification to the approved plans shall be submitted for review and approval by the department of planning and community development prior to the initial implementation of any modification and shall comply with applicable guidelines then in effect.

D. Annual inspections by the department of planning and community development shall be performed for all approved outdoor dining permits.

E. Modifications to outdoor dining permits may be granted by the Director of Planning and Community Development for changes to the approved plans that do not result in an increased number of tables or expansion of dining areas.

F. The City Council may establish fees by resolution for the review of such applications.

G. In approving an outdoor dining permit, the reviewing authority may impose such conditions as may be reasonably necessary to protect the public health, safety and general welfare, and to ensure that the proposed outdoor dining use is established and conducted in a manner which is consistent with this chapter and the development standards for the underlying zone.

H. All outdoor dining permits are subject to revocation pursuant to section 9679.



**9395.3. - Findings.**

The reviewing authority shall approve an outdoor dining permit application if all of the following findings can be made:

A. The proposed outdoor dining use is consistent with the general plan and any specific plans adopted for the area.

B. The proposed outdoor dining use will not adversely affect existing and anticipated development in the vicinity and will promote the harmonious development of the area.

C. The proposed outdoor dining use will not create any significant parking or traffic impacts, traffic safety hazards, pedestrian - vehicle conflicts, or pedestrian safety hazards and will not impede the safe and orderly flow of pedestrians along the public right of way.

D. The proposed outdoor dining use will not be detrimental to the public health, safety, or general welfare.”

**Section 5** Subsection B of Section 9654.6 (Parking Allocation) of Division 4 (OFF-STREET PARKING, LOADING AND LANDSCAPING) of PART 2 (SPECIAL REGULATIONS) of Chapter 6 (REGULATORY PROVISIONS) of Article IX (ZONING) of the Agoura Hills Municipal Code is hereby amended to read as follows, with deleted language shown in **strikeout** and new language shown in **underline** the remainder of the table shall remain unchanged:

**“9654.6. Parking allocation.**

*B. Parking spaces required.* The number of off-street parking spaces shall be no less than the following:

USE	PARKING SPACES REQUIRED
<i>Commercial</i>	
*Restaurants, including drinking establishments, sit down and fast food	<u>9.6</u> <del>15</del> for each 1,000 square feet of <u>existing gross seating and waiting</u> floor area.

*\*Based on the average parking rate for Fast Casual, Quality, High Turnover-Sit Down, and Fast-Food with Drive-Through category’s within the Institute of Transportation Engineers (ITE) Parking Generation Manual 5<sup>th</sup> edition.*

**Section 6.** CEQA. The City Council finds and determines that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment. Furthermore, the Ordinance authorizes only minor public or private

alterations in the condition of land which do not involve the removal of healthy, mature, scenic trees and the Ordinance imposes regulations that limit the environmental impacts of existing commercial property. The Ordinance is also exempt pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines since the Ordinance proposes provisions involving a negligible expansion of an existing use.

**Section 7.** Severability Clause. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or its application to any person or circumstances, is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsections, subdivision, paragraph, sentence, clause, phrase hereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**Section 8.** Effective Date. This Ordinance shall take effect thirty (30) days after passage.

**Section 9.** Certification. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

**PASSED, APPROVED, AND ADOPTED** this 14<sup>th</sup> day of June, 2023, by the following vote to wit:

AYES:        ( )  
NOES:         ( )  
ABSENT:      ( )  
ABSTAIN:     ( )

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Chris Anstead, Mayor

ATTEST:

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Kimberly M. Rodrigues, MMC, City Clerk

APPROVED AS TO FORM:

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Candice K. Lee, City Attorney