



Takoma Park City Council Meeting – January 24, 2018

Agenda Item 2

Work Session

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

Recommended Council Action

Consider amending City code to provide a sidewalk café permit process and direct staff to revise Administrative Regulations for the use of public right-of-way to allow sidewalk seating that may also permit the consumption of alcohol.

Context With Key Issues

At its October 4, 2017 meeting, the Takoma Park City Council discussed permitting restaurants to serve alcohol on the public right-of-way at sidewalk cafes. Restaurant owners in the Main Street Takoma area have expressed interest in expanding their operations to include sidewalk cafe seating with food and alcohol sales. Currently, outdoor alcohol sales are regulated by the Montgomery County Department of Liquor Control and require approval from the municipality. Because the City does not have a regulatory process in place to approve sidewalk cafés in the public right-of-way, restaurants are unable to secure required permits for the sale of wine, beer or other alcoholic beverages for outdoor seating.

Existing businesses with outdoor seating are either situated on private property, or have been functioning under the sidewalk sales provision (which is inappropriate for this use). There is no permitting process in place for restaurants to operate sidewalk cafes on the public right-of-way. If regulatory changes are approved by the City Council, the City staff will initiate a program that both allows for private use of the public right-of-way (sidewalks) and details what conditions have to be met in order to do so. Other issues such as use of the City lot for events with alcohol sales are not addressed in this Work Session.

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

- Memo – Outdoor Cafes
- Draft Code Language



City of Takoma Park, Maryland
Housing and Community Development Department
Memorandum

To: Sara Daines and Rosalind Grigsby
From: Christopher Johansson
Date: January 9, 2018
Subject: **Permitting the operation of sidewalk cafes**

Comments: This memo considers the benefits and trade-offs of allowing cafes to operate on public sidewalks for the purposes of serving food and alcohol. Staff recommends that the City of Takoma Park (the City) revise its code to allow sidewalk cafes. Draft regulatory language is included to initiate a new permitting process.

I. Introduction

At its October 4, 2017 meeting, the Takoma Park City Council discussed permitting restaurants to serve alcohol on the public right-of-way at sidewalk cafes. Restaurant owners in the Main Street Takoma area have expressed interest in expanding their operations to include sidewalk cafe seating with food and alcohol sales. Currently, outdoor alcohol sales are regulated by the Montgomery County Department of Liquor Control and require approval from the municipality. Because the City does not have a regulatory process in place to approve sidewalk cafés in the public right-of-way, restaurants are unable to secure required permits for the sale of wine, beer or other alcoholic beverages for outdoor seating.

Existing businesses with outdoor seating are situated on private property. There is no permitting process in place for restaurants to operate sidewalk cafes on the public right-of-way. If regulatory changes are approved by the City Council, the City staff will initiate a program that both allows for private use of the public right-of-way (sidewalks) and details what conditions have to be met in order to do so.

II. Discussion of Key Topics

Outdoor eating establishments in the City could improve the quality of the City's public space. According to the Project for Public Spaces, outdoor dining is a key activity that serves as a destination for a diverse group of people to use public space and make it more vibrant and dynamic.¹ Sidewalk cafes would make Takoma Park a more interesting place for walking and

¹<https://www.pps.org/reference/8-principles-streets-as-places/>

dining and promote more pedestrian traffic. Takoma Park restaurants argue that they can better compete with those in the surrounding communities that permit outdoor cafe seating with and without alcohol service. Allowing this use could enliven the City in the evening, in the way that the farmer's market encourages more pedestrian activity on the weekends.

Despite the advantages of sidewalk cafes, there could be drawbacks this use of public right-of-way. The Montgomery County Department of Permitting Services has developed outdoor seating guidelines that address the Americans with Disabilities Act (ADA) accessibility requirements, hours of operation, noise, maintenance and litter.

What follows are potential concerns along with responses to mitigate them:

- **Pedestrian safety could be impeded by obstructions from tables, chairs, barriers and other elements of the sidewalk cafes.**
Restaurants should maintain at least five feet of sidewalk space that is clear of obstructions from the café. Barriers are required that provide clear visible demarcation of the sidewalk from the café.
- **The current requirements of the Americans with Disabilities Act (ADA) generally require five feet of unobstructed sidewalk width for the passage of disabled citizens. This does not leave much room for outdoor seating in some parts of the City.**

According to Montgomery County's *Requirements for Outdoor Café Seating*, "seating in an outdoor café area must be accessible to people with disabilities. Americans with Disabilities Act (ADA) accessibility requirements must be met within the outdoor café area. Five percent, or at least one, of the seating spaces in the outdoor café area must be accessible to people with disabilities. An accessible route connecting the outdoor café area, the business entrance, and the restrooms must be provided."

One interesting option for addressing lack of space comes from The National Association of City Transportation Officials (NACTO). It recommends the creation of "parklets," which are temporary platforms that can be installed to accommodate café seating over street parking spaces when sidewalks are too narrow for tables and chairs.² Cities that have installed parklets have seen increased pedestrian traffic and revenue for surrounding businesses. Parklets could be installed on a temporary basis over the parallel parking spaces at Takoma Junction and Old Town. Laurel Street could also be closed off on Friday and Saturday evenings to accommodate sidewalk cafes.

- **Outdoor alcohol consumption could lead to more noise complaints by residents at night due to public drunkenness. Additionally, some residents expressed that they do not want outside drinking in their neighborhood on any day or time of day.**
The permitting process could require that a restaurant's history of excessive noise and/or public drunkenness complaints be a consideration in whether or not to award a permit to

² <https://nacto.org/publication/urban-street-design-guide/interim-design-strategies/parklets/>

operate a sidewalk café. Complaints could also be the basis for an automatic review and potential revocation of a restaurant's permit.

Montgomery County code requires that the "hours of operation of an outdoor café area may not exceed the regular hours the business is open and operating". Noise restrictions are stringently enforced by the Department of Environmental Protection (DEP).

- **Outdoor eating and drinking could produce more trash and encourage the proliferation of rodents.**

If outdoor cafes include self-service, restaurants could be required to include trash and recycling receptacles within the boundaries of the café. Complaints about trash could be the basis for an automatic review and potential revocation of a restaurant's permit.

In addition, the County has regulatory language addressing this issue:

It is the responsibility of the permittee that the outdoor café area shall remain neat and clean at all times. If the outdoor café is by serving oneself, trash and recycling receptacles must be provided and placed within the boundaries of the outdoor café area. The outdoor café area shall be maintained and remain free of litter. (Requirements for Outdoor Café Seating)

III. Recommendations

Outdoor cafés within the public Right-of-way are a desirable feature and are beneficial as long as the sidewalks remain accessible to pedestrians, particularly those with physical disabilities.

Given our research on this matter and satisfaction that the above concerns can be addressed to balance pedestrian and restaurant owner interests, staff recommend that the City move forward with an Outdoor Café program. Outdoor seating will make the City's commercial districts more vibrant and attractive for visitors and residents. However, it should be clearly communicated to businesses that using public sidewalks to expand their operations is a privilege and not a right. The sidewalk café applicant should be in full compliance with City income tax and real estate tax obligations, as well as property maintenance requirements. An outreach plan to inform businesses of the requirements for obtaining a permit should also be developed.

The following are a series of policy options that the City may choose to initiate a new sidewalk café program:

- Modify City code to provide a sidewalk café permit process and revise Administrative Regulations for the use of public right-of-way to allow sidewalk seating that also permits the consumption of alcohol;
- Develop a pilot program of limited scope and monitor how sidewalk cafes work in practice before advancing a full program;
- Lease sidewalk space to adjacent businesses so that they can operate sidewalk cafes;
- Permit restaurants to add outdoor seating, but no sidewalk alcohol sale or consumption;
- Enable multiple uses of the street through street closures or moveable sidewalks that create temporary space for cafes during weekend evenings or other periods of time;

- Two-phased implementation of sidewalk café program by starting with a program limited to corner restaurants. The program would be expanded as part of the second phase.

If the City proceeds with a program to permit sidewalk cafes on public right-of-way, certain fiscal considerations would need to be taken into account. If improvements are necessary for a sidewalk to comply with ADA requirements, should a café owner who operates on part of that sidewalk be required to use a portion of the profits attributable to outdoor seating and reimburse the City? Should the owner contribute to sidewalk improvements that are not legally required, but allow more outdoor customers? Additional fiscal considerations involve the costs of City staff time dedicated to both initiating and implementing a new permitting program. The fee structure for first time and renewal permits should reflect those costs.

IV. Appendix

This Appendix, regarding policy and procedures, provides draft regulatory language that was derived from research of other cities (e.g., City of Worthington, OH; City of Wyandotte, MI; Ridgely, MD; Frederick, MD; and Berkeley, CA).

APPENDIX

This document presents sample language, based on multiple sources. A full list of sources can be provided if requested. The City of Takoma Park, is referred to as “the City” and Montgomery County is sometimes referred to as “the County”. More outdoor seating will make the City’s commercial districts more vibrant and attractive for visitors and residents. However, businesses should understand that using public sidewalks to expand their operations is a privilege and not a right.

Right-of-Way Permit Application

When outdoor café seating is proposed in the public right of way (ROW), a Work in Public-Right-Of-Way Permit is required.

If the seating area encroaches within adjacent property frontage, written consent is required from neighboring property owner(s) to utilize any portion of the PROW directly in front of their property. Permission must be obtained from the property owner and not a leaseholder. The business owner is required to submit a Work in Public Right-of-Way Permit Application, which includes the information listed below.

- A plan dimensioned to appropriate scale showing the following:
 - a. The business name, address, and telephone number. Contact name and number of the responsible party. Contact name and number of property owner.
 - b. The existing building frontage. Plans must establish that the means of egress from the existing building are not blocked, diminished, or in any way altered because of the new outdoor café.
 - c. A list of the name and type for all businesses at street level on the immediate left and right sides of the proposed outdoor café seating.
 - d. Streets shown and labeled in front and/or adjacent to the property.
 - e. All existing sidewalk dimensions from building face to face of curb.
 - f. The proposed dimensions and total area of the outdoor café area.
 - g. The proposed location and size of tables.
 - h. The proposed location and number of chairs.
 - i. The proposed handicapped accessible facilities and accessible travel route to these facilities from the sidewalk/clear zone and from these facilities to the business entrance

Outdoor Café Permit

Definitions

- **Outdoor Café Seating Permit** - allows a food service establishment to set up tables, chairs, umbrellas, heaters, and other fixtures required for food service within the public right-of-way.
- **Establishment** – Licensed place of business.
- **Sidewalk café** -- an outdoor portion of a restaurant, delicatessen, ice cream shop or coffee shop, located on a public sidewalk and consisting of tables and chairs for use by patrons.
- **Obstacle** - - an object hindering passage, including but not limited to a tree, tree well, parking meter, fire hydrant, street light, bike rack, or trash can.
- **Restaurant** -- any business permitted to serve food, including but not limited to a general restaurant, fast food restaurant, delicatessen or ice cream parlor.
- **Clear path of travel** -- the area of the sidewalk reserved for pedestrian travel and free of obstacles.
- **Street Fixtures** - A physical object located within a public sidewalk. Examples of street fixtures are streetlights, trees, and any surrounding landscaped area, planters, benches, signs, and parking meters.
- **Street furniture** -- Any proposed physical object located within the sidewalk cafe area within a public sidewalk. Examples of street furniture may be, but are not limited to, tables, chairs, umbrellas, umbrella stands, covered trash receptacles, hostess podiums, counters, and waiter/waitress stations.
- **Sidewalk cafe seating** -- tables and/or chairs (including benches) and umbrellas associated with lawfully operating establishments, in or on the public right-of-way or resting on, or projecting into, the sidewalk area, which are not physically or structurally attached to a building, retaining wall or fence.

Other Laws

- The establishment or operation of a sidewalk cafe does not negate any requirements for other permits and licenses from Montgomery County Dept. of Health and Human Services (DHHS) and/or Dept. of Liquor Control (DLC), etc.
- Outdoor cafés must be part of a lawful operating restaurant.
- Outdoor cafés must adhere to all rules and regulations from Montgomery County Departments as applicable.
- An outdoor dining area shall comply with all applicable building, health, safety, fire, zoning and environmental standards.
- A sidewalk cafe shall comply with all building, health, safety, fire, zoning, and environmental standards applicable to such uses.
- The sale and consumption of alcohol to customers in an outdoor café requires a Liquor License from the Montgomery County Department of Liquor Control (DLC) and must comply with DLC's requirements. Obtain additional information on DLC's requirements at: <http://www.montgomerycountymd.gov/dlc/>

Application Process

- Any person seeking a permit shall file a completed application with the City of Takoma Park's, on the appropriate forms provided by the City.
- If the restaurant owner is not the owner of the real property on which the restaurant is located, the property owner must sign the application or an agent authorization form accompanying the application.
- If the sidewalk cafe is proposed to extend onto the sidewalk of a neighboring property, the neighboring property owner must sign the application or a form accompanying the application.
- The application must also be accompanied by any application fee as specified.
- The City shall create and provide application forms for permits. The information required by the application will be the minimum information that is required of any applicant, and will include the following:
 - (A) a scaled sketch plan showing all pertinent features of the area affected, including property lines, building footprint, sidewalks, street curb lines, lighting, and any obstacle, and the proposed location of the sidewalk cafe layout and enclosure (scaled and dimensioned);
 - (B) the seating capacity of the proposed sidewalk cafe;
 - (C) a description and scaled drawings of the enclosure plan, including any physical changes proposed to the sidewalk such as holes for mounting railings;
 - (D) a detail or cut sheet of the enclosure device; and
 - (E) documentation of insurance coverage meeting the requirements of this article.
- The City shall review a submitted application for compliance with this section. If the City Manager finds that the applicant meets the requirements of this section, the City shall approve the application and shall issue a sidewalk cafe permit to the applicant.
- An application for a sidewalk café permit shall be made to the-----.
The application shall include:
 - 1. a scale drawing depicting the sidewalk abutting the business,
 - 2. the location of all street fixtures and
 - 3. the locations of the proposed tables and chairs.
 - 4. whether or not tables and chairs must be removed at the close of business
- The holder of the permit shall pay an annual fee as established by the City of Takoma Park.
- The annual fee shall be paid with the original permit application and with any request for renewal of the permit.
 - An application for a sidewalk cafe permit shall be made to the City on the forms provided. The application shall include a scale plan and scale drawing depicting the sidewalk abutting the business and only extend to the side property lines, the location of all street fixtures, proposed tables, chairs, and any other proposed street furniture.
 - The application shall include the sizes of all proposed tables, chairs, and any other proposed street furniture.
 - The application shall be made by the operating establishment only.
 - The application shall include proof of the required insurance. It shall note the start date for coverage, time period of coverage, and the date of renewal.

The Permit

- The permit application shall be reviewed and approved by the City Manager or his or her designee. The City Council shall be notified of the approved application.
- Permits under this Section are not transferable, and must be renewed annually.
- Permit Fees
 - The initial Outdoor Café Seating Permit fee is \$-----.
 - The annual renewal fee for the Outdoor Café Seating Permit is \$----- (one third of initial permit).
 - The permit must be renewed each calendar year.
- Minor modifications may be field approved at the City's discretion. A major modification, such as altering the size of the outdoor café, requires the submittal of a revised plan with approval prior to implementing the modification.
- Transfer
 - The permit is issued to the individual business and cannot be transferred to others.
 - If at any time ownership of the business has changed, the current permit becomes void and the new ownership must apply for a new Outdoor Café Seating Permit. If a restaurant or the property on which it is located is transferred, the property owner must apply for and obtain a new sidewalk cafe permit before operating a sidewalk cafe.

Standards and Requirements

- The permittee shall monitor and control the use of the Sidewalk Cafe Seating to prevent disturbance of the surrounding neighborhood.
- Term
 - The Permit is issued on an annual basis and is valid during the year issued unless revoked earlier. Any violation of the permit may result in fines to the permit holder and/or revocation of the Permit.
 - A sidewalk cafe permit is valid starting on the later of its date of issuance, subject to the provisions of this article relating to transfer, suspension, and revocation.
 - A new permit must be obtained each year in accordance with the permit application process established in this section.
- Location
 - A sidewalk cafe may be located on the sidewalk directly abutting a restaurant. It may extend onto the sidewalk of a neighboring property with the written permission of the neighboring property owner
 - The approved Outdoor Café Seating Permit and plan must be located at the address to which it has been issued.
- Heating is permitted within the designated outdoor café area. The heaters must be placed within the barriers of the outdoor café area, portable, and be easily removed.

Furniture

- Except as explicitly stated in the permit, all sidewalk café furniture shall be readily moveable and shall be stored indoors when not in use. No permanent structures or improvements shall be installed on any sidewalk or other public property.

Hours of operation

- Service at a sidewalk café shall end by ____PM. The café area shall be cleared of all other furniture (except any furniture approved to remain in the café area overnight pursuant to the permit), debris and obstructions to the sidewalk no later than one hour after the end of table service.

Prohibitions

- All food must be prepared inside the business, cooking and preparation of food within the outdoor café area is prohibited. Grills are not permitted in outdoor café areas.
- All service shall take place within the boundaries of the outdoor café area. Wait staff or customers shall not block the clear pedestrian zone at any time.
- Alcoholic Beverages
 - An operating establishment shall not sell, serve, or allow consumption of alcoholic beverages on its sidewalk café without obtaining the required license from Montgomery County.
- Obstructions A sidewalk cafe must be located so as not to:
 - (1) impede the ingress or egress of parked vehicles; or
 - (2) obstruct access to any obstacle; or
 - (3) prevent egress from the building.
- Smoking is prohibited in the outdoor café area.
- Outdoor café areas shall not have permanent fixtures, tables, seating, or barriers unless previously approved. These items must be easily removable (i.e., not attached to buildings or sidewalks) so that the public right-of-way can be easily restored back to its original condition.
- The following are prohibited in the café area: cooking of food; unshielded trash or refuse storage; advertisements (exclusive of menus intended to be read from café), exclusively carryout transactions.
- Objects permitted under this permit shall not:
 - Unduly interfere with access by public employees and utility workers to meters, fire hydrants or other objects (street hardware) in the right-of-way;
 - Block or obstruct the view of necessary authorized traffic devices;
 - Unduly interfere with pedestrian traffic on the sidewalk, pedestrian safety, access to public or private parking, traffic circulation, and/or vehicular safety;
 - Be located adjacent to any commercial or passenger loading zone;
 - Be closer to the curb than 18 inches;
 - Be affixed to any City or utility company-owned poles or appurtenances; or
 - Be adjacent to a transit stop, or an area with high pedestrian traffic volume due to proximity to a transit stop.

Denial or Revocation of permit

The City may revoke a permit issued under this article for one or more of the following reasons:

- The applicant has misrepresented or provided false information on a permit application;
- The permit has been suspended within the previous twelve;
- The sidewalk cafe has been operated in such a manner as to create a public nuisance or constitute a hazard to the public health, safety, or welfare; or
- There is a superseding public need relative to the portion of the sidewalk occupied by or otherwise affected by the sidewalk cafe.
- Before revoking a permit, the City will provide written notice to the permit holder setting forth the grounds for and effective date of the revocation.
- If part of this permit is denied or withdrawn, then a new revised application and permit fee must be submitted.

Administration

- Takoma Park's City Manager, or his or her designee, may develop and implement administrative regulations as needed for the efficient implementation and enforcement of this article.
- The City retains all rights to revoke or alter any Outdoor Café Permit at any time for repairs in the right-of-way and in the interest of health, safety, or welfare concerns.
- Takoma Park's City Manager, or his or her designee, may approve Sidewalk Cafe Seating.
- When any objects permitted under this Section are found to be in conflict with existing or proposed City design plans, those objects shall, upon written demand of the City Manager or his or her designee, be removed or relocated in such a way as to eliminate the conflict, at the sole expense of the permittee.

Insurance

- Applicant shall provide proof of such insurance before a permit may be issued or renewed.
- The holder of a permit issued under this article shall obtain and maintain, for the period the permit is valid, a policy of commercial general liability insurance with bodily injury limits of \$1,000,000 per occurrence / \$2,000,000 aggregate, combined single limit, bodily injury & property damage, with the City named as additional insured.
- The insurance shall provide for 30 days prior written notice to be given to the City if coverage is substantially changed, canceled or non-renewed.
- Prior to permit approval, the permittee shall demonstrate possession of liability insurance. Said insurance shall name the City of Takoma Park as additionally insured and shall be in a form acceptable to the City Attorney.

Indemnification

- The holder of a sidewalk café permit shall fully insure, indemnify, defend and hold harmless the City of Takoma Park and in their capacity as such, the officers, agents, and employees thereof from and against any and all claims and damages in any way arising out of or through the acts or omissions of the permit holder or its employees in the operation, maintenance, use, placement or condition of the sidewalk café.

Maintenance

- It is the responsibility of the permittee to ensure that the sidewalk cafe, including the public sidewalk and furnishings, is kept in a clean and safe condition at all times.
- If the outdoor café is by serving oneself, trash and recycling receptacles must be provided and placed within the boundaries of the outdoor café area.
- The outdoor café area shall be maintained and remain free of litter
- A sidewalk cafe may not obstruct snow removal or street sweeping operations or otherwise interfere with routine maintenance by the City.

Outdoor Cafe Checklist

(from the Montgomery County Department of Permitting Services)

Any license may operate an outdoor café as part of the licensed premises only if the outdoor café is:

- Contiguous to the licensed premises, enclosed in a clearly delineated area, and surrounded by a continuous barrier at least 36 inches high at its lowest point;
- Not located on a public right of-way, without the express written approval of the City of Takoma Park.
- On the same side of the street and extends no more than a combined total of fifty (50) feet beyond the width of the store front of the licensed premises in either direction.
- If the café extends beyond the width of the storefront of the licensed premises, the licensee must obtain written permission to operate the extended portion of the café, from all adjoining property owners within the extended café area.
- The distance between the storefront of the licensed premises and the closest point of the café area must be no more than twenty-five (25) feet.
- Table service must be available at Outdoor Cafés.

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

[Section B 14 and C 1-8 may be more appropriate for Administrative Regulations]

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. The use of public sidewalks 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 public sidewalks for outdoor café seating shall only be permitted incidental to the operation of a restaurant on private contiguous property and may extend up to fifty feet beyond the width of the storefront of the restaurant with the consent of the property owner in front of which 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 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 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).

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 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;

c. Outdoor furnishings materials and their color should be selected for continuous harmony and aesthetic quality 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;

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 conditions 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 outdoor café area directly to the curb.

2. Hours of operation of the restaurant's indoor area and proposed hours of operation of the outdoor café area.

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 café permits are not transferrable. In the event of the transfer of ownership of the restaurant, the new owner must reapply for a permit.

F. 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 public health, safety, and welfare.

G. The City may revoke a permit for violations of this section, City regulations, or the terms and conditions of the permit.

H. Regulations. The Department 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, City approval of alcohol sales, additional permit criteria and standards, and prohibited activities.