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Subject:	Outdoor Cafe Permit Regulations – Establishment of Fees and Lease Rates		
Effective Date:	June 18, 2018		

OUTDOOR CAFE PERMIT REGULATIONS

1. Purpose

To regulate the establishment and permitting of outdoor cafes operating within the public right-of-way as authorized in *Takoma Park Code Section 8.16.090*.

2. Outdoor Cafe Permit Required

Licensed food service facilities must obtain an Outdoor Cafe Permit from the City prior to establishing an outdoor dining area located within the public right of way for purposes of serving food and alcoholic or non-alcoholic beverages to patrons.

3. Activities Exempt from Outdoor Cafe Permit Requirement

Vendors participating in a permitted Special Event or an authorized Farmers Market are exempt from the permitting requirements of this regulation.

4. Definitions

- A. “Applicant” means the person, organization, corporation, association or other entity applying for a permit to establish an outdoor cafe in the public right of way on behalf of a licensed food service facility.
- B. “City” means the City of Takoma Park as a municipal corporation and existing pursuant to the laws of the State of Maryland. The City Manager or their designee shall act as the City’s agent for purposes of this Regulation.
- C. “Food service facility” means a licensed facility such as a restaurant, coffee shop, cafe, food truck, retail market or similar business in which food or drink is prepared for sale or for service on the premises or elsewhere, or any other operations where food regularly is served or provided for the public with or without charge.
- D. “Lease Agreement” means a written agreement entered into by the City and the Permittee detailing the terms and conditions of the use of a designated area of the public right-of-way for purposes of establishing an Outdoor Cafe,
- E. “Outdoor Cafe” means an outdoor portion of a licensed food service facility consisting of tables and chairs or similar furnishings for use by patrons.

Proposed:	Sara Anne Daines	Date:	
Title:	HCD Director		
Approved:	Suzanne R. Ludlow	Date:	
Title:	City Manager		

- F. "Outdoor Cafe Permit" or "Permit" means written authorization from the City to establish an outdoor cafe in the public right of way.
- G. "Permitted Area" means that portion of the public right-of- way designated for use following the issuance of an Outdoor Cafe Permit.
- H. "Permittee" means the licensed food service facility issued an Outdoor Cafe Permit under this policy.
- I. "Public right-of-way" means any property owned by the City or over which the City has the right of access for the purposes of building and maintaining a street or sidewalk, curb and gutter, storm sewers and underground utilities. A public right-of-way includes but is not limited to a public street, on-street parking area, parking facility and sidewalk.
- J. "Storefront" means that part of the outer wall of the premises of a food service facility which is contiguous to a public sidewalk or right-of-way.

5. Permits – Duration, Processing and Permit Fees, Refunds, Fee Increases

- A. Permits will be issued for three month (90 calendar days), six month (180 calendar days) and twelve month (365 calendar days) periods.
- B. Permits are not transferable. In the event of the transfer of ownership of the food service facility which holds the Permit, the new owner must reapply for a Permit.
- C. Processing and Permit Fees will be charged in accordance with Exhibit A – Fee Schedule. The schedule will be updated annually and published on January 1 of each year.
- D. The Processing Fee is due and payable upon submission of an application and is nonrefundable.
- E. The Permit Fee is due and payable prior to the issuance of a Permit. The fee will not be prorated in the event that a permitted outdoor cafe is operational for less than the duration of the Permit.
- F. Effective on January 1st of each year, fees shall increase by an amount equal to the percent change in the Consumer Price Index ("CPI-U"), or any successor or replacement to this CPI, rounded to the nearest dollar. All annual computations shall be based on the prior non-rounded figures; only the fee charged shall be rounded. The percent change in the CPI-U shall be computed for the 12-month period ending in September of each year from the average CPI-U for the 12-month period ending in September of the previous year. If there is no increase in the CPI-U, then the license fee shall remain the same.
- G. The City reserves the right to adjust the Processing and Permit Fees as needed to

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reflect significant changes in processing procedures and administrative costs.

6. Application Process - Application Form, Payment of Fee, Internal Procedures

- A. An application for a Permit must be filed with the City Manager or their designee on a form to be furnished by the City.
- B. The Applicant must complete the application form in its entirety and include the following:
 - 1. Statement summarizing the operation of the proposed outdoor cafe noting the availability of table service, general menu offerings, and indicating whether alcoholic beverages are to be available to patrons.
 - 2. A scaled and dimensioned site plan that includes property lines, the public right-of way, the front of the food service facility and its entrance, the proposed dimensions, furniture, barriers, entry point to the outdoor cafe area, street addresses and entrances of adjoining property or properties directly impacted by the proposed siting of the outdoor cafe, and the curb, curb cuts, parking spaces, fixtures, trees, and landscaping located in the right-of-way within twenty feet of lines extending from each side of the proposed outdoor cafe area directly to the curb.
 - 3. Hours of operation of the food service facility’s indoor area and proposed hours of operation of the outdoor cafe area.
 - 4. Proposed seating capacity.
 - 5. Acknowledgement of insurance and indemnification requirements.
 - 6. Acknowledgement of the annual Permit Fee.
 - 7. Acknowledgment of annual Lease Fee.
 - 8. The signature of the owner of the real property where the food service facility is located.
- C. The Applicant must submit the Processing Fee with their completed application form.
- D. Upon receipt of the application form, the City Manager or their designee shall:
 - 1. Confirm completeness of the application and docket complete applications or promptly notify the Applicant of the deficiencies in incomplete

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applications.

2. Distribute the application to appropriate City departments for review.
3. Identify public safety, traffic, and disturbance concerns, and identify ameliorating conditions, and other adjustments that will allow for the granting of a Permit.
4. Consult with the Applicant regarding City concerns and explore changes and conditions that are acceptable to the City and the Applicant that will allow for the granting of a Permit.
5. Notify the Applicant of the decision and additional required submissions for the issuance of the Permit.

7. Permit Decisions

- A. The application shall be approved or denied within fifteen business days of receipt of the application unless the proposed outdoor cafe requires extensive review because of safety, traffic, or logistical concerns.
- B. The application shall be approved unless a determination has been made that issuance of the Permit will create any of the following conditions:
 1. Substantial disruption of the use of a street or interference with the operation of emergency vehicles or an ongoing municipal function.
 2. Restricted or blocked access to the sidewalk or adjoining properties, or creation of a substantial risk of injury to persons or damage to property.
 3. Violation of Federal, State, or local law.
 4. Unreasonable interference with the use and enjoyment of adjoining properties, neighboring businesses or residents.
- C. Upon notification that the application has been approved and prior to the issuance of a Permit, the Applicant must provide the following:
 1. Written permission to operate from all property owners and business owners located contiguous to the permitted area if the permitted area is to extend beyond the width of the storefront of the associated food service facility.
 2. Copy of Applicant's Outdoor Cafe License application and Outdoor Cafe

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License issued by the Montgomery County Department of Liquor Control, Board of License Commissioners.

3. Certificate of Insurance naming the City as additionally insured for the duration of the Permit and verifying liability coverage. Minimum insurance and liability coverage requirements are listed in Exhibit A – Fee Schedule. The schedule will be updated annually and published on January 1 of each year.
 4. Executed indemnification form provided by the City.
 5. Executed Lease Agreement for use of a designated portion of the public right-of-way.
 6. Permit Fee and annual Lease Fee payments.
- D. The Permit will be denied in the event the Applicant fails to complete the application or provide the required supplemental information after being requested to do, or the information contained in the application is found to be false in any material detail.
- E. When the grounds for denial of the Permit can be corrected by imposing reasonable conditions, the City Manager may impose such conditions rather than deny the Permit.
- F. Notice of the permit decision may be provided to the Applicant by mail, email or facsimile.

8. Conditions of Permit

- A. The following requirements apply to all permitted Outdoor Cafes.
1. The Outdoor Cafe must be incidental to the operation of the food service facility operated by the Permittee. All food must be prepared inside the associated food service facility; the storage, cooking and preparation of food within the outdoor cafe area is prohibited.
 2. The sale, service, or consumption of alcoholic beverages is prohibited unless an Outdoor Cafe License has been issued by the Montgomery County Department of Liquor Control, Board of License Commissioners. The Permittee/License holder shall comply with the requirements of the Board of License Commissioners.
 3. Smoking and vaping are prohibited within the permitted area.

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4. Hours of operation of the Outdoor Cafe shall not extend beyond the hours of operation of the food service facility operated by the Permittee. Additional restrictions on the hours of operation may be imposed by the City.
5. The area designated for use by the Outdoor Cafe may extend into the public right-of-way beyond the width of the storefront of the food service facility with the written permission of the property owners and business owners located contiguous to the permitted area. In the event the Outdoor Cafe is not located contiguous to the food service facility, it must be located within 25 feet of the storefront of the associated food service facility;
6. No permanent structures or improvements or permanent or temporary signage or lighting shall be installed on any sidewalk, boulevard tree or landscaping feature, City or utility company-owned poles or appurtenances without the explicit approval of the City.
7. The public right-of way reserved for pedestrian travel shall be accessible and remain free of obstacles. The area reserved for pedestrian travel shall be established by the City in accordance with the Americans with Disabilities Act.
8. Food and beverage service shall take place within the boundaries of the permitted area. Wait staff or customers shall not unduly interfere with pedestrian traffic or block the travel area.
9. All furniture and fixtures, including but not limited to tables, seating, heaters, canopies, barriers or refuse containers shall be contained within the boundaries of the permitted area, maintained in a clean and safe manner, portable, easily removed, and secured or stored indoors when not in use.
10. The permitted area and the surrounding area shall remain neat and clean at all times, and remain free of litter.
11. Compliance with all City, County, State and Federal laws and regulations including but not limited to the following sections of the City of Takoma Park Code:
 - a. Chapter 6.12 - Property Maintenance Code
 - b. Chapter 8.16.080 - Polystyrene Food-Service Ware and Packaging
 - c. Chapter 8.16.090 - Outdoor Cafes on Public Sidewalks
 - d. Chapter 8.48 - Disposable Plastic Bags

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- e. Chapter 10.14 - Business Recycling and Composting
- f. Chapter 10.16.010 - Abandonment of Refuse on Public Property
- g. Chapter 14.12 - Noise Control

- B. The Permit must be posted on the interior of a window or door of the storefront so it is visible from the street during the duration of the Permit.
- C. The City may impose additional conditions on the Permittee or waive any or all of the Permit conditions established by this Regulation.

9. Lease of Public Right-of-Way – Terms, Conditions, Lease Rates, Rate Increases

- A. Permittee will be required to enter into a Lease Agreement with the City for the use of the public right-of-way prior to the issuance of an Outdoor Cafe Permit.
- B. Lease Agreements are not transferable. In the event of the transfer of ownership of the food service facility, the new owner must obtain a new Outdoor Cafe Permit and enter into a new Lease Agreement with the City.
- C. The term of the lease will run concurrently with the Outdoor Cafe Permit.
- D. The Lease Agreement shall be terminated upon the expiration, permanent suspension or revocation of the Permit.
- E. The Lease Fee will be charged in accordance with Exhibit A – Fee Schedule. The schedule will be updated annually and published on January 1 of each year.
 - 1. The Lease Fee for the entire term of the Lease Agreement is due and payable upon execution of the Lease Agreement and the issuance of the Outdoor Cafe Permit. The Lease Fee will be prorated and a refund shall be paid in the event that a permitted Outdoor Cafe is operational for less than the duration of the Permit or if the Permit is suspended by the City for one month or more due to conditions beyond the control of the Permittee.
 - 2. Effective on January 1st of each year the Lease Fee shall increase by an amount equal to the percent change in the Consumer Price Index (“CPI-U”), or any successor or replacement to this CPI, rounded to the nearest dollar. All annual computations shall be based on the prior non-rounded figures; only the fee charged shall be rounded. The percent change in the CPI-U shall be computed for the 12-month period ending in September of each year from the average CPI-U for the 12-month period ending in September of the previous year. If there is no increase in the CPI-U, then the Lease Fee shall remain the same.

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- F. The Lease Agreement shall detail the terms and conditions for the use of the public right-of-way and shall include among other requirements, the Permittee to
1. Maintain the public right-of-way in a manner that is in compliance with Takoma Park Code Chapter 6.12 – *Property Maintenance Code*;
 2. Restore the public right-of-way to its original condition upon termination of the Lease Agreement; and
 3. Restrict the use of the leased public right-of-way to approved activities in accordance with the Outdoor Cafe Permit.

10. Permit Revocation, Suspension and Modification

- A. Permit Revocation. The City Manager may revoke the Permit if the Permittee, or any agents, employees, or contractors of the Permittee fail to comply with the conditions and requirements of the Permit or this regulation, violate any Federal, State, or local law, or a determination is made after the Permit is issued that the permit application was false in any material detail.
- B. Permit Suspension or Modification. The City Manager may temporarily or permanently suspend or modify the Permit as necessary to perform repairs and maintenance in the right-of-way, respond to an emergency, facilitate anticipated crowds, address violations or respond to an immediate or anticipated hazard to persons or property.
- C. Statement of Grounds. The grounds for the suspension or revocation of a Permit shall be provided in writing to the Permittee within one business day of the decision. Such written notice may be delivered by hand or via email or facsimile.

11. Appeals

- A. Decisions subject to appeal. The Applicant or Permittee may appeal the denial, revocation, suspension, condition or modification of the Permit.
- B. Appeal must be filed with the City Clerk not later than five business days after the date written notice of the decision is made.
- C. The City Manager shall decide an appeal within five business days. The decision shall be in writing and explain the grounds for the decision. The decision on appeal may affirm, reverse, or modify the original decision. If the decision on appeal grants or reinstates a Permit or lifts a suspension, the City Manager may impose conditions upon the Permit.

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Exhibit A

OUTDOOR CAFE PERMIT REGULATIONS - FEE SCHEDULE

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The schedule will be updated annually in accordance with Administrative Regulation No. 2018-01 – Outdoor Cafe Permit Regulations and published on January 1 of each year.

A. Processing Fee:

The Processing Fee is due and payable upon submission of an application for a new Outdoor Cafe Permit and the renewal of an existing Outdoor Cafe Permit.

Initial Application	\$145.00
Application for Renewal	\$90.00

The Processing Fee is nonrefundable.

B. Permit Fee:

The Permit Fee is due and payable prior to the issuance of an Outdoor Cafe Permit.

Three Month Permit (90 calendar days)	\$100.00
Six Month Permit (180 calendar days)	\$225.00
Twelve Month Permit (365 calendar days)	\$450.00

The Permit Fee will not be prorated in the event that a permitted outdoor cafe is operational for less than the duration of the Permit.

C. Lease Fee:

The Lease Fee for the entire term of the Lease Agreement is due and payable upon execution of the Lease Agreement and the issuance of the Outdoor Cafe Permit.

Monthly Lease Fee:	
Permitted Area is less than 162 sq. ft.	\$0.00 per sq. ft.
Permitted Area is equal to or more than 162 sq. ft.	\$0.60 per sq. ft.

The Lease Fee will be prorated and a refund shall be paid in the event that a permitted Outdoor Cafe is operational for less than the duration of the Permit or if the Permit is suspended by the City for one month or more due to conditions beyond the control of the Permittee.

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D. Insurance Requirements:

Permittee must obtain at its own cost and expense, and keep in force and effect during the term of this Agreement, including all extensions, the insurance specified below, with an insurance company licensed or qualified to do business in the State of Maryland.

Permittee shall provide the City with a Certificate of Insurance prior to the issuance of a Permit for the insurance coverages specified as follows. The Certificate must name the City of Takoma Park as an additional insured and provide for a minimum of 30 days written notice to the City of cancellation or material change in any of the policies is required. This insurance must remain in force for the duration of the Permit.

Workers Compensation - Bodily Injury by:

Accident (each)	\$100,000
Disease (policy limits)	\$500,000
Disease (each employee)	\$100,000

Commercial General Liability	\$1,000,000
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(Minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors.)