

SIDEWALK CAFE STANDARDS AND PROCEDURES

PURPOSE

These standards and procedures are adopted pursuant to Chapter 13.18 of the Municipal Code in order to encourage appropriate outdoor activities in the public right-of-way, to ensure that the space used for outdoor dining in the public sidewalk will serve a public purpose, to ease the process of obtaining permission to operate an outdoor dining facility, and to ensure adequate space for pedestrians on the sidewalk adjacent to sidewalk cafes.

DEFINITIONS

Sidewalk Café. An outdoor dining area on a public sidewalk where patrons may consume food and/or beverages provided by an abutting food service establishment. Such establishments may either provide table service in the outdoor dining areas or sell take-out items to be consumed in the outdoor dining area.

These regulations do not apply to outdoor dining on private property.

GENERAL PROVISIONS

- A. Permit required. Outdoor dining on a public sidewalk may occur only pursuant to a Sidewalk Cafe License Encroachment Permit (hereinafter "Encroachment Permit").
- B. Prohibited locations. Outside dining will not be permitted on sidewalks designated by City Council resolution as shared bicycle and pedestrian facilities.
- C. Permit transfer. An Encroachment Permit may be transferred to a subsequent operator of the same establishment subject to approval by the Public Works Director and payment of an Encroachment Permit transfer fee established by the City Council. Prior to approval of the transfer the Public Works Director may modify the terms of the permit as deemed appropriate to protect public health, safety and welfare.
- D. Zoning requirements. Outdoor dining on a public sidewalk shall be subject to the requirements and limitations set forth in Section 20.82.050 (Accessory Outdoor Dining) of the Municipal Code. An Encroachment Permit may be processed concurrently with an Accessory Outdoor Dining Permit.

- E. Conditions of approval. The Public Works Director shall have the authority to apply conditions to the approval of Encroachment Permits as appropriate to ensure compliance with the provisions of this policy. Standard conditions of approval are provided in this Council Policy. In addition to these standard conditions, special conditions may be applied as deemed appropriate by the Public Works Director.

- F. Authority of the Public Works Director; Appeal. The location and configuration of any sidewalk cafe shall be subject to approval by the Public Works Director, who shall consider public safety issues unique to the pedestrian and vehicular needs of the specific location when reviewing Encroachment Permit applications. Notwithstanding any other provisions of this policy, the Public Works Director shall have the authority to deny any Encroachment Permit application or revoke any existing permit if it is determined to be detrimental to public health, safety or general welfare. The decision of the Public Works Director may be appealed to the City Manager by the applicant. The decision of the City Manager shall be final.

- G. Indemnification. The Permittee shall defend, indemnify and hold the City and its employees harmless from and against any loss or damage arising from the use or existence of the improvements or encroachment authorized under an Encroachment Permit.

- H. Insurance. The Permittee shall obtain and maintain in force comprehensive general liability, broad form property damage and blanket contractual liability insurance in a combined single limit amount, per claim and aggregate, of at least one million dollars (\$1,000,000.00) covering the Permittee's operations on the sidewalk. Such insurance shall name, on a Special Endorsement form, the City, its elected and appointed boards, officers, agents and employees as additional insureds. A Certificate of Insurance shall contain provisions that prohibit cancellations, modifications, or lapse without thirty (30) days prior written notice to the City.

- I. Revocation. The Public Works Director may revoke this permit at any time if it is determined that continued operation of the sidewalk café is detrimental to the public interest or the Permittee is in violation of conditions to the permit.

- J. Abatement. In the event that the Permittee fails to abide by the terms and conditions of this permit, the Public Works Director may summarily abate any prohibited improvements and the Permittee shall pay all costs incurred by the City in such abatement.
- K. Inspection. The Public Works Department may inspect improvements within the public right-of-way at any time without notice to the Permittee.
- L. Indemnification. The Permittee shall defend, indemnify and hold the City and its employees harmless from and against any loss or damage arising from the use or existence of the improvements or encroachment authorized under this permit.
- M. Insurance. Permittee shall obtain and maintain in force comprehensive general liability, broad form property damage and blanket contractual liability insurance in a combined single limit amount, per claim and aggregate, of at least one million dollars (\$1,000,000) covering the applicant's operations on the sidewalk. Such insurance shall name, on a Special Endorsement form, the City, its elected and appointed boards, officers, agents and employees as additional insureds. A Certificate of Insurance shall contain provisions that prohibit cancellation, modifications, or lapse without thirty (30) days prior written notice to the City.
- N. Permit limitations. This permit is issued in conformance with Newport Beach Municipal Code Chapter 13.18 and Council policy L-21 relating to outdoor dining on public sidewalks. However, issuance of this permit does not imply that all governmental agency requirements for starting a new restaurant or expanding an existing one have been satisfied. Business owners are responsible for securing and complying with all required licenses and permits from other agencies including the state Alcoholic Beverage Control Board, the County Health Department, and the City of Newport Beach. Sale of alcoholic beverages in outdoor dining areas shall comply with Section 10.04.010 of the Newport Beach Municipal Code and Council Policy K-7 (Determination of Convenience and Necessity of Alcoholic Beverage Outlets).
- O. No alterations. The floor of the outdoor dining area shall be maintained at the same level as the sidewalk, and no alterations to the sidewalk or coverings on the sidewalk (e.g., borings for recessed sleeves) shall be installed unless expressly approved by the Public Works Director.

- P. Disabled access. The outdoor dining area shall be accessible to the disabled, and buildings adjacent to these dining areas shall maintain building egress as defined by the Uniform Building Code and State of California Title 24 Disabled Access Standards.
- Q. Management. Restaurant management shall operate the outdoor dining areas in compliance with the terms and conditions of this permit and shall not delegate or assign the responsibility. The Permittee shall ensure that sidewalk café patrons do not disturb persons on the adjacent right-of-way by loud, boisterous, and unreasonable noise, offensive words or disruptive behavior.
- R. Maintenance. Restaurant management shall keep the outdoor dining area clear of litter, food scraps, and soiled dishes and utensils at all times. Trash receptacles shall be provided in outdoor dining areas used for consuming take-out items unless public trash receptacles located nearby are determined to be adequate by the Public Works Director. At the end of each business day, establishments are required to clean (sweep and wash) the entire sidewalk in and around the outdoor dining area and remove debris to a closed receptacle. No debris shall be swept, washed, or blown into the sidewalk, gutter or street. If disposable materials are used, the establishment shall comply with all applicable City recycling programs. Awnings and umbrellas shall be washed whenever they are dirty and, in any event, no less than two times each year. Private trash receptacles shall be emptied daily.
- S. Furniture removal. When the establishment stops serving for the day and patrons already seated in it leave, further seating in the outdoor dining area shall be prohibited and the outdoor dining furniture shall be removed from the right-of-way unless otherwise approved in the Encroachment Permit.
- T. Plans and permits. All City-approved plans and permits for the outdoor dining area shall be kept on the premises for inspection at all times when the establishment is open for business.
- U. Smoking. Restaurant management may permit smoking in the outdoor dining area consistent with all applicable statutes and regulations. Management may also prohibit smoking in the outdoor dining areas.

- V. Permit transfers. This permit may be transferred to a subsequent operator subject to approval by the Public Works Director and payment of a transfer fee as established by the City Council. Prior to approval of a transfer the Public Works Director may modify the terms of the permit as deemed appropriate to protect public health, safety and welfare.
- W. Termination. Upon termination of the Encroachment Permit, the Permittee shall immediately remove the barriers around the outdoor dining area, return the sidewalk to its original condition, and remove all personal property, furnishings, and equipment from the sidewalk. Any personal property remaining on the premises shall be removed pursuant to the laws of the State of California and the City.
- X. Locations where sidewalk cafes are prohibited. Sidewalk Cafes shall be prohibited in Shared Bicycle/Pedestrian Facilities. Locations of shared bicycle/pedestrian facilities are as follows:

Campus Drive - south side	Von Karman Ave. to Jamboree Rd.
Irvine Avenue - east side	Orchard Ave. to Bristol St.
Jamboree road - west side	Eastbluff Dr. North to Campus Dr.
Mac Arthur Boulevard - east side	Jamboree Rd. to Campus Dr.
Ocean Front	F St. to McFadden Place & westerly line of Ocean Front parking lot to 36 th St.
Riverside Avenue - North side	Cliff Dr. to 150 feet north of Avon Ave.
San Joaquin Hills Road - south side	MacArthur Blvd. to Marguerite Ave.
San Miguel Drive - west side	Port Sutton Dr. to San Joaquin Hills Rd.
San Miguel Drive - both sides	San Joaquin Hills Rd. to Avocado Ave.

APPLICATION PROCEDURE

- A. An Encroachment Permit shall be required for all encroaching furniture and improvements. The application shall be filed with the Public Works Department on a form provided by the Public Works Department. The application shall be

signed by the owner of the property, or his authorized agent. Authorized agents shall submit written authorization. The application shall be accompanied by a site plan, drawn to scale and fully dimensioned, which accurately depicts the location, height, nature and extent of all proposed improvements and objects within the encroachment zone. All fixed features such as tree wells, sign posts, parking meters, fire hydrants, news racks, etc. within twenty feet (20') of the encroachment zone shall be depicted on the site plan.

- B. Prior to issuance of the Encroachment Permit the applicant shall provide both the Certificate of Insurance and the completed standard Special Endorsement in a form meeting the approval of the Public Works Director and the City Attorney.

TERM

Valid encroachment permits shall remain in effect until modified or revoked.

SIDEWALK CAFE DEVELOPMENT STANDARDS

- A. Horizontal Clearance. A clear, continuous pedestrian path not less than six feet (6') in width shall be required for pedestrian circulation outside of the outdoor dining area, provided that the Public Works Director may require more than six feet (6') if necessary to protect the public safety. Areas with heavy pedestrian traffic may be required to maintain a minimum of eight feet (8') clear width on the sidewalk. As used herein, pedestrian path means a continuous obstruction-free sidewalk area, paved to City standards, between the outside boundary of the dining area and any obstruction, including but not limited to parking meters, street trees, landscaping, street lights, bus benches, public art, and curb lines. These requirements may be modified at the discretion of the Public Works Director in locations where unusual circumstances exist and where public safety would not be jeopardized.
- B. Allowable uses. An outdoor dining area may incorporate street trees or street furniture, provided that the required pedestrian path is maintained outside of the outdoor dining area.
- C. Setbacks from corners, streets and alleys. When an outdoor dining area is located at a street corner, a ten-foot (10') setback from the corner of the building shall be maintained along both frontages. When an outdoor dining area is located adjacent to a driveway or an alley, a five-foot (5') setback shall be maintained from the driveway or alley. These requirements may be modified at

the discretion of the Public Works Director in locations where unusual circumstances exist and where public safety would not be jeopardized (e.g., the sidewalk adjacent to the proposed outdoor dining area is wider than usual or the perimeter of the building has an unusual configuration).

- D. Extension to adjacent properties. Subject to approval of the Public Works Director and the limitations of NBMC Sec. 20.82.050, an outdoor dining area may extend onto the sidewalk in front of an adjacent business with the written consent of both the adjacent business owner and property owner.

DESIGN STANDARDS

A. Barriers.

No barrier shall be required if the applicant proposes to limit the outdoor dining area to one row of table and chairs abutting the wall of the establishment and if no alcohol will be served.

Establishments that serve alcoholic beverages in the outdoor dining area shall provide a physical barrier that meets the requirements of this policy and of the Alcoholic Beverage Control Board.

Barriers should compliment the building facade as well as any street furniture and be somewhat transparent (such as wrought iron) and shall be able to withstand inclement weather. Barriers must be 70% transparent and shop drawings showing the design must be submitted to the Public Works Department for approval upon request.

Barriers shall conform to the Public Works Department installation standards and be removable. Barriers and furniture shall be removed at the end of each business day unless otherwise approved by the Public Works Department. Barriers shall be designed to be sectional in nature and easily removed by no more than two people. Barriers may be anchored through the use of recessed sleeves and posts, by wheels that can be locked into place, or weighted bases, however, when they are removed, the resulting surface must be flush with the sidewalk.

The height of any barrier shall not exceed three feet six inches (3'6").

- B. Awnings and Umbrellas. The use of awnings over the outdoor dining area and removable table umbrellas may be permitted, provided they do not interfere with street trees. No portion of an awning shall be less than eight feet (8') above the sidewalk and no portion of an umbrella shall be less than seven feet (7') above the sidewalk. Awnings may extend up to five feet (5') from the building front or cover up to fifty percent (50%) of the outdoor dining area, whichever is less. Awnings shall have no support posts located within the public right-of-way. A building permit must be obtained prior to installation of an awning. Heaters, electrical lighting, and/or planting shall not be attached to the awning structure.
- C. Lighting. Outdoor lighting fixtures should compliment the style of the building. Lighting fixtures shall not be glaring to motorists or pedestrians on the adjacent right-of-way, and shall illuminate only the outdoor dining area. Outdoor lighting may be installed on the facade of the building. Electrical fixtures shall not be permitted in the public right-of-way. Lighting shall be installed by a licensed electrician under an electrical permit from the Building Department. Battery operated lamps or candles will be permitted.
- D. Design. The design, material, and colors used for chairs, tables, umbrellas, awnings and other fixtures should compliment the architectural style and colors of the building facade and street furniture.
- E. Signs. Notwithstanding any other provision in the Municipal Code, signs and logos shall be permitted on umbrellas in outdoor dining areas.
- F. Heaters. Portable propane heaters shall be allowed within the outdoor dining area.
- G. Landscaping. Any landscaped pots or planters, if desired, shall be placed within the permitted barrier. Such planters shall be portable and not line the barrier in a continuous fashion. The height of planter and plantings shall not exceed 42-inches. Barriers and awnings may not be planting with vines. All planters and pots must be placed on the interior of the barrier.

Plants shall be properly maintained and stressed or dying plants shall be promptly replaced. Because plant fertilizers contain materials that can stain the pavement, water drainage from any plants onto the adjacent sidewalk shall not be allowed. Potted plants shall have saucers or other suitable systems to retain

seepage and be elevated to allow for air flow of at least one inch (1") between saucers and sidewalk.

FEES

- A. Application fee. An application fee established by resolution of the City Council shall be paid at the time an Encroachment Permit application is submitted to the Public Works Department.
- B. Transfer fee. A transfer fee established by resolution of the City Council shall be paid at the time an Encroachment Permit transfer application is submitted to the Public Works Department.
- C. Annual use fee. An annual use fee established by resolution of the City Council shall be paid upon annual renewal of an Encroachment Permit. No use fee shall be charged during the first year of operation.

VIOLATION/REMEDY

In the event that a Permittee fails to abide by the provisions of this policy or the terms and conditions of an encroachment permit, the Public Works Director may summarily abate any encroachment or improvement that is in violation of this policy. The Permittee or property owner shall pay all costs incurred by the City in abating the encroachment or improvement. The Permittee or property owner may appeal the decision of the Public Works Director to the City Manager. The determination of the City Manager with respect to abatement shall be final.

Adopted - March 11, 1996

Corrected - May 28, 1996

Amended - March 22, 1999

Amended - April 23, 2002

Note: This policy was adopted as L-19 on 3-11-96, however this number was already assigned to Leased Street Lights (approved 2-26-96).