

ORDINANCE NO. 1526

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUSTIN, CALIFORNIA, AMENDING SECTION 9277 OF CHAPTER 2 OF ARTICLE 9 (LAND USE) OF THE TUSTIN CITY CODE (CODE AMENDMENT 2022-0003) TO STREAMLINE THE PROCESS AND REQUIREMENTS FOR RESTAURANTS TO ESTABLISH OUTDOOR DINING AREAS AND OUTDOOR SEATING AREAS

The City Council of the City of Tustin does hereby ordain as follows:

SECTION 1. The City Council finds and determines as follows:

- A. That Chapter 2 of Article 9 of the Tustin City Code (TCC) establishes allowable uses, definitions, and development standards of properties within all zoning districts in the City.
- B. That the proposed Code Amendment (CA) 2022-0003 is an update to TCC Section 9277, the City's outdoor dining regulations. The intent of this amendment is to increase restaurants' ability to provide outdoor dining and seating areas while maintaining an attractive design and protecting the public interest.
- C. That on July 12, 2022, a public hearing was duly noticed, called, and held by the Planning Commission on CA 2022-0003 relating to outdoor dining.
- D. That on August 16, 2022, a public hearing was duly noticed, called, and held on CA 2022-0003 by the City Council.
- E. That the code amendments are reasonable and serve the purpose of responding to changes in resident and business owner preferences related to outdoor dining in light of the global COVID-19 pandemic.
- F. That the proposed amendments comply with the Tustin General Plan in that they comply with the following goal and policy:

Land Use Element Goal 6: Improve urban design in Tustin to ensure development that is both architecturally and functionally compatible, and to create uniquely identifiable neighborhoods, commercial and business park districts.

Policy 6.2: Encourage and promote high quality design and physical appearance in all development projects.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUSTIN, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 2. Section 9277 of Chapter 2 of Article 9 of the TCC is hereby amended in its entirety to read as follows:

9277 OUTDOOR RESTAURANT SEATING AND DINING AREAS

a) Purpose

The regulations and requirements of this Section are intended to provide for the proper location and minimum standards for permanent Outdoor Dining Areas and Outdoor Seating areas for restaurants in the commercial areas of the City of Tustin. It shall be unlawful for any person to establish an Outdoor Dining Area or Outdoor Seating Area at any site unless approval has been obtained, as applicable, consistent with this Section.

b) Definitions

For the purposes of this Section, the following definitions shall apply:

“Outdoor Dining Area” means an outdoor area that has been improved as a separately identifiable, designated space for the outdoor seating, service, and/or consumption of meals and beverages in conjunction with a restaurant located directly adjacent to or in close proximity of the outdoor area, excluding outdoor dining areas located within a park, golf course, recreation center, senior center or other public or quasi-public use, as may be determined by the Community Development Director. Typical improvements include a defined perimeter via landscape planters, decorative barriers, or fencing; decking or other decorative flooring that separates the dining area floor from the ground; and outdoor furnishings such as shade structures, tables, and chairs.

“Outdoor Seating Area” means an outdoor area directly adjacent to or in close proximity of a restaurant where non-fixed tables and chairs are provided for restaurant patrons to sit and/or consume meals and/or nonalcoholic beverages. An Outdoor Seating Area is differentiated from an Outdoor Dining Area by the portable nature of outdoor furnishings and a lack of physical barriers or improvements.

c) Applicability

No person or entity shall operate a restaurant or take-out restaurant which provides an Outdoor Dining Area or Outdoor Seating Area for the purpose of serving food or beverages to customers without meeting the requirements of this Section and receiving prior written approval of the Community Development Director or designee, as applicable. Said approval shall be in addition to any other license or permit required by California Law or the TCC. Outdoor Dining Areas or Outdoor Seating Areas proposing to operate

within the public right-of-way must obtain a License Agreement from the City of Tustin as described in subsection f. Outdoor Dining Areas proposing to serve alcoholic beverages shall obtain approval for a Conditional Use Permit pursuant to Section 9271dd, as may be required by the subject property's zoning designation, and an applicable license from the California State Department of Alcoholic Beverage Control.

d) Outdoor Seating Areas

Outdoor Seating Areas established as an accessory use to a food service establishment such as a café, bakery, or restaurant are subject to the requirements below and the Outdoor Seating and Dining Area Design Guidelines as may be promulgated by the Community Development Department, and as the same may be amended. The Community Development Director may waive, modify, or impose additional operational conditions deemed necessary and appropriate provided that the waiver, modification, and/or additional conditions achieve the purpose and intent of this Section.

(1) Operational Requirements

- (a) Restaurants may have non-fixed tables and furnishings (seats, benches, umbrellas) directly adjacent to or in close proximity of the restaurant.
- (b) Furnishings may be set out as early as thirty (30) minutes before opening and must be removed no later than thirty (30) minutes after closing of the business.
- (c) Operation of an Outdoor Seating Area shall be permitted only at such times as the main place of business is open, and in no event before 6:00 a.m. and after 11:00 p.m., except when the Outdoor Seating Area abuts in whole or in part a residentially used or zoned property, in which case the hours of operation for the Outdoor Seating Area shall be limited to no earlier than 7:00 a.m. and no later than 10:00 p.m.
- (d) All Outdoor Seating Areas shall comply with the City's Noise Ordinance.
- (e) All required pedestrian pathways, emergency access/exits, and fire lanes must be maintained in compliance with applicable ADA, Orange County Fire Authority, and City requirements.
- (f) No furnishings may be placed in any required parking or landscape area.
- (g) No furnishings may be placed or encroach within the public right-of-way without first obtaining appropriate approvals from the Public Works and Community Development Departments and meeting the requirements of Section f.
- (h) No advertising, signage, or identification of any kind is permitted on outdoor furnishings (including shade structures).

- (i) An Outdoor Seating Area provided in compliance with these requirements will not be counted as floor area used to determine the restaurant's parking requirement.
- (j) Furnishings must be maintained and cleaned regularly with no ripped, faded, or otherwise damaged materials. Any unmaintained furnishing shall be repaired or replaced immediately. The restaurant manager or business owner is responsible for maintaining the Outdoor Seating Area free of trash, litter, and food debris.

e) Outdoor Dining Areas

(1) Review Procedure and Submittal Requirements

The establishment of a new Outdoor Dining Area, or the expansion or substantial modification of an existing Outdoor Dining Area, shall be subject to the City's Design Review process in accordance with Section 9272. Approval for an Outdoor Dining Area shall be granted only to the operator of a restaurant which is in conformance with the Zoning Code and which holds a valid City Business License. Written concurrence of the property owner shall also be required. The Community Development Director may waive, modify, or impose additional conditions deemed necessary and appropriate provided that the waiver, modification, and/or additional conditions achieve the purpose and intent of this Section.

When a restaurant is proposed to replace a restaurant where an Outdoor Dining Area had previously been approved pursuant to this Section, the new restaurant owner or operator may continue to utilize the existing Outdoor Dining Area without obtaining separate written approval, so long as such owner or operator submits an Agreement to Conditions Imposed to the City to comply with the requirements of this Section and all conditions of the prior written approval, on a form provided by the Community Development Director, executed by the new restaurant owner and the property owner. Notwithstanding the foregoing, if any portion of the existing Outdoor Dining Area is located within a City property, a public sidewalk or other public right-of-way, the new restaurant owner or operator shall enter into a new License Agreement with the City and comply with the provisions of subsection f.

All proposals shall be accompanied by a complete application for Design Review on a form provided by the Community Development Director and shall include the following:

- (a) A detailed drawing to scale of the proposed site indicating the following: the existing facade, the points of ingress and egress, the proposed location of the tables, chairs, serving equipment, planters, borders, awnings, umbrellas, border enclosures, or other facilities to be included in the Outdoor Dining Area. If the Outdoor Dining Area is proposed to be located on City property, a public sidewalk or other public right-of-way, the drawings must also include the location of existing public improvements including fire hydrants, street signs, street lights, traffic signals, bus shelters, mail boxes, trees and tree grates, parking meters, planting boxes or planting areas, fire escapes or other

overhead obstructions, and any other public obstruction. Photographs and/or brochures depicting the chairs, tables, umbrellas and other private features including lighting shall be included with the site plan.

- (b) A narrative description of the proposal, including the proposed hours of operation, and any additional information as may be deemed necessary by the Community Development Director.
- (c) The fee as may be established by Resolution of the Tustin City Council.

(2) Location and Design Requirements

- (a) An Outdoor Dining Area shall meet the following locational and design criteria, and the Outdoor Seating and Dining Areas Design Guidelines:
 - (1) The Outdoor Dining Area may only be established abutting or adjacent to the primary restaurant business with which the outdoor dining area is associated.
 - (2) An Outdoor Dining Area shall not be located on City property, a public sidewalk or other public right-of-way unless a valid License to do so has been obtained from the Tustin Public Works Department and subject to the regulations established in Section f.
 - (3) The Outdoor Dining Area shall not occupy or interfere with the use of required parking spaces and drive aisles, unless approved otherwise.
 - (4) The Outdoor Dining Area shall not obstruct any fire exit, fire escape, or other required ingress or egress to any structure or property.
 - (5) The Outdoor Dining Area shall be compatible with the design of the building establishment and maintain proper visibility and access to the establishment.
 - (6) The Outdoor Dining Area shall not be located so as to interfere with ADA and pedestrian access, bike or vehicle traffic, or that creates a threat to public safety as determined by Community Development Director, Public Works Director, Police Chief or the Orange County Fire Authority.
 - (7) The Outdoor Dining Area floor shall be composed of decking, raised foundation, or other materials that differentiate the dining area from the surrounding area.
 - (8) The Outdoor Dining Area shall be enclosed by permanent improvements such as landscape planters, fencing, decks, and/or other decorative barriers that physically separate and/or define the dining area from other open or public spaces. Barriers within the public right-of-way shall be removable upon request by the City. The enclosure shall be a minimum of three (3)

feet tall, or higher as required by California State Department of Alcoholic Beverage Control as applicable.

- (b) No additional parking required when the Outdoor Dining Area contains no more than fifteen (15) seats, or is no larger than fifty (50) percent of the restaurant's interior seating area.
- (c) For restaurants located within commercial centers designated as "Large Retail Centers" (30,000 square feet or more), up to three (3) legal parking spaces adjacent to the restaurant can be used as part of an Outdoor Dining Area without needing to be replaced to comply with parking requirements.
- (d) A reduction in the number of required parking spaces to accommodate an Outdoor Dining Area can be obtained with the approval of a Conditional Use Permit by the Zoning Administrator, pursuant to Section 9264a (Joint Use of Parking Areas).

(3) Operational Requirements

City approval and continued enjoyment of the Outdoor Dining Area shall be subject to the following conditions:

- (a) The Outdoor Dining Area should be compatible in color and style with the exterior of the building. The use of compatible awnings, umbrellas, plants, and other human scale elements is encouraged to enhance the pedestrian experience.
- (b) The applicant shall comply with all applicable federal, state, county and city laws and regulations, and operation of the outdoor restaurant seating area shall not be detrimental to the health, safety, or welfare of persons residing or working in the vicinity.
- (c) No outdoor keeping or storage of food or beverages to be served shall be permitted. No open keeping or storage of used dishes, utensils or food scraps shall be permitted. Self-closing, outdoor trash containers shall be provided to the satisfaction of the Community Development Department. All outdoor restaurant seating areas shall be cleaned on a continual daily basis.
- (d) Furnishings must be maintained and cleaned regularly with no ripped, faded, or otherwise damaged materials. Any unmaintained furnishing shall be repaired or replaced immediately. The restaurant manager or business owner is responsible for maintaining the outdoor seating area free of trash, litter, and food debris.
- (e) Operation of an Outdoor Dining Area shall be permitted only at such times as the main place of business is open, and in no event before 6:00 a.m. and after 11:00 p.m., except when the outdoor dining area abuts in whole or in part a

residentially used or zoned property, in which case the hours of operation shall be limited to no earlier than 7:00 a.m. and no later than 10:00 p.m.

- (f) An Outdoor Dining Area may have a menu board that does not exceed six (6) square feet in area.
- (g) The sale and consumption of alcoholic beverages in the Outdoor Dining Area shall be restricted by and subject to any required California State Department of Alcoholic Beverage Control or other applicable license or permit governing the restaurant. Any outdoor dining area where alcoholic beverages are sold or consumed shall be confined by a border, fence, and/or planters and shall be supervised at all times by an employee of the restaurant. No alcoholic beverages may be removed from the Outdoor Dining Area, except to the interior of the restaurant.
- (h) The Outdoor Dining Area shall comply with all applicable federal, state, county and city laws and regulations concerning accessibility and nondiscrimination in the provision of services.
- (i) All Outdoor Dining Areas shall comply with the City's Noise Ordinance.
- (j) Live entertainment or amplified music within the Outdoor Dining Area during allowed operational hours shall be accomplished in such a fashion so as to comply with the TCC and City's Noise Ordinance.
- (k) Lighting shall be provided to illuminate the Outdoor Dining Area.
- (l) Violation of any of the requirements set forth in this Section, or any other conditions placed on approval of an Outdoor Dining Area by the City of Tustin, shall constitute a violation of the TCC, subject to enforcement in any manner authorized by the TCC. In addition, the Community Development Director is hereby authorized to suspend or revoke any prior approval of an Outdoor Dining Area upon continuous or repetitive violation of such requirements or conditions.
- f) Additional Requirements for Outdoor Seating Areas and Outdoor Dining Areas Located Within City Property, a Public Sidewalk, or the Public Right-of-Way

Notwithstanding any other provision of this Code, all or a portion of an Outdoor Seating Area or Outdoor Dining Area that satisfies the requirements of this Section, may be located within City property, a public sidewalk or public right-of-way where the Director of Public Works determines, in his or her discretion, that the use is compatible with the intended use of the City property, public sidewalk or other public right-of-way, subject to the following conditions:

- (1) A revocable License Agreement shall be obtained from the City of Tustin for any portion of an Outdoor Dining Area or Outdoor Seating Area located on City property, public sidewalk or other public right-of-way. The License Agreement shall be subject to termination by the City at any time upon a ten (10) day prior written notice upon determination of the Community Development Director and/or Director of Public Works that one (1) or more of the conditions or provisions of this Section have been violated, or that one (1) or more factors listed in this Section have changed, or the permitted use is no longer compatible with the intended use of the City property, public sidewalk or other public right-of-way. No prior written notice shall be required to terminate the License Agreement where the Community Development Director and/or Director of Public Works determines, in his or her discretion, that the continued use of the City property, public sidewalk or other public right-of-way for the Outdoor Seating Area or Outdoor Dining Area poses an imminent threat to health or safety.
- (2) The use of public sidewalks or right-of-way for an Outdoor Seating Area or Outdoor Dining Area may be permitted only when associated with the operation of a licensed establishment such as a café, bakery, restaurant or take-out restaurant operating on property located adjacent to or in close proximity of said right-of-way.
- (3) The restaurant operator or property owner shall provide to the City of Tustin, in a form acceptable to the City Attorney, the following:
 - (a) An agreement to indemnify, defend, and hold harmless the City of Tustin, as applicable, for any and all claims for liability or damages arising from the operation of the Outdoor Seating Area and/or Outdoor Dining Area; and,
 - (b) Insurance certificates and endorsements evidencing general liability insurance, workers compensation insurance, and such other insurance, in such amounts and forms as may be required by the City of Tustin Risk Manager.
- (4) In no event shall the placement of furnishings for or the operation of the Outdoor Seating Area or Outdoor Dining Area interfere with the passage of pedestrian or vehicular traffic, or reduce access to the public sidewalk to less than four (4) feet clear of all obstructions, measured from the edge of the sidewalk closest to the curb (or lampposts, utility boxes, etc., where such exist).
- (5) In no event shall the placement of furnishings for or the operation of the Outdoor Seating Area or Outdoor Dining Area obstruct access to any bus stop, crosswalk, mailbox, curb cut, parking space or any other public property, or obstruct access to any fire hydrant, fire escape or fire door, or obstruct the clear view of any traffic signal, regulatory sign or street sign.
- (6) The restaurant owner and/or operator shall be responsible for the maintenance and upkeep of the City property, public sidewalk or other public right-of-way used for the Outdoor Seating Area or Outdoor Dining Area and the replacement of damaged public property, including brick pavers.
- (7) Furniture and furnishings used for Outdoor Seating Areas may not be attached by any means to the City property, public sidewalk or other public right-of-way. When notified by the City of Tustin to do so, the restaurant shall remove all furnishings

and obstructions from the public sidewalk or right-of-way to accommodate special events or to accommodate the repair or maintenance of City property, sidewalk, or public right-of-way.

(8) The Outdoor Dining Area shall be confined by portable/removable improvements such as landscape planters, removable fencing and/or other decorative barriers that physically separate and/or define the dining area from other open or public spaces. The enclosure shall be a minimum of three (3) feet tall, or as required by California State Department of Alcoholic Beverage Control as applicable.

(9) Granting of a License by the City pursuant to this section f shall be subject to payment of such fees or compliance with such additional conditions as may be required by the City Council.

g) Appeals

The appeal of any action or decision of the Community Development Director to grant, deny, revoke, or suspend approval for an Outdoor Dining Area pursuant to this Section may be made by any interested party in the same manner and subject to the same procedures as an appeal of action of the Community Development Director or Zoning Administrator pursuant to Section 9294.

SECTION 3. Section 9263, Table 1: Parking Requirements by Land Use, of Part 6 of Chapter 2 of Article 9 of the TCC is hereby amended to read as follows (new text underlined; deleted text in ~~strikeout~~):

Table 1: Parking Requirements by Land Use	
Land Use Type	Parking Spaces Required
Restaurants, cafes, cafeterias, lounges, or similar establishments at which the consumption of food and beverages occurs primarily on the premises	One (1) space for each 100 sq. ft. of gross floor area, plus a minimum seven (7)-car stacking space for drive-through, except no additional parking spaces shall be required when a restaurant use replaces a retail, service, or office use on a property located within the Downtown Commercial Core Specific Plan
	No additional parking shall be required for an Outdoor Dining Area when the area either contains no more than fifteen (15) seats, or is no larger than fifty (50) percent of the restaurant's interior seating area; one (1) additional parking space shall be required for each additional 100 sq. ft. by which the outdoor restaurant seating area exceeds the fifty (50) percent threshold; restaurants located within commercial centers designated as "Large Retail Centers" (30,000 square feet or more) may use up to three (3) legal parking spaces adjacent to the restaurant as

	part of an Outdoor Dining Area without needing to be replaced to comply with parking requirements
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SECTION 4. Section 9263, Table 1: Parking Requirements by Land Use, of Part 6 of Chapter 2 of Article 9 of the TCC is hereby amended to read as follows (new text underlined; deleted text in ~~strikeout~~):

Table 1: Parking Requirements by Land Use	
Land Use Type	Parking Spaces Required
Restaurants, take out; including delicatessens, donut shops, coffee shops, or similar establishments at which the consumption of food and beverages occurs primarily away from the premises	One (1) space for each 250 sq. ft. of gross floor area, plus a minimum seven (7) car stacking space for drive-through, except no additional parking spaces shall be required when a restaurant use replaces a retail, service, or office use on a property located within the Downtown Commercial Core Specific Plan
	No additional parking shall be required for an Outdoor Dining Area when the area either contains no more than fifteen (15) seats, or is no larger than fifty (50) percent of the restaurant's interior seating area; one (1) additional parking space shall be required for each additional 250 sq. ft. by which the outdoor restaurant seating area exceeds the fifty (50) percent threshold; restaurants located within commercial centers designated as "Large Retail Centers" (30,000 square feet or more) may use up to three (3) legal parking spaces adjacent to the restaurant as part of an Outdoor Dining Area without needing to be replaced to comply with parking requirements

SECTION 5. Effective Date. This Ordinance shall take effect on the 31st day after its adoption. The City Clerk or his or her duly appointed deputy shall certify to the adoption of the Ordinance and cause this Ordinance to be published as required by law.

SECTION 6. CEQA Exemption. The City Council finds that the proposed Ordinance is not subject to the California Environmental Quality Act ("CEQA"; Cal. Pub. Resources Code Section 21000 et seq.) pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Cal. Code of Regs., title 14, Section 15000 et seq.) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 7. Severability. If any section, sub-section, clause or phrase in this Ordinance

is for any reason held out 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 Tustin hereby declares that it would have adopted this Ordinance and each section, subsection, 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.

PASSED AND ADOPTED, at a regular meeting of the City Council of the City of Tustin on this 20th day of September, 2022.

DocuSigned by:
Austin Lombard
AUSTIN LOMBARD,
Mayor

ATTEST:

DocuSigned by:
Erica Yasuda
ERICA N. YASUDA,
City Clerk



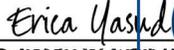
STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF TUSTIN)

CERTIFICATION FOR ORDINANCE NO. 1526

I, Erica N. Yasuda, City Clerk and ex-officio Clerk of the City Council of the City of Tustin, California, do hereby certify that the whole number of the members of the City Council of the City of Tustin is five; that the above and foregoing Ordinance No. 1526 was duly and regularly introduced at a regular meeting of the Tustin City Council, held on the 16th day of August, 2022, and was given its second reading, passed, and adopted at a regular meeting of the City Council held on the 20th day of September, 2022, by the following vote:

COUNCILMEMBER AYES:	<u>Lumbard, Clark, Gallagher, Gomez</u>	(4)
COUNCILMEMBER NOES:	_____	(0)
COUNCILMEMBER ABSTAINED:	_____	(0)
COUNCILMEMBER ABSENT:	<u>Cooper</u>	(1)

DS

DocuSigned by


 ERICA N. YASUDA
 City Clerk