

Sec. 62-209. Removal and storage fees; disposition of property.

(a) If the city removes, pursuant to this article, any tables, chairs, merchandise or other objects pertaining to a sidewalk cafe or outdoor display of merchandise, the permittee or business owner shall be responsible for the reasonable expenses incurred by the city for the removal and storage of such items. Failure to pay said expenses within 30 days of written notice may result in the sale of said item to pay storage fees or other city expenses.

(b) The city shall have the right to immediately remove any tables, chairs, merchandise or other objects within the public way which impede pedestrian traffic or pose a threat to the public health, safety or welfare.

(Ord. No. 02-24, § 2, 5-23-02)

Sec. 62-210. Indemnification and insurance.

(a) Upon issuance of a permit, the permittee agrees to indemnify, defend, save and hold harmless the city, its officers and employees from any and all claims, liability, lawsuits, damages and causes of action which may arise out of the permit or the permittee's activity on the permitted premises.

(b) The permittee agrees to meet and maintain in effect for the entire permit period, at permittee's own expense, the following requirements and coverages:

- (1) Commercial general liability insurance in the amount of \$1,000,000.00 per occurrence for bodily injury and property damage. The city must be named as an additional insured on this policy, and an endorsement must be issued as part of the policy reflecting compliance with this requirement.
- (2) For sidewalk cafes which serve alcoholic beverages, alcoholic-license liability insurance in the amount of \$1,000,000.00 per occurrence for bodily injury and property damage. The city must be named as an additional insured on this policy, and an

endorsement must be issued as part of the policy reflecting compliance with this requirement.

- (3) Workers' compensation and employers' liability as required by the state.
- (4) All policies must be issued by companies authorized to do business in the state and rated B+, VI or better per Best's Key Rating Guide, latest edition.
- (5) The permittee must provide and have approved by the city an original certificate of insurance as evidence that the requirements set forth in this section have been met prior to commencing operations. Failure to comply with these requirements shall cause a suspension or revocation of the permit.
- (6) A renewal certificate shall be issued 30 days prior to the expiration date of the policy. The policy shall provide a 30 day notification clause to the city if the policy is cancelled, not renewed or modified and the city must receive 30 days written notice prior to any cancellation, nonrenewal or change in the coverage provided. Any notices, including certificates evidencing compliance with this section shall be furnished to the city clerk.

(Ord. No. 02-24, § 2, 5-23-02)

Sec. 62-211. Violations.

Code enforcement officers and fire inspectors are hereby expressly designated as designees of the city for purposes of issuing warning notices and citations for all violations of this article in accordance with the established procedures. Life safety violations are defined as those conditions which exist involving serious threat to the public health, safety or welfare, including violations of the state accessibility code or building construction, in which case no warning notice shall be required.

(Ord. No. 02-24, § 2, 5-23-02)

Sec. 62-212. Classes of violations and penalties.

Violations of this article shall be classified as class 3 violations under division 3, article II, chapter 2, part II of this Code.
(Ord. No. 02-24, § 2, 5-23-02)

Sec. 62-213. Non-exclusivity.

Nothing contained in this article shall prevent or restrict the city from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or situation of noncompliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. All remedies and penalties provided for in this article shall be cumulative and independently available.
(Ord. No. 02-24, § 2, 5-23-02)

Sec. 62-214. Suit to collect lien.

If the city brings suit to collect liens, expenses, costs or assessments or to restrain, enjoin or otherwise prevent or remedy any violation of this article, the city is entitled to recover reasonable attorneys' fees and court costs from the named defendant in such action.
(Ord. No. 02-24, § 2, 5-23-02)

Sec. 62-215. Permissive grant.

The grant of a permit and use of the public ways pursuant to this article is a permissive use which is revocable by the city at any time and said use shall never be the basis of a vested right, prescriptive right, easement or title to any portion of the public ways or any interest in the public ways and shall be enjoyed as a permissive right only.
(Ord. No. 02-24, § 2, 5-23-02)

Sec. 62-216. Variances.

(a) A variance may be granted from the regulations contained in this article by the planning and zoning board if the planning and zoning board concludes that literal enforcement of the provisions of this article would result in unnecessary and unreasonable hardships for the property

at issue. In order for a variance to be granted, the planning and zoning board must also find that, by granting the variance, the remaining regulations will protect the public safety and welfare of the city. Except as provided in this section, all variance requests pertaining to this article shall be submitted, reviewed, advertised, granted, denied or granted with conditions pursuant to division 4, article II, chapter 118 of the Code. Appeals of the decision of the planning and zoning board shall be pursuant to division 5, article II, chapter 118 of the Code.

(b) No variance shall be permitted which results in a pedestrian pathway which is narrower than 42 inches or such minimum as may be required pursuant to the Americans with Disabilities Act.

(c) Any variance which results in an extension of a sidewalk cafe area beyond the property (boundary) line onto an adjacent property shall require the written consent of said adjacent property owner.

(d) No variance shall be permitted for the extension of the outdoor merchandise area beyond the property (boundary) line onto an adjacent property.
(Ord. No. 02-24, § 2, 5-23-02)

Sec. 62-217. Suspension of article.

Upon proclamation or authorization of the city commission, the applicability of any or all of the regulations contained in this article may be suspended citywide or in selected areas and during such time as may be proclaimed or authorized for purposes of a special event, such as block parties, festivals, or city celebrations.
(Ord. No. 02-24, § 2, 5-23-02)

Secs. 62-218—62-228. Reserved.**DIVISION 2. SIDEWALK CAFES****Sec. 62-229. Size of sidewalk cafe area.**

The size of the sidewalk cafe area for any particular property, unless a variance is obtained, shall not exceed the width of the building frontage nor shall the depth exceed that distance as mea-

sured from the building facade outward toward the curb, provided a pedestrian pathway is maintained.

(Ord. No. 02-24, § 2, 5-23-02)

Sec. 62-230. Standards, criteria and conditions for sidewalk cafes.

All permit holders for sidewalk cafes shall meet the following standards, criteria, and conditions:

- (1) Sidewalk cafes are restricted to the sidewalk cafe area.
- (2) Tables and chairs shall not be placed within five feet of bus stops, taxistands, fire hydrants or alleys.
- (3) Tables, chairs, umbrellas or other personal property may not be permitted within five feet of a pedestrian crosswalk or handicap corner curb cut.
- (4) Sidewalk cafes shall be located in such a manner that a distance of not less than five feet is maintained at all times as a clear unobstructed pedestrian pathway around the sidewalk cafe.
- (5) No object shall be permitted around the perimeter of an area occupied by tables and chairs which would have the effect of forming a physical or visual barrier discouraging the free use of the tables and chairs by the general public or which would have the effect of obstructing the pedestrian pathway, except where fences are approved by the city and otherwise as the city may permit by variance.
- (6) Tables, chairs, umbrellas and other permissible objects related to the sidewalk cafe shall be of quality, design, materials, size, elevation and workmanship both to ensure the safety and convenience of users and to enhance the visual quality of the urban environment. Design, materials, and colors shall be approved by the planning and zoning director or his designee prior to the issuance of the sidewalk cafe permit.
- (7) Umbrellas and other decorative material shall be for outdoor commercial use, be fire-retardant, or manufactured of fire-resistive material and shall comply with applicable building and fire codes, and there shall not be more than two of the same logos or names on each umbrella.
- (8) The public works department may require the temporary removal of a sidewalk cafe when street, sidewalk or utility repairs necessitate such action. If such temporary removal is required, the permittee shall immediately comply with all requirements of the public works department, including the removal or relocation of all tables, chairs or other items within the public way.
- (9) The city may cause the immediate removal or relocation of all or parts of the sidewalk cafe in emergency situations or for safety considerations.
- (10) The city and its officers and employees shall not be responsible for sidewalk cafe personal property and fixtures relocated during emergencies.
- (11) All sales transactions shall occur in the building.
- (12) The permittee shall assure that its use of the public ways in no way interferes with pedestrians or limits their free, unobstructed passage throughout the operation of the sidewalk cafe during all business hours. All tables, chairs, planters or other public ways obstructions shall be removed after business hours except for such matters located within sidewalk cafe areas which matters have been properly approved by the city pursuant to this article.
- (13) Tables, chairs, umbrellas and other permissible objects provided with a sidewalk cafe shall be maintained in a clean and attractive appearance and shall be in good repair at all times. Umbrellas or similar fixtures that are sensitive to windy conditions must be sufficiently weighted to prevent movement, and the city may require

removal of these umbrellas or similar fixtures on windy days to prevent injury to pedestrians.

- (14) The area covered by the permit, including the pedestrian pathway, shall be maintained in a neat, clean and orderly appearance at all times by the permittee, and the area shall be cleared of all debris as needed during the day, and again at the close of each business day.
- (15) Other than fences approved by the city no tables, chairs or other parts of sidewalk cafes shall be attached, chained, bolted or in any manner affixed to any tree, post, sign or other fixture, curb or sidewalk in or near the permitted area.
- (16) The permit covers all seating with the sidewalk cafe area. No additional outdoor seating authorized pursuant to this division shall be used for calculating seating requirements pertaining to applications for or issuance of an alcoholic beverage license for any establishment; nor shall the outdoor seating be used as the basis for computing required seating for restaurants and dining rooms, or as grounds for claiming exemption from such requirements under the provisions of any city ordinance or state law. However, additional outdoor seating authorized pursuant to this division shall be included in determining required plumbing or accessibility fixtures or other fire and building code requirements.
- (17) No food preparation, fire or fire apparatus shall be allowed within the public ways.
- (18) Upon the issuance of a hurricane or high wind hazard by the weather bureau or the city, the permittee shall immediately remove all tables, chairs and other equipment located within the public ways. The issuance of such a warning shall constitute an emergency situation.
- (19) Only the sidewalk cafe equipment specifically disclosed on the approved application and not otherwise prohibited shall be allowed within the sidewalk cafe area.

The estimated chair count per table may vary within the prescribed area, provided that the chairs remain within the approved sidewalk cafe area. No storage of chairs, tables, dishes, silverware or other sidewalk cafe equipment shall be allowed in the sidewalk cafe area or within the public way.

- (20) No live entertainment or speakers shall be placed within the sidewalk cafe area unless permitted as a special event. Conditions such as hours and days of operation and audio levels will be regulated by the city, and these may vary during the year.
- (21) The serving and consumption of alcoholic beverages within a sidewalk cafe is expressly conditioned upon the permittee obtaining the necessary state alcoholic beverage license and meeting all local and state alcoholic beverage requirements. Further, the service and consumption of alcoholic beverages within a sidewalk cafe shall only be permitted where the service and consumption of alcoholic beverages has been properly licensed. Nothing herein shall be construed to permit the service or consumption of alcoholic beverages wherein such service or consumption is prohibited by City Code or Charter.
- (22) The hours of operation of the sidewalk cafe are limited to the legal hours of operation of the business holding the sidewalk cafe permit.
- (23) Any damage to the public sidewalk or public fixtures within the public ways, including, but not limited to, chipped or cracked concrete, painted concrete, bent signs, etcetera, resulting from operation of the restaurant shall be the responsibility of the permittee and said permittee shall be liable to city for all cost of repair.
- (24) No bar or bars are allowed in sidewalk café areas in the historic downtown district.
- (25) Vats, tubs, coolers, and other beverage storage devices within sidewalk cafe ar-

eas in the historic downtown district shall not be used to store or accommodate, nor used in conjunction with the sales, service or dispensation of, alcoholic beverages, except during special events with the prior approval of the city commission.

- (26) Sidewalk cafe areas shall not be used or available for food or beverage sale or service unless tables, chairs and other furniture and fixtures sufficient to accommodate all of the patrons allowed within the sidewalk cafe areas are first permitted, placed and remain within the sidewalk cafe area.
 - (27) Fences relating to sidewalk cafe areas shall comply with the criteria set forth in this article.
 - (28) Alcohol beverages sales and service in sidewalk cafe areas in the historic downtown district is limited to that portion of the sidewalk cafe area adjacent to and directly in front of that portion of the building where alcohol sales and service is permitted.
- (Ord. No. 02-24, § 2, 5-23-02; Ord. No. 13-19, § 4, 5-23-13; Ord. No. 13-20, § III, 5-23-13)

Secs. 62-231—62-239. Reserved.

DIVISION 3. MERCHANDISE DISPLAY

Sec. 62-240. Size of outdoor merchandise area.

The size of the outdoor merchandise area for any particular property, unless a variance is obtained, shall not exceed the width of the building frontage nor shall the depth exceed five feet as measured from the building facade outward toward the curb, provided a pedestrian pathway is maintained. In the event a pedestrian pathway cannot be maintained within the aforementioned parameters and unless a variance is obtained, the size of the outdoor merchandise area shall not exceed the width of the building frontage nor shall the depth exceed that distance as measured

from the building facade outward toward the curb less the area necessary for the pedestrian pathway.

(Ord. No. 02-24, § 2, 5-23-02)

Sec. 62-241. Standards, criteria and conditions for outdoor merchandise areas.

All permit holders for outdoor merchandise areas shall meet the following standards, criteria and conditions:

- (1) No person shall locate an outdoor merchandise area within the public ways unless they have secured a permit from the city pursuant to the requirements of section 62-204 of this Code and paid any applicable fees required by the city.
- (2) Outdoor merchandise areas shall be located only in the areas designated by the city. Merchandise and the fixtures or devices on which it is displayed shall be restricted to the outdoor merchandise area and be located so as not to impede, endanger or interfere with pedestrian or vehicular traffic.
- (3) Merchandise and the fixtures or devices on which the merchandise is displayed must not block regulatory signs, crosswalks or intersections and shall be sufficiently lit during times of low light in order to provide for safe pedestrian passage alongside the outdoor merchandise areas.
- (4) The outdoor merchandise area for the display of merchandise and the fixtures or devices on which the merchandise is displayed must abut the building facade. In addition, all displays of merchandise shall be sufficiently set back from the curb to allow for the parking of automobiles.
- (5) All displays of merchandise within the outdoor merchandise areas must meet a minimum height of 28 inches. All merchandise located within an outdoor merchandise areas shall be placed so that the merchandise and the fixtures or devices on which the merchandise is displayed

are stable and not easily tipped and do not include sharp edges, protrusions, or other features which may be hazardous to the public.

- (6) All merchandise and the fixtures or devices on which the merchandise is displayed shall be moved inside the building or structure wherein the business is located during hours the business is not operated and during inclement weather, including, but not limited to, heavy rain or wind.
- (7) The permittee shall be responsible for the maintenance, upkeep and security of the fixtures or devices on which the merchandise is displayed and the city shall not be so responsible.
- (8) The permittee shall be responsible for keeping the outdoor merchandise areas clean of garbage, trash, paper, cups, cans or litter associated with the operation of the outdoor merchandise areas.
- (9) The permittee shall not utilize within the outdoor merchandise area any bell, siren, horn, loudspeaker or any similar device to attract the attention of customers.
- (10) Display items shall be limited to merchandise sold by the business or decorative items which relate to or compliment the business.
- (11) Outdoor merchandise areas shall not contain any live animals.
- (12) Display items shall not include signage which would otherwise require a sign permit under the Code.
- (13) All sales transactions shall occur in the building.
- (14) Except as provided for herein, no merchandise shall be displayed by use of racks or tables. Periodic display of merchandise upon tables may be permitted for special events up to four times per year, not to exceed one time per calendar quarter. A special event permit may be obtained from the planning and zoning department.
- (15) The permittee shall assure that permittee's use of the public ways in no way interferes with pedestrians or limits their free, unobstructed passage throughout the display of merchandise during all business hours. All merchandise or other public ways obstructions shall be removed after business hours. A pedestrian pathway must be maintained and remain unobstructed at all times.
- (16) Any damage to the public sidewalk or public fixtures within the public ways, including, but not limited to chipped or cracked concrete, painted concrete, bent signs, etcetera resulting from operation of the business shall be the responsibility of the permittee and said permittee shall be liable to city for all cost of repair.

(Ord. No. 02-24, § 2, 5-23-02)

Secs. 62-242—62-62-299. Reserved.

DIVISION 4. FENCING CRITERIA

Sec. 62-300. Applicability.

This division 4 is applicable to fencing contemplated or allowed under article VII of chapter 62.
(Ord. No. 13-20, § IV, 5-23-13)

Sec. 62-301. Height.

Fencing shall be a minimum of 36 inches and a maximum of 41 inches in height.
(Ord. No. 13-20, § IV, 5-23-13)

Sec. 62.302. Openings/entranceways.

If there is any pedestrian opening or entranceway in the fencing, the minimum width of the opening or entranceway shall be 44 inches and the maximum shall be 60 inches. The community development department may approve a larger opening or entranceway for architectural compatibility with the building and fencing, or for functional efficiency, but the width shall not exceed 72 inches. No gates shall be installed or used in pedestrian openings or entranceways.
(Ord. No. 13-20, § IV, 5-23-13)

Sec. 62-303. Materials and colors.

Fencing must be made of metal (aluminum, steel, iron, or similar material) and must be of a dark or neutral color. Black or brown is preferred. (Ord. No. 13-20, § IV, 5-23-13)

Sec. 62-304. Architecture.

The architectural details of fencing shall be approved by the community development department in order to ensure compatibility with the surrounding architecture and buildings. All portions of fencing facade shall be constructed in such a way or of a material that allows the free flow of air and open view through the fencing when viewed from either side of the fencing, and in no event shall the façade of each fence segment consist of more than 50 percent solid and opaque material.

(Ord. No. 13-20, § IV, 5-23-13)

