



## Takoma Park City Council Meeting – February 7, 2018

### Agenda Item 6

#### **Work Session**

Continued Discussion of Amendment to Takoma Park Code, Title 8, Business (Outdoor Cafes)

#### **Recommended Council Action**

Discuss item and provide direction to staff.

#### **Context with Key Issues**

This item was last discussed during the Council's January 24 work session at which time a proposed ordinance providing for the establishment of a new outdoor café permit allowing for the use of public right-of-way by local restaurants was presented. The following revisions to the preliminary draft ordinance have been made in response to the comments provided during the discussion:

- 1) The listing of businesses that could apply for an outdoor café permit was expanded to include coffee shops, food trucks, café's and retail establishments such as the Takoma Park Silver Spring Coop;
- 2) The definition of the public right of way was expanded to include, in addition to public sidewalks, city streets and on-street parking areas;
- 3) The area in which an outdoor café could be located was expanded to include not only the sidewalk immediately adjacent to the storefront but curbside areas as well as parking spaces and the street;
- 4) The hours of operation of the outdoor café were linked to those of the associated business or, if alcoholic beverages are served, to restrictions that may be imposed by the liquor license; and
- 5) Detailed design considerations, application requirements and certain permit elements were deleted for future incorporation in the anticipated administrative regulations;

#### **Council Priority**

Advance Economic Development Efforts

#### **Environmental Impact of Action**

N/A

**Fiscal Impact of Action**

TBD

**Racial Equity Impact of Action**

The racial equity impact of this action is unknown though we do not believe it will disproportionately impact any particular group.

**Attachments and Links**

- Draft - Revised Code amendment
- Draft - Revised Code amendment (redline)

**Proposed Amendment to Chapter 8.16, Sale of Food and Drink, of the Takoma Park Code  
to Allow for Outdoor Cafe Seating in the Public Right-of-Way**

**Revised Draft – February 7, 2018**

**8.16.090 Outdoor cafes on public sidewalks.**

- A. The purpose of this section is to further the City’s efforts to increase the economic vitality of its business districts. The outdoor cafes will stimulate additional pedestrian traffic and provide a service that will complement the existing commercial uses within the district.
- B. Definitions.
1. Food service facility is defined as a licensed facility such as a restaurant, coffee shop, café, food trucks, 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.
  2. Public right-of-way is defined as 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 and sidewalk.
- C. The use of public right-of-way for outdoor cafes shall be permitted subject to the following conditions:
1. The use of the public right-of-way for an outdoor café shall be permitted incidental to the operation of a food service facility located on private contiguous property and may extend beyond the width of the storefront of the food service facility with the written consent of the adjoining property owners within the extended café area. In the event the outdoor café area is not contiguous to the food service facility, it must be located within 25 feet of the storefront of the associated food service facility;
  2. Execution of a lease agreement with the City to run concurrently with the outdoor café permit;
  3. Compliance with all City, County, State and Federal laws and regulations; and
  4. Compliance with any conditions imposed by the City in connection with the issuance of an outdoor café permit.
- D. Permit requirements, permit fees, and denial, suspension or revocation of permits.
1. Food service facilities seeking to establish an outdoor dining area in the public right-of-way are required to obtain an outdoor café permit prior to the establishment of the dining

area. Farmers markets and special event vendors are exempted from the requirements of this chapter.

2. Outdoor café permits are not transferrable. In the event of the transfer of ownership of the food service facility, the new owner must reapply for a permit.
3. The City may require temporary or permanent suspensions or modifications to a permit as necessary to perform repairs and maintenance in the right-of-way, facilitate crowds, or otherwise promote the public health, safety, and welfare of the community.
4. The City may suspend or revoke a permit for violations of this section, conditions of the permit, or other applicable City, county, state or federal law.

#### E. Regulations.

The City shall develop regulations for the implementation and enforcement of this section, which may include, but not be limited to, permit modification, renewal and revocation procedures, application fees, annual permit fees, calculation of annual fee increases, right-of-way lease terms and conditions, insurance and indemnification requirements, City approval of alcohol sales, additional permit criteria and standards, and prohibited activities.

#### F. Violations.

A violation of this section is a Class AA offense.

**Draft of Text to Be Added Proposed Amendment to Chapter 8.16, Sale of Food and Drink, of the Takoma Park Code to Allow for RestaurantOutdoor Cafe Seating in the Public Right-of-Way**

~~{Section B 14 and C 1-8 may be more appropriate for Administrative Regulations}~~

**Revised Draft – February 7, 2018**

**8.16.090 -Outdoor cafes on public sidewalks.**

A. The purpose of this section is to further the City’s efforts to increase the economic vitality of its business districts. The outdoor cafes will stimulate additional pedestrian traffic and provide a service that will complement the existing commercial uses within the district.

B. Definitions.

1. Food service facility is defined as a licensed facility such as a restaurant, coffee shop, café, food trucks, 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.

2. Public right-of-way is defined as 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 and sidewalk.

C. The use of public ~~sidewalks~~right-of-way for outdoor cafes shall be permitted subject to the following conditions:

~~1. An application for permit must be submitted to the Housing and Community Development Department for review. An administrative review shall be conducted and a final determination made within thirty (30) days of receipt of the application;~~

~~2. \_\_\_\_\_~~ The use of the public ~~sidewalks~~right-of-way for an outdoor café ~~seating~~ shall only be permitted incidental to the operation of a restaurant ~~food service facility located~~ on private contiguous property and may extend ~~up to fifty feet~~ beyond the width of the storefront of the restaurant ~~food service facility~~ with the written consent of the adjoining property ~~owner in front of which~~ owners within the extended café area. In the event the outdoor café area ~~extends~~;

~~3. In no event shall the operation of the sidewalk cafe reduce the open portion of the public sidewalk to less than five feet clear of all obstructions (e.g. street lighting, benches, trees, trash receptacles, planters, etc.);~~

~~4. All tables, chairs and other appurtenances shall be constructed and secured in such a manner that they can be easily removed during winter months and after hours, if required by the City;~~

~~5. No permit shall be issued until the applicant enters into a lease of the right of way, signs a hold harmless agreement and submits is not contiguous to the City evidence of general liability insurance and liquor liability insurance, including the City as a named insured and insuring the City against any liability resulting from the operation of the sidewalk café. Minimum coverage shall be \$1,000,000.00 for general liability insurance and \$1,000,000.00 for liquor liability insurance and shall have no less than an "A" rating by the most recent AM Best Insurance Rating Guide;~~

~~6. The sale and consumption of alcoholic beverages in the outdoor cafe shall be restricted by the liquor license governing the restaurant;~~

~~7. The outdoor cafe shall not be detrimental to the health, safety, morals or general welfare of persons residing or working in the vicinity;~~

~~8. The operation of outdoor cafes shall be permitted between the hours of \_\_\_\_\_ and \_\_\_\_\_;~~

~~10. All maintenance and upkeep of the public right of way food service facility, it must be located within 25 feet of the storefront of the associated with the operation of the outdoor cafe shall be the responsibility of the owner of such cafe (upkeep includes the replacement of damaged public property, e.g. brick pavers). food service facility;~~

~~11. All outdoor cafe permits shall be subject to an annual review and such permits may be revoked at any time on thirty (30) days' notice;~~

~~12. An annual permit fee as established by the Department shall be required;~~

~~13. All outdoor cafe establishments must comply 2. Execution of a lease agreement with applicable health regulations;~~

~~14. The following design criteria shall be applied to all sidewalk cafe petitions:~~

~~a. All outdoor furnishings shall be designed to withstand a wind pressure of not less than thirty (30) pounds per square foot;~~

~~e. Outdoor furnishings materials and their color should be selected for continuous harmony and aesthetic quality the City to run concurrently with the adjoining buildings and street scope. Materials shall be of durable quality such as wrought iron; light gauge materials like aluminum and plastics shall be generally discouraged. Weather resistant wood is allowed only as a secondary accent material outdoor café permit;~~

~~d. Colors should be harmonious; brilliant or bright colors shall be used only for accent;~~

~~e. Tables to be placed within the City's right of ways shall not have a surface area greater than nine square feet, be easily removable and shall not impede safe pedestrian movement;~~

~~f. Materials and finishes shall be selected for their durability and wear as well as for their beauty. The table surface shall be smooth and easily cleanable. Proper measures shall be taken to correct damage or decline due to the elements, neglect or abuse; and~~

~~g. Devices incorporated to separate eating areas from pedestrian pathways such as fencing or planters, must conform to above standards of design.~~

~~h. The City Manager may impose additional~~3. Compliance with all City, County, State and Federal laws and regulations; and

4. Compliance with any conditions imposed by the City in connection with the granting of a permit as necessary to protect public health, safety, and welfare.

~~C. Outdoor café permit applications shall be completed by the business operating the restaurant and submitted on a form created by the Department and include the following:~~

~~1. A scaled and dimensioned site plan that includes the front of the restaurant, the entrance to the restaurant, the proposed dimensions, furniture, barriers, and entry point to the outdoor café area, and the curb, curb cuts, fixtures, trees, and landscaping in the right of way within twenty feet of lines extending from each side of the proposed issuance of an outdoor café area directly to the curb permit.~~

~~2. Hours~~D. Permit requirements, permit fees, and denial, suspension or revocation of operation of the restaurant's indoor permits.

1. Food service facilities seeking to establish an outdoor dining area **and proposed hours of operation of the** in the public right-of-way are required to obtain an outdoor café permit prior to the establishment of the dining area. Farmers markets and special event vendors are exempted from the requirements of this chapter.

~~3. Proposed seating capacity.~~

~~3. Acknowledgement of insurance and indemnification requirements.~~

~~4. Acknowledgement of annual permit fee.~~

~~5. Acknowledgment of annual lease rate.~~

~~6. The signature of the owner of the real property where the restaurant is located if other than the owner of the restaurant.~~

~~7. The signature of the owner any real property in front of which the sidewalk café extends.~~

~~8. The sidewalk café permit application fee.~~

~~E. Sidewalk~~ 2. Outdoor café permits are not transferrable. In the event of the transfer of ownership of the ~~restaurant~~ food service facility, the new owner must reapply for a permit.

~~F. 3.~~ 3. The City may require temporary or permanent suspensions or modifications to a permit as necessary to perform repairs and maintenance in the right-of-way, facilitate crowds, or otherwise promote the public health, safety, and welfare of the community.

~~G. 4.~~ 4. The City may suspend or revoke a permit for violations of this section, ~~City regulations,~~ or the terms and conditions of the permit, or other applicable City, county, state or federal law.

H. E. Regulations.

The ~~Department~~ City shall develop regulations for the implementation and enforcement of this section, which may include, but not be limited to, permit modification, renewal and revocation procedures, application fees, annual permit fees, ~~the lease rate per square foot of right-of-way used for outdoor café space~~ calculation of annual fee increases, right-of-way lease terms and conditions, insurance and indemnification requirements, City approval of alcohol sales, additional permit criteria and standards, and prohibited activities.

F. Violations.

A violation of this section is a Class AA offense.