

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO,
CALIFORNIA, REPEALING SECTION 12-328 OF THE
FRESNO MUNICIPAL CODE AND ADDING ARTICLE 22
OF CHAPTER 12 TO THE FRESNO MUNICIPAL CODE
RELATING TO OUTDOOR DINING

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 12-328 of Article 3, Chapter 12 of the Fresno Municipal Code is repealed.

SECTION 2. Article 22 is added to Chapter 12 of the Fresno Municipal Code to read:

ARTICLE 22

OUTDOOR DINING

Section 12-2201. Title.

12-2202. Purpose.

12-2203. Definitions.

12-2204. Applicability.

12-2205. General Requirements for Outdoor Dining Areas.

12-2206. Use of City Right-Of-Way.

12-2207. Termination.

12-2208. Severability.

SEC. 12-2201. TITLE. This Section shall be known as the “Outdoor Dining Ordinance.”

SEC. 12-2202. PURPOSE. The purpose of this Section is to allow for the expansion and use of certain outdoor dining areas, without requiring a special permit, to promote business, revitalization, and public safety.

SEC. 12-2203. DEFINITIONS. For the purpose of this Section, “Outdoor Dining” shall refer to a delineated area, including patios, sidewalks, and similar areas, located outside of and adjacent to a building used for serving and consuming food and beverages, a portion of which must be within 20 feet of said building. “Encroachment

Date Adopted:

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Date Approved

Effective Date:

City Attorney Approval: _____

Ordinance No.

Area” shall refer to that portion of City of Fresno right-of-way where Outdoor Dining is permitted. “Outdoor Dining Operator” shall mean the operator of a business wishing to engage in Outdoor Dining, whether operator is the property owner, tenant, lessee, or other legal occupant of the business location.

SEC. 12-2204. APPLICABILITY. This Section shall apply to Restaurants, Taverns, Delicatessens, Ice Cream Stores, Cafeterias, Banquet Halls, Bakeries, Micro-breweries and similar uses.

SEC. 12-2205. GENERAL REQUIREMENTS FOR OUTDOOR DINING AREAS.

(a) No site plan, conditional use permit, or amendment to an existing special permit is required for expansion into an Outdoor Dining area if the proposed use is authorized for any portion of the applicant’s property, and Outdoor Dining use is not expressly prohibited by a condition of an existing special permit, approved parcel or tract map, or zoning action.

(b) Use of the Outdoor Dining area shall be subject to the same hours of operation and conditions as the existing authorized use for the property. The Chief Administrative Officer is authorized to further restrict the hours of or days of operation, locations of operation, or restrict use during special events, construction activities, or circumstances as he deems necessary or appropriate.

(c) No updated or additional safety or security plan is required.

(d) Multiple Outdoor Dining areas may be used. The total Outdoor Dining area associated with each establishment is limited to 49 persons or 749 square feet, whichever is less. Additional Outdoor Dining Area up to 3,000 square feet may be approved with a special permit.

(e) The Outdoor Dining area must maintain and allow for at least four feet of available and usable travel space for all walkways, sidewalks, entrances and exits. The Outdoor Dining area must not obstruct direct access or egress from any entrance or exit. A 10 foot visibility triangle must be maintained at all streets, driveways, and vehicular entrances. An Outdoor Dining area adjacent to a roadway or vehicular travel area must be located at least six feet from the edge of the curb.

(f) No additional parking is required when the Outdoor Dining area is less than 749 square feet.

(g) The acoustical analysis requirements of Section 12-326(F)(7) are not applicable to Outdoor Dining if the total Outdoor Dining area is less than 749 square feet and is limited to 49 persons or less. Use of the Outdoor Dining area shall comply with the Noise Ordinance per Article 1 of Chapter 10.

(h) Barriers around Outdoor Dining areas are not required, but movable temporary barriers are allowed subject to this Code if not more than four feet in height and maintain at least fifty percent transparency to the outdoor elements. Temporary barriers cannot block or enclose existing ingress or egress to a structure absent prior authorization from the

Building Official or designee, and all temporary barriers must have at least one direct exit made by either providing a gap in the temporary barrier, or with a gate swinging in the direction of egress, but not into the travel area, equipped with panic hardware.

(i) Allowed furnishings may include tables, chairs, umbrellas, landscape pots, wait stations, planters, benches, waste receptacles, and similar items that help to define pedestrian and other use of the outdoor dining areas. Materials must be of wood, metal, stone, terra cotta, cast stone, hand-sculpted concrete, a solid surfacing material, or recycled plastic. Plastic resin furnishings are prohibited unless made of commercial-grade materials; chain link fencing is prohibited. No signs shall be affixed to or supported by the furnishings or fixtures except as authorized by the Sign Ordinance. Permanent lighting, heating, or cooling fixtures may be allowed with a building permit consistent with Chapter 11 (Building Permits and Regulations). Individual table umbrellas may be used. If any heating devices are used, other coverings, canopies, tents or similar items are prohibited except with a building permit and subject to approval by the Fire Department.

(j) If a qualifying Outdoor Dining area is proposed to be used after 10:00 p.m. and is located within 500 feet of property planned residential uses, excluding any portion that is planned residential mixed uses, an acoustical analysis with a diagram of the Outdoor Dining area must be conducted to ensure compatibility with the Noise Ordinance. If an

acoustical analysis shows compatibility, the Outdoor Dining area can be used after 10:00 p.m. for such time as the consumption of food and beverages is otherwise authorized for the property if consistent with the assumptions in the analysis to ensure compatibility. A copy of the acoustical analysis must be submitted to the Director, kept on the premises associated with the Outdoor Dining area, and promptly made available for inspection upon request by any person. Any expansion of the Outdoor Dining area will require an updated acoustical analysis before it can be used after 10:00 p.m. If the acoustical analysis does not show compatibility, use of the Outdoor Dining area can be used after 10:00 p.m. upon approval of a valid conditional use permit for the extended use. This Section does not authorize use of the Outdoor Dining area after 10:00 p.m. if the acoustical analysis does not show compatibility with the Noise Ordinance.

(k) This Ordinance does not authorize anyone to commit a trespass or taking of another's property or otherwise impair the property rights of another property owner or occupant.

(l) This Ordinance does not authorize the use of any property by mobile vendors.

(m) Outdoor Dining shall otherwise comply with all applicable federal, state or local laws, including Chapter 11 of this Code. In addition to any other remedies authorized by law, including citation, the city may revoke the approval following the process set forth in Section 12-405(E).

SEC. 12-2206. USE OF CITY OF RIGHT-OF-WAY. Use of city street easement or right-of-way for Outdoor Dining purposes is allowed without obtaining any permit or encroachment agreement, subject to the following requirements in addition to those found in Section 12-2205, except as noted:

(a) Outdoor Dining shall be allowed on a first come basis in an Encroachment Area upon paved city right-of-way in an area immediately adjacent to a building in which Outdoor Dining is otherwise permitted by the legal occupant of that building. If two or more persons desire to use the same Outdoor Dining Encroachment Area, the Chief Administrative Officer may allocate the available area to each as he deems appropriate.

(b) Outdoor Dining is not allowed in the following areas: any area designated for vehicular traffic, bicycle traffic, or parking, or any area within four feet of such an area; within ten feet of a fire hydrant; in any area that does not allow free and adequate pedestrian access and movement, including ingress and egress to and from a building or parking facility; in any area between the street and another business or residential use; in any area that would block or hinder access to any street light or traffic signal equipment, irrigation controllers, pull boxes or utility vaults; upon any unimproved surface; or any area specifically restricted or prohibited for such a use by the Chief Administrative Officer or designee.

(c) No rent or fees shall be charged for use of the Encroachment Area.

(d) No additional parking shall be required for use of the Encroachment Area for Outdoor Dining; the parking requirements of Section 12-2205 are not applicable to this Section 12-2206.

(e) No updated safety or security plan is required for use of the Encroachment Area, unless such a requirement is imposed by the Chief Administrative Office in response to the particular circumstances of the location.

(f) Permanently attached structures, facilities, fixtures or buildings are not allowed in the Encroachment Area without appropriate building or other permits, including an encroachment permit required by Section 13-219.

(g) The Encroachment Area shall remain free of any nuisance, and shall remain in full compliance with all applicable federal, state, and local laws. The Outdoor Dining Operator shall also be solely responsible for operation, maintenance and repair of the Encroachment Area, subject to direction by the city. The encroachment on the city's right-of-way is a non-exclusive, revocable use. The Chief Administrative Officer or designee in his absolute and sole discretion, with or without prior notice, may revoke, condition, or require modification of the use upon determination that any portion of the Encroachment Area is required for any municipal or public utility purpose, or is detrimental to the public health, safety, welfare, aesthetic appeal, and interest. Failure to follow the direction of the Chief Administrative Officer, or his designee, concerning

the use of an Outdoor Dining Encroachment Area, including modification, conditions, or revocation of such uses, shall constitute a public nuisance, punishable as a misdemeanor under the Fresno Municipal Code and/or subject to civil enforcement by the City Attorney, including injunction and/or claims for monetary damages, costs, and attorney's fees, and a lien upon adjacent real property for such unpaid amounts. City staff is also authorized to remedy violations by removal, without liability for the loss of use of the property, of any personal property remaining in or upon any city property or right-of-way, and in such event, the Outdoor Dining Operator shall be responsible to the city for the city's costs to remedy or abate the violations.

(h) Use of the Encroachment Area shall not cause the Encroachment Area, or adjacent property or right-of-way to become out of compliance with any applicable federal, state or local law including Chapter 11 of the Code.

(i) The Outdoor Dining Operator shall remain solely responsible for any harm caused by use of the Encroachment Area, including, but not limited to, personal injury, property damage, or civil rights claims, and by use of the Encroachment Area agrees to fully indemnify, defend and hold harmless the city and its agents from any and all claims of any kind resulting from use of the Encroachment Area. The Outdoor Dining Operator waives and shall not maintain any claim of any kind against the city or its agents concerning use of an Encroachment Area.

SEC. 12-2207. TERMINATION. No vested or any other property right is created by the approval of this Article or by any use, or construction of any structures, facilities, fixtures, or buildings, authorized by this Article. Should the city repeal or amend this Article, or should the allowed use of an Encroachment Area be revoked, conditioned, or modified, no claim for loss of property rights or due process of any kind shall be maintained against the city or its agents.

SEC. 12-2208. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this Article is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Article. The Council hereby declares that it would have passed this Article, and each section, subsection, clause or phrase thereof, regardless if any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

SECTION 3. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the ____ day of _____, 2014.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval : _____, 2014
Mayor Approval/No Return: _____, 2014
Mayor Veto: _____, 2014
Council Override _____, 2014

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

BY: _____
Katherine B. Doerr [Date]
Supervising Deputy

KBD:elb [65250elb/kbd] Ord 071814