



**Beverly Hills City Council Liaison /
Open BH Code Changes and Fees Ad Hoc Subcommittee
will conduct a Special Meeting, at the following time and place, and will address the
agenda listed below:**

**CITY OF BEVERLY HILLS
455 N. Rexford Drive
Beverly Hills, CA 90210**

TELEPHONIC / VIDEO CONFERENCE MEETING

**Beverly Hills Liaison Committee Meeting
<https://beverlyhills-org.zoom.us/my/adhoc>
Meeting ID: 549 782 5652
Passcode: 90210**

**You can also dial in by phone:
+1 669 900 9128 US
+1 877 853 5247 (Toll-Free)**

**One tap mobile
+16699009128,,5497825652# US
+18778535247,,5497825652# US (Toll-Free)**

**Wednesday, March 2, 2022
4:00 PM**

Pursuant to Government Code Section 54953(e)(3), members of the Beverly Hills City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee and staff may participate in this meeting via a teleconference. In the interest of maintaining appropriate social distancing, members of the public can view this meeting through live webcast at www.beverlyhills.org/live and on BH Channel 10 or Channel 35 on Spectrum Cable, and can participate in the teleconference/video conference by using the link above. Written comments may be emailed to mayorandcitycouncil@beverlyhills.org.

AGENDA

- 1) Public Comment
 - a. Members of the public will be given the opportunity to directly address the Committee on any item listed on the agenda.
- 2) Resolution of the Beverly Hills City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee continuing to authorize public meetings to be held via teleconferencing pursuant to Government Code Section 54953(e) and making findings and determination regarding the same.

Recent legislation was adopted allowing the Beverly Hills City Council Liaison/ Open BH Code Changes and Fees Ad Hoc Subcommittee to continue virtual meetings during the COVID-19 declared emergency subject to certain conditions and the proposed resolution implements the necessary requirements.

- 3) Open BH Conversion Code and Fee Structure Subcommittee Meeting #3
- 4) Future Agenda Items
- 5) Adjournment



Huma Ahmed
City Clerk

Posted: February 25, 2022

**A DETAILED LIAISON AGENDA PACKET IS AVAILABLE FOR REVIEW AT
WWW.BEVERLYHILLS.ORG**



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STAFF REPORT

Meeting Date: March 2, 2022

To: City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee

From: Gabriella Yap, Committee Secretary

Subject: A RESOLUTION OF THE CITY COUNCIL LIAISON / OPEN BH CODE CHANGES AND FEES AD HOC SUBCOMMITTEE OF THE CITY OF BEVERLY HILLS CONTINUING TO AUTHORIZE PUBLIC MEETINGS TO BE HELD VIA TELECONFERENCING PURSUANT TO GOVERNMENT CODE SECTION 54953(e) AND MAKING FINDINGS AND DETERMINATIONS REGARDING THE SAME

Attachments: 1. Proposed resolution

RECOMMENDATION

Staff and the City Attorney's office recommend that the City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee adopt a resolution making the following findings so that meetings of the City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee will be subject to the special Brown Act requirements for teleconference meetings: (1) the City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee has reconsidered the circumstances of the COVID-19 state of emergency; (2) the state of emergency continues to directly impact the ability of the members to meet safely in person; and (3) state or local officials continue to impose or recommend measures to promote social distancing. Though the City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee adopted such a resolution in the past, these findings must be continuously made to continue to hold meetings under these special teleconferencing requirements.

FISCAL IMPACT

The proposed resolution allowing the City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee greater flexibility to conduct teleconference meetings is unlikely to cause a greater fiscal impact to the City as the City Council Liaison / Open BH

Code Changes and Fees Ad Hoc Subcommittee has been conducting such teleconference meetings for over a year.

INTRODUCTION

AB 361 allows the City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee to continue virtual meetings during the COVID-19 declared emergency subject to certain conditions. These special requirements give the City greater flexibility to conduct teleconference meetings when there is a declared state of emergency and either social distancing is mandated or recommended, or an in-person meeting would present imminent risks to the health and safety of attendees.

BACKGROUND

On September 16, 2021, the Governor signed AB 361, amending the Brown Act to establish special requirements for teleconference meetings if a legislative body of a local public agency holds a meeting during a proclaimed state of emergency and either state or local officials have imposed or recommended measures to promote social distancing, or the body determines, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

AB 361 authorizes local agencies to continue meeting remotely without following the Brown Act's standard teleconferencing provisions if the meeting is held during a state of emergency proclaimed by the Governor and either of the following applies: (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the agency has already determined or is determining whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

DISCUSSION

To continue to hold meetings under these special teleconferencing requirements, the City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee needs to make two findings pursuant to Government Code Section 54953(e)(3). First, there must be a declared state of emergency and the City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee must find that it has reconsidered the circumstances of such emergency. Second, the City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee must find that such emergency continues to directly impact the ability of the City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee's members to meet in person. Alternatively, for the second finding, the City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee must find that state or local officials continue to impose or recommend social distancing measures. These findings must be continuously made to continue to hold meetings under these special teleconferencing requirements.

The declared emergency is still in effect. Furthermore, the State of California and the County of Los Angeles have recommended measures to promote social distancing. The Centers for Disease Control and Prevention continue to advise that COVID-19 spreads

more easily indoors than outdoors and that people are more likely to be exposed to COVID-19 when they are closer than 6 feet apart from others for longer periods of time. Additionally, the Los Angeles County Department of Public Health still encourages people at risk for severe illness or death from COVID-19 to take protective measures such as social distancing and, for those not yet fully vaccinated, to physically distance from others whose vaccination status is unknown. The County Health Department also continues to recommend that employers take steps to support physical distancing and the City Council continues to recommend steps to reduce crowding indoors and to support physical distancing at City meetings to protect the health and safety of meeting attendees.

Please note that AB 361 applies to all legislative bodies. Therefore, Commissions and standing committees will need to also comply with the requirements of AB 361.

Gabriella Yap
Secretary of the
City Council Liaison / Open BH Code
Changes and Fees Ad Hoc Subcommittee

Approved By

RESOLUTION NO. CCL-OBHCFC-03

RESOLUTION OF THE CITY COUNCIL LIAISON / OPEN BH
CODE CHANGES AND FEES AD HOC SUBCOMMITTEE OF
THE CITY OF BEVERLY HILLS CONTINUING TO
AUTHORIZE PUBLIC MEETINGS TO BE HELD VIA
TELECONFERENCING PURSUANT TO GOVERNMENT
CODE SECTION 54953(e) AND MAKING FINDINGS AND
DETERMINATIONS REGARDING THE SAME

WHEREAS, the City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee is committed to public access and participation in its meetings while balancing the need to conduct public meetings in a manner that reduces the likelihood of exposure to COVID-19 and to support physical distancing during the COVID-19 pandemic; and

WHEREAS, all meetings of the City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code Sections 54950 – 54963), so that any member of the public may attend, participate, and watch the City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee conduct its business; and

WHEREAS, pursuant to Assembly Bill 361, signed by Governor Newsom and effective on September 16, 2021, legislative bodies of local agencies may hold public meetings via teleconferencing pursuant to Government Code Section 54953(e), without complying with the requirements of Government Code Section 54953(b)(3), if the legislative body complies with certain enumerated requirements in any of the following circumstances:

1. The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
2. The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the

emergency, meeting in person would present imminent risks to the health or safety of attendees.

3. The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

WHEREAS, on March 4, 2020, Governor Newsom declared a State of Emergency in response to the COVID-19 pandemic (the “Emergency”); and

WHEREAS, the Centers for Disease Control and Prevention continue to advise that COVID-19 spreads more easily indoors than outdoors and that people are more likely to be exposed to COVID-19 when they are closer than 6 feet apart from others for longer periods of time; and

WHEREAS, the Los Angeles County “Responding together at Work and in the Community Order (8.23.21)” provides that all individuals and businesses are strongly encouraged to follow the Los Angeles County Public Health Department Best Practices. The Los Angeles County Public Health Department “Best Practices to Prevent COVID-19 Guidance for Businesses and Employers”, updated on September 13, 2021, recommend that employers take steps to reduce crowding indoors and to support physical distancing between employees and customers; and

WHEREAS, the unique characteristics of public governmental buildings is another reason for continuing teleconferenced meetings, including the increased mixing associated with bringing people together from across several communities, the need to enable those who are immunocompromised or unvaccinated to be able to safely continue to fully participate in public

meetings and the challenge of achieving compliance with safety requirements and recommendations in such settings; and

WHEREAS, the Beverly Hills City Council has adopted a resolution that continues to recommend steps to reduce crowding indoors and to support physical distancing at City meetings to protect the health and safety of meeting attendees; and

WHEREAS, due to the ongoing COVID-19 pandemic and the need to promote social distancing to reduce the likelihood of exposure to COVID-19, the City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee intends to continue holding public meetings via teleconferencing pursuant to Government Code Section 54953(e).

NOW, THEREFORE, the City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee of the City of Beverly Hills resolves as follows:

Section 1. The Recitals provided above are true and correct and are hereby incorporated by reference.

Section 2. The City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee hereby determines that, as a result of the Emergency, meeting in person presents imminent risks to the health or safety of attendees.

Section 3. The City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee shall continue to conduct its meetings pursuant to Government Code Section 54953(e).

Section 4. Staff is hereby authorized and directed to continue to take all actions necessary to carry out the intent and purpose of this Resolution including, conducting open and

public meetings in accordance with Government Code Section 54953(e) and other applicable provisions of the Brown Act.

Section 5. The City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee has reconsidered the circumstances of the state of emergency and finds that: (i) the state of emergency continues to directly impact the ability of the members to meet safely in person, and (ii) state or local officials continue to impose or recommend measures to promote social distancing.

Section 6. The Secretary of the City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee shall certify to the adoption of this Resolution and shall cause this Resolution and her certification to be entered in the Book of Resolution of the City Council Liaison / Open BH Code Changes and Fees Ad Hoc Subcommittee of this City.

Adopted: March 2, 2022

JULIAN A. GOLD
Presiding Councilmember of the City
Council Liaison / Open BH Code
Changes and Fees Ad Hoc
Subcommittee of the City of Beverly
Hills, California



CITY OF BEVERLY HILLS
POLICY AND MANAGEMENT

MEMORANDUM

TO: Beverly Hills City Council Open BH Code Changes and Fees Subcommittee

FROM: Ryan Gohlich, Director of Community Development
Timothea Tway, City Planner
Laura Biery, Marketing and Economic Sustainability Manager

DATE: March 2, 2022

SUBJECT: Open BH Conversion Code and Fee Structure Subcommittee Meeting #3

INTRODUCTION

This item provides the Councilmembers assigned to the Open BH Code Changes and Fees Subcommittee with an outline of the discussion points for today's meeting.

DISCUSSION

Background

At the September 21, 2021, City Council Study Session meeting, the City Council expressed interest in long-term conversion of outdoor dining currently allowed under OpenBH to enhance the City's economic sustainability and vitality by preserving the nightlife created. At the meeting, the City Council directed Staff to return to the full Council to discuss broad policy questions, and also approved the formation of two subcommittees:

- Subcommittee 1: Design and Operating Standards Subcommittee (Parklets)
 - Options for physical and aesthetic standards
- Subcommittee 2: Code and Fee Structure Changes Subcommittee (Open Air Dining)
 - Potential code changes for existing sidewalk dining
 - Fees for use of public right-of-way, installation of traffic control measures

Through the OpenBH program that was established during the COVID-19 pandemic, open air dining installations have been approved on a temporary basis that do not always conform to the Beverly Hills Municipal Code (BHMC) regulations for permanent open air dining. As restaurant owners seek to make their OpenBH open air dining permanent, it is necessary to review the existing permanent regulations to determine if changes to the code requirements, fees, or approval process are necessary or desired.

The Open BH Code Changes and Fees Subcommittee met for its first meeting on November 29, 2021, and its second meeting on January 26, 2022. During these discussions the Subcommittee considered several questions to guide a discussion about potential changes to permanent open air dining code regulations. The discussions related to what type of outdoor dining should be allowed in the City, how much dining should be allowed and where, the relationship between indoor and outdoor dining, and sidewalk clearances required. Staff received direction from the Subcommittee about desired regulatory changes

As staff works on draft code language to memorialize the previous direction provided that related mainly to the regulations for open air dining, staff is now recommending that the subcommittee consider if any changes should be made to the process for obtaining an open air dining permit approval and fees charged for permanent open air dining installations.

Recommended Discussion on Process and Fees

At this time, staff recommends discussing if there are any changes desired related to the process for review and approval of open air dining installations and fees charged for open air dining permits and installations. Please note that the discussion in this report is related to permanent regulations only, not temporary regulations established through Open BH.

Current Approval process and fees

Approval Process

- The majority of open air dining applications are reviewed by the Director of Community Development. This process generally takes approximately 2 to 5 months, but varies depending on the complexity of the proposal and responsiveness of the applicant team to City corrections.
 - This process involves public noticing, the cost of which is borne by the applicant. The noticing period is 20 days in advance of a decision being made.
 - The Director can refer cases to the Planning Commission if the Director believes the application merits review by the Planning Commission.
- Projects with more than 12 outdoor chairs on private property that are located within 170' of a residential zone must be reviewed by the Planning Commission. This process can take between 3 to 6 months, but varies depending on the project, the applicant team's responsiveness to corrections, and whether the project includes other entitlement requests.
 - This process also involves public noticing. Currently, the (Beverly Hills Municipal Code) BHMC requires an early public notice, which is sent within 40 days of the filing of the application, as well as a notice that is sent 20 days in advance of the public hearing.
 - Generally, it is rare for an open air dining permit to be considered by the Planning Commission, and oftentimes, the permits considered by the Planning Commission accompany other entitlement requests (like extended hours permits, etc.).
- Open air dining permits are valid for a period of five years and may be renewed for one additional five year period. After the initial renewal, a new open air dining permit is required.
- The Director of Community Development has the authority to send an open air dining permit to the Planning Commission for revocation or suspension if the open air dining creates a nuisance, was obtained in a fraudulent manner, or if the open air dining violates provisions of the regulations in the BHMC.
- Currently there is no approval process for permanent parklets, as these are not currently allowed per the BHMC.

Fees

The following fees are required for the processing of open air dining projects:

- For Planning Commission level projects, the base permit fee is approximately \$5,000. In addition, the applicant is responsible for the public noticing costs required per the BHMC, these costs are usually several hundred dollars.
- For Director Level projects, the base permit fee is approximately \$2,600. In addition, the applicant is responsible for the public noticing costs required per the BHMC, these costs are usually several hundred dollars.
- All projects utilizing the public right of way are required to pay a rental fee of \$1.55 per square foot per month (if the installation has a railing/barrier) and \$1.07 per square foot per month (if the installation has no railing/barrier).
- It should be noted that, during previous fee discussions, the City Council has decided that, in order to encourage open air dining, the fees should be subsidized and do not necessarily reflect the cost to the City to process such applications. This decision is based on a goal of encouraging open air dining as it is seen as a successful program that creates lively commercial areas.

Discussion Questions

Staff recommends that the Subcommittee discuss the following and provide direction to staff. Staff will integrate direction into draft regulatory language and return to the Subcommittee with the language for review.

- Should changes be made to the initial approval process for open air dining applications?
 - Staff recommends that the Subcommittee discuss the potential of creating by a “by-right” open air dining process that would not require noticing or a discretionary decision.
 - A by-right process would require an applicant to submit plans that meet a certain set of objective standards, and receive approval at the staff level if the standards are met. This by-right process would not involve public noticing of the application or the ability to impose conditions of approval.
 - If the Subcommittee is interested in recommending a by-right process, staff recommends that open air dining projects that meet the following standards could be considered for by-right approval:
 - Not located within 170’ of residential,
 - Not extending open air dining beyond the restaurant façade,
 - Not including a parklet,
 - Meeting all other code requirements.
 - The Subcommittee could also consider whether any types of open air dining requests should require Planning Commission Review.
 - The subcommittee could consider amending the noticing requirements to require only posted notice at the site for pending applications. This could reduce the cost of noticing to the applicant and potentially streamline the permit approval process.

- Staff recommends that the Subcommittee discuss the desired approval process for parklets. Staff recommends that parklets require discretionary approval (review by the Planning Division), at least for the first few years of the program, to provide the public with an opportunity to comment on potential permanent parklet installations.
- Should changes be made to permit renewal and expiration regulations?
 - Recommendation: staff recommends that the Subcommittee consider extending the initial five year period for outdoor dining permits. Alternatively, the Subcommittee could consider eliminating the renewal requirement altogether. This renewal requirement can be burdensome to businesses, in terms of both time and money.
 - Staff also recommends the Subcommittee consider allowing multiple renewals of existing open air dining installations, and not limiting it to one five-year renewal. This would allow successful restaurants to continue operating open air dining without needing to fully re-apply for a new permit every ten years.
- Should changes be made to fees for open air dining?
 - The Subcommittee could recommend changing open air dining fees. As noted above, the fees charged for open air dining already reflect a subsidy to encourage open air dining installations in the City.
- Should fees for parklets be similar to fees for traditional open air dining?
 - The Subcommittee should discuss whether the application fee for parklets should be the same as the current fees.
 - The Subcommittee should consider whether the rental rate for the public right of way for parklets should be the same as the current rental rate for open air dining with a barrier (\$1.55 per square foot per month). Should the parklet fee also include the lost revenue of any parking meters that are used for the parklet space?

FISCAL IMPACT

None at this time. To be evaluated at future meetings based on recommendations made by the Subcommittee.

RECOMMENDATION

Staff recommends that the Subcommittee provide direction regarding potential changes to the approval process and fees for permanent open air dining. Staff will return at the next subcommittee meeting with drafted code language integrating feedback from this meeting as well as past meetings of the Subcommittee.