



**CITY OF LARKSPUR
Staff Report**

August 3, 2022, City Council Meeting

DATE: July 25, 2022

TO: Honorable Mayor Hillmer and the Larkspur City Council

FROM: Julian Skinner, Public Works Director

SUBJECT: AMENDING THE FEE SCHEDULE TO ADD ENCROACHMENT PERMIT AND LAND DEVELOPMENT ENGINEERING FEE No. 9(c) – SQUARE FOOTAGE AREA CHARGE FOR OUTDOOR DINING IN PUBLIC RIGHT-OF-WAY – AT A REASONABLE RATE AS DETERMINED BY THE CITY ENGINEER, AND COMPARABLE TO LEASES AT OR NEAR THE OUTDOOR DINING LOCATION FOR SIMILAR USE

ACTION REQUESTED

Hold a public hearing and consider the attached resolution.

SUMMARY

At the May 23, 2022, City Council meeting, Council directed staff to establish a rental fee for outdoor dining use of the public right-of-way as part of its direction to staff on a parklet policy.

DISCUSSION

The latest City of Larkspur Fee Schedule, adopted on April 20, 2022, includes encroachment permit fees but no specific fee for outdoor dining in the public right-of-way. The proposed action would add the outdoor dining rental fee to the fee schedule effective immediately. Currently the fee schedule contains only a square footage area fee for general private use of public property. The attached resolution adds a specific rental fee for outdoor dining usage of the right-of-way. It is important to note that this is a rental fee for use of City property and not a cost recovery or regulatory fee, or a fee for service or to mitigate development impacts. As such the fee is set, subject to the City Engineer's exercise of reasonable discretion, at the market rental rate for a similar use in the subject location.

This fee would be charged to establishments in conjunction with issuance of an encroachment permit for use of the public right-of-way for outdoor dining purposes subject to the provisions of Larkspur Municipal Code Chapter 15.32 Encroachment of City Rights-of-way.

AGENDA ITEM 7.1

This item and staff's recommendations are intended to be considered upon completion of a public hearing. The public hearing provides all interested parties with an opportunity to comment or request clarification regarding the fee proposed.

FISCAL IMPACT

The City Engineer has not completed the full evaluation of the fee for this fiscal year. As an example of potential fee, use of a typical parking space sized area for outdoor dining on the sidewalk at a \$5.00 / square foot / month rent would result in a monthly rental fee of \$800.

ENVIRONMENTAL STATUS

The proposed action has no potential for physical effects on the environment because it involves the adoption of a fee for use of government property, does not commit the City to any specific project, and would apply the fee to future development projects or activities that will be fully evaluated in full compliance with the California Environmental Quality Act ("CEQA") as part of the application process for the development projects or activities, if CEQA review is legally required for a development project or activity. For any public project funded with fee revenue, the City would undertake CEQA review at the earliest feasible time. (See CEQA Guidelines, Section 15004(b)(1)). In light of the foregoing, approval of the fee is not a "project" for purposes of CEQA, pursuant to CEQA Guidelines, Section 15378(b)(4); and, even if considered a "project" under CEQA, is exempt from CEQA review pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that approval of the fee may have a significant effect on the environment.

STAFF RECOMMENDATION

It is recommended that the Council approve the attached resolution amending the fee schedule for the City of Larkspur. Approving the resolution will establish the new fee effective immediately.

Respectfully submitted,
Julian Skinner, Public Works Director

Attachments

1. Resolution
5172473.1

**CITY OF LARKSPUR
RESOLUTION 62/22**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LARKSPUR
AMENDING THE FEE SCHEDULE TO ADD ENCROACHMENT PERMIT AND LAND
DEVELOPMENT ENGINEERING FEE No. 9(c) – SQUARE FOOTAGE AREA
CHARGE FOR OUTDOOR DINING IN PUBLIC RIGHT-OF-WAY**

WHEREAS, Ordinance No. 853, adopted May 19, 1993, provides that all city fees shall be established by resolution during the fiscal year;

WHEREAS, Resolution No. 18/93, adopted June 2, 1993, was the first setting of fees by resolution;

WHEREAS, Resolution No. 29/22, adopted April 20, 2022, was the last time fees were changed;

WHEREAS, a new fee is proposed establishing a rental charge for outdoor dining in the public right-of-way in conjunction with issuance of an encroachment permit per Municipal Code section 15.32, and

WHEREAS, the new fee is proposed to be added to the City's Fee Schedule within the Encroachment Permit and Land Development Engineering Fees section as item 9(c) square footage area charge for outdoor dining in public right-of-way – at a reasonable rate as determined by the City Engineer, and comparable to leases at or near the outdoor dining location for similar use

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Larkspur does hereby resolve, declare, determine and order as follows:

1. The recitals above are found to be true and correct and constitute the findings of the City Council made in support of the resolution.
2. The City Fee Schedule is amended to add a fee for outdoor dining in the public right-of-way as item 9(c) within the Encroachment Permit and Land Development Engineering Fees section. The fee shall be an amount per square foot of public right-of-way used by the encroachment for outdoor dining, with the amount established by the City Engineer exercising reasonable discretion to determine comparable lease rates for similar uses near the outdoor dining location.
3. The adopted fees will become effective immediately.
4. The proposed action has no potential for physical effects on the environment because it involves the adoption of a fee for use of government property, does not commit the City to any specific project, and would apply the fee to future development projects or activities that will be fully evaluated in full compliance with the California Environmental Quality Act ("CEQA") as part of the application process for the development projects or activities, if CEQA review is legally required for a development project or activity. For any public project funded with fee revenue, the City would undertake CEQA review at the earliest feasible time.

7.1 ATTACHMENT 1

(See CEQA Guidelines, Section 15004(b)(1)). In light of the foregoing, approval of the fee is not a “project” for purposes of CEQA, pursuant to CEQA Guidelines, Section 15378(b)(4); and, even if considered a “project” under CEQA, is exempt from CEQA review pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that approval of the fee may have a significant effect on the environment.

IT IS HEREBY CERTIFIED that the City Council of the City of Larkspur duly introduced and regularly adopted the foregoing resolution at a regular meeting held on August 3, 2022, by the following vote:

- AYES: COUNCILMEMBER:
- NOES: COUNCILMEMBER:
- ABSENT: COUNCILMEMBER:
- ABSTAIN: COUNCILMEMBER:

Dan Hillmer, Mayor

ATTEST:

Alison Foulis, City Clerk
5172477.1