

# TOWN OF PALM BEACH

Information for Town Council Meeting on: February 10, 2021

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To: Mayor and Town Council

From: Wayne Bergman, Director of Planning, Zoning & Building

Cc: Kirk Blouin, Town Manager & James Murphy, Asst. Director of PZB

Re: Possible Outdoor Seating Regulations

Date: January 27, 2021

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## **DISCUSSION:**

Since the Town Council approved the Covid-19 Outdoor Seating program, PZB staff has been reviewing the current outdoor seating requirements found in today's code. Currently the Town has outdoor seating regulations that would prohibit many of the current outdoor seating arrangements that have been approved by Town staff – on a temporarily basis only - under the Covid-19 program. The Town codes on outdoor seating are found in Chapter 134, Sections 134-1111, 134-1161, and 134-2104 through 2109. These current regulations do allow for very limited outdoor seating and provide restrictions on the size of outdoor seating areas, the number of total outdoor seats, the minimum width of public sidewalks [with tables and chairs placed outside], and required, although undefined, buffers to contain noise, odors, light and litter. There are differing regulations for outdoor seating in the C-TS and C-WA zoning districts. There are some minor differences in the regulations between the Town Council special exception approval and staff approvals for outdoor seating (yes – staff can approve outdoor seating at this time).

The pandemic has driven the proliferation of outdoor seating. Knowing that the outdoor seating has been well received by the community over the past year, and with the outdoor seating concept embraced by the restaurant owners, staff expects to receive many new applications for permanent outdoor seating, especially as the pandemic recedes and the temporary seating approvals start to expire. Outdoor dining is a positive draw to the Town's retail businesses, which is a commercial sector that had some difficulties even before the onset of the pandemic.

Outdoor seating can currently be approved in three ways:

1. The most common way of approval comes under our emergency Covid-19 policy. Based upon Town Council approval, staff currently has the ability to approve temporary outdoor seating for local restaurants under our Covid-19 program. The criteria is basically to maintain the minimum handicapped aisle width (can be reduced to 36" in some cases) and space the tables & chairs to allow for social distancing

between parties. If the seating is within public ROW's, a deposit is required to cover any damage and the Town is named on the restaurant's GL insurance policy as an additional insured party. The policy is to allow restaurants to take approved indoor seating and place some of that capacity outdoors (no extra seating is allowed).

2. The second way to approve outdoor seating is by special exception granted by the Town Council. This allows for permanent outdoor seating and new seats if the special exception criteria are met and if approved by the Council.
3. The third way to approve outdoor seating is by way of Administrative Approval. This allows the director of PZB to approve outdoor seating. The criteria is found in 134-2106. It is not clear how often this was used in the past, as the prescriptive criteria appears difficult to meet.

Some key, general questions at this time for the Council to possibly consider are:

- Does the Council support the expansion of the outdoor seating on a more permanent basis?
- Do the current regulations provide for the manner and type of outdoor seating that the Town Council would like to see?
- Should the existing code regulations be updated?
- Is there an interest in developing an outdoor seating permit program ("sidewalk café") that would approve the outdoor seating on an annual basis, with annual permits issued to compliant restaurants and which would allow for the generation of new fees?

Depending on the Council's response to the general questions listed above, if directed, staff could prepare revised regulations and come back with an ordinance for possible adoption, after a review and recommendation from the Planning & Zoning Commission.

Some matters to consider if moving forward with a review and possible revision to the outdoor seating codes:

- While the matter is under review, do we want to declare a moratorium on new outdoor seating applications, or declare a "zoning in progress"?
- What are the Florida DOT rules on outdoor seating along their roadways?
- Do we want revise the distance that outdoor seating must be from property lines or neighboring businesses?
- Can outdoor seating be located on neighboring properties, or if located along public sidewalks, can the seating be located adjacent to other businesses?
- Do we revise the distance required between the outdoor seating area and bus stops, taxi or valet stands, sight triangles and crosswalks?
- Do we want to set a minimum handicapped access distance between the tables / chairs and any other projections, curbs, or other accessible conditions, that would be greater than 36"?

- Do we revise times for permitted outdoor seating?
- Do we revise the outdoor seating area, recognizing that some restaurants have more area (indoors and outdoors) than others? One size does not fit all.
- Do we want some buffering between the outdoor seating and other businesses and uses?
- Do we want detectable, physical barriers (railings, planters, hanging rope, etc.) to be placed between the public walkway and the tables / chairs? If so, should there be a maximum and minimum height of the barriers? Type of material?
- Should outdoor music be permitted?
- Can the outdoor seating remain outside 24/7?
- How to buffer or limit lighting and noise?
- Do we want to specify the type and/or quality of the tables and chairs?
- Will umbrellas be permitted?
- What about seating under awnings? Minimum height distance?
- What about additional signage placed outside or on the umbrellas, tables or chairs?
- Should a safety or traffic review be conducted as part of the approval process?
- How can the sidewalk or public spaces be maintained and cleaned if covered by tables and chairs during daytime hours?
- More issues to come, we are certain.

This review, if deemed necessary, could take some time. We expect that we will receive more permanent outdoor seating requests this season, as businesses that tried the temporary outdoor seating, approved under our Covid-19 policy, will want to continue and perhaps expand the outdoor seating.

Attached to assist in this discussion / review are current codes for the City of Lake Worth and the City of Miami (examples to use as a comparison to existing Palm Beach regulations) and an excellent example of outdoor seating regulations from Alexandria, VA – King Street.

Attached:      Town Code Sections referenced above  
                      Code from Lake Worth and Miami  
                      King Street Outdoor Dining Design Guidelines, Alexandria, VA

Sec. 134-1111. - Special exception for stands, seated dining areas and open counters for eating and drinking.

- (a) No stands or open counters and no open seating arrangement (except as otherwise provided in article VIII, division 14), whether or not at tables, intended for feeding or the dispensing of food or drink whether or not for profit or for any other similar purposes for the sale of commodities to the public shall be erected or permitted anywhere in the town unless they are contained within a building. However, in the C-TS town-serving commercial district, the town council may permit, as a special exception, the serving of food and beverages to seated patrons in outdoor open air areas which are operated as a part of a restaurant contained within a building, provided approval of such special exception does not increase the allowable capacity. The following are conditions to the approval of any such special exception:
  - (1) Open air dining areas must be properly buffered to avoid noise, litter, light and odor impacts upon neighboring properties, especially nearby residential uses.
  - (2) Area associated with the outdoor portion of the restaurant will not count toward any maximum square footage limitations associated with the town-serving aspects of this chapter.
- (b) In the C-TS town-serving commercial district, the town council may permit, as a special exception, extra outdoor patron seating, over and above the inside seating capacity, as part of a take-out food business contained within a building provided the following conditions are met:
  - (1) The take-out food business inside tenant space does not exceed 2,000 square feet.
  - (2) Open air dining areas are properly buffered to avoid noise, litter, light and odor impacts upon neighboring properties, especially nearby residential uses.
  - (3) The area associated with the outdoor seating of the take-out food business will not count toward any maximum square footage limitations associated with the town-serving aspects of this chapter.
  - (4) Area associated with the outdoor seating cannot encroach into the required ten-foot unobstructed, pedestrian sidewalk.
  - (5) The amount of outdoor seating can not exceed eight seats, nor can it extend beyond any property line of the take-out business tenant space.

(Ord. No. 2-74, § 6.61, 3-26-74; Ord. No. 3-77, § 14, 3-29-77; Ord. No. 1-89, 4(f), 2-6-89; Ord. No. 1-04, § 15, 3-9-04; Ord. No. 5-09, § 7, 4-15-09)



Sec. 134-1161. - Stands, seated dining areas and open counters for eating and drinking.

(a) No stands or open counters and no open seating arrangement (except as provided for in article VIII, division 14), whether or not at tables, intended for feeding or the dispensing of food or drink whether or not for profit or for any other similar purposes for the sale of commodities to the public shall be erected or permitted anywhere in the town unless they are contained within a building. However, in the C-WA Worth Avenue zoning district, the town council may permit, as a special exception, the serving of food and beverages to seated patrons in outdoor open air areas which are operated as a part of a restaurant contained within a building, provided approval of such special exception shall not increase the allowable capacity. The following are conditions to the approval of any such special exception:

- (1) Open air dining areas must be properly buffered to avoid noise, litter, light and odor impacts upon neighboring properties, especially nearby residential uses.
- (2) Area associated with the outdoor portion of the restaurant shall not count toward any maximum square footage limitations associated with the town-serving aspects of this chapter.

(Ord. No. 2-74, § 6.61, 3-26-74; Ord. No. 3-77, § 14, 3-29-77; Ord. No. 1-89, § 4(f), 2-6-89; Ord. No. 1-04, § 16, 3-9-04; Ord. No. 5-09, § 10, 4-15-09)

## DIVISION 14. - ADMINISTRATIVE APPROVAL OF OUTDOOR SEATING

### Sec. 134-2104. - Requirements and fee.

- (a) It shall be unlawful for any person to provide outdoor seating without either approval by the town as provided by this article or approval under sections 134-226 through 134-230.  
Administrative approval of outdoor seating shall be permitted only within the C-TS, C-WA, C-OPI, C-B and R-D(2) zoning districts as accessory uses subject to the standards and criteria set forth in sections 134-2105 through 134-2108.
- (b) There shall be a fee for the initial application establishing outdoor seating. A renewal fee shall be established and included in the annual business tax receipt.

(Ord. No. 5-09, § 1, 4-15-09)

### Sec. 134-2105. - Application.

Application to operate outdoor seating with administrative review shall be made to the director of the planning, zoning and building department or his or her designee (individually or collectively referred to in this chapter as "director"). The application shall on a form provided by the director.

(Ord. No. 5-09, § 1, 4-15-09)

### Sec. 134-2106. - Standards and criteria for application review.

The following standards and criteria shall be part of part of the application which shall be used by the director in reviewing and approving an outdoor seating application. The applicant shall meet all of the following criteria in order to be granted administrative approval:

- (1) Outdoor seating is restricted to the area abutting the boundary lines of the property on which the business owned by the applicant is located.
- (2) Outdoor seating shall not be allowed where the tables and chairs would be placed within five feet of bus stops, taxi stands, sight triangles or other structures or areas determined by the director to require clearance for the public.
- (3) No tables or chairs shall be allowed within five feet of a pedestrian crosswalk.
- (4) Outdoor seating shall be located in such a manner that a minimum five-foot-wide unobstructed pedestrian path is maintained at all times.
- (5) No objects shall be permitted around the perimeter of an outdoor seating area occupied by tables and chairs which would have the effect of forming a physical or visual barrier discouraging the use of the pedestrian path.
- (6) Establishments with outdoor seating adjacent to or abutting a residential use shall close

outdoor seating service at 12:00 midnight.

- (7) All outdoor seating shall have a minimum 30-foot setback from a residential use's property line and shall be properly buffered and screened by a six-foot-high wall between the outdoor seating and an abutting residential use to avoid noise, litter, light and odor impacts. When there is a street between the residential use and the outdoor said screening shall not be required.
- (8) No establishment shall play or cause to be played any music in the open air, nor shall any singing be allowed.
- (9) All kitchen equipment used to service the outdoor seating shall be located within the kitchen of the primary dining facility.
- (10) Outdoor seating shall comply with any regulation relating to noise and lighting.
- (11) Areas associated with the outdoor seating portion of the restaurant shall not count toward any maximum square footage limitations.
- (12) Outdoor seating able to be seen from the public right-of-way shall be taken inside after close of business.
- (13) Outdoor seating shall be counted toward the inside seating capacity of a restaurant or dining room.

(Ord. No. 5-09, § 1, 4-15-09)

Sec. 134-2107. - Conditions specific to outdoor seating on public rights-of-way.

- (a) The permit may be suspended by the director of planning, zoning and building when an ordinance or resolution is adopted by the town council providing for an event necessitating that the sidewalk be clear for a period of time.
- (b) The director may require the temporary removal of sidewalk seating when street, sidewalk or utility repairs necessitate such action.
- (c) If found to be necessary for the protection of the health, safety and welfare of the public, the departments of public works, police and fire-rescue or other emergency service providers may require the applicant to immediately remove or relocate all or parts of the sidewalk seating and, if necessary, the town may remove or relocate same in emergency situations.
- (d) The town and its officers and employees shall not be responsible for sidewalk seating components relocated during emergencies.
- (e) No tables and chairs nor other parts of the outdoor seating located within the public right-of-way shall be attached, chained or in any manner affixed to any tree, post, sign or other fixtures, curb or sidewalk within or near the permitted area.
- (f) Damage to the public sidewalk or any public structure as a result of the outdoor seating operation shall be the responsibility of the property owner.

(Ord. No. 5-09, § 1, 4-15-09)

Sec. 134-2108. - Denial, revocation or suspension of approval.

If the code enforcement board has found an operator or owner to be in violation of any provision of this Code related to outdoor seating on two or more occasions, the director may deny, revoke or suspend approval for any outdoor seating authorized by the town.

(Ord. No. 5-09, § 1, 4-15-09)

Sec. 134-2109. - Appeal of denial, revocation or suspension by the director of planning, zoning and building department.

The town council shall hear any appeal of a denial, revocation or suspension of outdoor seating by the director pursuant to sections 134-141 through 134-145.

(Ord. No. 5-09, § 1, 4-15-09)



*Footnotes:*

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**Editor's note**— Ord. No. 2010-08, § 1, adopted April 20, 2010, amended COMMUNICATION FACILITIES IN THE RIGHTS-OF-WAY IV, in its entirety to read as herein set out. Former Art. IV, §§ 19-50—19-59, pertained to the same subject matter and derived from Ord. No. 2009-15, § 1, adopted Oct. 20, 2009.

Sec. 19-50. - Permit required.

Operating a sidewalk cafe on public sidewalks shall be unlawful without first obtaining a permit from the public services department and paying the fee thereof in accordance with the provisions and requirements of this article. A sidewalk cafe, permitted and operated in accordance with this article, shall not be an obstruction of a sidewalk as provided in section 19-11 of this Code.

(Ord. No. 2010-08, § 1, 4-20-10; Ord. No. 2013-43, § 2, 9-17-13)

Sec. 19-51. - Definitions.

The following words when used in this article, shall, for the purposes of this article, have the following meanings:

*Bar* shall mean an establishment which can operate until 2:00 a.m., where alcoholic beverages are licensed to be sold, consumed or distributed on the premises.

*Menu board* shall mean a board allowing for the posting of a restaurant's complete menu and fabricated in such a manner so as not to constitute a form of general advertising or establishment identification.

*Operator* means the person or entity that operates the food or beverage service establishment and also operates the sidewalk cafe. The term "operator" shall include the owner of the food or beverage service establishment if the owner is also the operator of such establishment.

*Overhanging encroachment* shall mean any awning, canopy, portable umbrella, or other appurtenances whether permanently or semi-permanently affixed to the premises, or otherwise extending over the outdoor seating area, utilized in connection with a sidewalk cafe which is partially extending over the right-of-way.

*Permittee* means the business owner who has applied for and receives a permit to operate a sidewalk cafe under the terms and provisions of this article.

*Restaurant* shall mean a place or location kept, used, or held out to the public to be a place where meals or foodstuffs are prepared and served for profit, to the general public.

*Sidewalk* shall mean that portion of public property lying adjacent to or within the public right-of-way paved and used for pedestrian travel.

*Sidewalk cafe* means any group of tables, chairs or other seating fixtures and all related appurtenances maintained within the public sidewalk and intended for the purpose of consumption of food or beverage by patrons, when such is located, directly abutting, adjacent and contiguous to an adjacent bar or restaurant, as defined in section 23.02.03.00 of the zoning code, having the same operator.

*Sidewalk cafe components* shall mean means those non-permanent fixtures, furnishings and components associated with the operation of a sidewalk cafe, which shall include, but is not limited to, tables, chairs or other seating fixtures, umbrella, heaters, fans, bussing stations, plants and/or planters, menu boards, equipment, decor, fences, barricades or other sidewalk cafe furniture, appurtenances or accessories maintained within the public sidewalk and intended for the purpose of consumption of food or beverage by patrons, when such is located adjacent to a food or beverage service establishment having the same operator.

(Ord. No. 2010-08, § 1, 4-20-10; Ord. No. 2013-43, § 2, 9-17-13)

Sec. 19-52. - Permit requirements, fees and renewals; FDOT rights-of-way.

- (a) *Permit requirements.* A permit to operate a sidewalk café shall only be issued to a legally licensed and operating restaurant who wishes to provide seating for its patrons, on the sidewalk, that is immediately adjacent to the subject restaurant.
- (b) *Permit fees.* The permit fee and annual permit renewal fee, business tax receipt and use and occupancy certificate fees for establishing and maintaining a sidewalk café shall be determined by the city commission and set forth by resolution or ordinance as required by law. The permit fee and annual permit renewal fee shall include the city's fee and any rent due under a FDOT right-of-way lease. No fee shall be prorated or refunded.
- (c) *Permit validity; renewals.* Permits shall be valid from October 1 to September 30, unless revoked or suspended earlier. The city shall begin to process renewal permit applications on July 1 of each year. To renew a permit, the operator shall complete the application procedure set forth under this article and pay all applicable fees and taxes. The operator shall apply for and secure the renewal permit on or before September 30 of each year. The failure to renew a permit on or before September 30 shall result in a penalty of twenty-five (25) percent of the renewal fee and may be cited as a violation of this article. If a permit is not timely renewed or a renewal application is denied, the operator shall not operate the sidewalk café.
- (d) *FDOT right-of-way.*
  - (1) *City lease.* If the sidewalk cafe operates in whole or in part on any right-of-way owned or maintained by the Florida Department of Transportation (FDOT) and such right-of-way is leased to the city, the applicant shall be required to abide by and be subject to all terms and conditions of such lease which may include, but are not limited to, the following:
    1. Payment of rent plus applicable taxes.
    2. Indemnification and insurance requirements.
    3. Maintenance of right-of-way requirement.
    4. Termination provision, even if prior to expiration of sidewalk café permit.
    5. Periodic governmental inspections.
    6. Waiver of legal rights, monetary claims, and damages of any sort for the loss of occupancy of the leased property.
    7. Prohibition of any portable or temporary advertising signs in leased right-of-way.

It is the responsibility of each applicant to review any applicable lease and to be fully apprised of all the terms and conditions of such lease. Applicants may request a copy of any applicable lease from the office of the city clerk.

- (2) *Application documentation.* In addition to complying with all other applicable provisions of this article, before a sidewalk café permit may be issued, the applicant shall provide the city with all requested documents required for compliance with the subject lease or as otherwise required by the city.
- (3) *Termination; waiver of damages.* By accepting a permit issued under this article, the permittee agrees to and acknowledges the following: If the subject lease is terminated for any reason, the permit shall be simultaneously revoked; and the permittee waives any claim for damages due to such termination and revocation. A revocation pursuant to this subsection is not appealable to the city commission.

(Ord. No. 2010-08, § 1, 4-20-10; Ord. No. 2013-43, § 2, 9-17-13; Ord. No. 2015-15, § 2, 10-20-15)

#### Sec. 19-53. - Permit application.

- (a) *Application.* A completed application for a permit to establish a sidewalk cafe shall be submitted to the building division of the department for community sustainability on a form provided by the city for initial intake. Such application will be forwarded to other city departments for review. After such review, the public services department director or his/her designee will issue an approval or denial of the submitted permit application.
- (b) *Submission requirements.* Prior to submission, the applicant must have obtained a business tax receipt for the business entity requesting the sidewalk cafe from the city and must have an approved occupancy certificate for the building.
- (c) *Processing requirements.* To be processed an application for sidewalk cafe permit shall include, but not be limited to, the following information:
  - (1) Name and address of the applicant;
  - (2) The written consent of the property owner;
  - (3) A copy of a valid business tax receipt and use and occupancy certificate, or proof of concurrent application to operate a restaurant adjacent to the sidewalk area in which the sidewalk cafe is to be located;
  - (4) Proof of a valid certificate of occupancy for the building adjacent to where the proposed sidewalk cafe is to be located;
  - (5) A copy of current liability insurance, listing both the City of Lake Worth and the Florida Department of Transportation as additional named insureds with coverage limits listed in subsection 19-56(b) of this article and all necessary endorsements;
  - (6) A seating plan (minimum scale of one-fourth inch equals one foot (¼"=1')) showing the layout, arrangement, aisle widths, access to adjacent buildings and overall dimensions of the existing or proposed sidewalk cafe area and adjacent private property including the structures located thereon,

proposed location, size and number of all sidewalk cafe components and any other appurtenances to be located within the boundaries of the sidewalk cafe. The seating plan must depict the method used to demarcate the proposed sidewalk cafe area;

- (7) A survey no older than two (2) years, or if older than two (2) years the accuracy of the survey must be confirmed;
  - (8) Photographs, drawings, or manufacturers' brochures, fully describing the appearance, and physical features of all sidewalk cafe components or other objects relating to the sidewalk cafe;
  - (9) A plan for the maintenance and clearing of the sidewalk cafe area after closing. The plan must include receptacles for cigarette disposal;
  - (10) Any permits or approvals required from any other governmental agency necessary to operate a sidewalk cafe;
  - (11) Proof of notification to adjacent business owners of the applicant's intent to establish outdoor cafe seating;
  - (12) Such additional information as the public services department director or his/her designee may reasonably require as needed to determine compliance with the provisions of this division.
- (d) *Permit application fee.* Completed applications shall be accompanied by all applicable fees. No fee shall be prorated or refunded. Once approved, a permit fee and an annual permit renewal fee each year thereafter, shall be required to obtain a sidewalk cafe permit.
- (e) *Fees and taxes to be obtained.* Upon confirmation of the sidewalk cafe application approval, the applicant shall obtain a separate business tax receipt for the sidewalk cafe operation. Issuance of the business tax receipt and use and occupancy certificate shall serve as the final component of the sidewalk cafe application process. All outstanding city fees and taxes required by law relative to the business establishment with which the proposed sidewalk cafe is associated and the property on which the establishment is located shall be paid in full and all required city licenses shall be current prior to approval of a sidewalk cafe permit.

(Ord. No. 2010-08, § 1, 4-20-10; Ord. No. 2013-43, § 2, 9-17-13; Ord. No. 2015-15, § 3, 10-20-15)

#### Sec. 19-54. - Application review.

- (a) A completed application shall be reviewed by the following departments: public services, planning and zoning, fire, police, risk management and such other departments as required by the city in accordance with the standards and criteria for application review provided in this article.
- (b) Within thirty (30) days of receipt of a completed application, the public services department director or his/her designee shall issue a letter of intent to approve or deny the permit.
- (c) The letter of intent shall serve as a temporary sidewalk cafe permit. Within seven (7) days of issuance of the letter of intent, a final inspection of the sidewalk cafe area will be conducted by the code compliance division prior to issuance of the sidewalk cafe permit.

(Ord. No. 2010-08, § 1, 4-20-10; Ord. No. 2013-43, § 2, 9-17-13)

#### Sec. 19-55. - Standards and criteria for application review.



The following standards and criteria shall be used in reviewing the application:

- (a) Sidewalk cafes are restricted to the sidewalk area abutting the boundary lines of the property on which the bar or restaurant owned and/or operated by the applicant is located.
- (b) Permits will not be approved where an application indicates that sidewalk cafe components would be placed within six (6) feet of bus stops, taxi stands, site triangles or other structures or areas as determined by the director or designee to require clearance for the public.
- (c) No sidewalk cafe components will be permitted within six (6) feet of a pedestrian crosswalk.
- (d) Sidewalk cafes shall be located as follows:
  - (1) The sidewalk cafe shall not be located within six (6) feet of the sidewalk area beginning at the back of the curb projected as a straight line between city blocks and shall not include sidewalk bulbs or ADA ramps in the calculation. In areas where the six-foot setback does not provide sufficient clearance for ADA compliance, a minimum ADA clearance past the six-foot line must be maintained.
  - (2) A clear, uninterrupted and unobstructed pathway of at least forty-two (42) inches must exist at all times as a pedestrian path in front of or through each sidewalk cafe. In areas where in-ground or above-ground planters are present, the area of such planters shall not be included in the calculation of the requisite forty-two (42) inches.
  - (3) In areas of congested pedestrian activity, the director or designee shall be authorized to require a wider pedestrian path than that provided herein as circumstances dictate.
- (e) No objects shall be permitted around the perimeter of a sidewalk area occupied by tables and chairs which would have the effect of forming a physical or visual barrier discouraging the use of the pedestrian path of sidewalk as described in subsections (d)(1) and (2) above.
- (f) Tables, chairs, umbrellas and any other objects provided as part of the sidewalk cafe shall be of quality design materials and workmanship; both to ensure the safety and convenience of patrons and be compatible with use in the immediate vicinity of the proposed sidewalk cafe.

(Ord. No. 2010-08, § 1, 4-20-10; Ord. No. 2013-43, § 2, 9-17-13)

Sec. 19-56. - Liability and insurance.

- (a) Prior to the issuance of a business tax receipt the applicant shall furnish the city with a signed statement that the permittee shall hold harmless the city, its officers, employees and the Florida Department of Transportation and shall indemnify the city, its officers, employees and the Florida Department of Transportation for claims of damages to property or injury to persons which may be occasioned by any activity carried out under the terms of the business tax receipt and approved sidewalk cafe permit. The statement shall also include that the permittee shall be responsible, shall indemnify and shall hold the city harmless for performance of and payment for any environmental remediation that may be necessary, as determined by the Florida Department of Transportation, as a result of permittee's use of the area of the sidewalk cafe.
- (b) Permittee shall furnish and maintain public liability, food products liability, liquor liability, and property

damage insurance for the benefit of city and the Florida Department of Transportation insuring and indemnifying city and the Florida Department of Transportation from all claims and damage to property or bodily injury, including death, which may arise from operations under the business tax receipt or in connection therewith. Such insurance shall provide coverage of not less than one million dollars (\$1,000,000.00) for bodily injury or death to any one (1) person or any number of persons in any one (1) occurrence and property damage, respectively, per occurrence, or a combined coverage of not less than two million dollars (\$2,000,000.00). Such insurance shall be without prejudice to coverage otherwise existing therein and shall name as additional insureds the Florida Department of Transportation, its officers and employees, as well as the city, its officers and employees, and shall further provide that the policy shall not terminate or be canceled prior to the completion of the business tax receipt period without forty-five (45) days' written notice to the risk manager at the address shown on the business tax receipt.

(Ord. No. 2010-08, § 1, 4-20-10; Ord. No. 2013-43, § 2, 9-17-13)

Sec. 19-57. - Conditions of sidewalk cafes permits.

- (a) No objects shall be permitted around the perimeter of a sidewalk area occupied by sidewalk cafe components which would have the effect of forming a physical or visual barrier discouraging the use of the pedestrian path of sidewalk as described in subsections (d)(1) and (2) above.
- (b) All sidewalk cafe components utilized as part of the sidewalk cafe shall be of quality design materials and workmanship; both to ensure the safety and convenience of patrons and be compatible with use in the immediate vicinity of the proposed sidewalk cafe.
- (c) No other use of the area devoted to the sidewalk cafe shall be permitted, except normal use as a public sidewalk, during the hours that the sidewalk cafe is not operated.
- (d) Approval of sidewalk cafes shall be limited to bars and restaurants in the downtown zoning district.
- (e) A sidewalk cafe permit may be suspended by the director when an ordinance or resolution is adopted by the city commission providing for an event necessitating that the sidewalk be clear for a period of time.
- (f) The director or designee may require the temporary removal of sidewalk cafes when street, sidewalk or utility repairs necessitate such action.
- (g) All sidewalk cafe components and any other objects provided in connection with a sidewalk cafe shall be removed from the sidewalk area when the permittee's restaurant is closed to the public.
- (h) If found to be necessary for the protection of the health, safety and welfare of the public, the department of public services, police and fire department or emergency service providers may require the permittee to immediately remove or relocate all or parts of the sidewalk cafe and/or all sidewalk cafe components, and if necessary, the city may remove or relocate same in emergency situations.
- (i) The city and its officers and employees shall not be responsible for sidewalk cafe components relocated during emergencies.
- (j) The sidewalk cafe permit shall be specifically limited to the area shown on the exhibit attached to the application and made a part of the permit. The subject sidewalk cafe shall not exceed its delineated area and must not spillover to adjacent areas and the curbside.

- (k) The permittee shall take such actions necessary to ensure its use of the sidewalk in no way interferes with sidewalk users or limits their passage.
- (l) All sidewalk components provided within a sidewalk cafe shall be maintained in a clean and attractive appearance, shall be in good repair at all times, and shall be maintained in accordance with the plan submitted by the applicant and approved by the director.
- (m) The sidewalk area covered by the permit shall be maintained in a neat and orderly appearance at all times and the area shall be cleared of all debris and hazardous obstructions, on a periodic basis during the day and again at the close of each business day in compliance with the plan submitted in accordance with section 19-53 and approved by the director or designee. Permittee is prohibited from sweeping or hosing the sidewalk debris, or otherwise allowing such debris into any Florida Department of Transportation drainage system or the city's stormwater conveyance system and roadway.
- (n) The permittee is prohibited from using any petroleum products or hazardous or otherwise regulated materials in conjunction with the use, cleaning, and/or maintenance of the sidewalk cafe.
- (o) The serving and consumption of alcoholic beverages as part of the operation of a sidewalk cafe shall be separately permitted subject to applicable regulations of other governmental entities.
- (p) Overhanging encroachments with a vertical clearance of at least nine (9) feet for pedestrians shall be permitted over the sidewalk cafe area during the operation of the sidewalk cafe, if permitted in accordance with the provisions of the Code and are subject to and must comply with Chapter 14-43, Florida Administrative Code.
- (q) No advertising signs or business identification signs shall be permitted on the sidewalk other than menu boards which have been approved by the director.
- (r) No tables and chairs sidewalk cafe components, nor other parts appurtenances of sidewalk cafes shall be attached, chained or in any manner affixed or penetrate to any tree, post, sign or other fixture, curb or sidewalk within or near the permitted area, and shall be readily removable without damage to the surface of the sidewalk.
- (s) No tables, chairs, umbrellas sidewalk cafe components or any part of a sidewalk cafe shall be permitted within the six-foot area beginning at the back of the curb.
- (t) Permittee shall be required to comply with any regulation relating to noise in the sidewalk cafe area.
- (u) The sidewalk cafe permit covers only the public sidewalk and/or right-of-way. Tables and chairs on private property will be governed by other applicable regulations.
- (v) Permittee shall be required to provide two (2) smokers' cigarette butt urns, such as model number 83CSL-0603 manufactured by Smokers' Outpost, or comparable urns by another manufacturer. This requirement shall apply to all new and previously issued sidewalk cafe permits. Placement of the urns must be approved by the building department.
- (w) All sidewalk cafe permits are subject to periodic inspections by the city to insure compliance with this article.
- (x) All sidewalk cafe permits are subject to the discontinuance due to the expiration or revocation of any and all utility permits and access permits that have been issued to the city.

**Editor's note—** Ord. No. 2013-43, § 2, adopted September 17, 2013, repealed and reenacted sections 19-57—19-59 in their entirety to read as herein set out. Formerly, sections 19-57—19-59 pertained to form and conditions of business tax receipt, denial, revocation or suspension of business tax receipt; removal and storage fees; emergencies, and appeals, respectively, and derived from Ord. No. 2010-08, § 1, adopted April 20, 2010.

Sec. 19-58. - Business tax receipt; sidewalk cafes.

All business tax receipts issued under this article shall be issued on a form provided by the department for community sustainability. In addition to naming the permittee and any other information deemed appropriate by the department, a business tax receipt issued under this article shall contain the following conditions:

- (a) Each business tax receipt shall be effective for one (1) year, subject to annual renewal.
- (b) The business tax receipt shall be personal to the permittee only and shall not be transferable in any manner.

(Ord. No. 2013-43, § 2, 9-17-13)

**Note—** See editor's note at section 19-57.

Sec. 19-59. - Denial, revocation or suspension of sidewalk cafe permit; removal and storage fees; emergencies.

- (a) The city may deny, revoke or suspend a sidewalk cafe permit for any sidewalk cafe authorized in the city if it is found that:
  - (1) Any required business or health permit has been suspended, revoked or canceled;
  - (2) The permittee does not have insurance which is correct and effective in the minimum amount described above;
  - (3) Changing conditions of pedestrian or vehicular traffic cause congestion necessitating removal of a sidewalk cafe. Such decision shall be based upon finding of the city that the minimum pedestrian path is insufficient under existing circumstances and represents a danger to health, safety or general welfare of pedestrians or vehicular traffic;
  - (4) The permittee has failed to correct violations of this article or conditions of his permit within three (3) days of receipt of the notice of same delivered in writing to the permittee by registered mail, return receipt requested, to the last address provided by the permittee to the city or the permittee has failed to pay all violation fines imposed under the provisions of this section;
  - (5) The permittee has received two (2) notices of violation within a six-month period, whether corrected or not; or
  - (6) Sidewalk cafe components may be removed by the city and a reasonable fee charged for labor, transportation and storage should the permittee fail to remove said items within thirty-six (36) hours of receipt of the final notice to do so for any reason provided for under this article.
- (b) Upon denial, revocation or suspension, city shall provide notice of such action to the applicant or the permittee in writing, stating the action which has been taken and the reason therefor. If the action of the city is based on subsection (a)(2) or (3) of this section, the action shall be effective twenty-four (24) hours



after the city's postmarked date of mailing of notice to permittee. Otherwise, such notice shall become effective within ten (10) days after the city's postmarked date of mailing of such notice to the permittee unless appealed to the city commission.

- (c) In addition to the remedies provided in this section, the following civil penalties will be imposed upon the issuance of a written notice to the permittee as follows:

For a first violation the violator shall receive a written warning.

For a second violation, the fine shall be one hundred dollars (\$100.00).

For third or subsequent violation, the fine is five hundred dollars (\$500.00).

- (i) The city cashier shall accept designated fines and issue receipts therefor. The city shall provide a notice of violation form for notifying alleged violators to appear and answer to charges of violations.
- (ii) Payment shall be made, either by mail or in person, to the city cashier within thirty (30) days of the notice of penalty being issued. If a person follows this procedure, s/he shall be deemed to have admitted the infraction and to have waived his/her right to a hearing on the issue of commission of the infraction.

(Ord. No. 2013-43, § 2, 9-17-13)

**Note—** See editor's note at section 19-57.

#### Sec. 19-59.5. - Appeals.

- (a) An appeal shall be initiated within ten (10) days of the city's postmarked date of mailing of the denial, revocation or suspension of a sidewalk cafe permit by filing a written notice of appeal with the city manager.
- (b) The city manager shall place the appeal on the next available regular city commission agenda. At the hearing upon appeal, the city commission shall hear and determine the appeal, and the decision of the city commission shall be final and effective immediately.
- (c) The filing of a notice of appeal by a permittee shall not stay an order by the code enforcement special magistrate to remove a sidewalk cafe components. Sidewalk cafe components shall be removed immediately as set out above, pending disposition of the appeal and final decision of the city commission.

(Ord. No. 2013-43, § 2, 9-17-13)

**Editor's note—** Ord. No. 2013-43, § 2, adopted September 17, 2013, enacted provisions intended for use as section 19-60. Inasmuch as there are already provisions so designated, and at the discretion of the editor, said provisions have been redesignated as section 19-59.5.

*Footnotes:*

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**Editor's note**— Ord. No. 13123, § 2, adopted Jan. 14, 2010, renumbered article VI, §§ 54-221—54-230 as §§ 54-222—54-231 and added a new § 54-221 as set out herein. The historical notation has been retained with the amended provisions for reference purposes.

Sec. 54-221. - Statement of purpose.

- (a) The primary function of sidewalks is for pedestrian movement and sidewalk cafes shall not interfere with their use.
- (b) Sidewalk cafes will be ADA compliant.
- (c) A safe, secure and comfortable environment will be maintained for pedestrians using the public right-of-way.
- (d) A sidewalk cafe shall enhance the vitality of the street environment.
- (e) A sidewalk cafe shall be compatible with adjacent streetscape elements in terms of design and construction.

(Ord. No. 13123, § 2, 1-14-10)

Sec. 54-222. - Permit required.

Operating a sidewalk cafe on city sidewalks shall be unlawful without a permit. No person shall conduct business as herein defined without first obtaining a permit from the director of the department of resilience and public works and paying the fee therefor to the director of finance or his/her designee. It shall be unlawful for any person to operate a sidewalk cafe on any sidewalk within the city except as provided by this article.

(Ord. No. 9848, § 1, 6-14-84; Code 1980, § 54-108; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13676, § 2, 4-27-17; Ord. No. 13792, § 1, 10-11-18)

Sec. 54-223. - Definitions.

As used in this article:

*Cafe zones* means any public sidewalk area within the city that complies with the requirements of article VI of this chapter.

*Director* means the director of the department of resilience and public works.

*Food establishment* means an establishment serving prepared food to be consumed on or off premises.

*Permit* means a grant of authority by the city to operate a sidewalk cafe, subject to compliance, as a condition precedent to the initial issuance of such permit and any renewals thereof with all requirements, conditions or criteria set forth in this article for the issuance and maintenance of a sidewalk cafe permit. A permit shall be valid for a maximum of one year in duration and shall be renewable on an annual basis upon full compliance with all application requirements.

*Permittee* means the recipient of a sidewalk cafe permit under the terms and provisions of this article.

*Sidewalk* means that portion of the street between the curb lines or the lateral lines of a non-driving lane separated by curb or bollards and the adjacent property lines where a five-foot minimum clearance is available to and intended for use by pedestrians.

*Sidewalk cafe* means the placing, locating, or permitting of the placing or locating of outdoor furniture, including but not limited to, chairs and tables within the sidewalk area adjacent to a business licensed to operate as a restaurant or take-out food establishment.

*State road* shall mean those roadways that are part of the state highway system under the jurisdiction of the Florida Department of Transportation.

(Ord. No. 9848, § 1, 6-14-84; Ord. No. 10217, § 1, 1-8-87; Ord. No. 10693, § 1, 1-11-90; Ord. No. 10854, § 1, 3-14-91; Ord. No. 11053, § 2, 3-25-93; Code 1980, § 54-109; Ord. No. 13087, § 2, 9-10-09; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13585, § 2, 1-14-16; Ord. No. 13792, § 1, 10-11-18)

Sec. 54-224. - Fees and security deposit.

- (a) A non-refundable application fee of \$175.00 and initial inspection fee of \$10.00 shall accompany the sidewalk cafe application.
- (b) The fee for an annual permit for establishing or maintaining a sidewalk cafe shall be \$11.50 per square foot of usable sidewalk area, as determined by the department of resilience and public works. The sidewalk cafe permit year shall begin on October 1 and end on September 30. The fee for any sidewalk cafe permitted during the permit year shall be prorated on a monthly basis to the end of the current permit year. The full annual permit fee shall be due and payable on or before October 1. Payment received more than ten calendar days after the due date shall be charged a late fee of ten percent of the payment amount due. Failure to make a required payment within 30 calendar days of the due date shall constitute a basis for and result in immediate license suspension and forfeiture to any right and interest to the security deposit or performance bond.
- (c) Failed permit inspections are subject to a reinspection fee of \$95.00.
- (d) Security deposit. Upon issuance of the permit, the permittee shall provide a security deposit in an amount sufficient to secure one-quarter of the permit fee. All documentation, including the form of the security deposit, shall be subject to the approval of the city attorney as to form and correctness. In the event the permittee fails to make an annual payment within 30 days of the date due, the permittee shall forfeit any right and interest to the security deposit, whichever may be applicable, and the entire amount of the security deposit shall be retained by the city or its designee. The permittee shall have no recourse against this retention by the city when payment by the permittee is untimely.

(Ord. No. 9848, § 1, 6-14-84; Ord. No. 10217, § 1, 1-8-87; Ord. No. 10658, § 3, 10-12-89; Ord. No. 10693, § 1, 1-11-90; Ord. No. 10854, § 1, 3-14-91; Ord. No. 11053, § 2, 3-25-93; Code 1980, § 54-111; Ord. No. 11280, § 2, 7-13-95; Ord. No. 12228, § 1, 5-9-02; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13195, § 5, 9-27-10; Ord. No. 13467, § 2, 6-12-14; Ord. No. 13585, § 2, 1-14-16; Ord. No. 13682, §§ 2—5, 5-25-17; Ord. No. 13792, § 1, 10-11-18)

**Editor's note—** Ord. No. 13585, § 2, adopted January 14, 2016, changed the title of section 54-224 from "Permit fee" to "Fees and security deposit." The historical notation has been preserved for reference purposes.

Sections 2—5 of Ord. No. 13682, adopted May 25, 2017, state the following: "Section 2. The sidewalk café permit fees imposed by Section 54-224(b) of the City Code, the annual permit of \$11.50 per square foot of useable sidewalk area,

and Section 54- 224(d) of the City Code, the required security deposit, are hereby waived for downtown sidewalk cafés located in the area bounded by the west side by Northwest/Southwest 1st Avenue on the west, by the north side of Northwest/Northeast 1st Street on the north, Biscayne Boulevard on the east, and by the south side of Southwest/Southeast 1st Street on the south, as further described in Exhibit "A".

Section 3. The waiver period for eligible sidewalk cafés, as described in Section 2 above, shall be during the remainder of the construction of the Project until the City and any other public agencies that have jurisdiction over the Project, as applicable, have determined that the Project has achieved substantial completion in the area described in Section 2. This Ordinance will automatically sunset once that date of substantial completion is confirmed by the Public Works Director.

Section 4. This waiver only applies to sidewalk café permit fees imposed by Sections 54-224(b) and Section 54-224(d) of the City Code.

Section 5. This Ordinance does not waive sidewalk café fees imposed by Section 54-224(a) of the City Code, the non-refundable application fee of \$175.00 and the initial inspection fee of \$10.00, the sidewalk café fees imposed by Section 54-224(c) of the City Code, the failed permit inspection fee, or any other fees including but not limited to payment of the BTR, payment of the CU, any related inspections, or any similar requirements, or fees."

#### Sec. 54-225. - Permit application.

- (a) Application for a permit to operate a sidewalk cafe shall be made at the department of resilience and public works in a form deemed appropriate by the director. Such application shall include, but not be limited, to the following information:
  - (1) Name and address of the applicant;
  - (2) A copy of a valid business license to operate a restaurant or a take-out food establishment adjacent to the sidewalk area which is the subject of the application;
  - (3) A copy of current liability insurance;
  - (4) A current survey (certified if required by other agencies having jurisdiction over the area) of the sidewalk area including adjacent roadway and property lines.
  - (5) A drawing (minimum scale of one-fourth inch equals one foot) showing the layout and dimensions of the existing sidewalk area and adjacent private property, proposed location, size and number of all outdoor furniture, including but not limited to, tables, chairs, umbrellas, location of doorways, location of trees, parking meters, bus shelters, sidewalk benches, trash receptacles, glare screens, menu boards, heaters, fans, planters and any other sidewalk obstruction either existing or proposed within the pedestrian area;
  - (6) Photographs, drawings, or manufacturers' brochures fully describing the appearance of all proposed tables, chairs, umbrellas, or other objects related to the sidewalk cafe; and
  - (7) Photograph of subject street right-of-way where sidewalk cafe is proposed.
- (b) Applications shall be reviewed by the following departments: resilience and public works; planning and zoning, neighborhood enhancements team, risk management and finance. Building department review is required for lighting, electrical connections, fans, and heaters.
- (c) Within 30 days of receipt of a completed application, the director shall approve or deny the permit.
- (d) Reserved.
- (e) The applicant shall provide proof of necessary insurance prior to receiving the permit.



(Ord. No. 9848, § 1, 6-14-84; Ord. No. 10854, § 1, 3-14-91; Code 1980, § 54-112; Ord. No. 13087, § 2, 9-10-09; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13195, § 5, 9-27-10; Ord. No. 13585, § 2, 1-14-16; Ord. No. 13792, § 1, 10-11-18)

Sec. 54-226. - Permit requirements.

- (a) No person shall establish a sidewalk cafe on any public street or sidewalk unless such person has obtained a valid permit to operate that sidewalk cafe in such a manner pursuant to this article.
- (b) Permits shall be issued only to validly licensed restaurants or food establishments that wish to provide tables and chairs on the sidewalk(s) adjacent to their businesses for use by the general public.
- (c) In the Coconut Grove central commercial district, permits shall be issued to sidewalk cafes in conjunction with "food establishments" and validly licensed restaurants, provided the establishment provides required off-street parking at a rate of one parking space per 100 square feet for the sidewalk cafe area or pays a mitigation fee in lieu thereof, as described in section 35-224 herein, in addition to other required off-street parking and the sidewalk cafe permit fee. For purposes of this article, references to specific districts are solely for purposes of delineating affected geographic areas subject to this section and shall not convey any rights under the Miami 21 Code, the zoning ordinance of the City of Miami, Florida ("Miami 21 Code"), as amended or superseded.
- (d) No sidewalk cafe permit shall be issued by the city within any state road right-of-way in the absence of an approval from the Florida Department of Transportation.

(Ord. No. 9848, § 1, 6-14-84; Ord. No. 11053, § 2, 3-25-93; Code 1980, § 54-113; Ord. No. 13087, § 2, 9-10-09; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13467, § 2, 6-12-14; Ord. No. 13585, § 2, 1-14-16)

Sec. 54-227. - Standards and criteria for application review.

The following standards and criteria shall be used in reviewing the drawing required in section 54-225(a)(5):

- (1) Sidewalk cafes are restricted to the sidewalk frontage of the licensed restaurant or food service establishment to which the permit is issued; or within the contiguous sidewalk frontage of the building where the licensed restaurant or food service establishment is located, provided that written approval is supplied by the building owner and any affected lessee.
- (2) Permits will not be issued where the tables and chairs would be placed within five feet of bus stops, taxistands, or counter service windows.
- (3) No tables and chairs will be permitted within five feet of a pedestrian crosswalk.
- (4) The area to be considered shall have sidewalks which are nine feet in width or greater, not including the curb. Subject to written approval of the property owner, a warrant issued in accordance with the Miami 21 Code and approval of the director of the resilience and public works department, or his/her designee, a portion of the required nine feet of width may be provided on an Americans with Disabilities Act ("ADA") compliant sidewalk located on private property abutting the right-of-way line. All regulations stated in this article, except the permit fee, shall be applicable to any areas of private property included in the sidewalk permit application.
- (5) Sidewalk cafes shall be located in such a manner that a minimum five-foot-wide clear pedestrian path is maintained at all times. In areas of congested pedestrian activity, the director is authorized to require a wider pedestrian path, as circumstances dictate. The pedestrian path zone surrounding the sidewalk cafe

area shall not be encumbered in any way by the placement of menu boards, planters, or bicycles affixed or leaned against the sidewalk cafe enclosure. Menu boards will be allowed within the sidewalk cafe footprint and shall have no advertising other than the menu and restaurant information.

- (6) Objects used to form a physical barrier around the sidewalk cafe perimeter shall be permitted. All physical barriers shall have a two-foot clear path every 25 feet and shall not be more than 36 inches in height. Items placed along the perimeter of a sidewalk cafe shall not be located within street intersection visibility triangles. Proposed material and design shall be approved by the resilience and public works department. Glare screens shall not be permanently attached to the sidewalk, shall not be more than 36 inches in height, and shall be removed during non-business hours. Endorsements/advertising are not permitted on enclosures, umbrellas, tableware, and covers, except for the name and/or logo of the restaurant.
- (7) Tables, chairs, umbrellas and any other objects provided with the sidewalk cafe shall be of quality design, materials, and technique; both to ensure the safety and convenience of users, and to enhance the visual and aesthetic quality of the urban environment. Design, materials, and colors shall be harmonious with an urban environment so as to reduce visual clutter and enhance aesthetics. Landscape maintenance must be done on a regular basis to ensure the health of plant materials.
- (8) Awnings, umbrellas and other decorative material shall be fire retardant pressure treated, or manufactured of fire resistive material.
- (9) No portion of any object placed in the sidewalk cafe shall extend into the five-foot pedestrian path.
- (10) In certain areas within city where streetscape enhancements have been installed changes are not permitted to the sidewalk paving and must not be damaged by enclosures, signage, etc. Sidewalk cafe owner shall preserve and protect all existing trees and plantings in the public right-of-way to the satisfaction of the resilience and public works department and replace, entirely at the applicant's expense, any trees that are damaged as a result of the sidewalk cafe. Trees shall not be used to support wires or to place any signs, screws, nails, staple, ropes, brackets, banding or other hardware.
- (11) Sidewalk cafe furnishings and fixtures, including any required bar unit, servers' work station, or greeting stations shall be portable and shall not be permanently attached to the wall of the abutting building, the sidewalk, or screen. Bus stations shall not be permitted.
- (12) Umbrella height must be 84 inches above the sidewalk (highest point of the sidewalk if not level).
- (13) A greeting station can be located closer to the sidewalk, but shall remain within the confines of the sidewalk cafe footprint and a clear path maintained for an unobstructed access to the main entrance, and along the pedestrian clear path area.
- (14) Planters may be placed within the sidewalk cafe but must be secured to ensure that they do not move on un-level sidewalk. If planters are on wheels they must be locked.
- (15) Umbrellas and screens may be supported by a socket in the sidewalk. The resilience and public works department must approve the coring and capping method in advance and holes must be filled or capped when not in use.
- (16) Lighting, fans and heaters are optional items. Light levels shall be low and directed towards the sidewalk cafe rather than towards the street. Lighting, fans and heaters shall comply with established standards and criteria and with all applicable codes.
- (17) All portions of the sidewalk cafe that are located on private property not within the public right-of-way

shall comply with City of Miami zoning regulations.

(Ord. No. 9848, § 1, 6-14-84; Ord. No. 10217, § 1, 1-8-87; Ord. No. 10693, § 1, 1-11-90; Ord. No. 10854, § 1, 3-14-91; Code 1980, § 54-114; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13585, § 2, 1-14-16; Ord. No. 13676, § 2, 4-27-17; Ord. No. 13792, § 1, 10-11-18)

Sec. 54-228. - Indemnification and insurance.

- (a) Applicant agrees to indemnify, defend, and hold harmless the city, its officials, employees, agents, and, if applicable, its instrumentalities and each of them from and against all loss, cost, penalties, fines, damages, claims of any nature, including expenses and attorney's fees, and any and all liabilities by reason of injury to or death of any person, damage to, destruction, or loss to any property including the city, its instrumentalities, officials, employees, and agents arising out of or in connection with the performance or non-performance of the services contemplated by this permit/agreement which is directly or indirectly caused, in whole or in part, by any act, omission, default, liability, or negligence, whether active or passive of the applicant, its employees, agents, servants, or contractors, unless such act or omission is solely caused by the city, its instrumentalities, officials, employees, and agents. The applicant further agrees to indemnify, defend, and hold harmless the city, its instrumentalities, officials, employees, and agents against all liabilities which may be asserted by an employee or former employee of the applicant or any of its contractors as provided above for which the applicant's liability to such employee or former employee would otherwise be limited to payments under workers' compensation or similar laws. In addition, the applicant understands and agrees that except where caused by the negligence or misconduct of the city, its instrumentalities, officials, employees, or agents, the city shall not be liable for any loss, injury, or damage to any personal property or equipment of the applicant, its employees, agents, contractors, business licensees, or invitees placed on city property and its instrumentalities and shall be at the sole risk of the applicant thereof. The applicant shall ensure that adequate safety precautions are in effect at all times during the term of the permit. It shall be a further condition precedent to the issuance of any such permit for placement of such sidewalk cafe in the public right-of-way that the permit holder(s) is/are jointly and severally responsible, at each permit holder's sole expense, for any damages regarding restoring the public right-of-way to its original condition before installation of facilities. The indemnification shall survive termination of this permit/agreement.

Prior to the issuance of any such permit, the applicant shall submit to the city a certificate of insurance with respect to commercial general liability with limits of at least \$500,000.00 per occurrence, \$1,000,000.00 policy aggregate, and any endorsements thereto, including, but not limited to, premises and operations liability, personal and advertising injury, products and completed operations, and liquor liability. The certificate must reflect primary and noncontributory language and list the city as an additional insured on all third-party liability policies including liquor. The insurance herein required shall remain in full force and effect at all times during the entire term of the permit. Additionally, all such insurance shall be subject to review and approval by the city's risk management department.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "A-" as to management and no less than Class "V" as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick New Jersey, or its equivalent subject to the approval of the city's risk management department. Companies not meeting the above rating

requirements shall submit proof of reinsurance from qualifying insurers having or exceeding the required rating criteria.

The registrant/applicant shall provide 30 days prior written notice of cancellation to the city for any reason other than non-payment of premium in which ten days' notice shall apply.

- (b) Applicant shall furnish the city with a certificate of insurance substantially in accordance to the insurance requirements contained in Exhibit A, available at the department of resilience and public works. It is understood and agreed that all coverage provided by the applicant shall be primary and non-contributory, and its insurance shall have no right of recovery or subrogation against the city and if applicable, any of its instrumentalities. The department of resilience and public works may modify the insurance requirements, if warranted.

(Ord. No. 9848, § 1, 6-14-84; Code 1980, § 54-115; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13585, § 2, 1-14-16; Ord. No. 13792, § 1, 10-11-18; Ord. No. 13918, § 2, 9-24-20)

**Editor's note—** Ord. No. 13585, § 2, adopted January 14, 2016, changed the title of section 54-228 from "Liability and insurance" to "Indemnification and insurance." The historical notation has been preserved for reference purposes.

#### Sec. 54-229. - Form and conditions of permit.

The permit shall be issued on a form deemed suitable by the director. In addition to naming the permittee and any other information deemed appropriate by the director, the permit shall contain the following conditions:

- (1) Each permit shall be effective for one year, starting October 1st and ending September 30th, subject to annual renewal. Fees for the initial year shall be prorated on a monthly basis. Permits are subject to annual renewals and applications shall be received by the department prior to October 1st.
- (2) The permit issued shall be personal to the permittee only and shall not be transferable in any manner.
- (3) The permit may be suspended by the director when necessary to clear sidewalk areas for a "community or special event" authorized by a permit issued by the police department.
- (4) The director may require the temporary removal of sidewalk cafes when street, sidewalk, or utility repairs necessitate such action.
- (5) The department of resilience and public works or the police department may immediately remove or relocate all or parts of the sidewalk cafe in emergency situations.
- (6) The city and its officers and employees shall not be responsible for sidewalk cafe components relocated during emergencies.
- (7) The permit shall be specifically limited to the area shown on the "exhibit" attached to and made part of the permit.
- (8) The permittee shall use positive action to assure that its use of the sidewalk in no way interferes with or embarrasses sidewalk users or limits their free unobstructed passage.
- (9) The sidewalk cafe shall be opened for use by the general public and such use shall not be restricted to patrons of the permittee.
- (10) Permittees holding a local business tax receipt or certificate of use limited to take-out food shall not be permitted to provide table service in the sidewalk cafe. However, this shall not relieve the permittee of the responsibility to maintain the sidewalk cafe as required in this section.

- (11) Tables, chairs, umbrellas, and any other objects provided with a sidewalk cafe shall be maintained with a clean attractive appearance and shall be in good repair at all times.
- (12) The sidewalk area covered by the permit shall be maintained in a neat and orderly appearance at all times and the area shall be cleared of all debris on a periodic basis during the day, and again at the close of each business day.
- (13) No advertising signs or business identification signs shall be permitted in the public right-of-way; this shall not prohibit the use of umbrellas, glare screens, or menu boards carrying restaurant logotypes. Size and location of menu boards shall be approved by city.
- (14) No tables and chairs nor any other parts of sidewalk cafes shall be attached, chained, or in any manner affixed to any tree, post, sign, or other fixtures, curb or sidewalk within or near the permitted area. No additional outdoor seating authorized herein shall be used for calculating seating requirements pertaining to location of, applications for, or issuance of a liquor license for any establishment or be used as the basis for computing required seating for restaurants and dining rooms or as grounds for claiming exemption from such requirements under the provisions of any city ordinance or state law.
- (15) Except as provided in section 54-227, the permit covers only the public sidewalk. Tables and chairs on private property will be governed by other applicable regulations. The permit shall include a reference to the applicant complying with all requirements for sidewalk cafes set forth in article VI of this Code. Where an applicant that is already legally operating a sidewalk cafe at a leased location submits a lease executed prior to March 1, 2016, the owner consent requirement stated herein shall not apply until such time as the current term of such lease ends.
- (16) The permittee shall notify the director of resilience and public works, in writing, when operation of the sidewalk cafe begins. Said notice shall be delivered to the director within 24 hours of such commencement.
- (17) The issuance of a sidewalk cafe permit does not grant or infer vested rights to use of the sidewalk area by the permittee. The city retains the right to deny the issuance of a permit or the renewal of a permit.
- (18) No entertainment or sound speakers shall be placed within or adjacent to the right-of-way in a manner which causes persons to accumulate and obstruct the pedestrian path. Entertainment and sound speakers shall comply with the city's noise regulations.

(Ord. No. 9848, § 1, 6-14-84; Ord. No. 10217, § 1, 1-8-87; Ord. No. 10693, § 1, 1-1-90; Code 1980, § 54-116; Ord. No. 12885, § 1, 2-8-07; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13585, § 2, 1-14-16; Ord. No. 13792, § 1, 10-11-18)

Sec. 54-230. - Denial, revocation or suspension of permit; removal and storage fees; emergencies.

- (a) The director may deny, revoke, or suspend a permit for any sidewalk cafe authorized in the city if it is found that:
  - (1) Any necessary business or health permit has been suspended, revoked, or cancelled.
  - (2) The permittee does not have insurance which is correct and effective in the minimum amount described in section 54-228, or has failed to make a quarterly permit fee payment when due.
  - (3) Changing conditions of pedestrian or vehicular traffic cause congestion necessitating removal of sidewalk cafe. Such decision shall be based upon findings of director that the minimum five-foot pedestrian path is insufficient under existing circumstances and represents a danger to the health, safety, or general welfare of pedestrians or vehicular traffic.



- (4) The permittee has failed to correct violations of this article or conditions of his/her permit within three days of receipt of the director's notice of same delivered in writing to the permittee.
  - (5) The permittee has failed to take positive actions to prohibit violations from recurring.
  - (6) The permittee has failed to make modifications within three days of receipt of the director's notice of same delivered in writing to the permittee.
  - (7) Tables, chairs and other vestiges of said sidewalk cafe in the right-of-way may be removed by the department of resilience and public works, and a reasonable fee charged for labor, transportation, and storage, should the permittee fail to remove said items within 36 hours of receipt of the director's final notice to do so for any reason provided for under this article. If the final notice is sent based on subsection (a)(2) or (3) of this section, the removal action shall become effective upon the receipt of such notice and the permittee shall have four hours to remove said items or to, within that time, request, in writing, a meeting with the department of resilience and public works director to contest the final notice. The fees incurred by the department of resilience and public works and/or other agents of the city who implement the removal shall be billed to the violator and if the fees remain unpaid for 30 days, shall be imposed as a municipal lien against the real and personal property of the violator and shall be recorded in the public records of Miami-Dade County, and may be foreclosed by the city as such, pursuant to F.S. § 166.021. In addition, the city may utilize the code enforcement procedures set forth in chapter 2, article X, to address any violations.
- (b) Upon denial or revocation, the director shall give notice of such action to the applicant or the permittee in writing stating the action which has been taken and the reason thereof. If the action of the director is based on subsection (a)(2) or (3) of this section, the action shall be effective upon giving such notice to the permittee. Otherwise, such notice shall become effective within ten days unless appealed to the city commission.

(Ord. No. 9848, § 1, 6-14-84; Ord. No. 10693, § 1, 1-11-90; Code 1980, § 54-117; Ord. No. 11280, § 2, 7-13-95; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13585, § 2, 1-14-16; Ord. No. 13676, § 2, 4-27-17; Ord. No. 13792, § 1, 10-11-18)

#### Sec. 54-231. - Appeals.

- (a) Appeals shall be initiated within ten days of a permit denial or revocation by filing a written notice of appeal with the city manager, and a copy of same delivered the same day to the director. Any revocation effective immediately may also be appealed to the city commission by such filing within ten days.
- (b) The city manager shall place the appeal on the first non-planning and zoning city commission agenda for which proper notice can be given and shall notify the director of resilience and public works thereof. At the hearing upon appeal, the city commission shall hear and determine the appeal, and the decision of the city commission shall be final and effective immediately.
- (c) The filing of a notice of appeal by a permittee shall not stay an order by the director to remove a sidewalk cafe or parts thereof. Vestiges of the sidewalk cafe shall be removed immediately, as set out in section 54-230, pending disposition of the appeal and final decision of the city commission.
- (d) A permit which has been suspended or revoked pursuant to section 54-230(a)(1), (2) or (4) may be reinstated by the director of the department of resilience and public works at such time as the permittee has demonstrated that the violation has been corrected to the satisfaction of the department of public works.
- (e) A new permit shall not be issued or an existing permit shall not be reinstated for a minimum period of six

months after said issuance or reinstatement has been denied by the director of resilience and public works, or in the event of an appeal, by the city commission.

(Ord. No. 9848, § 1, 6-14-84; Ord. No. 10693, § 1, 1-11-90; Code 1980, § 54-118; Ord. No. 13123, § 2, 1-14-10; Ord. No. 13792, § 1, 10-11-18)

Sec. 54-232. - Enforcement.

Enforcement shall be as proscribed by Chapter 2, Article X, Code Enforcement, and any other remedies as provided by law.

(Ord. No. 13123, § 2, 1-14-10)

Secs. 54-233—54-260. - Reserved.



# King Street Outdoor Dining Design Guidelines

City of Alexandria  
Approved by Board of Architectural Review  
January 2006



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## Purpose

**These Guidelines provide standards for the use of outdoor dining areas along King Street and adjoining streets in order to maintain a quality appearance in keeping with the Street's historic character.**

The City of Alexandria permits outdoor dining along King Street and adjoining streets in Old Town through an administrative permitting process authorized by Section 6-800 of the City of Alexandria Zoning Ordinance. As per Section 6-805(O)(4), the design of each outdoor dining area must "comply with any Board of Architectural Review approved design guidelines." This document contains the guidelines of furniture and fixtures considered acceptable within the architectural and cultural framework of Old Town's main commercial corridor.

Central to the process of permitting outdoor dining along one of the nation's most historic streets is the necessity of ensuring that furniture and other items placed along the street will complement the overall character of the street and not detract from the district's architectural heritage. These Design Guidelines provide standards for the use of outdoor dining areas in order to enhance the historic character, visual quality and pedestrian safety of the area.

These guidelines apply to all outdoor dining areas that receive City approval through powers granted by Section 6-800 of the Zoning Ordinance. Failure to comply with these guidelines constitutes a violation of the City Zoning Ordinance.



## Background

The City of Alexandria is pleased to offer restaurants along King Street the option of utilizing the public sidewalk as outdoor dining areas. Outdoor dining gives restaurant patrons an amenity that has become an increasingly popular feature within the Washington area.

While the City has encouraged the use of outdoor dining arrangements, restaurant operators must be mindful of two important considerations: the safety and flow of pedestrian traffic, and the visual appropriateness within Old Town's historic district.

These Design Guidelines are intended to ensure that restaurants use the public sidewalk for outdoor dining in a way that is safe for pedestrians and appropriate for the historic district.

## Application Procedure

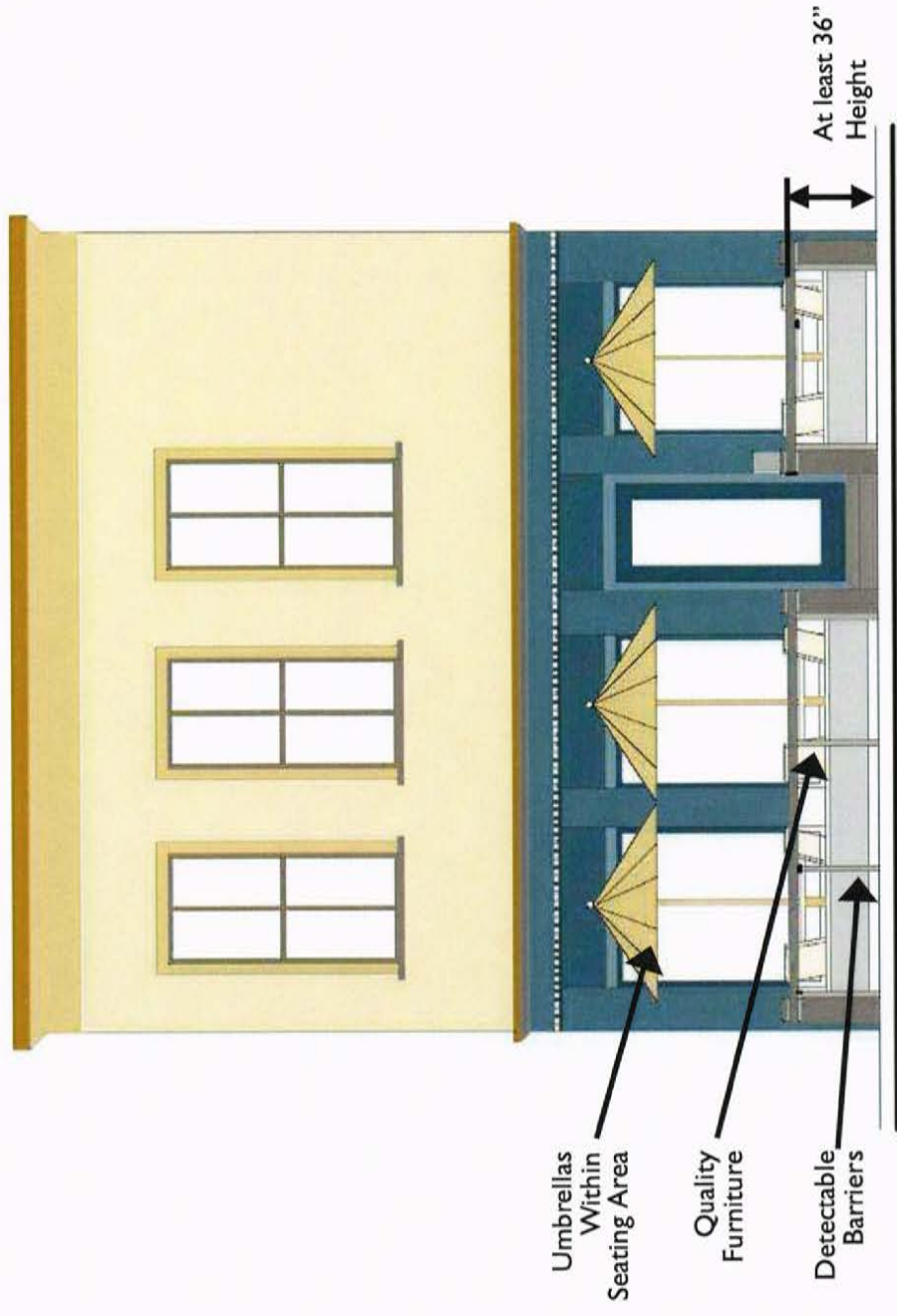
Outdoor dining is permitted along King Street and adjoining streets through an administrative approval process authorized by Section 6-800 of the City Zoning Ordinance. This administrative process saves time and expense by pre-establishing standards that must be followed for all outdoor dining set-ups.

To apply, a restaurant owner needs to complete the following.

- **Application Form:** A brief form with basic information about the restaurant and proposed number of seats
- **Site Plan:** A plan showing the proposed outdoor dining area with measurements (including a representation showing that at least 5 feet of unobstructed sidewalk space will remain for pedestrians).
- **Photos or Drawing of Furniture:** Photos or other graphic representation (including color and material) of furniture and umbrellas, needed for the City to verify that the proposed furniture conforms to these Design Guidelines.

For forms, information or questions, contact the Department of Planning and Zoning at 703.838.4666 or visit in person at City Hall, 301 King Street, Room 2100.

## Elements of a Quality Outdoor Seating Area





## Chapter I: Barriers

Dining area barriers (fences, gates, ropes etc.) are visually appealing and help to separate the dining area from the sidewalk. All barrier material must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint.

Barriers are required in the following instances:

### a) Required for Leading Edge of All Dining Areas:

A detectable barrier is required for the leading edge of all outdoor dining areas to ensure that visually impaired pedestrians using canes can detect the dining area safely. The *leading edge*, illustrated at left, is defined as the section of a dining area that is at or near a perpendicular angle to the building wall and/or curb line.

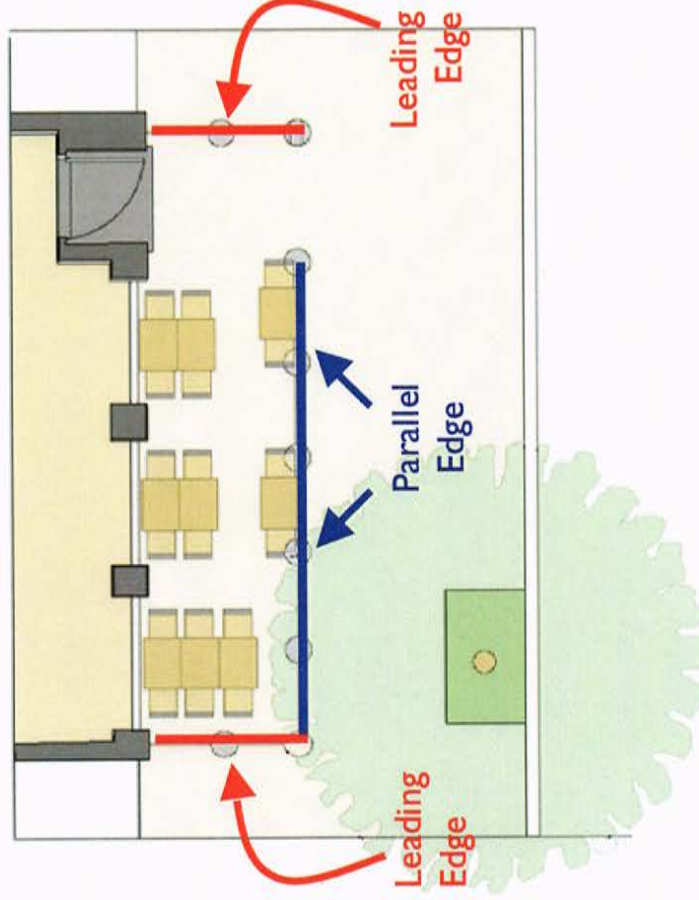
### b) Required for Full Perimeter of Some Dining Areas:

**Areas:** A detectable barrier is required for the full perimeter (with the exception of access openings) when the outdoor seating area extends more than 3 feet into the public right of way. The perimeter includes both the leading edge and parallel edge.

Restaurants which do not serve alcohol and whose outdoor seating area extends less than 3 feet into the public right-of-way are not required to enclose the full perimeter of the seating area, but may do so on an optional basis.

### c) Required for Full Perimeter of All Outdoor Dining Areas Serving Alcohol:

**State law** requires that outdoor dining areas where alcohol is served or consumed must enclose the area, with only one opening to the sidewalk for access.



**FIGURE 1**  
*Illustration of leading edge and parallel edge of barrier*

## 1.1 Barrier Designs

A wide variety of styles and designs are permissible for outdoor dining area barriers:

**Sectional Fencing:** Sectional fencing (generally defined as rigid fence segments that can be placed together to create a unified fencing appearance) is a desirable solution for outdoor seating areas using barriers. Such fencing is portable, but cannot be easily shifted by patrons or pedestrians, as can less rigid forms of enclosures.

Sectional fencing must be of metal (aluminum, steel, iron, or similar) or of wood construction and must be of a dark color (either painted or stained).



**FIGURE 2**  
*Acceptable sectional fencing design*



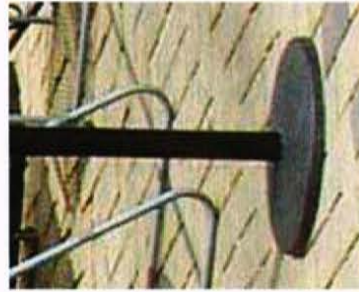
## 1.1 Barrier Designs

**Rope or Chain Rails:** Rope or chain-type barriers (generally defined as enclosures composed of a rope or chain suspended by vertical elements such as stanchions) are permitted if they meet the following guidelines:

- **Rope/Chain Diameter:** The rope or chain must have a minimum diameter of 1 inch, in order to maintain detectability by the visually impaired.
- **Posts:** Vertical support posts (stanchions, bollards, etc.) must be constructed of wood or metal (aluminum, steel, iron, or similar).
- **Stanchion Base Must Not Be A Tripping Hazard:** If a stanchion or other vertical supporting device is attached to a base, that base must be flat and must measure no more than one-half ( $\frac{1}{2}$ ) of an inch above the sidewalk surface. No domed stanchion bases are permitted.



**FIGURE 3**  
*Rope or chain barrier must have a minimum diameter of 1 inch*



**FIGURE 4**  
*Stanchion base must be flat and no more than 1/2" above sidewalk surface*



**FIGURE 5**  
*Domed stanchion bases are not permitted*

## 1.1 Barrier Designs

**Freestanding:** Any barrier (whether sectional fencing or rail-type) must be freestanding, without any permanent or temporary attachments to buildings, sidewalks or other infrastructure.



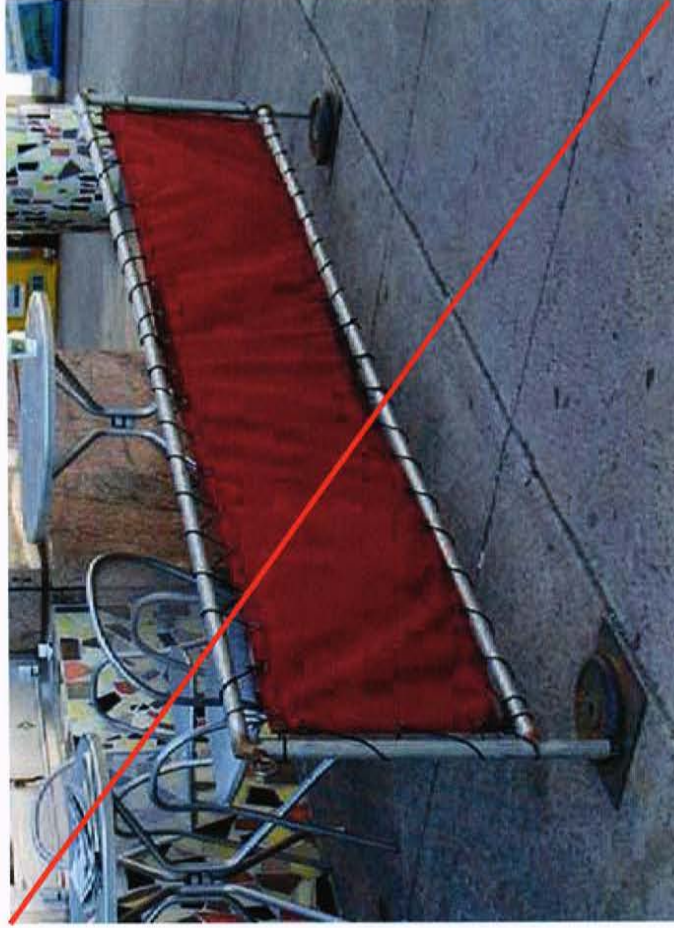
**FIGURE 6**  
*Acceptable sectional fencing design: freestanding*



## 1.1 Barrier Designs

### Prohibited Barrier Styles:

- **Fabric Inserts:** Fabric inserts (whether natural or synthetic fabric) of any size are not permitted to be used as part of a barrier.
- **Chain-link and Other Fencing:** The use of chain-link, cyclone fencing, chicken wire or similar appurtenances is prohibited. Materials not specifically manufactured for fencing or pedestrian control (including but not limited to buckets, food containers, tires, tree stumps, vehicle parts, pallets, etc.) and not expressly permitted elsewhere in these Guidelines may not be used as components of a barrier.



**FIGURE 7**  
*Fabric inserts are not permitted to be used as part of a barrier*

## 1.2 Barrier Measurements

To ensure their effectiveness as pedestrian control devices and their detectability for persons with visual impairments, barriers must meet the following measurement guidelines:

**Height:** The highest point of a barrier (such as a stanchion) must measure at least 36 inches in height, with the exception of planters.

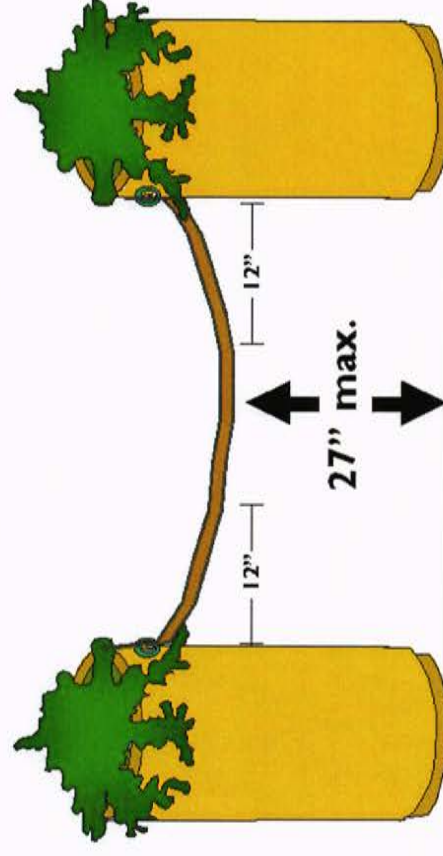
**“Open” Appearance:** Fences or other perimeter enclosures with a height of between 36” and 50” must be at least 50 percent open (see-through) in order to maintain visibility of street level activity. Any enclosure with a height over 50” must be at least 80 percent open (see-through).

**Maximum Distance from Ground:** All barriers must be detectable to visually impaired pedestrians who employ a cane for guidance. Therefore the bottom of barriers must be no greater than 27 inches above the sidewalk surface.

- **How to Measure Rope/Chain Distance from Ground:** In the case of a rope or chain enclosure, the rope/chain must not exceed 27 inches in height when measured 12 inches or more away from a vertical post (stanchion, bollard or other such support).



**FIGURE 8**  
*Sectional fencing barrier height must be at least 36"*



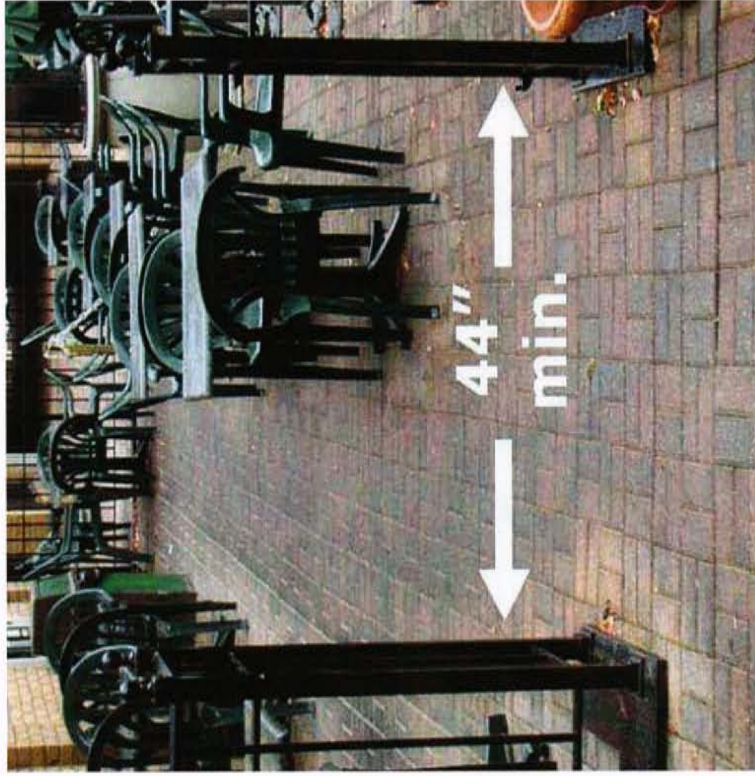
**FIGURE 9**  
*How to measure rope/chain distance from ground*



### 1.3 Access Openings

**Minimum Access Width:** Any access opening within the barrier must measure no less than 44 inches in width.

**Location:** Access openings should be placed in a location that will not create confusion for visually impaired pedestrians.



**FIGURE 10**  
**Minimum access width is 44 inches**





**FIGURE 11**  
*Acceptable planter design  
and material*



**FIGURE 12**  
*Height of plants  
may not exceed 8'*

## 1.4 Planters

Planters may be used in addition to or in place of other barrier designs. In addition, planters may be used in situations where no barrier is required (for example, where the outdoor dining area does not extend more than three feet into the sidewalk) in order to provide added visual interest and create a more attractive and welcoming atmosphere.

Planters and the plants contained within them must meet the following requirements:

**Maximum Height of Planters:** Planters may not exceed a height of 36 inches above the level of the sidewalk. (This pertains only to planters, not the plants contained therein.)

**Maximum Height of Plants:** Plants (whether live or artificial) may not exceed a height of 108 inches (8 feet) above the level of the sidewalk.



## I.4 Planters

**Planted Material:** All planters must have plants contained within them. If the plants within a planter die, the plants must be replaced or the planter removed from the public right-of-way. Artificial plants; empty planters; or planters with only bare dirt, mulch, straw, woodchips or similar material are not permitted.

Seasonal, thematic planter displays are encouraged.



**FIGURES 13, 14 and 15**  
**Acceptable planter design and material**



## Chapter 2: Furniture and Fixtures

King Street's retail liveliness depends on maintaining an attractive and high-quality atmosphere. As stated in the *King Street Retail Strategy*, "The quality of the streetscape is vitally important to King Street's retail ambience...The streetscape and the defining adjacent buildings are the most significant overall elements in providing a dynamic visual environment."

Outdoor dining furniture becomes a prominent part of the streetscape when used in the front of buildings, and such furniture needs to uphold the high standards applied to buildings and other improvements in Old Town.

A wide range of furniture styles, colors and materials are permitted. All furniture and fixtures must be maintained in good visual appearance, without visible fading, dents, tears, rust, corrosion, or chipped or peeling paint. All furniture and fixtures must be maintained in a clean condition at all times. All furniture and fixtures must be durable and of sufficiently sturdy construction as not to blow over with normal winds.

To ensure a quality visual appearance in keeping with the historic context of King Street's architecture, the conditions on the following pages apply to furniture (tables and chairs).



## 2.1 Types of Furniture

**Prohibited Furniture:** All furniture other than tables, chairs and umbrellas is prohibited. This includes but is not limited to serving stations, bar counters, shelves, racks, sofas, televisions, trash receptacles, heaters and torches.

**Freestanding:** Furniture and fixtures must not be secured to trees, lampposts, street signs, hydrants, or any other street infrastructure by means of ropes, chains or any other such devices, whether during restaurant operating hours or at times when the restaurant is closed.

Other furniture or equipment  
not permitted



**FIGURE 16**  
*Furniture other than tables, chairs and umbrellas is not permitted*





**FIGURE 17**  
Furniture may be  
of dark color or  
natural unpainted  
material



**FIGURE 18**  
No white or fluorescent furniture is permitted

## 2.2 Tables

Tables need to be functional, not only for patrons, but also for pedestrians, given the limited space available for outdoor dining on many Old Town sidewalks.

Outdoor dining furniture must also contribute to the overall atmosphere of Old Town's commercial district and be complementary in both appearance and quality.

**Color:** Tables may be colored or of a natural unpainted material (i.e., wood, metal etc.). Tables are not permitted to be white plastic or of any fluorescent or other strikingly bright or vivid color.



## 2.2 Tables

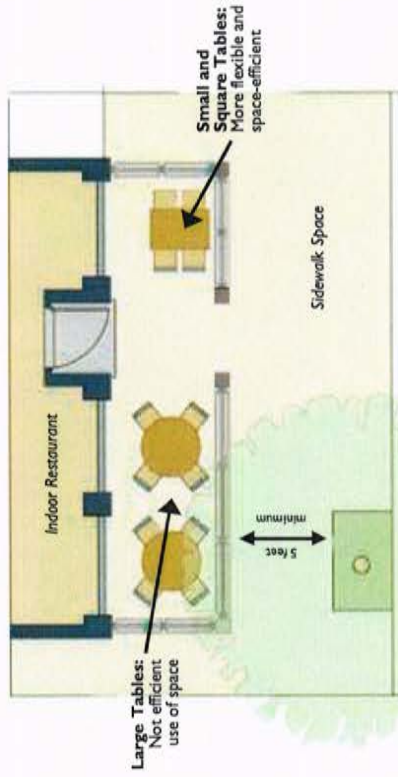
**Size and Shape:** The size and shape of tables strongly affects the functionality of an outdoor dining area. Due to Old Town's narrow sidewalks, restaurants should strive for space-efficient layouts and furniture configuration.

### Square or Rectangular Tables Preferred:

Square or rectangular tables are strongly recommended for use in Old Town's outdoor dining areas.

- **Better Fit:** Square or rectangular tables may fit flush against a building's wall and can permit more usable surface area for patrons while at the same time leaving more space available for pedestrians.
- **More Flexibility:** Square or rectangular tables are more flexible for use in outdoor dining areas. Such tables may be combined to seat larger parties much more effectively than can round tables.

**Smaller Tables Preferred:** Smaller tables work better than larger tables and are more efficient and flexible. Although optimal table size varies by each restaurant's specific outdoor dining layout, smaller tables are preferred.



**FIGURE 19**  
*Efficient furniture layout - smaller furniture works better on King Street*



**FIGURES 20 and 21**  
*Smaller bistro-style tables are more efficient for use along King Street*

### 2.3 Chairs

Chairs, like other outdoor dining elements, must contribute to the overall atmosphere of Old Town's commercial district and must be complementary in both appearance and quality.

**Color:** Chairs may be colored or of a natural unpainted material (i.e., wood, metal etc.). Chairs are not permitted to be white plastic or of any fluorescent or other strikingly bright or vivid color.

**Upholstery:** Upholstered chairs are permitted. Upholstery is not permitted to be of any fluorescent or other strikingly bright or vivid color.

**Matching:** All chairs used within a particular establishment's outdoor seating area must match each other by being of visually similar design, construction and color.



**FIGURE 22**  
*Chairs used in an outdoor dining area must match each other*



**FIGURE 23**  
*No white plastic or fluorescent furniture is permitted*



**FIGURE 24**  
*Furniture may be of dark color or natural unpainted material*





**FIGURE 25**  
*Acceptable umbrella design*

## 2.4 Umbrellas

Umbrellas can add a welcoming feel to outdoor dining areas and provide shelter from the elements, making their use desirable for outdoor dining applications. Appropriately designed and sized umbrellas are permitted for use under this outdoor dining program. Umbrellas must be free of advertisements and contained within the outdoor dining area, and the lowest dimension of an extended umbrella must be at least 7 feet above the sidewalk surface. All umbrellas must comply with the following conditions.

### **Contained Within the Outdoor Seating Area:**

To ensure effective pedestrian flow, all parts of any umbrella (including the fabric and supporting ribs) must be contained entirely within the outdoor seating area.

### **Minimum Height for Sidewalk Clearance:**

When extended, the umbrella must measure at least 7 feet above the surface of the outdoor dining area in order to provide adequate circulation space below. This measurement must include not only the umbrella frame and panels, but also any decorative borders such as fringes, tassels, or other such ornamentation.

**Maximum Height:** Any part of an umbrella used in an outdoor seating area may not exceed a height of 120" (10 feet) above the level of the sidewalk, in order to avoid causing an undue visual obstruction of other businesses.

## 2.4 Umbrellas

**Colors:** Umbrellas must blend appropriately with the surrounding built environment. Therefore, umbrella fabric is not permitted to be of any fluorescent or other strikingly bright or vivid color. Umbrella covers must be of one solid color.

**Size and Shape:** The size and shape of an umbrella strongly affects its functionality within a constrained space such as an outdoor dining area. Due to the narrow measurements of most restaurants' outdoor dining areas, restaurants using umbrellas should strive for space-efficient umbrella designs.

**Square or Rectangular Umbrellas Preferred:** Square or rectangular umbrellas, as opposed to round or octagonal umbrellas, are strongly recommended for use in Old Town's outdoor dining areas.

**Market-Style Umbrellas Preferred:** Market-style umbrellas – those designed specifically for patio or outdoor restaurant use – are preferred for outdoor dining purposes.

**Material:** Umbrella fabric must be of a material suitable for outdoor use, and must be canvas-type. No plastic fabrics, plastic/vinyl-laminated fabrics, or any type of rigid materials are permitted for use as umbrellas within an outdoor seating area.

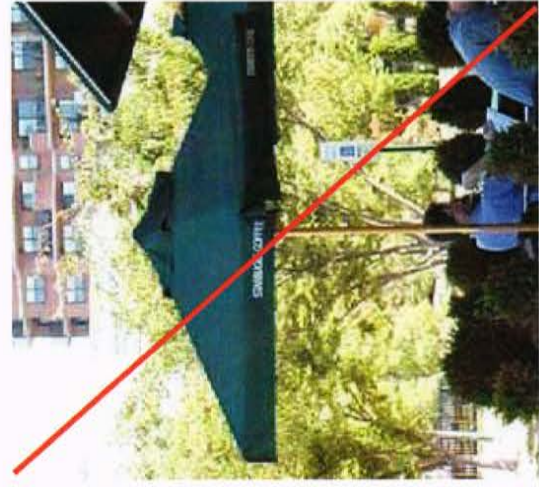


**FIGURE 26**  
*Acceptable umbrella design: Solid color, space-efficient, market-style, canvas material*



## 2.4 Umbrellas

**Signage or Wording Prohibited:** Umbrellas must not contain signage for the restaurant or for any other entity in the form of wording, logos, drawings, pictorial or photographic representations, or any other likewise identifying characteristic.



**FIGURES 27 and 28**  
**Signage on umbrellas**  
**not permitted**



## 2.5 Sidewalk Coverings

The floor of outdoor seating areas should be uncovered sidewalk material as to provide continuity with the adjacent public right-of-way. Floor coverings or raised platforms may not be used within outdoor dining areas.

### Prohibited Sidewalk Coverings:

- **Carpet:** Prohibited sidewalk coverings include carpet or other flooring material constructed of fabric, canvas, wool, tile, linoleum, nylon, vinyl, or any covering that is intended to resemble turf.
- **Platforms:** Raised decks, platforms, or other such surfaces are not permitted within outdoor dining areas.



**FIGURE 29**  
*Outdoor dining areas should be uncovered sidewalk material*

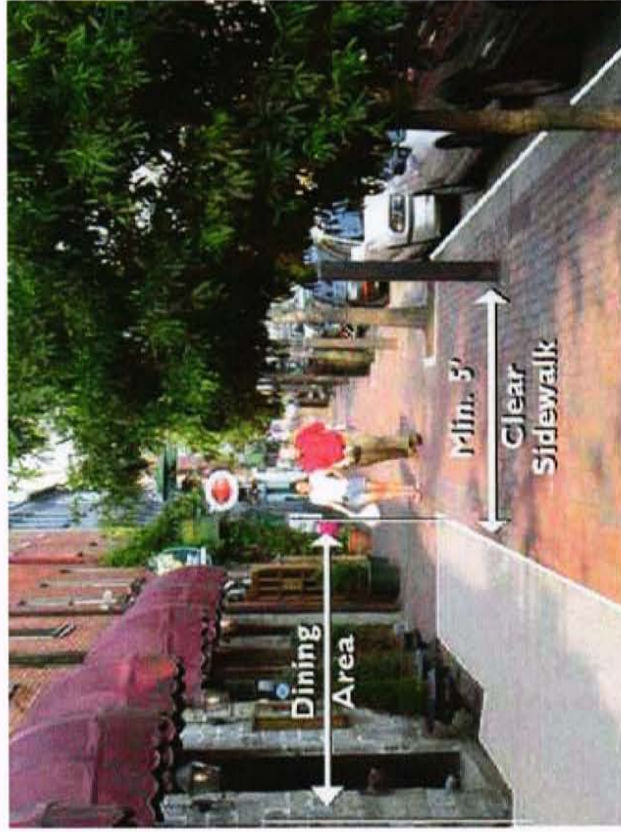
## 2.6 Circulation Room

As established in the Outdoor Dining Ordinance, all outdoor dining areas must leave at least 5 feet of unobstructed pedestrian space. This 5 feet of pedestrian space must be clear of obstructions caused by trees, tree wells, posts, hydrants, or any other infrastructure. In addition, no part of an outdoor dining area (including plants) may extend into the 5-foot-unobstructed zone.

If a perimeter enclosure is used, adequate space must be provided within the enclosed outdoor dining area to permit movement of patrons and waitstaff. Waitstaff may not serve patrons from beyond the perimeter enclosure.

## 2.7 Signage

Signage is permitted within outside dining areas only with a valid City permit. No extra or additional signage is permitted solely as a result of an establishment's participation in this outdoor dining program.



**FIGURE 30**  
*Outdoor dining areas must leave at least 5 feet of unobstructed pedestrian space*



## 2.8 Setback from Other Businesses

Restaurants need to be mindful of adjoining businesses when using outdoor dining areas, making sure that neighboring businesses remain visible to pedestrians and motorists.

A restaurant may be required to adjust the outdoor seating area's layout, dimensions or distance from the property line (2 feet or more) to ensure that this visibility is maintained.



**FIGURE 31**  
*Neighboring businesses must remain visible to pedestrians and motorists*