

INTRODUCED: September 24, 2012

AN ORDINANCE No. 2012-189-189

To amend and reordain ch. 90, art. II of the City Code by adding therein a new div. 10, consisting of new sections 90-271 through 90-281, and to amend Appendix A of the City Code by adding therein new fees for sections 90-272 and 90-274, for the purpose of permitting sidewalk cafés within the public sidewalk and excluding sidewalk cafés from the general encroachment provisions set forth in the City Code.

Patron – Mayor Jones (By Request)

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: OCT 22, 2012 AT 6 P.M.
FINAL PUBLIC HEARING: NOV 12, 2012 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That Chapter 90, Article II, of the Code of the City of Richmond (2004) be and is hereby amended and reordained by adding therein a new Division 10, consisting of new sections numbered 90-271 through 90-281, as follows:

DIVISION 10.

SIDEWALK CAFÉS

Sec. 90-271. Definitions.

AYES: 8 NOES: 0 ABSTAIN: _____

ADOPTED: NOV 12 2012 REJECTED: _____ STRICKEN: _____

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning;

Director of planning and development review means the director of planning and development review of the city, and includes the director's designee.

Director of public works means the director of public works of the city and, except in section 90-275 of this Code pertaining to sidewalk café permit revocation and suspension, includes the director's designee.

Food or beverage service establishment means an establishment located in a building, which sells food or beverages and provides seating and tables or counters within the building for use by patrons to consume food or beverages sold in the building, and which is located within a zoning district as set forth in chapter 114 of this Code in which the establishment is a use for which the zoning district regulations permit outdoor dining.

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

Sidewalk café 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 adjacent to a food or beverage service establishment having the same operator. A sidewalk café is not considered an "encroachment" as defined in article I of this chapter so long as all outdoor facilities related thereto are temporary in nature, are not permanently affixed so as to extend below, on or above

the sidewalk, involve no penetration of the sidewalk surface, are not attached to any building, and are readily removable without damage to the surface of the sidewalk.

Sec. 90-272. Sidewalk café permit: application, approval and general provisions.

(a) *Permit required; enforcement.* Subject to the provisions of this division, a sidewalk café may be operated within a portion of the public sidewalk only upon approval of a sidewalk café permit as provided for in this section. No other use of the area devoted to the sidewalk café shall be permitted, except normal use as a public sidewalk during the hours that the sidewalk café is not operated. The design, operation and use of a sidewalk café shall comply with the approved permit. It shall be the responsibility of the director of public works to enforce the provisions of this division as provided in article II of this chapter.

(b) *Application.* Application for a sidewalk café permit shall be made to the director of planning and development review on such application form and subject to such written procedures as the director may establish for the purpose. Application for a sidewalk café permit shall be made by the operator of a properly licensed and lawfully operated food or beverage service establishment that is located at street level adjacent to the proposed sidewalk café. The application shall be signed by the operator of the establishment and by the owner of the property on which the establishment is located, if the owner is not the operator.

(c) *Plan and other materials to accompany application.* The following plan and other materials shall be submitted in triplicate with the application for a sidewalk café permit:

- (1) A plan drawn to scale and with dimensions, where applicable, showing:
 - a. The layout and arrangement of the proposed sidewalk café, including its overall dimensions, aisle widths, access to the adjacent building, and the locations and dimensions of chairs, tables, umbrellas, barriers, outdoor heating

devices and other appurtenances to be located within the boundaries of the proposed sidewalk café; and

b. The following sidewalk conditions and features located within the boundaries of the proposed sidewalk café and within ten feet of such boundaries: location of street right-of-way line, existing sidewalk paving material and width measured from the building to the face of the curb and from the proposed sidewalk café to the face of the curb; the locations of tree wells, sidewalk grates, benches, bus passenger shelters, mailboxes, newspaper boxes, lampposts, traffic signal poles, traffic and parking signs, parking meters, wheelchair ramps, driveways, fire hydrants, trash receptacles and similar sidewalk features or obstructions; and the boundaries of any existing adjacent sidewalk café.

(2) Verification of water closets, lavatories and seating capacity:

a. The number of water closets and lavatories for each sex provided in the existing food or beverage service establishment; and

b. The seating capacity of the proposed sidewalk café.

(3) Photographs or other graphic representations, together with specifications, which depict the design, materials and colors of chairs, tables, umbrellas, barriers and other appurtenances to be located within the boundaries of the proposed sidewalk café;

(4) Photographs of the proposed site of the sidewalk café and within ten feet thereof, showing the relationship of the site to the adjacent building and showing the features enumerated in subsection (c)(1)(b) of this section; and

(5) Such additional information as the director of planning and development review or the director of public works may reasonably require as needed to determine compliance with the provisions of this division.

(d) *Permit application fee.* An application and processing fee, as set forth in appendix A to this Code, shall accompany each application for a sidewalk café permit. Such fee shall be nonrefundable.

(e) *Indemnification and insurance requirements to be met.* Proof of compliance with the indemnification and insurance requirements set forth in section 90-69(a)(4) and (5) of this article shall be submitted to and approved by the director of public works prior to approval of a sidewalk café permit.

(f) *Fees and taxes to be paid.* All city fees and taxes required by law relative to the food or beverage service establishment with which the proposed sidewalk café 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 café permit.

(g) *Action on permit application.* The director of planning and development review and the director of public works shall jointly approve, approve with conditions or deny the application for a sidewalk café permit. Approval or approval with conditions shall be granted only if the proposed sidewalk café complies with the design guidelines, sidewalk café standards, uniform statewide building code and other applicable provisions of this division. Approval of the application shall not be granted unless the director of public works is satisfied that adequate space will remain in the public sidewalk area to facilitate safe and convenient circulation of pedestrian traffic. Upon approval, the permit application shall constitute the sidewalk café permit.

(h) *Availability of approved permit on the premises.* The approved sidewalk café permit and related plan for layout and arrangement shall be available on the premises of the food or beverage service establishment.

Sec. 90-273. Sidewalk café permit: changes to approved permit.

No material change to an approved sidewalk café permit shall be made without prior written approval by the director of planning and development review and the director of public works, provided that the director of public works may modify an approved permit if the director finds there is a superseding public need relative to use of the adjacent sidewalk area.

Sec. 90-274. Sidewalk café permit: duration, annual renewal and transferability.

(a) *Duration of sidewalk café permit.* A sidewalk café permit shall be valid from April 1 to March 31 of the following calendar year, unless otherwise revoked.

(b) *Annual renewal.* An approved sidewalk café permit shall be renewable on an annual basis, unless withdrawn in writing by the applicant or revoked or suspended pursuant to the provisions of section 90-275. Annual renewal of the permit shall be subject to the operator of the sidewalk café and the property owner signing an application and payment of the annual renewal fee as set forth in appendix A to this Code by no later than March 15. Renewal shall be subject to compliance with the indemnification and insurance provisions and sidewalk café standards of this division in effect at the date of renewal. All city fees and taxes required by law relative to the food or beverage service establishment with which the proposed sidewalk café 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 renewal of a sidewalk café permit.

(c) *Transferability.* A sidewalk café permit shall not be transferable to another operator.

Sec. 90-275. Sidewalk café permit: revocation and suspension.

(a) *Generally.* Operation of a sidewalk café is a licensed privilege granted by the city to occupy a portion of the public sidewalk area and is predicated on the sidewalk café being operated in compliance with all applicable regulations and on maintaining the superseding public interest in use of sidewalks in the city. An approved sidewalk café permit may be revoked or suspended as provided in this section.

(b) *Revocation of approved permit.*

(1) The director of public works shall have the authority to revoke, which revocation shall not be appealable, an approved sidewalk café permit if it is determined that any of the following have occurred:

a. The applicant has misrepresented or provided false information in the permit application.

b. The sidewalk café permit has been suspended more than two times in a 12-month period on grounds of noncompliance pursuant to subsection (b)(1)(a) of this section.

c. The sidewalk café has been operated in such manner as to create a public nuisance or to constitute a hazard to the public health, safety or welfare.

d. Any health regulation, ABC regulation or law or regulation regarding the possession, sale or consumption of controlled substances has been violated in conjunction with the operation of the sidewalk café.

e. Any city fees or taxes required by law relative to the sidewalk café, the food or beverage service establishment with which it is associated or the

property on which the establishment is located are delinquent or required city licenses have not been maintained.

f. It has been determined that there is a superseding public need relative to the portion of the sidewalk occupied by or otherwise affected by the sidewalk café.

(2) Before revocation of a sidewalk café permit, the director of public works shall provide written notice to the operator of the sidewalk café setting forth the effective date of the revocation and the grounds therefore.

(3) In the case of revocation of a sidewalk café permit on grounds other than specified in subdivision (1)(f) of this subsection, the operator of the sidewalk café shall not be permitted to re-apply for a permit to operate a sidewalk café adjacent to the same food or beverage service establishment.

(c) *Suspension of approved permit.*

(1) The director of public works shall have the authority to suspend, which suspension shall not be appealable, an approved sidewalk café permit for a period of up to 30 days, or such longer period as may be necessary in the case of work in the sidewalk area or other portion of the street, if it is determined that any of the following have occurred:

a. The sidewalk café or the operation thereof is not in compliance with the approved permit, applicable design guidelines or any of the sidewalk café standards set forth in this division.

b. It has been determined that there is a superseding public need relative to the portion of the sidewalk occupied by or otherwise affected by the sidewalk café.

(2) Before suspension of a sidewalk café permit, the director of public works shall provide written notice to the operator setting forth the effective date of the suspension, the length of the suspension and the grounds therefore.

(3) The director of public works may reinstate a sidewalk café permit when the director is satisfied that the grounds for the suspension have been remedied.

Sec. 90-276. Marking of sidewalk café boundaries.

After approval of a sidewalk café permit and prior to initial occupancy of any area approved for use as a sidewalk café, the operator of the sidewalk café shall notify the director of public works, who shall be responsible for marking the corners of the approved sidewalk café area in a conspicuous manner on the sidewalk surface.

Sec. 90-277. Sidewalk café design guidelines.

(a) *Preparation.* Design guidelines for sidewalk cafés shall be prepared by the director of planning and development review. The design guidelines shall be in compliance with applicable provisions of the uniform statewide building code, the current edition of American with Disabilities Act standards for accessible design and other applicable codes, ordinances and regulations.

(b) *Status.* The design guidelines shall be adopted by resolution of the city planning commission, and are incorporated herein by reference. The design guidelines may be amended from time to time by resolution adopted by the commission.

(c) *Compliance.* Every sidewalk café shall be designed and operated in compliance with the design guidelines.

Sec. 90-278. Sidewalk café standards; location.

(a) *Generally.* The sidewalk café shall be located adjacent to a portion of a building occupied at street level by a food or beverage service establishment having the same operator. In a case where the building occupied by such establishment is set back from the street right-of-way line, and the entire setback area is lawfully used for purposes of outdoor dining pursuant to applicable zoning regulations, the sidewalk café shall be permitted to be located adjacent to such outdoor dining area. In no case shall a sidewalk café extend beyond the extremities of the building or portion thereof occupied by the food or beverage service establishment.

(b) *Pedestrian passageway.*

(1) A pedestrian passageway within the sidewalk area outside of the sidewalk café shall be observed, and shall consist of a continuous area between the sidewalk café and the back of the curb along the entire length of the sidewalk café. Such pedestrian passageway shall be not less than five feet in width, except as provided in subdivision (2) of this subsection, and shall be unobstructed by any tree well, bench, bus passenger shelter, mailbox, newspaper box, lamppost, traffic signal pole, traffic or parking sign, parking meter, wheelchair ramp, driveway, fire hydrant, trash receptacle or similar sidewalk feature.

(2) The director of public works may approve a lesser or require a greater pedestrian passageway width if the director finds that such is justified based on: the volume of pedestrian traffic; physical condition, alignment and overall width of the sidewalk; volume of vehicle traffic on the street, lane width and function or speed limit;

or similar factors; provided that the director is satisfied that an adequate continuous passageway for safe and convenient circulation of pedestrian traffic will be maintained along the sidewalk.

(c) *Pedestrian visibility.* The location, dimensions, layout and other features of the sidewalk café shall be designed so as not to unreasonably obstruct pedestrian visibility of the ground floor of buildings that adjoin the food or beverage service establishment to which the sidewalk café is related.

(d) *Distance from property zoned residential.* The sidewalk café shall not be located within 100 feet of and fronting along the same street as property in a residential zoning district, other than the R-63 district.

Sec. 90-279. Sidewalk café standards; barriers.

Barriers consistent with the design guidelines shall be installed along the entire length and both ends of any sidewalk café that extends more than three feet into the sidewalk, provided that:

(a) In the case of a sidewalk café that serves alcoholic beverages, barriers shall be installed in accordance with ABC requirements.

(b) Subject to applicable ABC requirements, at least one opening in the barrier along the length of a sidewalk café shall be provided for purposes of access to and from the sidewalk café, unless the director of public works determines that an alternate opening is appropriate.

(c) Required means of egress from the adjacent food or beverage service establishment shall be maintained at all times.

Sec. 90-280. Sidewalk café standards; features and appurtenances.

(a) *Layout, arrangement and appurtenances.* The layout and arrangement of the sidewalk café and the design, materials and colors of chairs, tables, umbrellas, outdoor heating devices and other appurtenances within the sidewalk café shall comply with the design guidelines.

(b) *Signage.* Signs within the sidewalk café shall be permitted only as specified in the design guidelines.

(c) *Certain features and appurtenances not permitted.* The following shall not be permitted within a sidewalk café: televisions, other electronic audio or visual devices or means of producing amplified sound; cash registers or card readers; wait stations; vending machines or similar items. Trash containers shall not be located within a sidewalk café in any case where service to patrons by wait staff is provided.

Sec. 90-281. Sidewalk café standards; operation.

(a) *Hours of operation.* The sidewalk café may be occupied by patrons only between the hours of 7:00 a.m. and 11:00 p.m. daily.

(b) *Daily removal.* All tables, chairs, umbrellas, barriers and other fixtures and appurtenances shall be removed from the sidewalk café each day within one hour of closing to patrons. Such items shall be stored in an enclosed building.

(c) *Removal in case of storm warning.* All tables, chairs, umbrellas, barriers and other fixtures and appurtenances shall be removed from the sidewalk café in case of a severe storm warning.

(d) *Certain activities not permitted.* Within the sidewalk café, there shall be no live entertainment, food or beverage preparation or service to standing patrons.

(e) *Smoking.* The operator shall not permit smoking within the sidewalk café.

(f) *ABC requirements.* All ABC requirements shall be met in the case of a sidewalk café where alcoholic beverages are served or are available to patrons.

(g) *Cleanliness.* The sidewalk café shall be kept sanitary, neat and clean at all times, and free from accumulation of leftover food and beverages, used eating and drinking utensils, and litter. The operator of the sidewalk café shall be responsible for cleaning up any trash or litter on the adjacent sidewalk area emanating from the sidewalk café. Covered trash containers, consistent with the design guidelines, shall be provided within the sidewalk café in any case where no service to patrons by wait staff is provided.

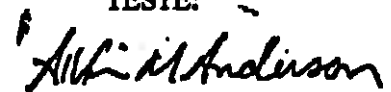
§ 2. That Appendix A to the Code of the City of Richmond (2004) be and is hereby amended and reordained by adding therein new fees for sections 90-272 and 91-274 of the Code of the City of Richmond (2004) as follows:

<i>Code Section</i>	<i>Description</i>	<i>Fee</i>
90-272	Application and processing fee for sidewalk café permit	\$150.00
90-274	Fee for annual renewal of sidewalk café permit	\$100.00

§ 3. This ordinance shall be in force and effect upon adoption.

A TRUE COPY:

TESTE:

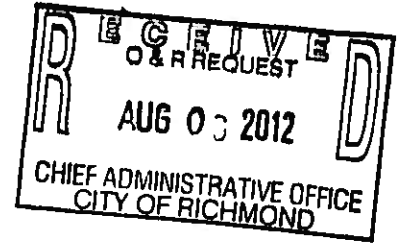


City Clerk



CITY OF RICHMOND

INTRACITY CORRESPONDENCE



O&R REQUEST

DATE: July 31, 2012

EDITION: 1

TO: The Honorable Members of City Council

THROUGH: Dwight C. Jones, Mayor
(This in no way reflects a recommendation on behalf of the Mayor)

THROUGH: Byron C. Marshall, Chief Administrative Officer

THROUGH: Peter H. Chapman, DCAO-Economic and Community Development & Planning

FROM: Mark A. Olinger, Director Planning and Development Review Department

Amendment of the Code of Ordinances (Chapter 90, Article II, Division 10) for the Purpose of Permitting Sidewalk Cafés Within the Public Sidewalk.

RECEIVED

AUG 29 2012

OFFICE OF CITY ATTORNEY

ORD. OR RES. No. _____

PURPOSE: To amend and reordain Chapter 90, Article II by adding a new Division 10 which shall include Sections 90-271 through 90-281 and including an amendment to Appendix A, Sections 90-272 & 90-274.

REASON: The proposed ordinance would amend the Code of Ordinances for the purpose of permitting sidewalk cafés within the public sidewalk such that sidewalk cafés would not be subject to the general encroachment provisions.

RECOMMENDATION: Pursuant to consideration by the Land Use Committee at its September 18, 2012 meeting a public hearing would be held by City Council at its September 24, 2012 meeting. The recommended schedule would afford sidewalk café operators an opportunity to take advantage of the remaining outdoor season.

BACKGROUND: The proposed Sidewalk Café Ordinance will permit enhanced use of the public right-of-way through the promotion of pedestrian and retail friendly activities, will facilitate a pedestrian oriented environment while protecting the health, safety and general welfare, will expedite the approval of such facilities while ensuring that the public's use of the sidewalk will not be unduly impaired and will protect adjacent uses from any adverse impacts.

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It should be noted that under the proposed ordinance sidewalk cafés are not considered an encroachment for the reason that they are temporary in nature since they are not permitted to be permanently affixed to the sidewalk or adjacent building. Application review is administrative requiring approval by the Directors of Planning and Development Review and Public Works. It is anticipated that review times will be reduced from several weeks for an an encroachment permit to a matter of days for sidewalk café permit.

The proposed Sidewalk Café Ordinance has received extensive internal vetting by the Department of Public Works, the Department of Planning and Development Review and the Law Department.

Finally, staff is currently aware of two restaurant operators that are interested in opening sidewalk cafés under the proposed ordinance.

FISCAL IMPACT/COST: Staff time for preparation of draft ordinance; publishing of public notice.

FISCAL IMPLICATIONS: N/A.

BUDGET AMENDMENT NECESSARY: N/A.

REVENUE TO CITY: Permit fees associated with Sidewalk Café Applications.

DESIRED EFFECTIVE DATE: Upon Adoption.

REQUESTED INTRODUCTION DATE: September 10, 2012.

CITY COUNCIL PUBLIC HEARING DATE: September 24, 2012.

REQUESTED AGENDA: CONSENT.

RECOMMENDED COUNCIL COMMITTEE: Land Use Committee.

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: N/A

AFFECTED AGENCIES: Office of Chief Administrative Officer & Law Department (for review of draft ordinance)

RELATIONSHIP TO EXISTING ORD. OR RES.: Chapter 90 of the City Code would be amended by this request.

REQUIRED CHANGES TO WORK PROGRAM(S): N/A.

ATTACHMENTS: Copy of the proposed ordinance.

STAFF: Roy W. Benbow, Principal Planner
Department of Planning and Development Review (Room 508)
646-3409

CHAPTER 90. STREETS, SIDEWALKS AND PUBLIC WAYS

ARTICLE II. USE OF STREETS, SIDEWALKS AND PUBLIC WAYS

DIVISION 10. SIDEWALK CAFÉS

Sec. 90-271. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Director of planning and development review means the director of the department of planning and development review of the city, and shall include the director's designee.

Director of public works means the director of the department of public works of the city and, except in section 90-275 of this division pertaining to sidewalk café permit revocation and suspension, shall include the director's designee.

Food or beverage service establishment means an establishment located in a building and which sells food or beverages and provides seating and tables or counters within the building for use by patrons to consume food or beverages sold in the building, and which is located within a zoning district as set forth in chapter 114 of this Code in which it is a use for which the zoning district regulations permit outdoor dining.

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

Sidewalk café 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 adjacent to a food or beverage service establishment having the same operator. A sidewalk café shall not be considered an "encroachment" as defined in article I of this chapter so long as all outdoor facilities related thereto are temporary in nature, are not permanently affixed so as to extend below, on or above the sidewalk, involve no penetration of the sidewalk surface, are not attached to any building, and are readily removable without damage to the surface of the sidewalk.

Sec. 90-272. Sidewalk café permit: application, approval and general provisions.

- (a) *Permit required; enforcement.* Subject to the provisions of this division, a sidewalk café may be operated within a portion of the public sidewalk only upon approval of a sidewalk café permit as provided for in this section. No other use of the area devoted to the sidewalk café shall be permitted, except normal use as a public sidewalk during the hours that the sidewalk café is not operated. The design, operation and use of a sidewalk café shall comply with the approved permit. It shall be the responsibility of the director of public works to enforce the provisions of this division as provided in article II of this chapter.

(b) *Application.* Application for a sidewalk café permit shall be made to the director of planning and development review on such application form and subject to such written procedures as the director may establish for the purpose. Application for a sidewalk café permit shall be made by the operator of a properly licensed and lawfully operated food or beverage service establishment that is located at street level adjacent to the proposed sidewalk café. The application shall be signed by the operator of the establishment and by the owner of the property on which the establishment is located, if the owner is not the operator.

(c) *Plan and other materials to accompany application.* The following plan and other materials shall be submitted in triplicate with the application for a sidewalk café permit.

(1) A plan drawn to scale and with dimensions, where applicable, showing:

- a. The layout and arrangement of the proposed sidewalk café, including its overall dimensions, aisle widths, access to the adjacent building, and the locations and dimensions of chairs, tables, umbrellas, barriers, outdoor heating devices and other appurtenances to be located within the boundaries of the proposed sidewalk café; and
- b. The following sidewalk conditions and features located within the boundaries of the proposed sidewalk café and within ten feet of such boundaries: location of street right-of-way line, existing sidewalk paving material and width measured from the building to the face of the curb and from the proposed sidewalk café to the face of the curb; the locations of tree wells, sidewalk grates, benches, bus passenger shelters, mailboxes, newspaper boxes, lampposts, traffic signal poles, traffic and parking signs, parking meters, wheelchair ramps, driveways, fire hydrants, trash receptacles and similar sidewalk features or obstructions; and the boundaries of any existing adjacent sidewalk café.

(2) Verification of water closets, lavatories and seating capacity:

- a. The number of water closets and lavatories for each sex provided in the existing food or beverage service establishment; and
- b. The seating capacity of the proposed sidewalk café.

(3) Photographs or other graphic representations, together with specifications, which depict the design, materials and colors of chairs, tables, umbrellas, barriers and other appurtenances to be located within the boundaries of the proposed sidewalk café;

(4) Photograph(s) of the proposed site of the sidewalk café and within ten feet thereof, showing the relationship of the site to the adjacent building and showing the features enumerated in subparagraph (c) (1)b of this section;

- (5) Such additional information as the director of planning and development review or the director of public works may reasonably require as needed to determine compliance with the provisions of this division.
- (d) *Permit application fee.* An application and processing fee, as set forth in appendix A to this Code, shall accompany each application for a sidewalk café permit. Such fee shall be nonrefundable.
- (e) *Indemnification and insurance requirements to be met.* Proof of compliance with the indemnification and insurance requirements set forth in section 90-69 (a) (4) and (5) of this article shall be submitted to and approved by the director of public works prior to approval of a sidewalk café permit.
- (f) *Fees and taxes to be paid.* All city fees and taxes required by law relative to the food or beverage service establishment with which the proposed sidewalk café 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 café permit.
- (g) *Action on permit application.* The director of planning and development review and the director of public works shall jointly approve, approve with conditions or deny the application for a sidewalk café permit. Approval or approval with conditions shall be granted only if the proposed sidewalk café complies with the design guidelines, sidewalk café standards, uniform statewide building code and other applicable provisions of this division. Approval of the application shall not be granted unless the director of public works is satisfied that adequate space will remain in the public sidewalk area to facilitate safe and convenient circulation of pedestrian traffic. Upon approval, the permit application shall constitute the sidewalk café permit.
- (h) *Availability of approved permit on the premises.* The approved sidewalk café permit and related plan for layout and arrangement shall be available on the premises of the food or beverage service establishment.

Sec. 90-273. Sidewalk café permit: changes to approved permit.

No material change to an approved sidewalk café permit shall be made without prior written approval by the director of planning and development review and the director of public works, provided that the director of public works may modify an approved permit if the director finds there is a superseding public need relative to use of the adjacent sidewalk area.

Sec. 90-274. Sidewalk café permit: duration, annual renewal and transferability.

- (a) *Duration of sidewalk café permit.* A sidewalk café permit shall be valid from April 1 to March 31 of the following calendar year, unless otherwise revoked.
- (b) *Annual renewal.* An approved sidewalk café permit shall be renewable on an annual basis, unless withdrawn in writing by the applicant or revoked or suspended pursuant to the provisions of section 90-275. Annual renewal of the permit shall be subject to the operator

of the sidewalk café and the property owner signing an application and payment of the annual renewal fee as set forth in appendix A to this Code by no later than March 15. Renewal shall be subject to compliance with the indemnification and insurance provisions and sidewalk café standards of this division in effect at the date of renewal. All city fees and taxes required by law relative to the food or beverage service establishment with which the proposed sidewalk café 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 renewal of a sidewalk café permit.

- (c) *Transferability.* A sidewalk café permit shall not be transferable to another operator.

Sec. 90-275. Sidewalk café permit: revocation and suspension.

- (a) *Generally.* Operation of a sidewalk café is a licensed privilege granted by the city to occupy a portion of the public sidewalk area and is predicated on the sidewalk café being operated in compliance with all applicable regulations and on maintaining the superseding public interest in use of sidewalks in the city. An approved sidewalk café permit may be revoked or suspended as provided in this section.

- (b) *Revocation of approved permit.*

- (1) The director of public works shall have the authority to revoke an approved sidewalk café permit if it is determined that any of the following have occurred. Such revocation shall not be appealable.
- a. The applicant has misrepresented or provided false information in the permit application.
 - b. The sidewalk café permit has been suspended more than two times in a 12-month period on grounds of noncompliance pursuant to subparagraph (b) (1)a of this section.
 - c. The sidewalk café has been operated in such manner as to create a public nuisance or to constitute a hazard to the public health, safety or welfare.
 - d. Any health regulation, ABC regulation or law or regulation regarding the possession, sale or consumption of controlled substances has been violated in conjunction with the operation of the sidewalk café.
 - e. Any city fees or taxes required by law relative to the sidewalk café, the food or beverage service establishment with which it is associated or the property on which the establishment is located are delinquent or required city licenses have not been maintained.
 - f. It has been determined that there is a superseding public need relative to the portion of the sidewalk occupied by or otherwise affected by the sidewalk café.

- (2) Before revocation of a sidewalk café permit, the director of public works shall provide written notice to the operator of the sidewalk café setting forth the effective date of the revocation and the grounds therefore.
- (3) In the case of revocation of a sidewalk café permit on grounds other than specified in paragraph (1) of this subsection, the operator of the sidewalk café shall not be permitted to re-apply for a permit to operate a sidewalk café adjacent to the same food or beverage service establishment.

(c) *Suspension of approved permit.*

- (1) The director of public works shall have the authority to suspend an approved sidewalk café permit for a period of up to 30 days, or such longer period as may be necessary in the case of work in the sidewalk area or other portion of the street, if it is determined that any of the following have occurred. Such suspension shall not be appealable.
 - a. The sidewalk café or the operation thereof is not in compliance with the approved permit, applicable design guidelines or any of the sidewalk café standards set forth in this division.
 - b. It has been determined that there is a superseding public need relative to the portion of the sidewalk occupied by or otherwise affected by the sidewalk café.
- (2) Before suspension of a sidewalk café permit, the director of public works shall provide written notice to the operator setting forth the effective date of the suspension, the length of the suspension and the grounds therefore.
- (3) The director may reinstate a sidewalk café permit when the director is satisfied that the grounds for the suspension have been remedied.

Sec. 90-276. Marking of sidewalk café boundaries.

After approval of a sidewalk café permit and prior to initial occupancy of any area approved for use as a sidewalk café, the operator of the sidewalk café shall notify the director of public works who shall be responsible for marking the corners of the approved sidewalk café area in a conspicuous manner on the sidewalk surface.

Sec. 90-277. Sidewalk café design guidelines.

- (a) *Preparation.* Design guidelines for sidewalk cafés shall be prepared by the director of planning and development review. The design guidelines shall be in compliance with applicable provisions of the uniform statewide building code, the current edition of ADA standards for accessible design and other applicable codes, ordinances and regulations.

- (b) *Status.* The design guidelines shall be adopted by resolution of the city planning commission, and are incorporated herein by reference. The design guidelines may be amended from time to time by resolution adopted by the commission.
- (c) *Compliance.* Every sidewalk café shall be designed and operated in compliance with the design guidelines.

Sec. 90-278. Sidewalk café standards: location.

- (a) *Generally.* The sidewalk café shall be located adjacent to a portion of a building occupied at street level by a food or beverage service establishment having the same operator. In a case where the building occupied by such establishment is set back from the street right-of-way line, and the entire setback area is lawfully used for purposes of outdoor dining pursuant to applicable zoning regulations, the sidewalk café shall be permitted to be located adjacent to such outdoor dining area. In no case shall a sidewalk café extend beyond the extremities of the building or portion thereof occupied by the food or beverage service establishment.
- (b) *Pedestrian passageway.*
 - (1) A pedestrian passageway within the sidewalk area outside of the sidewalk café shall be observed, and shall consist of a continuous area between the sidewalk café and the back of the curb along the entire length of the sidewalk café. Such pedestrian passageway shall be not less than five feet in width, except as provided in paragraph (2) of this subsection, and shall be unobstructed by any tree well, bench, bus passenger shelter, mailbox, newspaper box, lamppost, traffic signal pole, traffic or parking sign, parking meter, wheelchair ramp, driveway, fire hydrant, trash receptacle or similar sidewalk feature.
 - (2) The director of public works may approve a lesser or require a greater pedestrian passageway width if the director finds that such is justified based on: the volume of pedestrian traffic; physical condition, alignment and overall width of the sidewalk; volume of vehicle traffic on the street, lane width and function or speed limit; or similar factor; provided that the director is satisfied that an adequate continuous passageway for safe and convenient circulation of pedestrian traffic will be maintained along the sidewalk.
- (c) *Pedestrian visibility.* The location, dimensions, layout and other features of the sidewalk café shall be designed so as not to unreasonably obstruct pedestrian visibility of the ground floor of buildings that adjoin the food or beverage service establishment to which the sidewalk café is related.
- (d) *Distance from property zoned residential.* The sidewalk café shall not be located within 100 feet of and fronting along the same street as property in a residential zoning district, other than the R-63 district.

Sec. 90-279. Sidewalk café standards: barriers.

Barriers consistent with the design guidelines shall be installed along the entire length and both ends of any sidewalk café that extends more than three feet into the sidewalk, provided that:

- (a) In the case of a sidewalk café that serves alcoholic beverages, barriers shall be installed in accordance with ABC requirements;
- (b) Subject to applicable ABC requirements, at least one opening in the barrier along the length of a sidewalk café shall be provided for purposes of access to and from the sidewalk café, unless the director of public works determines that an alternate opening is appropriate.
- (c) Required means of egress from the adjacent food or beverage service establishment shall be maintained at all times.

Sec. 90-280. Sidewalk café standards: features and appurtenances.

- (a) *Layout, arrangement and appurtenances.* The layout and arrangement of the sidewalk café and the design, materials and colors of chairs, tables, umbrellas, outdoor heating devices and other appurtenances within the sidewalk café shall comply with the design guidelines.
- (b) *Signage.* Signs within the sidewalk café shall be permitted only as specified in the design guidelines.
- (c) *Certain features and appurtenances not permitted.* The following shall not be permitted within a sidewalk café: televisions, other electronic audio or visual devices or means of producing amplified sound; cash registers or card readers; wait stations; vending machines or similar items. Trash containers shall not be located within a sidewalk café in any case where service to patrons by wait staff is provided.

Sec. 90-281. Sidewalk café standards: operation.

- (a) *Hours of operation.* The sidewalk café may be occupied by patrons only between the hours of 7:00 a.m. and 11:00 p.m. daily.
- (b) *Daily removal.* All tables, chairs, umbrellas, barriers and other fixtures and appurtenances shall be removed from the sidewalk café each day within one hour of closing to patrons. Such items shall be stored in an enclosed building.
- (c) *Removal in case of storm warning.* All tables, chairs, umbrellas, barriers and other fixtures and appurtenances shall be removed from the sidewalk café in case of a severe storm warning.
- (d) *Certain activities not permitted.* Within the sidewalk café, there shall be no live entertainment, food or beverage preparation or service to standing patrons.

- (e) *Smoking.* The operator shall not permit smoking within the sidewalk café.
- (f) *ABC requirements.* All ABC requirements shall be met in the case of a sidewalk café where alcoholic beverages are served or are available to patrons.
- (g) *Cleanliness.* The sidewalk café shall be kept sanitary, neat and clean at all times, and free from accumulation of leftover food and beverages, used eating and drinking utensils, and litter. The operator of the sidewalk café shall be responsible for cleaning up any trash or litter on the adjacent sidewalk area emanating from the sidewalk café. Covered trash containers, consistent with the design guidelines, shall be provided within the sidewalk café in any case where no service to patrons by wait staff is provided.

(Add sidewalk café permit application and renewal fees to Appendix A, as shown.)

Code Section	Description	Fee
<u>90-272</u>	<u>Application and processing fee for sidewalk café permit</u>	<u>\$150.00</u>
<u>90-274</u>	<u>Fee for annual renewal of sidewalk café permit</u>	<u>\$100.00</u>