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**SUBJECT:** Discuss and provide direction regarding potential modifications to the regulation of outdoor dining and merchandise displays in Downtown Brentwood to ensure an aesthetic, safe, and accessible environment

**DEPARTMENT:** City Manager's Office

**STAFF:** Darin Gale, Assistant City Manager

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### **TITLE/RECOMMENDATION**

Staff recommends that the City Council discuss and provide direction regarding potential modifications to the regulation of outdoor dining and merchandise displays in Downtown Brentwood, as well as implementation of an updated ordinance, and authorize staff to prepare the appropriate text amendments to the Brentwood Municipal Code and Downtown Specific Plan for Planning Commission consideration.

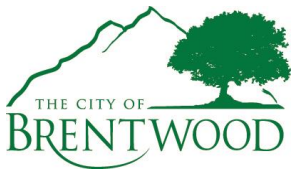
### **FISCAL IMPACT**

There are no fiscal impacts associated with this action; however, enforcement and implementation of an updated code will require additional staff time and resources.

### **BACKGROUND**

In January of 2022, the City Council authorized a future agenda item to discuss outdoor dining and vending in Downtown Brentwood due to conflicts created by newly created outdoor dining spaces. Specifically, this included conflicts with outdoor dining where pedestrians on the sidewalk had to walk through a dining area and the consumption of alcohol in these areas. Although limited instances of these conflicts remain, many of the specific issues leading to this future agenda item were resolved, as the businesses creating the conflict are no longer in operation.

Although the original issue giving rise to this future agenda item was resolved, some conflicts remain. One specific conflict is that the area a business is authorized to occupy is not clearly defined as part of the existing approval process. For example, when the City installed new shade structures in Downtown, it was assumed that businesses would operate under the rooflines of those structures, but it was not explicitly required and has resulted in conflicts.



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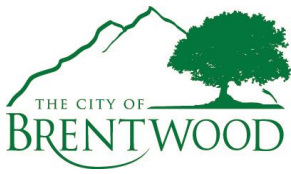
Businesses in Downtown Brentwood that have an outdoor dining area or are displaying merchandise are operating on the sidewalk and within the public right of way. The City's current regulations do not clearly set forth a common vision for the use of the public right of way for private purposes Downtown. Through a detailed update to these regulations, the City can properly implement a vision and ensure the continued success of Downtown businesses.

In response to the original future agenda item request, this report includes an overview and status of the current outdoor dining rules and a variety of options for the City Council to consider. Staff has had some conversations with the Downtown Brentwood Coalition (DBC) regarding conflicts related to businesses operating on the sidewalk, but no meetings have been held with any specific businesses to date. Once the City Council provides policy direction, staff will begin the process of working with the DBC and Downtown businesses to draft modified regulations for City Council consideration, so this is just the first step in the process. Both residents and businesses will have multiple opportunities to weigh in on this process.

**OUTDOOR DINING IN THE DOWNTOWN ZONE**

The City's existing rules governing outdoor dining Downtown are found in two locations: general parameters are found in the [Downtown Specific Plan](#), which was originally adopted in 2005 and subsequently amended, and more specific standards are set out in the Zoning Ordinance of the Brentwood Municipal Code ([Chapter 17.900 – Standards for Outdoor Dining Uses and Merchandise Displays in the Downtown Zone](#)). Outdoor dining and merchandise display permits are currently issued through a no fee Administrative Design Review (ADR) process by the Community Development Department. The current code requires pedestrian walkway clearance of four feet, as well as basic standards for lighting, furniture, and fixtures, but it lacks detail and has limited enforcement tools if a business does not follow the code.

In addition to the ADR process, during the COVID-19 pandemic, City orders by the Director of Emergency Services included a General Operations Policy to comply with and address Federal, State, and County orders issued to protect the public from the spread of COVID-19. By the summer of 2020, the impact of mandatory indoor dining prohibitions were threatening the continued viability of restaurants across the nation. In California, according to the California Restaurant Association, between March and August 2020, 900,000 to 1 million California restaurant workers had either been laid off or furloughed. Locally, in order to both safeguard the public health and aid the ongoing existence of local restaurants, the Director of Emergency Services delegated authority to City staff to allow for temporary outdoor dining, providing Brentwood restaurants with flexibility to maintain business operations. Although this was intended to be temporary in nature, tracking the contours of the pandemic, some Downtown businesses that received temporary approval during COVID-19 continue to operate outdoor dining without an approved ADR or outside of their approvals.



Other businesses located outside of Downtown returned to normal operations and no longer operate outdoor dining; for example, private parking lots were commonly used for outdoor dining in other locations. This ordinance and discussion is specific to Downtown uses in the public right of way.

Existing Downtown businesses with outdoor dining or merchandising display can be classified in one of the five following categories:

1. Approved ADR and in compliance with approval;
2. Approved ADR but not in compliance with approval;
3. Allowed to operate under temporary outdoor dining permit due to COVID;
4. Allowed to operate under a temporary outdoor dining permit due to COVID but have expanded footprint; or
5. No review or approval from staff for outdoor merchandise display.

### **ZONING ORDINANCE ALTERNATIVES**

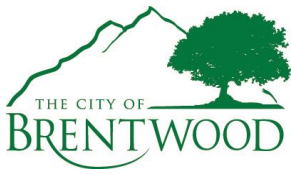
The current process for reviewing outdoor dining or merchandise displays in the Downtown lacks the clarity needed for staff to properly enforce this section of the Zoning Ordinance.

Staff from Economic Development and Community Development have reviewed Brentwood Municipal Code Chapter 17.900 and recommend that the City Council modify the existing outdoor dining and merchandising display regulations. The modification would be based on City Council direction provided after carefully reviewing the standards found within this section of the zoning ordinance and Downtown Specific Plan.

Options that could be explored in an updated ordinance are as follows:

#### **a. Modify BMC Chapter 17.900 with new requirements and standards.**

Currently, there is a no-cost Planning staff review for outdoor dining and merchandise display (the ADR process). Certain physical building improvements required by the Building Code may necessitate building permits. Instead of the current ADR process that does not include the needed specific outdoor dining or merchandise display standards or requirements, staff recommends creating an official outdoor dining and merchandising display permit. This permit should be processed in conjunction with a nominal flat fee to businesses, as there are costs associated with processing and enforcing such permits. Although the current ordinance does allow for a fee to process such approvals, no fee is currently included in the City's Cost Allocation Plan. Staff recommends that an updated ordinance include more specific requirements clearly defining the space in which a business can operate; and requiring a



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cleaning deposit, liability insurance, annual inspections, etc. Although many businesses will have concerns with the costs associated with these new requirements, this is part of the cost associated with operating within the public right of way. City staff is not proposing to charge or lease the space for a fee to an operator.

- b. Public pedestrian access through a controlled and permitted outdoor dining area premises will not be permitted where alcohol is served. Instead, permitted outdoor dining area premises where alcohol is served must be contiguous to the business establishment and separated by a permanent form of fencing.**

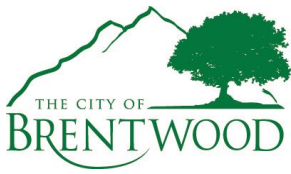
This type of outdoor dining configuration in the public right of way was voluntarily removed by a local business and is not currently present in the Downtown. Staff recommends language be included in an updated ordinance to ensure this does not occur again.

- c. Increasing the public pedestrian walkway clearance to five (5) feet, from the existing requirement of four (4) feet, with allowances for the Director of Community Development to provide administrative approval for four (4) feet should physical limitations on the public sidewalk create conflicts with the proposed outdoor dining area.**

This standard could apply to new outdoor dining permittees. Existing permitted establishments could adhere to the previous applicable standard of four feet, and maintain accessibility and compliance with applicable Building Code provisions at all times, but will be required to ensure the sidewalk is cleaned on a regular basis. In certain instances, existing outdoor dining areas constructed to improve outdoor dining options during the COVID-19 pandemic may need to be modified based on field inspections by the Community Development Department. City Economic Development staff, as well as the Downtown Brentwood Coalition, will work with business owners to ensure the built environment focuses on an accessible Downtown.

- d. Permittees to be required to regularly clean the sidewalk in front of their business establishment out to the back of the curb. If the sidewalk is not properly cleaned, the outdoor dining permit can be revoked by following the City's Municipal Code (Section 17.890.006).**

The existing ordinance states that a property owner/business with an ADR is to maintain the sidewalk in front of the business (17.900.005(J)), but this is not well-defined. This section of the code will need to be improved and expanded to ensure staff has a process to revoke a permit if a condition is not properly implemented. Staff recommends that criteria for revocation of a permit be included in the new ordinance, as well as specific regulations related



to maintenance responsibilities.

**e. Consider restricting installation of bar seating designed to seat customers facing the public right of way.**

For conflicts with a bar having seating facing the public right of way, if the City Council wanted to restrict this, it could be included in an updated ordinance and staff would need direction on how or if existing businesses would be impacted.

**f. Clearly define the placement, height, material, and allowed use for all fencing.**

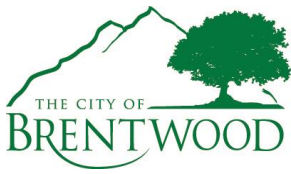
When the City installed new shade structures Downtown, it was assumed businesses would operate under the rooflines of those structures, but it was not explicitly required. Currently, there is no uniform placement, height, or materials used for fencing Downtown. Some fences are attached to the inside of the shade structures, whereas others are attached to the outside or well beyond the shade structures. This lack of uniformity creates conflicts between patrons of a business and the general public using the sidewalks.

The above list is not an exhaustive list of items that could be included in a modified set of regulations, but it includes many important items that affect existing businesses. With City Council direction on the items above, and on other items pertaining to this section of the Zoning Ordinance, staff will prepare an updated set of regulations for consideration. Staff will likewise prepare and bring back conforming Downtown Specific Plan amendments to ensure uniformity amongst all applicable regulations. For example, the outdoor dining regulations in the Downtown Specific Plan only require a four foot pedestrian walkway clearance; if the City Council directed staff to increase this distance, an amendment to the Downtown Specific Plan would be needed to ensure consistency with a revised Municipal Code requirement.

Based upon current City Council priorities being worked on by City staff, this set of amendments to the Downtown Specific Plan and Zoning Ordinance would be a 12 month process. The process could include an update with the City Council prior to beginning the process of adoption, which requires a review and recommendation by the Planning Commission as part of a notice public hearing.

**IMPLEMENTATION PROCESS**

City staff will need to review each outdoor dining set up and outdoor merchandise display to determine current approval status. As discussed above, during COVID-19, the City and most Downtown businesses partnered on shade structures attached to buildings. The poles for each shade structure were placed to ensure compliance with the City's outdoor dining and building codes. After installation of the shade

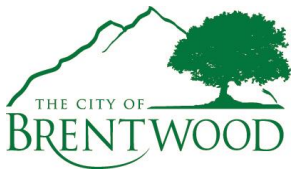


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structures, most businesses installed fencing to allow for seating in a defined area and to meet California Department of Alcoholic Beverage Control requirements. Most fences were installed without City review or permits and, as a result, their placement is not uniform and a few are in areas where staff would not recommend them to be.

Below is a matrix for City Council consideration and direction regarding the implementation of a new set of regulations. Some of the options below would require a business to make improvements and or changes to existing improvements. Others may require legal review to determine their feasibility. For example, a business might be required to move, change, or eliminate current fences, seating, or other improvements. Additionally, as part of this process, the City will follow up with each property owner to ensure all proper building permits are obtained and improvements inspected related to outdoor improvements within the public right of way.

<b>Current Status</b>	<b>Option A</b>	<b>Option B</b>	<b>Option C</b>
Approved ADR and in compliance	Allow business to continue operating under existing ADR	Require business to meet new standards under a new permit process	*Add clarity to condition requiring business to regularly clean sidewalk, annual inspections, and meet liability insurance requirements
Approved ADR out of compliance with approval	Require business to apply for new permit based upon existing standards	*Require business to apply for new permit based upon new standards	*Add clarity to condition requiring business to regularly clean sidewalk, annual inspections, and meet liability insurance requirements
Operating under a temporary COVID approval	Require business to apply for a permit under existing standards and add clarity to condition related to sidewalk cleaning, inspections and liability insurance requirements	*Require business to apply for a permit under new standards	



<b>Current Status</b>	<b>Option A</b>	<b>Option B</b>	<b>Option C</b>
Operating without City review or approval	Require business to apply for permit under existing standards and add condition related to sidewalk cleaning, inspection and liability insurance requirements	*Require business to apply for a permit under new standards	

\*Staff recommended options

**CITY COUNCIL STRATEGIC INITIATIVE**

Not Applicable.

**PREVIOUS ACTION**

Previous Action by the City Council is included in attachment 1.

**DATE OF NOTICE**

Not applicable.

**ENVIRONMENTAL DETERMINATION**

Not applicable at this time.

**ATTACHMENT(S)**

1. Previous Actions
2. Current Outdoor Dining and Merchandise Zoning Code